
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 274

28 MARCH 2017

INTENTION TO INTRODUCE THE MARINE SPATIAL PLANNING BILL, 2017 INTO PARLIAMENT AND EXPLANATION SUMMARY OF THE BILL

The Minister of Environmental Affairs intends introducing the Marine Spatial Planning Bill, 2017 in Parliament in 2017 in terms of Rule 276 of the Rules of the National Assembly and in terms of Rule 186 of the Rules of the National Council of Provinces.

An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly and Rule 186(1)(b) of the Rules of the National Council of Provinces.

Copies of the draft Bill can be obtained from Mr. Heinrich Muller, National Department of Environmental Affairs, East Pier Building 1, East Pier Road, V&A Waterfront, Cape Town. Email: hmuller@environment.gov.za and Tel. (021) 819 2421. The draft Bill is also available on the website of the national Department of Environmental Affairs, www.environment.gov.za.



**BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS**

MEMORANDUM ON THE OBJECTS OF THE MARINE SPATIAL PLANNING BILL, 2017

1. BACKGROUND

1.1 The ocean has become an attractive economic expansion opportunity as land resources are under increased pressure. As a result, there is much more intensive multiple sector usage which may lead to conflict situations. Individual sector planning in the ocean is no longer viable and there is a need to co-ordinate planning in South Africa's ocean space and optimise sustainable economic growth. Sectoral ocean governance practices do not follow a plan-based approach. Regulation within sectors has little or no consideration of the policies and plans of other users or sectors that may be conflicting or compatible, thereby requiring coordination. Establishing boundaries for management and planning efforts are also most often based on political considerations and are not necessarily meaningful from an economic, ecological or social perspective.

1.2 In August 2014, the President established the first Operation Phakisa for the Ocean Economy, led by the Department of Environmental Affairs, to focus on unlocking the economic potential of South Africa's ocean. One of the key outcomes at Operation Phakisa (Ocean) was the development of a Marine Spatial Plan ("MSP"), and an integrated ocean governance institutional framework to ensure effective implementation. The Department of Environmental Affairs was identified as the lead department to develop the MSP and the legislation to support it. The main purpose of the Marine Spatial Planning Bill, 2017 ("the Bill") is to provide a statutory basis for the implementation of marine spatial planning for South Africa.

2. OBJECTS OF BILL

The objects of the Bill are to—

(a) develop and implement a shared marine spatial planning system to manage a

- changing environment that can be accessed by all sectors and users of the ocean;
- (b) promote sustainable economic opportunities which contribute to the development of the South African ocean economy through coordinated and integrated planning;
 - (c) facilitate good ocean governance;
 - (d) provide for the documentation, mapping and understanding of the physical, chemical and biological ocean processes and opportunities in, and threats to, the ocean; and
 - (e) to give effect to South Africa's international obligations in South African waters.

3 SUMMARY OF BILL

3.1 The Bill seeks to create a marine spatial planning system that promotes economic growth and is facilitated by coordinated planning across multiple sectors.

3.2 The Bill applies to South Africa's territorial waters (12 nautical miles from the base line), the Exclusive Economic Zone (200 nautical miles from the base-line), extended continental shelf claim, the territorial waters, exclusive economic zone and extended continental shelf around the Prince Edward Islands.

3.3 Principles and criteria for MSP decision-making

A set of decision-making and conflict resolution criteria based on the principles in the draft marine spatial planning framework ("MSP Framework"), have been inserted to assist in decision-making and conflict resolution.

3.4 Marine spatial planning system

Marine spatial planning is an iterative planning system. The process begins with the development of a MSP Framework, which sets out the broad objectives and processes of marine spatial planning. The Minister must also develop a knowledge and information base which will contain all relevant data

and information from core sector departments. This information will assist in the development of marine area plans. Since the ocean is so vast, planning will be divided into bio-geographic marine areas and plans for these areas will be developed by analysing and allocating the spatial and temporal distribution of human activities in the South Africa's ocean space. The MSP principles must be considered when developing these plans.

3.5 **Consultation**

Consultation must occur in the development of the MSP Framework and the marine area plans. Affected organs of state, coastal planning bodies, and industries are also specifically mentioned. The operational development and consultation is done by the National Working Group on Marine Spatial Planning ("National Working Group on MSP"), which consists of a technical working group, who report on and make recommendations on the MSP Framework and marine area plans to the Directors-General Committee on Marine Spatial Planning ("DG Committee"). It is then submitted to the Ministerial Committee on Marine Spatial Planning ("Ministerial Committee"), for final approval.

3.6. **Institutional Framework and Implementation**

The National Working Group on MSP has been included in the institutional structures with the power to consult MSP experts. The National Working Group on MSP advises and makes recommendations to the DG Committee. The recommendations must include the relevant marine area plans and a comprehensive report on the analysis and criteria used for developing the plan. The DG Committee and Ministerial Committees consist of the core departments that are represented on the National Working Group on MSP. These are the departments responsible for responsible for defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, science and technology, telecommunications, tourism, transport, and rural development and land affairs. There is the option to co-opt other

departments where necessary. There is also an obligation to report on the implementation of MSP to Cabinet at least every 2 years, in order that other departments are also kept informed. A quorum and decision-making by majority vote has been included. The decision tree begins with recommendations by the National Working Group on MSP (technical advisory body) to the DG's Committee. The DG's Committee may refer the matter back to the National Working Group with instructions or submit with recommendations to the Ministerial Committee, who similarly may refer the matter back with instructions or give final approval.

3.7 **Publication**

The approved MSP Framework and the marine area plans must be published in the *Gazette* and may be amended or reviewed when necessary but at least every five years. The Ministerial Committee is responsible for ensuring cooperation between sector departments, and where necessary, resolving user conflicts.

3.8 **Regulations**

The Minister may after consulting the Ministerial Committee prescribe regulations.

4. **DEPARTMENTS/BODIES/PERSONS CONSULTED**

- 4.1 The draft Marine Spatial Planning Bill was published for public comment on 24 March 2016 written comments were received from Nelson Mandela Metropolitan University, Rhodes University, University of Cape Town, City of Cape Town, Western Cape, Cape Nature, Council for Scientific and Industrial Research ("CSIR"), South African National Biodiversity Institute, World Wide Fund for Nature South Africa, South African Deep-Sea Trawling Industry Association, Irvin and Johnson Holding Company (Pty) Ltd ("I&J"), Ocean and

Land Resource Assessment Consultants, Oceana, West Coast Rock Lobster Association, South African Pelagics Fishing Industry Association.

4.2 In addition to the written comment process, stakeholder summits were held for both government and general stakeholders to further consult the MSP Bill and process. The following government departments, public entities, industry representatives, academics and NGOs were present:

- Department of Agriculture, Forestry and Fisheries;
- Department of Defence;
- Department of Higher Education and Training;
- Department of Mineral Resources;
- Department of Rural Development and Land Reform;
- Department of Science and Technology;
- Department of Tourism;
- Department of Trade and Industry;
- Department of Transport;
- Council for Geoscience;
- CSIR;
- Petroleum Agency of South Africa;
- South African Maritime Safety Authority;
- South African National Biodiversity Institute;
- South African National Hydrographers Organisation;
- Transnet;
- 101 SA;
- Abalone Farmers Association;
- Africa Energy;
- Bird Life South Africa;
- Denel Spaceteq;
- Exxon Mobile;
- Fish South Africa, Sea Harvest Corporation (Pty) Ltd;

- I&J;
- International Tourism consultant;
- Nelson Mandela Metropolitan University;
- Oceana;
- Offshore Petroleum Association of South Africa;
- Pioneer fishing;
- South African Deep-Sea Trawling Industry Association;
- Smit Amandla;
- Statoil;
- Total E&P South Africa; and
- University of Cape Town.

5. FINANCIAL IMPLICATIONS FOR STATE

R1 million for use of GTAC – National Treasury - budgeted from the Medium Term Expenditure Framework (“MTEF”) R200 000 consultation and publication in the *Gazette* - budgeted from MTEF €9 million for implementation of the marine spatial plan externally funded via Benguela Current Convention and GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit - German funding).

6. PARLIAMENTARY PROCEDURE

6.1 The spatial planning in South African waters as envisaged by the Bill seeks to balance environmental, economic and social objectives which pertains to areas listed in Schedule 4 to the Constitution, namely, environment, industrial promotion, regional planning and development, tourism, trade, urban and rural development, local tourism, municipal planning, pontoons, ferries, jetties, piers and harbours.

6.2 It is thus our view that cumulatively the provisions of the Bill, with the positive obligations for the provincial and local government in the implementation of marine spatial plans and due to harbours being an area listed in Part B of

Schedule 4 to the Constitution, to a substantial measure have a bearing on the areas listed above in Schedule 4 to the Constitution.

6.3 The Department of Environmental Affairs and the State Law Advisers are of the view that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996.

6.4 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 347

24 MARCH 2016

DRAFT MARINE SPATIAL PLANNING BILL, 2016

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby publish for public comment, the draft Marine Spatial Planning Bill, 2016 as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the draft bill is invited to do so within 60 days from the date of publication in the *Government Gazette* and by no later than 16h00 on the last day. Comments received after this time may not be considered. All representations and comments must be submitted in writing to the Deputy Director-General of the Department of Environmental Affairs, Branch: Oceans and Coasts:

Hand-deliver to: The Deputy Director-General
Environmental Affairs: Oceans and Coasts
Attention: Mr Gcobani Popose
East Pier Building 2, East Pier Road
V and A Waterfront, Cape Town

By post to: Environmental Affairs: Oceans and Coasts
P O Box 52126
V and A Waterfront, Cape Town
8002

By email to: Mspbill@environment.gov.za
Enquiries: Mr Gcobani Popose 021 819 2416

For background information the Socio Economic Impact Assessment Study on the bill is available on request via e-mail.



BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

REPUBLIC OF SOUTH AFRICA

—————
MARINE SPATIAL PLANNING BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill
published in Government Gazette No. ... of ... 2016)*

(The English text is the official text of the Bill)

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(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B—2016]

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BILL

To provide a framework for marine spatial planning in South Africa's waters; to provide for the development of the marine spatial plan; to provide for institutional arrangements for the implementation of the marine spatial plan and governance of the use of the ocean by multiple sectors; and to provide for matters connected therewith.

PREAMBLE

WHEREAS South Africa's exclusive economic zone consists of a total of 1 540 000 square kilometres of ocean, and South Africa has lodged a claim for an extended continental shelf for an additional 1 870 000 square kilometres;

AND WHEREAS recognising the economic opportunities in the ocean;

AND WHEREAS the ocean is subject to environmental change and variability and is not homogenous and that there is a need to balance economic, ecological, and social objectives;

AND WHEREAS the ocean is being used more intensively than it has been in the past and has multiple users that may conflict with one another;

AND WHEREAS there is a need to co-ordinate planning in South Africa's ocean space and optimise sustainable economic growth;

AND IN ORDER TO address these matters;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

1. Definitions
2. Objects of Act
3. Application of Act
4. Conflicts with other legislation
5. Marine spatial planning system
6. Development of marine spatial plan
7. Directors-General Technical Committee
8. Functions of the Directors-General Technical Committee
9. Ocean Economy Ministerial Management Committee
10. Functions of the Ocean Economy Ministerial Management Committee
11. Compliance with the marine spatial plan
12. Short title and commencement

Definitions

1. In this Act, unless the context indicates otherwise—

"Director-General" means the Director-General of the Department responsible for environmental affairs;

"internal waters" means the internal waters as defined in section 3 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

"marine area plans" means the marine area plans developed in terms of section 6(1)(c);

"marine sector plan" means a plan as prescribed, which sets out priorities and potential use allocations for specific users within the ocean environment, developed by an organ of state responsible for such user group;

"marine spatial plan" means a marine spatial plan developed in terms of section 6;

"marine spatial planning framework" means a marine spatial framework referred to in section 5(b);

"Minister" means the Cabinet Minister responsible for environmental affairs;

"prescribe" means to prescribe by regulation;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"regulation" means a regulation made and includes a notice issued under this Act;

"sector" means a particular industry or user group which operates within South African waters to conduct its activities or operations or business;

"sector department" means a Department that regulates a sector;

"South African waters" means the—

(a) internal waters, territorial waters, the exclusive economic zone, and the continental shelf as defined in section 7 of the Maritime Zones Act, 1994;

(b) the zones referred to in (a) around the Prince Edward Islands referred to in the Prince

Edward Islands Act, 1948 (Act No. 43 of 1948); and

(c) estuaries;

"territorial waters" means the territorial waters as defined in section 4 of the Maritime Zones Act, 1994; and

"this Act" includes any regulation or notice made or issued under this Act.

Objects of Act

2. The objectives of the Act are to—

- (a) promote sustainable economic opportunities which contribute to the development of the ocean economy through coordinated and integrated planning;
- (b) develop a shared national marine spatial planning process to manage a changing environment that can be accessed by all sectors and users of the ocean;
- (c) facilitate good ocean governance; and
- (d) provide for the documentation, mapping and understanding of the physical, chemical and biological ocean processes and opportunities in, and threats to, the ocean.

Application of Act

3. (1) This Act applies—

- (a) on or in South African waters; and
- (b) to all persons and to all vessels and aircraft, including foreign vessels and aircraft, on or in South African waters or the airspace above South African waters.

(2) This Act binds all organs of state.

Conflicts with other legislation

4. In the event of any conflict between a section of this Act and other national legislation, the section of this Act prevails if the conflict specifically concerns marine spatial planning.

Marine spatial planning system

5. The marine spatial planning system for the ocean includes the following components:

- (a) A knowledge and information base of ecological processes relevant for reporting on the ocean environment in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998), or a specific environmental management Act, relevant social and economic information, and any other information necessary for the marine spatial planning;
- (b) a marine spatial planning framework and marine area plans which set out the principles and frameworks for the development of a marine spatial plan;
- (c) marine sector plans, which will inform co-ordinated sector planning in the implementation, monitoring and evaluation, and review of the marine spatial plan;
- (d) a marine spatial plan which is an iterative mechanism of analysing and allocating the spatial and temporal distribution of human activities in the exclusive economic zone to achieve ecological, economic, and social objectives; and

- (e) the effective implementation, monitoring and evaluation, and review of the marine spatial plan.

Development of marine spatial plan

6.(1) The Directors-General Technical Committee established in terms of section 7 must—

- (a) develop and maintain the knowledge and information base referred to in section 5(a) and may request an organ of state to provide data, statistics, documents, and any other relevant information that may be necessary for the development of a marine spatial plan;
- (b) develop a marine spatial planning framework which must include broad principles and objectives of the marine spatial plan, which guide development of the marine area plans;
- (c) develop marine area plans referred to in section 5(b) for the East Coast, South-East Coast, West Coast and Prince Edward Islands, which must be guided by the marine spatial planning framework and must reflect the specificities and requirements of the region in alignment with the marine spatial planning framework;
- (d) develop a marine spatial plan informed by the national and marine area plans, marine sector plans, if any, and will include but not be limited to—
 - (i) objectives and principles determined in the national and marine area plans;
 - (ii) maps and spatial data of different sector uses;

- (iii) compatible and incompatible uses within specific ocean planning areas;
- (iv) synergies among compatible users;
- (v) projections, forecast and future planning scenarios;
- (vi) analysis of emerging uses;
- (vii) environmental change impacts;
- (viii) biological, chemical and physical characteristics of the ocean including species, habitats and ecosystems;
- (ix) the submerged historic environment;
- (x) community and cultural values;
- (xi) current uses, activities and pressures for change;
- (xii) future uses and opportunities for all interests and sectors;
- (xiii) the nature, potential utility and value of marine resources;
- (xiv) threats to the natural systems;
- (xv) shared economic, cultural, social and environmental values;
- (xvi) existing monitoring and management arrangements and the extent that they will need to be adapted; and
- (xvii) methods of assessing performance and consistency with the plan; and

(e) review and update the marine spatial plan at least every five years.

(2) When developing the marine spatial plan, an appropriate consultation process with all relevant organs of state and members of the public must be followed.

(3) The Minister must publish—

- (a) the marine spatial planning framework and marine area plans in the *Gazette*; and

(b) the marine spatial plan, maps and any other GIS data, on an appropriate electronic platform.

(4) The Minister may, after consultation with the Ocean Economy Ministerial Management Committee referred to in section 9, prescribe the submission of marine sector plans including, but not limited, to the contents, frequency, responsible organs of state and any other relevant details required for such plans, or any other matter that is required for the effective implementation of marine spatial planning.

Directors-General Technical Committee

7. (1) A Directors-General Technical Committee, comprising of Directors-General responsible for administering environmental affairs, fisheries, trade and industry, transport, mineral resources, energy, public enterprises, science and technology, international relations, higher education and training, rural development and land reform, labour, public works, home affairs, small business development, tourism, National Treasury, economic development, and monitoring and evaluation in the Presidency, is hereby established.

(2) Directors-General from other relevant departments may be co-opted where necessary.

(3) The Director-General and the Director-General in the Presidency, responsible for monitoring and evaluation, are co-chairpersons of the Directors-General Technical Committees.

(4) The Directors-General Technical Committee may determine its own procedures.

(5) The Directors-General may delegate their powers and functions to officials within their respective departments.

Functions of the Directors-General Technical Committee

8. (1) The functions of the Directors-General Technical Committee, in addition to the functions referred to in section 6, are to:

- (a) coordinate the maintenance, implementation, monitoring and evaluation, and review of the marine spatial plan;
- (b) coordinate and determine priorities on the implementation of the marine spatial plan;
- (c) ensure cooperation between sector departments;
- (d) identify the current and future needs and related priorities;
- (e) consider sector plans and identify compatible and incompatible uses within specific ocean planning areas, synergies among compatible users, projections, forecast and future planning scenarios, analysis of emerging uses, and environmental change impacts; and
- (f) resolve user conflicts, including trade-offs or off-sets between sectors.

(2) The Directors-General Technical Committee must coordinate the joint responsibilities in terms of this Act in accordance with the framework established by the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

(3) The Directors-General Technical Committee may refer any matter to the Ocean Economy Ministerial Management Committee referred to in section 9 for a decision.

Ocean Economy Ministerial Management Committee

9. (1) The Ocean Economy Ministerial Management Committee, comprising of Ministers responsible for administering environmental affairs, fisheries, trade and industry, transport, mineral resources, energy, public enterprises, science and technology, international relations, higher education and training, rural development and land reform, labour, public works, home affairs, small business development, tourism, National Treasury, economic development, and monitoring and evaluation in the Presidency, is hereby established.

(2) Ministers from other relevant departments may be co-opted where necessary.

(3) The Minister and the Minister in the Presidency, responsible for monitoring and evaluation, are co-chairpersons of the Ocean Economy Ministerial Management Committee.

(4) The Ocean Economy Ministerial Management Committee may determine its own procedures.

Functions of the Ocean Economy Ministerial Management Committee

10. (1) The functions of the Ocean Economy Ministerial Management Committee are *inter alia* to consider and decide on any matter referred to it by the Directors-General Technical Committee.

(2) If the Ocean Economy Ministerial Management Committee is unable to make a final decision on any matter referred to it, the matter may be referred to the Executive Issue Resolution Committee referred to in subsection (3), for a final decision.

(3) The Executive Issue Resolution Committee will be constituted on an *ad hoc* basis and will comprise of the Deputy President, who is the chairperson of the Committee and the relevant Ministers involved in the matter that requires resolution as contemplated in subsection (2).

Compliance with the marine spatial plan

11. An organ of state may not issue any permit, permission, licence or other authorisation that is contrary to the marine spatial plan or any final decision of the Directors-General Technical Committee, the Ocean Economy Ministerial Committee or the Executive Issue Resolution Committee.

Short title and commencement

12. This Act is called the Marine Spatial Planning Act and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.