

REPUBLIC OF SOUTH AFRICA

MARINE SPATIAL PLANNING BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Government Gazette No. 40726 of 28 March 2017)
The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS)

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BILL

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

PREAMBLE

WHEREAS South Africa has a vast exclusive economic zone totalling 1 540 000 square kilometres of ocean;

AND WHEREAS the ocean presents economic opportunities;

AND WHEREAS the ocean is subject to environmental change and variability and is not homogenous and 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 usages that may conflict with one another;

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

AND IN ORDER TO address these matters,

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

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Definitions

1. In this Act, unless the context indicates otherwise—
- “**Director-General**” means the Director-General of the Department responsible for environmental affairs;
- “**Directors-General Committee**” means the Directors-General Committee on Marine Spatial Planning established by section 10; 5
- “**marine area plan**” means a bio-geographic marine area that will serve as a planning unit which is developed by analysing and allocating the spatial and temporal distribution of human activities in the South African waters to achieve ecological, economic and social objectives, taking into account all relevant principles and factors set out in this Act; 10
- “**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 planning framework**” means a document which sets out the goals, objectives, principles and framework for the development of marine area plans; 15
- “**Minister**” means the Cabinet Minister responsible for environmental affairs;
- “**Ministerial Committee**” means the Ministerial Committee on Marine Spatial Planning established by section 11; 20
- “**National Working Group**” means the National Working Group on Marine Spatial Planning established by section 9;
- “**prescribe**” means prescribed by regulation;
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution; 25
- “**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— 30
- (a) internal waters as referred to in section 3 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), but excludes all freshwater bodies and estuaries as defined in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);
- (b) territorial waters, the exclusive economic zone and the continental shelf as referred to respectively in sections 4, 7 and 8 of the Maritime Zones Act, 1994; and 35
- (c) the zones referred to in paragraph (b) around the Prince Edward Islands as referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and
- “**this Act**” includes any regulation or notice made or issued under this Act. 40

Objects of Act

2. The objects of the Act 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; 45
- (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 50
- (e) give effect to South Africa’s international obligations in South African waters.

Application of Act

3. This Act applies to marine spatial planning on or in South African waters and binds all organs of state. 55

Conflicts with other legislation

4. In the event of any conflict between the provisions of this Act and other legislation specifically relating to marine spatial planning, the provisions of this Act prevail.

Principles and criteria for marine spatial planning

5. (1) The following principles apply to marine spatial planning: 5
- (a) The sustainable use, growth and management of the ocean and its resources;
 - (b) the identification of economic opportunities which contribute to the development of the ocean economy;
 - (c) the promotion of collaboration and responsible ocean governance;
 - (d) the promotion of an ecosystem and earth system approach to ocean 10 management which focuses on maintaining ecosystem structure and functioning within a marine area;
 - (e) adaptive management, which takes into account the dynamics of the ecosystems and the evolution of knowledge and of activities in South African waters; 15
 - (f) a precautionary approach;
 - (g) the promotion of equity between and transformation of sectors;
 - (h) the reliance on the best available scientific information;
 - (i) the equitable resolution of conflict scenarios including the implementation of trade-offs, relocations and other available resolutions; 20
 - (j) the principle of efficiency, whereby—
 - (i) decision-making procedures are designed to minimise negative financial, social, economic or environmental impacts; and
 - (ii) the principle of spatial resilience and flexibility; 25
 - (k) the principle of good administration; and
 - (l) South Africa's international obligations and cross-border cooperation.
- (2) Where there is a conflict between existing uses, developing uses or activities, maximum co-existence of uses or activities should be preferred wherever possible but where such co-existence is not possible, subsection (1)(i) must be applied.

Marine spatial planning system 30

6. The marine spatial planning system is an iterative, phased process consisting of the following steps:

- (a) The development of a marine spatial planning framework;
- (b) the development of a knowledge and information system referred to in section 7; 35
- (c) the development of marine area plans;
- (d) the effective implementation, monitoring and evaluation of marine area plans; and
- (e) the review of the marine area plans in terms of section 14.

Knowledge and information system 40

7. (1) The Minister must establish a knowledge and information system to house information in order to develop marine area plans, which must include—

- (a) ecological processes;
- (b) relevant social and economic information;
- (c) information relating to all sectors including existing and future uses and 45 marine sector plans, if available;
- (d) the outcome of consultations contemplated in section 8(2);
- (e) any other data and information necessary for the development, amendment or review of the marine area plans; and
- (f) where relevant, information relating to matters as prescribed by the Minister 50 in terms of section 13.

(2) Sector departments must submit all sector information contemplated in subsection (1) to the Minister upon request, or as prescribed, for consideration in the development of the marine area plans.

(3) The data and information submitted in terms of subsection (2) is subject to the 55 Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Consultation

- 8.** (1) In the development of the marine spatial planning framework and the marine area plans, the National Working Group must ensure that all relevant stakeholders are adequately consulted, including—
- (a) sector departments; 5
 - (b) affected organs of state;
 - (c) institutional coastal planning bodies;
 - (d) industrial representative bodies from the various affected sectors; and
 - (e) the general public.
- (2) Despite subsection (1), sector departments must ensure that their respective stakeholders are properly consulted and the outcomes of the consultations must be made available prior to the development of any marine area plan and this information should form part of the sector information submitted in terms of section 7(2). 10

National Working Group

- 9.** (1) A National Working Group on Marine Spatial Planning is hereby established, comprising of competent officials who are nominated from the departments responsible for defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, science and technology, telecommunications, tourism, transport, rural development and land affairs. 15
- (2) The National Working Group is a technical group responsible for— 20
- (a) developing a draft marine spatial planning framework that complies with the objects of the Act and the principles and criteria for marine spatial planning provided for in sections 2 and 5;
 - (b) developing draft marine area plans by using the information from the knowledge and information data base contemplated in section 7 and by taking into account relevant factors, including the principles in section 5 and the following factors: 25
 - (i) Maps and spatial data of different sector uses;
 - (ii) compatible and incompatible uses within specific ocean planning areas; 30
 - (iii) synergies among compatible users;
 - (iv) projections, forecast and future planning scenarios;
 - (v) the analysis of emerging uses;
 - (vi) environmental change impacts;
 - (vii) biological, chemical and physical characteristics of the ocean, including species, habitats and ecosystems; 35
 - (viii) the submerged historic environment;
 - (ix) the community and cultural values;
 - (x) current uses, activities and pressures for change;
 - (xi) future uses and opportunities for all sectors; 40
 - (xii) the nature, potential utility and value of marine resources;
 - (xiii) threats to the ocean environment;
 - (xiv) shared economic, cultural, social and environmental values;
 - (xv) existing monitoring and management arrangements and the extent that they will need to be adapted; 45
 - (xvi) methods of assessing performance and consistency with the plan;
 - (xvii) the current and future needs and related priorities; and
 - (xviii) the process of monitoring and implementation of the marine area plans; and
 - (c) the report submitted to the Directors-General Committee and the Ministerial Committee. 50
- (3) In addition to subsection (2), the National Working Group must make a recommendation to the Directors-General Committee—
- (a) by submitting draft marine area plans, accompanied by a report detailing how the recommendation was reached, including what factors were considered; 55
 - and
 - (b) on how to resolve user conflicts, including relocations, trade-offs or other resolutions as contemplated in section 5(2).
- (4) The National Working Group may appoint a panel of experts to advise them on any aspect of their functions in terms of this Act. 60

Directors-General Committee

10. (1) A Directors-General Committee on Marine Spatial Planning is hereby established, comprising of Directors-General from the departments responsible for defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, science and technology, telecommunications, tourism, transport, rural development and land affairs. 5

(2) A Director-General from another relevant department may be co-opted where necessary.

(3) The Director-General and the Director-General responsible for planning, monitoring and evaluation are co-chairpersons of the Directors-General Committee. 10

(4) At a meeting of the Directors-General Committee, at least six of the members referred to in subsection (1) constitute a quorum.

(5) A decision of the majority of the members present at any meeting constitutes a decision of the Directors-General Committee, and in the event of an equality of votes, the Director-General responsible for planning, monitoring and evaluation must have a deciding vote in addition to his or her deliberative vote. 15

(6) The Directors-General contemplated in subsection (1) may nominate their alternates on the Directors-General Committee.

(7) The Directors-General Committee must consider the marine area plans and accompanying reports referred to it by the National Working Group, and either— 20

(a) approve and refer a marine area plan and accompanying report to the Ministerial Committee, which referral may include—

(i) recommendations to resolve user conflicts, including relocations, and trade-offs or other resolutions between sectors as contemplated in section 5(2); and 25

(ii) recommendations on facilitating cooperation between sector departments; or

(b) refer the marine area plan and accompanying report back to the National Working Group with specific instructions for consideration.

Ministerial Committee 30

11. (1) The Ministerial Committee on Marine Spatial Planning is hereby established, comprising of Ministers responsible for defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, science and technology, telecommunications, tourism, transport, rural development and land affairs.

(2) A Minister from another relevant portfolio may be co-opted where necessary. 35

(3) The Minister and the Minister responsible for planning, monitoring and evaluation are co-chairpersons of the Ministerial Committee.

(4) At a meeting of the Ministerial Committee, at least six of the members referred to in subsection (1) constitute a quorum.

(5) A decision of the majority of the members present at any meeting constitutes a decision of the Ministerial Committee, and in the event of an equality of votes, the Minister responsible for planning, monitoring and evaluation must have a deciding vote in addition to his or her deliberative vote. 40

(6) Subject to subsection (6), the Ministerial Committee may—

(a) approve any marine area plans and accompanying reports referred to it by the Directors-General Committee; 45

(b) approve any marine area plans and accompanying reports with amendments; or

(c) refer any marine area plans and accompanying reports back to the Directors-General Committee for reconsideration with specific instructions. 50

(7) The Ministerial Committee must—

(a) ensure cooperation between sector departments; and

(b) where necessary, resolve user conflicts, including relocations, and trade-offs or other resolutions between sectors as contemplated in section 5(2).

(8) The Ministerial Committee must report to Cabinet on implementation of marine spatial planning at least every two years. 55

Publication

12. Once the marine spatial framework and marine area plans have been approved by the Ministerial Committee, the Minister must publish—
- (a) the marine spatial planning framework and those parts of the marine area plans which can be published, by notice in the *Gazette*; and 5
 - (b) those parts of the marine area plans which cannot be published by notice in the *Gazette*, on an appropriate electronic platform.

Regulations

13. The Minister may, after consultation with the Ministerial Committee, make regulations on the following: 10
- (a) Submission of marine sector plans, including—
 - (i) responsible organs of state that must submit marine sector plans;
 - (ii) the frequency of submission of marine sector plans by responsible organs of state; and
 - (iii) the content and format of marine sector plans; 15
 - (b) the provision of data, statistics, documents and any other relevant information that may be necessary for the development of a marine area plan from organs of state or other relevant persons, bodies or institutions;
 - (c) anything that may be prescribed under this Act; and
 - (d) any other matter that is required for the effective implementation of marine 20 spatial planning under this Act.

Review of plans

14. The marine area plans must be reviewed at least every five years and, if necessary, amended in terms of the iterative, phased process contemplated in section 6 and the process and procedure contemplated in sections 9 to 11. 25

Short title and commencement

15. This Act is called the Marine Spatial Planning Act, 2017, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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 coordinate 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 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 baseline), the Exclusive Economic Zone (200 nautical miles from the baseline), 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 marine spatial planning 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 ("National Working Group"), 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 has been included in the institutional structures with the power to consult MSP experts. The National Working Group 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 Committee consist of the core departments that are represented on the National Working Group. These are the departments responsible for defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, science and technology, telecommunications, tourism, transport, 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 two 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 (technical advisory body) to the DG Committee. The DG 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 and 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 on the draft Marine Spatial Planning Bill and its processing. 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.