

REPUBLIC OF SOUTH AFRICA

MARINE SPATIAL PLANNING BILL

(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)

(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

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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;

"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*.