# REPUBLIC OF SOUTH AFRICA

**MARINE SPATIAL PLANNING BILL**

**[B9-2017]**

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*(As proposed by the Portfolio Committee on Environmental Affairs (National Assembly))*

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**(MINISTER OF ENVIRONMENTAL AFFAIRS)**

**[B9—2017]**

**AMENDMENTS PROPOSED**

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**MARINE SPATIAL PLANNING BILL**

**[B 9—2017]**

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**CLAUSE 1**

1. On page 3, after line 6, to insert the following definition:

**“ 'marine area'** means a bio-geographic area that will serve as a planning unit for a marine area plan;”.

2. On page 3, in line 7, after the first "a" to omit "bio-geographic" and to substitute "plan developed within a".

3. On page 3, from line 7, to omit "that will serve as a planning unit which is developed".

**CLAUSE 2**

1. On page 3, after line 48, to insert:

*"(c)* conserve the ocean for present and future generations;".

2. On page 3, in line 49, to omit "*(c)* facilitate good ocean governance;" and substitute with *"(d)* facilitate responsible use of the ocean;".

3. On page 3, in line 50, to omit "(*d*)" and to substitute "(*e*)".

4. On page 3, in line 53, to omit "(*e*)" and to substitute "(*f*)".

**CLAUSE 3**

1. On page 3, in line 55, after "3." to insert "(1)".

2. On page 3, after line 56, to insert:

"(2) Any right, permit, permission, licence or any other authorisation issued in terms of any other law must be consistent with the approved marine area plans.".

**CLAUSE 5**

1. On page 4, in line 5, after “planning” to insert “and should be applied and considered having regard to the precautionary approach”.

2. On page 4, in line 9, after “responsible” to omit “ocean governance” and substitute with “use of the ocean through consultation and cooperation”.

3. On page 4, in line 10, after “the” to omit “promotion” and substitute with “advancement”.

4. On page 4, in line 16, after “*(f)”* to omit “a precautionary approach” and substitute with “the principle of spatial resilience and flexibility”.

5. On page 4, in line 21, after "whereby" to omit "⎯".

6. On page 4, in line 22, to omit "(i)".

7. On page 4, in line 23, after the semi-colon, to omit “and” to omit the last “and”.

[This may be incorrect.]

8. On page 4 in line 24, to omit "(ii)the principle of spatial resilience and flexibility;".

9. On page 4, in line 25, after "administration" to insert ", coherent and holistic planning and management".

10. On page 4, in line 29, after “possible,” to omit “subsection (1)*(i)* must be applied” and substitute with “the principles in subsection (1) must be applied to resolve such conflict”.

**CLAUSE 8**

1. On page 5, in line 8, to omit “and”.

2. On page 5, after line 8, to insert:

 “*(e)* representative organisations of affected persons and institutions; and”.

3. On page 5, in line 9, before “the”, to omit “*(e)*” and substitute “*(f)*”.

4. On page 5, in line 15, after “(1)” to insert “*(a)*”.

**CLAUSE 9**

1. On page 5, in line 15, after “(1)” to insert “*(a)*”.

2. On page 5, in line 18, after “evaluation,” to insert “public enterprises,”.

3. On page 5, after line 19, to insert:

 "*(b)* The official nominated from the department responsible for environmental affairs, must be the chairperson and convener of the National Working Group.”

**[**The Department would prefer that section 9(1) is drafted in a way that is consistent with the other provisions of the Bill.

We prefer that full statements appear in the form of subsections while paragraphs (like *(a)*, *(b)* etc.) are used to list things, as is currently in the Bill. As a compromise, we propose:

“**9.** (1) A National Working Group on Marine Spatial Planning is hereby established and—

 *(a)* comprises of competent officials who are nominated from the departments responsible for defence, energy, environmental affairs, fisheries, mineral resources, planning monitoring and evaluation, public enterprises; science and technology, telecommunications, tourism, transport, and rural development and land affairs; and

 *(b)* the official nominated from the department responsible for environmental affairs must be the chairperson and convenor of the National Working Group.”**]**

4. On page 5, from line 29, after “uses” to omit “within specific ocean planning areas”.

5. On page 5, in line 46, after “the” to omit “plan” and to substitute “marine area plans”.

6. On page 5, in line 50, after “report” to insert “contemplated in subsection (3)*(a)* which must be”.

7. On page 5, from line 50, to omit “and the Ministerial Committee”.

8. On page 5, in line 54, after “detailing” to insert “transitional provisions, if any, and”.

9. On page 5, after line 58, to insert:

 “(4) The recommendation contemplated in subsection (3), must be made by consensus, and where no consensus is reached, all the proposed options must be presented in the report.”.

10. On page 5, in line 59, to omit “(4)” and to substitute “(5)”.

**CLAUSE 10**

1. On page 6, in line 5, after “evaluation,” to insert “public enterprises,”.

2. On page 6, from line 9, after “Director-General”, to omit “and the Director-General responsible for planning, monitoring and evaluation are co-chairpersons” and substitute with “is the chairperson”.

[Note that the Minister/ Department raised with the Committee the difficulty resulting from making the DEA the only chair in these committees, inter alia, that this system has been working really well and it gives the other departments comfort and assurance in the process. Also for the Committee to bear in mind that the co-chairing has no real effect as there is no voting or power of veto. It is merely a formality. On the other hand, if the chairpersonship is reserved only for DEA, the other departments may withdraw and challenge the entire process. In addition, the other departments are accountable to their own committees and it may be difficult to force them to participate effectively.]

3. On page 6, from line 13, after “decision” to omit “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” and to substitute “of the Directors-General Committee, must be made by consensus, and where no consensus is reached, all the proposed options must be presented to the Ministerial Committee for a final decision”.

4. On page 6, in line 18, after “Committee” to insert “, which alternate may not be a member of the National Working Group and not lower than the rank of chief director”.

[Proposed insertions: **“**the National Working Group and may not be lower than the rank of Chief**-**Director**”** – in the same way that “Director-General” is hyphenated and capitalised, for consistency.]

5. On page 6, in line 29, after “Group”to omit “with specific instructions for consideration” and to substitute “for reconsideration, with specific instructions”.

**CLAUSE 11**

1. On page 6, in line 33, after “evaluation,” to insert “public enterprises,”.

2. On page 6, from line 40, after the first “the” to omit “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” and to substitute “Ministerial Committee in terms of this Act must be made by consensus”.

3. On page 6, in line 44, after “(6)” to omit “Subject to subsection (6), the” and to substitute "The".

**CLAUSE 12**

**Option 1: as formulated by the Department, OCSLA and Parliamentary Law Advisers**

1. On page 7, from line 2, to omit clause 12 and to substitute the following clause:

"12.(1)(*a*) Any marine spatial framework and marine area plans that have been approved by the Ministerial Committee, must be tabled by the Minister, in Parliament for consideration by the relevant Parliamentary Committee, at least ……… days before publication thereof in the *Gazette*, if Parliament is then in session.

(*b*) If Parliament is not in session as contemplated in paragraph (*a*), the marine spatial framework and the marine area plans must be submitted to the Speaker of Parliament for consideration of the relevant Parliamentary Committee, at least ……………. days before publication thereof in the *Gazette*.

**[**Departmental proposal, consistent with earlier proposal:

“12. (1) Any marine spatial framework and marine area plans that have been approved by the Ministerial Committee, must—

 *(a)* be tabled by the Minister in Parliament for consideration by the relevant Parliamentary Committee at least ……… days before publication thereof in the *Gazette*, if Parliament is ~~then~~ in session; or

 *(b)* must be submitted to the Speaker of Parliament for consideration ~~of~~ by the relevant Parliamentary Committee, at least ……………. days before publication thereof in the *Gazette,* if Parliament is not in session.”**]**

(2) …. days after the marine spatial framework and marine area plans have been tabled in Parliament or submitted to the Speaker of Parliament as contemplated in subsection (1), 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

(b) those parts of the marine area plans which cannot be published by notice in the *Gazette*, on an appropriate electronic platform.''

**Option 2 drafted by OCSLA for possible consideration**

1. On page 7, from line 2, after "12." to omit "Once the marine spatial framework and marine area plans have been approved by the Ministerial Committee, the Minister must publish—" and to substitute the following:

"(1) Any marine spatial framework and marine area plans that have been approved by the Ministerial Committee, must be tabled by the Minister in Parliament for consideration by the relevant Parliamentary Committee, before publication thereof in the *Gazette.*

 (2) After the marine spatial framework and marine area plans have been tabled in Parliament and considered by the relevant Parliamentary Committee as contemplated in subsection (1), the Minister must publish—".

[Propose deletion of “as contemplated in subsection (1) as the section, which consists of 2 subsections, is not unclear without it.

Note also that the Department has researched the law on this matter and the Constitutional power read with the rules of Parliament is so wide that inserting any statutory refinement may limit those powers unintentionally.]

**CLAUSE 13**

1. On page 7, after line 18, to insert:

*“(c)* the manner and form of consultation as contemplated in section 8(1);”

2. On page 7, in line 19, before “anything” to omit “*(c)*;” and to substitute “*(d)*”.

[Incorrect inclusion of the semi-colon in the reference “*(c)*;”]

[Propose deletion of the “and” in line 19 of page 7]

[Propose insertion of “and” after “

3. On page 7, in line 20, before “any” to omit “*(d)*;” and to substitute “*(e)*”.

[Incorrect inclusion of the semi-colon in the reference “*(d)*;”]