

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. ... of ... 2017)
The English text is the official text of the Bill)*

(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B—2017]

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

ARRANGEMENT OF SECTIONS

Sections

1. Definitions
2. Objects of Act
3. Application of Act
4. Conflicts with other legislation
5. Principles and criteria for marine spatial planning
6. Marine spatial planning system
7. Knowledge and information system
8. Consultation
9. National Working Group on Marine Spatial Planning
10. Directors-General Committee on Marine Spatial Planning
11. Ministerial Committee on Marine Spatial Planning
12. Publication
13. Regulations

14. Review of plans
15. 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;

"Directors-General Committee on Marine Spatial Planning" means the Directors-General Committee established by section 10;

"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;

"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;

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

"Ministerial Committee on Marine Spatial Planning" means the Ministerial Committee established by section 11;

"National Working Group on Marine Spatial Planning" means the technical working group 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;

"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 as referred to in section 3 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), but excludes all fresh water 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
- (c) the zones referred to in (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.

Objects of Act

2. The objectives 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;
- (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) 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.

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:
- (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 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;
- (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;
- (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;
- (k) the principle of good administration; and
- (l) South Africa's international obligations and cross-border co-operation.

(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

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;
- (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

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 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

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 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 on Marine Spatial Planning must ensure that all relevant stakeholders are adequately consulted, including—

- (a) sector departments;
- (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).

National Working Group on Marine Spatial Planning

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, and rural development and land affairs.

(2) The National Working Group on Marine Spatial Planning is a technical group responsible for—

- (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—
 - (i) maps and spatial data of different sector uses;
 - (ii) compatible and incompatible uses within specific ocean planning areas;
 - (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;

- (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;
 - (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;
 - (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 on Marine Spatial Planning and the Ministerial Committee on Marine Spatial Planning.

(3) In addition to subsection (2), the National Working Group on Marine Spatial Planning must make a recommendation to the Directors-General Committee on Marine Spatial Planning—

- (a) by submitting draft marine area plans, accompanied by a report detailing how the recommendation was reached, including what factors were considered; 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 on Marine Spatial Planning may appoint a panel of experts to advise them on any aspect of their functions in terms of this Act.

Directors-General Committee on Marine Spatial Planning

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, and rural development and land affairs.

(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 on Marine Spatial Planning.

(4) At a meeting of the Directors-General Committee on Marine Spatial Planning, 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 on Marine Spatial Planning 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.

(6) The Directors-General contemplated in subsection (1) may

nominate their alternates on the Directors-General Committee on Marine Spatial Planning.

(7) The Directors-General Committee on Marine Spatial Planning shall consider the marine area plans and accompanying reports referred to it by the National Working Group on Marine Spatial Planning and either—

(a) approve and refer a marine area plan and accompanying report to the Ministerial Committee on Marine Spatial Planning, 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

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

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

Ministerial Committee on Marine Spatial Planning

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, and rural development and land affairs.

(2) A Minister from another relevant portfolio may be co-opted

where necessary.

(3) The Minister and the Minister responsible for Planning, Monitoring and Evaluation are co-chairpersons of the Ministerial Committee on Marine Spatial Planning.

(4) At a meeting of the Ministerial Committee on Marine Spatial Planning, 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 on Marine Spatial Planning 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.

(6) Subject to subsection (6), the Ministerial Committee on Marine Spatial Planning may—

- (a) approve any marine area plans and accompanying reports referred to it by the Directors-General Committee on Marine Spatial Planning;
- (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 on Marine Spatial Planning for reconsideration with specific instructions.

(7) The Ministerial Committee on Marine Spatial Planning 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 Marine Spatial Planning Committee must report to Cabinet on implementation of Marine Spatial Planning at least every two years.

Publication

12. Once the marine spatial framework and marine area plans have been approved by the Ministerial Committee on Marine Spatial Planning, 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.

Regulations

13. The Minister may, after consultation with the Ministerial Committee on Marine Spatial Planning, make regulations on the following:

- (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;
- (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 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.

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*.