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Contents

| <i>No.</i> | | <i>Gazette No.</i> | <i>Page No.</i> |
|--|--|------------------------|---------------------|
| GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS | | | |
| Environmental Affairs, Department of/ Omgewingsake, Departement van | | | |
| 274 | Marine Spatial Planning Bill, 2017: Intention to introduce the Act into parliament and explanation summary of the Bill | 40726 | 4 |

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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