

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS AMENDMENT BILL

*(As amended by the Portfolio Committee on Water and Environmental Affairs
(National Assembly)
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 28B—2013]

ISBN 978-1-77597-128-3

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Environmental Management: Protected Areas Act, 2003, so as to amend or insert certain definitions; to authorise the declaration of marine protected areas; to provide for the management of marine protected areas; to provide for transitional measures; and to effect certain textual alterations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 57 of 2003, as amended by section 1 of Act 31 of 2004

1. Section 1 of the National Environmental Management: Protected Areas Act, 2003 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “Department” of the following definition:

“**‘Department’** means the national Department **[of Environmental Affairs and Tourism]** responsible for administering environmental affairs;”;

(b) by the insertion after the definition of “environmental goods and services” of the following definition:

“**‘fish’**, when used as a verb, has the meaning, with the changes required by the context, ascribed to ‘fishing’ in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);”;

(c) by the substitution for the definition of “marine protected area” of the following definition:

“**‘marine protected area’** means an area declared as a marine protected area in terms of **[section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998)]** section 22A;”;

(d) by the insertion after the definition of “marine protected area” of the following definition:

“**‘marine waters’** means waters that form part of the internal waters, territorial waters and the exclusive economic zone of the Republic, respectively referred to in sections 3, 4 and 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), and includes an estuary defined in section 1 of the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);”;

- (e) by the substitution for the definition of “national protected area” of the following definition:

“**‘national protected area’** means—

- (a) a special nature reserve;
- (b) a national park; **[or]**
- (bA) a marine protected area; or
- (c) a nature reserve or protected environment—
 - (i) managed by a national organ of state; or
 - (ii) which falls under the jurisdiction of the Minister for any other reason;”.

Amendment of section 2 of Act 57 of 2003, as amended by section 2 of Act 31 of 2004

2. Section 2 of the principal Act is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) to provide for a diverse and representative network of protected areas on state land, private land **[and]**, communal land and marine waters;”.

Amendment of section 4 of Act 57 of 2003

3. Section 4 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) to **[the exclusive economic zone and]** marine waters, including the continental shelf of the Republic[,] referred to in [sections 7 and] section 8 **[, respectively,]** of the Maritime Zones Act, 1994 (Act No. 15 of 1994).”.

Substitution of section 14 of Act 57 of 2003, as inserted by section 4 of Act 31 of 2004

4. The following section is hereby substituted for section 14 of the principal Act :

“**[Marine] Continued existence of marine protected areas**

14. [(1) Chapter 1, this Chapter and section 48 apply to marine protected areas.

(2) The other provisions of this Act do not apply to marine protected areas, but if a marine protected area has been included in a special nature reserve, national park or nature reserve, such area must be managed and regulated as part of the special nature reserve, national park or nature reserve in terms of this Act.] Any marine protected area which had been declared as such in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which exists when the National Environmental Management: Protected Areas Amendment Act, 2013, takes effect, must be regarded as a marine protected area declared as such in terms of section 22A.”.

Insertion of Part 2A in Act 57 of 2003

5. The following Part is hereby inserted in Chapter 3 of the principal Act, after Part 2:

“Part 2A

Marine protected areas

Declaration of marine protected areas

22A. (1) The Minister may, by notice in the *Gazette*—

- (a) declare an area specified in the notice—
 - (i) as a marine protected area; or
 - (ii) as part of an existing marine protected area; and
 - (b) assign a name to the marine protected area.
- (2) A declaration under subsection (1)(a) may only be issued—
- (a) to conserve and protect marine and coastal ecosystems;
 - (b) to conserve and protect marine and coastal biodiversity;

- (c) to conserve and protect a particular marine or coastal species, or specific population and its habitat;
 - (d) if the area contains scenic areas or to protect cultural heritage;
 - (e) to facilitate marine and coastal species management by protecting migratory routes and breeding, nursery or feeding areas, thus allowing species recovery and to enhance species abundance in adjacent areas;
 - (f) to protect and provide an appropriate environment for research and monitoring in order to achieve the objectives of this Act; or
 - (g) to restrict or prohibit activities which is likely to have an adverse effect on the environment.
- (3) A notice under subsection (1)(a) may only be issued after consultation with the Cabinet member responsible for fisheries.

Withdrawal of declaration of, addition to, or exclusion from, marine protected areas

- 22B.** The Minister may, by notice in the *Gazette*—
- (a) withdraw a declaration made under section 22A(1);
 - (b) add to or exclude any area from a marine protected area; and
 - (c) assign a different name to a marine protected area.”.

Amendment of section 28 of Act 57 of 2003, as amended by section 8 of Act 31 of 2004

6. Section 28 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) to regulate the area as a buffer zone for the conservation and protection of a special nature reserve, national park, marine protected area, world heritage site or nature reserve;”.

Amendment of section 31 of Act 57 of 2003, as amended by section 9 of Act 31 of 2004

7. Section 31 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
- “Subject to subsection 34, before issuing a notice under section 18(1), 19, 20(1), 21, 22(1), 22A(1), 22B, 23(1), 24(1), 26(1), 28(1) or 29, the Minister may follow such consultative process as may be appropriate in the circumstances, but must—”.

Amendment of section 34 of Act 57 of 2003, as amended by section 10 of Act 31 of 2004

8. Section 34 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “If it is proposed to declare an area under section 18(1) [or], 20(1) or 22A(1) as a special nature reserve [or], a national park [,] or a marine protected area, or as part thereof, and that area consists of or includes—”.

Amendment of section 37 of Act 57 of 2003, as substituted by section 13 of Act 31 of 2004

9. The following section is hereby substituted for section 37 of the principal Act:

“Application of Chapter

- 37.** Except where expressly stated otherwise in this Chapter, this Chapter only applies to a protected area which is a special nature reserve, national park, marine protected area, nature reserve or protected environment, and the expressions “**protected area**”, “**national protected area**”, “**provincial protected area**”, “**local protected area**” and “**protected environment**” must be construed accordingly in this Chapter.”.

Amendment of section 38 of Act 57 of 2003, as amended by section 14 of Act 31 of 2004 and section 3 of Act 15 of 2009

10. Section 38 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
 “(a) subject to paragraphs (aA) and (aB), may assign the management of any kind of protected area listed in section 9 to a suitable person, organisation or organ of state;”;
- (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (aA); 10
- (c) by the insertion in subsection (1) after paragraph (aA) of the following paragraph: 15
 “(aB) may assign the management of a marine protected area only to a suitable national organ of state, but the powers referred to in section 48A(2) may not be so assigned; or”; and
- (d) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20
 (b) may assign the management of a privately owned protected environment to a suitable person, organization or organ of state, provided that the owner and lawful occupier have requested or consented to such assignment, and the Minister has given the owner and lawful occupier notice in writing in terms of section 33. 25

Amendment of section 41 of Act 57 of 2003

11. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (g) of the following paragraph: 25

- “(g) a zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections, provided that in a marine protected area, the zoning must not conflict with a zoning in terms of section 48A(2)(a).”.

Amendment of section 48 of Act 57 of 2003, as amended by section 18 of Act 31 of 2004 30

12. Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

- “Despite other legislation, no person may conduct commercial prospecting [or], mining, exploration, production or related activities— 35

Insertion of section 48A in Act 57 of 2003

13. The following section is hereby inserted in the principal Act, after section 48:

“Restriction of activities in marine protected areas

- 48A.** (1) Despite any other legislation, no person may in a marine protected area— 40
- (a) fish or attempt to fish;
 - (b) take or destroy any fauna or flora;
 - (c) undertake any dredging or extraction of sand, rock, gravel or minerals unrelated to any activities referred to in section 48(1);
 - (d) discharge or deposit waste or any other polluting matter; 45
 - (e) in any manner which results in an adverse effect on the marine environment, disturb, alter or destroy the natural environment or disturb or alter the water quality or abstract sea water;
 - (f) carry on any activity which may have an adverse effect on the ecosystem of the area; 50
 - (g) construct or erect any building or other structure on or over any land or water within such a marine protected area;
 - (h) carry on marine aquaculture activities;
 - (i) engage in bio-prospecting activities;

- (j) sink or scuttle any platform, vessel or other structure; or
- (k) undertake mineral exploration, and production of petroleum and other fossil fuels.
- (2) Notwithstanding subsection (1) but subject to section 48(1), the Minister may, in relation to a marine protected area, prescribe—
 - (a) different zones to regulate different activities within that marine protected area; and
 - (b) activities which require a permit.
- (3) Before exercising the power referred to in subsection (2), the Minister must—
 - (a) consult with the Minister responsible for fisheries and the management authority that is responsible for managing the relevant marine protected area; and
 - (b) ensure that the zoning achieves the objectives referred to in section 2.
- (4) Any zone declared in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), or created by regulation in terms of section 77 of that Act which exists when the National Environmental Management: Protected Areas Amendment Act, 2013, takes effect, must be regarded as a zone prescribed in terms of subsection (2)."

Amendment of section 52 of Act 57 of 2003, as amended by section 20 of Act 31 of 2004

- 14.** Section 52 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:

“(1) The management authority of a national park, marine protected area, nature reserve or world heritage site may, in accordance with prescribed norms and standards, make rules for the proper administration of the area.”;
 - (b) by the insertion in subsection (2) after paragraph (a) of the following paragraph:

“(aA) must be consistent with any zoning or permitting done in terms of section 48A(2), and if there is a conflict, such zoning and permitting prevails;”;
 - (c) by the deletion in subsection 2(b) of the word “and”;
 - (d) by the addition to subsection 2(c) of the expression “; and”;
 - (e) by the addition to subsection (2) of the following paragraph:

“(d) must be published in the *Gazette*.”; and
 - (f) by the addition of the following subsection:

“(3) Rules made in terms of subsection (1) which apply to marine protected areas must be made in consultation with the Department.”

Amendment of section 90 of Act 57 of 2003

15. Section 90 of the principal Act is hereby amended by the addition of the following subsection:

- “(3) Section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), is hereby repealed.”.

Amendment of section 91 of Act 57 of 2003, as inserted by section 26 of Act 31 of 2004

- 16.** Section 91 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

“**Savings and transitional provisions**”; and
 - (b) by the addition of the following subsection:

“(3) (a) Any regulation relating to a marine protected area prescribed in terms of section 77 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which exists when the National Environmental Management: Protected Areas Amendment Act, 2013, takes effect, must be regarded as having been prescribed in terms of this Act and remains of force and effect until it is repealed or amended in terms of this Act.

(b) Anything done in relation to a marine protected area in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which could have been done in terms of this Act must be regarded as having been done in terms of this Act.

(c) Any permission granted in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which was valid immediately before the commencement of the National Environmental Management: Protected Areas Amendment Act, 2013, remains valid and the person concerned must be regarded as having been issued with a permit contemplated in section 48A(2).

(d) Any application for a permit or exemption lodged in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which has not been finalised when the National Environmental Management: Protected Areas Amendment Act, 2013, takes effect must, despite the repeal of section 43 of that Act by section 90(3), be dispensed with in terms of section 43 of the Marine Living Resources Act, 1998, and a decision taken in terms of section 43 must be deemed as a decision taken in terms of this Act.”.

Amendment of Arrangement of Sections of Act 57 of 2003, as amended by section 1 of Act 31 of 2004

17. The Arrangement of Sections which occur before section 1 of the principal Act is hereby amended—

(a) by the substitution for item 14 of the following item:

“**14. [Marine]** Continued existence of marine protected areas”; and

(b) by the insertion after item 22 of the following heading:

“Part 2A

Marine protected areas”;

(c) by the insertion after that heading of the following items:

“**22A.** Declaration of marine protected areas

22B. Withdrawal of declaration of or addition to or exclusion from marine protected areas”;

(d) by the insertion after item 48 of the following item:

“**48A.** Restriction of activities in marine protected areas”;

(e) by the substitution for item 91 of the following item:

“**91.** Savings and transitional provisions”; and

(f) by the addition of the following items:

“**SCHEDULE 1**
SCHEDULE 2”.

Short title and commencement

18. This Act is called the National Environmental Management: Protected Areas Amendment Act, 2013, and comes into effect on the date of publication in the *Gazette* as contemplated in section 81 of the Constitution of the Republic of South Africa, 1996, or such earlier date as determined by Proclamation by the President in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1. The National Environmental Management: Protected Areas Amendment Bill, 2013 (“the Amendment Bill”), seeks to amend the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), (“the Act”). The Act is a specific environmental management Act within the framework of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA).
- 1.2. The Amendment Bill focuses on the incorporation of marine protected areas into the NEMA protected areas regime. Marine protected areas (“MPAs”) are currently regulated under the Marine Living Resources Act, 1998 (Act No. 18 of 1998), (“MLRA”), with the exception of certain provisions which are regulated in terms of the Act (Protected Areas Act). Fisheries and marine environmental management were previously administered by one department, the then Department of Environmental Affairs and Tourism. In 2009, via a Presidential Proclamation, the fisheries function was transferred from the Minister responsible for Environmental Affairs (“the Minister”) to the Minister responsible for Agriculture, Forestry and Fisheries.
- 1.3. It is necessary to provide for legislation to give proper effect to the restructuring of the two Departments and Ministries.

2. OBJECTS OF BILL

The objects of the Bill are to—

- provide for the declaration of marine protected areas;
- provide for management of marine protected areas;
- make transitional arrangements; and
- generally bring the management of all aspects of marine protected area management under the purview of the protected areas regime in the Act.

3. CLAUSE BY CLAUSE EXPLANATION

3.1. Clause 1 (Amendment of section 1)

Certain definitions are amended or inserted to accommodate the inclusion of the powers to declare and manage marine protected areas in terms of the Act.

3.2. Clauses 2 and 3 (Amendment of sections 2 and 4)

The proposed amendment is consequential to the holistic inclusion of marine protected areas in the Act.

3.3. Clause 4 (Amendment of section 14)

Section 14 currently limits the application of certain Chapters in the Act to marine protected areas declared in terms of the MLRA. The clause seeks to remove the limitation and to bring existing MPAs within the ambit of the Act.

3.4. Clauses 5 (Insertion of Part 2A in Act)

This clause seeks to insert provisions in the Act authorising the Minister to declare MPAs and prescribe the criteria for declaration. Provision is also made for the power to withdraw such declaration or add to or exclude any area from the marine protected area.

3.5. Clauses 6, 7, 8 and 9 (Amendment of sections 28, 31, 34 and 37)

The proposed amendments are consequential to the holistic inclusion of marine protected areas in the Act.

3.6. Clause 10 (Amendment of section 38)

The proposed amendment seeks to clarify the appointment of management authorities or agents for MPAs and to provide for certain limitations of powers.

3.7. Clause 11 (Amendment of section 41)

The proposed amendment seeks to align zoning by management authorities with zoning by the Minister. It is necessary to retain both powers as they serve different objectives.

3.8. Clause 12 (Amendment to section 48)

This clause proposes to amend section 48(1) of the Act in order to expand and clarify wording. In the list of activities prohibited within protected areas, the mining activities of exploration and production have been added to clarify that all related mining activities are included.

3.9. Clauses 13 (Insertion section 48A)

The proposed amendment seeks to set out the restriction of activities within MPAs and to provide for the Minister's powers to prescribe zones and prescribe activities requiring permits. Provision is made for consultation between the Minister and the Minister responsible for fisheries.

3.10. Clauses 14 (Amendment of section 52)

The proposed amendment seeks to ensure that internal rules of an appointed management authority do not conflict with the Minister's zoning or permitting functions within MPAs. It also requires the management authorities to consult the Department before making their internal rules and to publish such rules in the *Gazette*.

3.11. Clause 15 (Amendment of section 90)

The proposed amendment seeks to repeal section 43 of the MLRA governing MPAs since the Act will in future provide for MPAs.

3.12. Clause 16 (Amendment of section 91)

The proposed amendment seeks to provide for certain savings and transitional provisions.

3.13. Clause 17 (Amendment of Arrangement of Sections)

The clause seeks to bring the Arrangement of Sections, which occur at the beginning of the Act, in line with the amendments proposed in the Amendment Bill.

3.14. Clause 18 (Short title)

This clause states the short title and commencement of the Amendment Act.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

- Department of Agriculture Forestry and Fisheries
- Presidency
- State Law Advisers

5. IMPLICATIONS FOR VULNERABLE GROUPS

None

6. FINANCIAL IMPLICATIONS FOR STATE

None

7. PARLIAMENTARY PROCEDURE

- 7.1. The State Law Advisers and the Department of Environmental Affairs are of the opinion that the proposed Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 7.2. 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.