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environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

SELECT COMMITTEE ON LAND AND ENVIRONMENTAL AFFAIRS

BRIEFING ON THE NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS AMENDMENT BILL, 2014

1. PURPOSE

The purpose of the submission is to brief the Select Committee on the National Environmental Management: Protected Areas Amendment Bill No. 28 of 2013 (NEMPA Amendment Bill/ the Bill).

2. BACKGROUND AND DISCUSSION

2.1 The NEMPA Amendment Bill was tabled in Parliament in May 2103, adopted by the Portfolio Committee on Water and Environmental Affairs on 29 November 2013, and approved in the National Assembly on 13 November 2013.

2.2 The National Environmental Protected Areas Act, No. 57 of 2003 (the Protected Areas Act) primarily regulates the declaration and management of all protected areas in South Africa. Marine protected areas, however were regulated under the Marine Living Resources Act, No. 18 of 1998 (MLRA), which preceded the Protected Areas Act. Both Acts were administered by the Department of Environmental Affairs until 2010, when via Presidential Proclamation, fisheries was transferred to the Department of Agriculture Forestry and Fisheries. The effect was that the environmental functions in the MLRA (s43 and MPA regulations and marine species conservation regulations) remained with the Department of Environmental Affairs. Both Departments were therefore "sharing" the administration of one Act and this created confusion and interpretational difficulties. It is therefore necessary to separate the environmental functions functions to create certainty and clarity. This Bill aims to do that by repealing the function of declaring and managing marine protected areas in the MLRA (fisheries legislation) and incorporating it into the Protected Areas Act (environmental legislation).

- 2.3 The Bill has the following clauses:
- 2.3.1. Clause 1 amends certain definitions and inserts definitions in the Act to accommodate the inclusion of the powers to declare and manage marine protected areas in terms of the Act.
 - 2.3.2. Clauses 2 and 3 amends one of the objectives of the Act, as a result of comments from the public, as well as consequential amendments to the holistic inclusion of marine protected areas in the Act.
 - 2.3.3. Clause 4 amends section 14 of the Act, as Section 14 currently limits the application of certain Chapters in the Act to marine protected areas (MPAs) declared in terms of the Marine Living Resources Act, 1998. The clause seeks to remove the limitation and to bring existing MPAs within the ambit of the Act.
 - 2.3.4. Clause 5 inserts a new section 22A, to insert provisions in the Act (in Part 2A), authorising the Minister to declare MPAs and prescribe the criteria for declaration. It also enables the Minister to withdraw such declaration or add to or exclude any area from a marine protected area.
 - 2.3.5. Clauses 6, 7, 8 and 9 contain consequential amendments to the Act, to allow for the holistic inclusion of marine protected areas in the Act.
 - 2.3.6. Clause 10 amends section 38 of the Act, to clarify the appointment of management authorities or agents for MPAs and to provide for certain limitations of powers and functions. The insertion in section 38(1)(b) seeks to clarify that consent requirements are only applicable to private landowners within protected environments.
 - 2.3.7. Clause 11 amends section 41 of the Act, to align zoning by management authorities with zoning by the Minister. It is necessary to retain both powers as they serve different objectives.
 - 2.3.8. Clause 12 amends 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 as a result of public comments to the Portfolio Committee.
 - 2.3.9. Clause 13 inserts a new section 48A in the Act, to set out the restriction of activities within MPAs and to provide for the Minister's powers to prescribe zones and prescribes activities requiring permits. Provision is made for consultation between the Minister and the Minister responsible for fisheries.
 - 2.3.10. Clause 14 amends section 52 of the Act, 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 that all internal rules or amendments to internal rules must be published in the Government Gazette before they are valid.
 - 2.3.11. Clause 15 repeals section 43 of the MLRA currently governing MPAs since provisions of the Amendment Bill now provide for MPAs.
 - 2.3.12. Clause 16 seeks to save the existing MPA regulations made in terms of the MLRA.

- 2.3.13 Clause 17 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.
 - 2.3.14 Clause 18 states the short title and commencement of the Amendment Act. There is no legal or practical impediment to allowing all of the proposed amendments to come into effect immediately upon publication of the assented Bill by the President in terms of section 81 of the Constitution of the Republic of South Africa of 1996.
3. A presentation on the ICM Amendment Bill is attached.