Briefing to the Portfolio Committee on Environmental Affairs Public Hearings on the Marine Spatial Planning Bill (B9-2017).

Further to comments provided by the CSIR (dated 19 June 2017) with regards to the Marine Spatial Planning (MSP) Bill (hereafter referred to as “the Bill”).

The CSIR acknowledges the fundamental importance of an MSP Act in order to govern the allocation, exploitation and management of ocean resources in a manner that is sustainable, equitable, transparent and administratively responsible. The MSP Bill is therefore a critically important step in the development of such an Act. The comments provided below are intended to improve the development of an MSP Act that is incorporated within the existing legislative framework intended to govern the inseparable and seamless coastal and ocean environment.

The Bill, and MSP Framework, and numerous other documents make reference to the value and importance of ocean resources for the growth and sustainable development of the ocean economy of South Africa. The Oceans Lab of Operation Phakisa states that the oceans have the potential to contribute up to 177 billion rand to the gross domestic product (GDP) and create just over one million jobs by 2033.

The ocean, as is the coast of South Africa, is indisputably valuable for the intentions of national growth and development. As such, it appears reasonable to expect that ocean governance be underpinned by a legislative framework at least as comprehensive as the National Environmental Management: Integrated Coastal Management Act of 2008 (ICM Act) that was created to manage the valuable coast of South Africa. This is unfortunately not the case.

Therefore, generally, the:

The lack of legislation for the National Environmental Management of the Oceans (NEMO) is the most critical weakness of this, or any version of the MSP Bill. Without the NEMO enacted, the MSP Bill is inadequate as a proxy and lacks the overarching framework for ocean governance, and the effective and coordinated role of MSP. The absence of NEMO and the definition of a dedicated ocean department, governance institutions, stakeholder processes, assignment of responsibility etc. results in an MSP Bill that appears to lack a spirit equivalent to the “People-centered, Pro-poor” approach so clearly present in the ICM Act.

A challenge of disproportionate effort to value: The value of ocean resources requires commensurately meticulous attention to the legal framework that will govern the use of the space and the resources. The ICM Act provides an example and precedent for the development of legislation intended to govern national resources.

A challenge of unreasonably asymmetry: Terrestrial and coastal spatial planning is framed and supported by an extensive and comprehensive set of legislation. This includes, but are not limited to the Spatial Planning and Land Use Management Act (No. 16 of 2013); National Environmental Management Act (No. 107 of 1998), ICM Act; Municipal Systems Act (No. 32 of 2000) and regulations dealing with Environmental Impact Assessments. Compared to coastal spatial planning that is comprehensively supported through the existence of framework legislation, the MSP Bill in the absence of an “Oceans Act” (NEMO) is unsupported to the extent of rendering it un-implementable.
Furthermore, and specifically:

Principle 5(1) c of the MSP Bill refers to “responsible ocean governance” but the term “governance” itself is not defined in Section 1. From the literature it is clear that “governance” encompasses not only the actions of the state (which includes local governments), but also of other actors including communities, businesses and civil society organizations (Adger et al., 2003; Lemos and Agrawal, 2006). Effective governance can be conceived as a framework of accountability and responsibility to users, stakeholders and the wider community that also includes formal and informal arrangements, structures and functions, institutions, and organizational traditions and values that have been put in place to achieve its objectives in an effective and transparent manner (Independent Evaluation Group of the World Bank, 2007; Olsen et al., 2011).

While Principle 5 (1) c clearly states intent to undertake Marine Spatial Planning through an ocean governance approach, the Bill itself is far removed from an authentic attempt to create, and I quote from Section 2 of the Objects of the ICM Act:

“(e) to preserve, protect, extend and enhance the status of “ocean resources” (ICM Act reads: coastal public property) as being held in trust by the State on behalf of all South Africans, including future generations;

(d) to secure equitable access to the opportunities and benefits of “ocean resources” (ICM Act reads: coastal public property); “

The point being that the MSP Bill, in its current manifestation, has no directives for promoting and achieving the principle of ocean governance. This is clear from at least two sections in the Bill:

- Firstly, Section 8 dealing with Consultation is not adequate to describe the complexity of multi-use & multi-user engagement of the ocean space. There is no clear directive and process to outline stakeholder engagement critical to the acceptance of marine area plans. The Bill refers to “adequacy” of engagement, which is vague and inadequate in itself; and,
- Secondly, all institutions of the Bill i.e. National Working Group, Director-General Committee and Ministerial Committee excludes the role of civil society other than as a stakeholder for which there is an inadequate process described for participation in multi-sector planning as required for MSP. The Bill is silent on the role of civil society in the review of marine area plans, as it is on the role of civil society on the review process of MAPs. Section 6 of the Bill describes a policy process identical to the equally or more complex ICM Act which has entire sections dedicated to stakeholder engagement.
In addition, the Bill creates challenges of administrative governance as indicated by the following:

- Section 7 outlines the scope of a “Knowledge and information system” to inform the development of marine area plans. Section 7(1)(3) of the bill indicates that the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) section 7(2) will be employed to access the relevant data and information required for the “Knowledge and information system”. The Bill neglects to reference the Spatial Data Infrastructure Act (Act 54 of 2003) (SDI Act) as the national regulatory framework for the provision and maintenance of spatial data from all organs of state;

- Monitoring and evaluation (M&E) of the creation, implementation and review of the marine area plan and the subsequent activities in the plan areas. Section 6(e) and section 10(2)(b)(xviii) deals with M&E. The Bill makes mention of the requirement for M&E within the “creation” process of a marine area plan and ensures representatively of the Planning, Monitoring and Evaluation in the Presidency (now presumably the Department of Planning, Monitoring and Evaluation). But there is no governance mechanisms to inform, govern or monitor the implementation of the marine area plans.

**Principally, the current Bill cannot compensate for the lack of NEMO legislation. The absence of NEMO fundamentally weakens the MSP Bill and renders its institutions and management tools inadequate for the complexity of ocean space allocation and effective management.**

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