

REPUBLIC OF SOUTH AFRICA

**MARINE OIL POLLUTION
(PREPAREDNESS, RESPONSE AND
COOPERATION) BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and
prior notice of its introduction published in Government Gazette No. 45983 of
28 February 2022)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B 10—2022]

ISBN 978-1-4850-0777-7

GENERAL EXPLANATORY NOTE:

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

BILL

To give effect to the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1 5

INTRODUCTORY PROVISIONS

1. Definitions
2. Objects of Act
3. Incorporation of OPRC Convention into law
4. Application of Act 10

CHAPTER 2

MARINE OIL POLLUTION PREPAREDNESS

5. Risk assessments
6. South African National Oil Spill Contingency Plan
7. Site-specific pollution contingency plan 15
8. Marine oil pollution response equipment inventory
9. Training and exercise
10. Appointment of Incident Commander
11. National Marine Oil Pollution Preparedness, Response and Cooperation Incident Management Organisation 20
12. Regional cooperation

CHAPTER 3

MARINE OIL POLLUTION RESPONSE

13. Duty to report incidents
14. Initial response actions 25
15. Incident Commander to coordinate response
16. Support of disaster structures
17. Termination of response
18. Cost recovery and compensation

CHAPTER 4

MARINE CASUALTIES AND POWERS OF INTERVENTION

19. Powers of intervention	
20. Measure to be safe, reasonable and proportional	
21. Consultation and notification	5
22. Right to compensation	
23. Protection from liability	

CHAPTER 5

ADMINISTRATION, ENFORCEMENT AND MISCELLANEOUS PROVISIONS

24. Administration and enforcement	
25. Appointment of inspectors	
26. Boarding of ships by inspectors	
27. Access to premises, offshore installation, oil-handling facility or port facility	
28. Functions of inspectors	15
29. Powers of arrest of inspectors	
30. Offences and penalties	
31. Regulations	
32. Recovery of fines by distress	
33. Time limit for prosecutions	20
34. Short title and commencement	

SCHEDULE

CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions	25
1. In this Act, unless the context indicates otherwise, any meaning ascribed to a word or expression in the OPRC Convention bears the meaning so ascribed, and	
“ Abidjan Convention ” means the Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region, 1984;	30
“ Authority ” means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);	
“ Centre for Sea-watch ” means the SAMSA’s operational unit responsible for marine domain awareness and communication;	35
“ Chief Executive Officer ” means the Chief Executive Officer of the Authority appointed in terms of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);	
“ Constitution ” means the Constitution of the Republic of South Africa, 1996;	
“ Department ” means the Department of Transport;	40
“ Director-General ” means the Director-General of the Department;	
“ flag state ” means the jurisdiction under whose laws the vessel is registered;	
“ immediate-incident-responding-party ” means the party that is first to react to the incident as it occurs;	
“ Incident Commander ” means the person appointed as an Incident Commander in terms of section 10(3);	45
“ incident command course ” means the compulsory course provided to all incident commanders;	
“ Incident Management Organisation ” means the Incident Management Organisation established in terms of section 11;	50
“ incident management system ” means the safe, effective and efficient management of response, the command and deployment of all types and forms of resources for marine pollution incidents;	
“ International Maritime Organization ” means the specialised United Nations organisation established on 17 March 1948 in terms of the International Maritime	55

Organization Convention of the United Nations concluded in London, United Kingdom in 1948;

“International Oil Pollution Compensation Funds” means funds in terms of the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013 (Act No. 36 of 2013); 5

“Intervention Convention” means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

“Intervention Protocol” means the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil, 1973;

“marine casualty” means an event, or a sequence of events, that has resulted in severe damage to the environment, or the potential for severe damage to the environment, brought about by the damage of a ship or ships; 10

“Minister” means the Cabinet member responsible for transport;

“Nairobi Convention” means the Convention for the Development, Protection, Management and Development of the Marine and Coastal Environment of the Western Indian Ocean, 1985; 15

“NOSCP” means the South African National Oil Spill Contingency Plan;

“offshore installation” means any of the following situated within the internal waters, territorial waters or the Exclusive Economic Zone, or on, or above, the continental shelf: 20

(a) Any installation, or mechanism, including a subsea pipeline or vessel, which is used for the transfer of any substance to or from—

(i) a ship;

(ii) a research, exploration or production platform; or 25

(iii) the coast of the Republic;

(b) any exploration or production platform used in prospecting for, or the mining of, any substance; or

(c) any exploration or production vessel used in prospecting for, or the mining of, any substance;

“oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products; 30

“oil and gas infrastructure” means oil and gas fields, individual wells and rigs, pipelines, transshipment centres and refineries;

“oil pollution incident” means an occurrence or series of occurrences having the same origin which results or may result in a discharge of oil and which poses or may pose a threat to the marine environment, or to the coastline or related interests of the Republic, and which requires emergency action or other immediate response; 35

“OPRC Convention” means the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990; 40

“organ of state” means organ of state as defined in section 239 of the Constitution;

“owner”, in relation to a ship, means the person or persons registered as owner of the ship, or in the absence of registration, the person or persons in whom the authority to operate the ship is vested, but in relation to a ship belonging to a State and which is operated by a person registered as the operator of the ship, the person so registered; 45

“place of refuge” means a place where a vessel in distress can be safely taken to, in order to prevent further damage or deterioration of the ship;

“prescribed” means prescribed by regulation or notice; 50

“Republic” means the Republic of South Africa;

“seaports and oil-handling facilities” means ports, oil terminals including mobile and immobile off-shore ship-to-ship bunkering, pipelines and other oil-handling facilities;

“ship” means a vessel of any type whatsoever, operating in the marine environment, and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft of any type; 55

“South African ship” means any ship having South African nationality as contemplated in section 3 of the Ship Registration Act, 1998 (Act No. 58 of 1998);

“South African waters” includes internal waters, territorial waters and exclusive economic zone as referred to in sections 3, 4 and 7 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), respectively; and 60

“this Act” includes regulations made in terms of this Act.

Objects of Act

2. The objects of this Act are to—
- (a) provide for the safe, effective and efficient management and deployment of resources in response to, cooperation in and control of, spills of oil, or any other pollutant from ships or any other sources within South African waters or which pollute or threaten to pollute South African waters, aquatic resources, coastline or related interests; 5
 - (b) provide for the effective cooperation with neighbouring countries in matters pertaining to marine oil pollution preparedness, response and control;
 - (c) incorporate into law of the Republic, the relevant provisions of the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990; and 10
 - (d) reduce and control the pollution of the marine environment, wildlife and associated impacts on biodiversity and ecological processes by oil from ships, offshore installations, seaports and oil-handling facilities. 15

Incorporation of OPRC Convention into law

3. (1) Subject to this Act, the OPRC Convention has the force of law in the Republic.
- (2) The Minister may, by notice in the *Gazette*, publish for general information any amendments made to the OPRC Convention under article 14 if those changes are binding on the Republic in terms of section 231 of the Constitution. 20
- (3) For the purpose of this Act, the English text of the OPRC Convention prevails for the purpose of interpretation.

Application of Act

4. (1) Unless expressly provided otherwise, this Act applies to all spills or possible spills of oil, from any or all sources that may pollute or threaten to pollute South African waters, coastal aquatic resources or coastline. 25
- (2) This Act applies to the Republic and to the Prince Edward Islands as referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948), including any privately owned ship, offshore installations, port facilities, oil-handling facilities or any offshore installation or any port facility or any oil-handling facility owned or partly owned or chartered or otherwise operated by an organ of state except that it does not apply to any ship or offshore installation of the South African National Defence Force in times of war, conflict or emergency. 30
- (3) This Act does not apply to warships or naval auxiliary vessels of another State.
- (4) Notwithstanding all the above, this Act will apply to an oil spill casualty occurring at a South African Naval Base. 35
- (5) This Act binds the State and all organs of State.

CHAPTER 2

MARINE OIL POLLUTION PREPAREDNESS

Risk assessments 40

5. (1) The Director-General must cause the Authority to undertake a national marine oil pollution risk assessment within two years after coming into operation of the envisaged Marine Oil Pollution (Preparedness, Response and Cooperation) Act, and thereafter at least every five years or whenever there is new development that alters the risk of marine oil pollution incidents in a port facility, oil-handling facility or offshore installation, whichever comes first. 45
- (2) The risk assessments undertaken under subsection (1) must be reported to the Director-General and lodged further with the Incident Management Organisation and must, as a minimum, define—
- (a) the main shipping routes and characterise the types, quantities and frequencies of marine pollutants carried on each route; 50
 - (b) the locations and describe marine oil pollution risks including spatial zone of influence of a potential pollution event, for all present offshore installations