

# THE HYDROGRAPHIC BILL

To provide for hydrographic surveying and nautical cartography in the RSA, in compliance with the international obligations accepted by the RSA in terms of its membership of the International Hydrographic Organization and the International Maritime Organization.

**Be it enacted by the Parliament of the Republic of South Africa, as follows:**

## Definitions

1. In this Act, unless the context indicates otherwise -

“**Chart**” means a special purpose map or a specially compiled digital data base, from which such a map can be derived, designed to meet the requirements of marine navigation, showing depth of water, nature of bottom, elevations, configurations and characteristics of coast, dangers, aids to navigation and other information relevant to navigation;

“**FIG**” means the International Federation of Surveyors;

“**GMDSS**” means the Global Maritime Distress and Safety System as established by the International Maritime Organization;

“**Hydrography**” means that branch of applied science which deals with the measurement and description of the physical features of the navigable portion of the Earth’s Surface and adjoining coastal areas with special reference to their use for the purpose of Navigation;

“**Hydrographic Office**” means the physical location from where all hydrographic and nautical cartography shall be managed;

“**HOST**” means the Hydrographic Office Survey Team established as part of the Hydrographic Service and based at the Hydrographic Office;

“**Hydrographic Surveying**” means the science of measuring and depicting those parameters necessary to describe the precise nature and configuration of the seabed and coastal strip, its geographical relationship to the landmass, and the characteristics and dynamics of the sea;

“**Hydrographic Surveyor**” means any person who studies and practices the science of hydrography and complies with the standards of competence as laid down by the FIG/IHO;

“**Hydrographer**” means a person who is a hydrographic surveyor, and in the context of this Act, is the officer appointed as the national authority for hydrography and nautical cartography in the RSA;

“**IHO**” means the International Hydrographic Organization; “**IMO**” means the International Maritime Organization;

“**IMO**” means the International Maritime Organisation;

“**Maritime Zones**” means the maritime zones established by the Maritime Zones Act of the RSA, Act 15 of 1994;

“**Minister**” means the Minister of Defence;

“**Nautical Cartography**” means the science of the compilation and production of charts and nautical publications;

“**NAVAREA**” means the short title of an area in the WORLD-WIDE NAVIGATIONAL WARNING SERVICE (WWNWS);

“**NAVAREA-VII**” means the area for which the Republic has assumed the responsibility for the coordination, compilation and dissemination of navigation warnings;

“**Navigation**” means the process of directing the movement of a craft from one point to another

“**Navigational Warning**” means a broadcast message containing urgent information relevant to safe navigation;

“**Non-reciprocating state**” - means a state which does not admit a civil action for damages against itself on the basis of fault in the preparation, dissemination or content of any official chart, nautical publication or other nautical information in favour of a South African citizen, a company registered or licensed under the Companies Act 61 of 1973, a close corporation registered or licensed under the Close Corporation Act 69 of 1984, a permanent resident of the Republic, a natural or legal person with an interest in a ship registered *or licensed* under the Merchant Shipping Act 57 of 1951 or the owners of or other natural or legal persons with an interest in the cargo or bunkers of such a ship;

“**Official Nautical Chart or Nautical Publication**” means a chart or other publication that has been issued by or on the authority of a government authorised hydrographic office or other relevant government institution, and meeting the relevant IMO and IHO Specifications;

“**Republic**” means the Republic of South Africa.

## Hydrographic Services

2. (1) The Government of the Republic shall undertake the collection and compilation of hydrographic data and the publication, dissemination and keeping up to date of all nautical information necessary for safe navigation within the Maritime Zones of the Republic.
- (2) The Government of the Republic shall undertake to carry out the following nautical and hydrographic services, in the manner most suitable for the purpose of aiding navigation:
  - (a) To ensure that hydrographic surveying is carried out adequately to the requirements of safe navigation and to internationally accepted specifications and standards.
  - (b) To prepare and to issue official nautical charts, sailing directions, list of lights, notices to mariners, tide tables and other nautical publications, where applicable, satisfying the needs of safe navigation;
  - (c) To promulgate notices to mariners in order to keep nautical charts and publications, as far as possible, up to date.
- (3) The Government of the Republic shall undertake to obtain the greatest possible uniformity in official nautical charts and nautical publications and to take into account the resolutions and recommendations of the IHO.
- (4) The Government of the Republic shall undertake to coordinate hydrographic activities to the greatest possible degree, in order to ensure that hydrographic and nautical information is made available on a world-wide scale as timely, reliably and unambiguously as possible.
- (5) The Government of the Republic shall take all steps necessary to ensure that, when information of any dangers is received by a coast radio station or by other means, it shall be promptly brought to the knowledge of those concerned and communicated to other interested Governments, by means of GMDSS or other recognised means.
- (6) Transmission of information under the provisions of subsection (5) shall be free of cost to ships concerned.

### **Hydrographer**

3. (1) The officer appointed by the Chief of the South African Navy as Hydrographer of the South African Navy shall be the Hydrographer of the Republic.
- (2) The Hydrographer of the Republic shall:
  - (a) be the national authority for hydrographic surveying and nautical cartography in the Republic and in the maritime zones of the Republic;
  - (b) be the responsible agent for the execution of the responsibilities of the Government of the Republic in terms of section 2;
  - (c) have authority to deal with all matters related to hydrography and nautical cartography in the execution of the responsibilities of the Government of the Republic in terms of section 2;
  - (d) have authority in the performance of the functions mentioned in paragraph (b) and (c) of this subsection;
  - (e) be assisted in the performance of the functions mentioned in paragraphs (b) and (c) of this subsection by the Directorate of Hydrography established by section 4;
  - (f) be the Director of the said Service;
  - (g) be entitled to delegate any of his functions in terms of this Act.

### **Hydrographic Service of the Republic**

4. (1) There is hereby established a Hydrographic Service in the South African Navy under the direction of the Hydrographer of the Republic.
- (2) The Hydrographic Service shall consist of the following:
  - (a) The Survey Fleet.
  - (b) The HOST, a quick reaction mobile survey team based at the Hydrographic Office.
  - (c) The Hydrographic Office.
  - (d) The Navigational Warning Service.

### **Membership of the International Hydrographic Organisation**

5. (1) The Republic as a member state of the IHO shall, as far as possible, adhere to the resolutions and recommendations of the IHO.
- (2) The Hydrographer of the Republic shall:
  - (a) be the official representative of the Republic for IHO and other international hydrographic matters.
  - (b) Participate in those activities of the IHO which are relevant to the performance of functions in terms of this act.
- (3) The annual membership fee for the IHO shall be paid from the Hydrographic Budget.

### **Submission of Hydrographic Information**

6. (1) Every natural or legal person within the jurisdiction of the Republic in possession of hydrographic information which have an influence on the maintenance of nautical charts, nautical publications and safety of navigation shall communicate such information to the Hydrographer as soon as reasonably practical to do so.
- (2) Failure to communicate such information in accordance with the provisions of subsection (1) shall be an offence for which the perpetrator shall be liable on conviction to a fine not exceeding R4000 or to a term of imprisonment not exceeding 4 months or to both such fine and such imprisonment.
- (3) The masters of foreign ships exercising freedom of navigation are encouraged to communicate the information in described in subsection (1) to the Hydrographer.
- (4) The Hydrographer shall: -
  - (a) utilise all relevant information in terms of subsections (1) and (3) for the maintenance of nautical charts and nautical publications through the publication of Notices to Mariners and the dissemination of navigation warnings.
  - (b) Cause, as far as possible, such information to be checked in the field for accuracy by a competent hydrographic surveyor.

**Standards of Competence of Hydrographic Surveyors and Nautical Cartographers**

7. (1) The standards of competence of hydrographic surveyors shall be as promulgated by the FIG/IHO.
- (2) The Hydrographer shall determine the standards of competence for nautical cartographers, in conjunction with the relevant national cartographic authorities, taking into account those standards of competence laid down for land cartographers.
- (3) Hydrographic surveyors shall be registered with the South African Council for Professional and Technical Surveyors (PLATO) the various categories available. The membership fees to the said Council shall be paid from the Hydrographic Budget.

**Copyright**

8. (1) Copyright shall exist in all official nautical charts, nautical publications or hydrographic data produced by the Hydrographic service of the Republic.
- (2) The Hydrographer shall be the responsible agent for the application and management of the copyright, under subsection 6 of section 5 of the Copyright Act 98 of 1978 on nautical charts, nautical publications and hydrographic data.

**Right of Access for Survey and Related Purposes : Powers on entry upon land**

9. (1) For the purpose of performing any duties imposed or exercising any powers given by this Act, by any other law or by any regulations made under any such law a hydrographic surveyor of the Hydrographic Service of the Republic may -
- (a) enter upon any land with such assistants, animals, vehicles, aircraft, appliances and instruments as are necessary for or incidental to the performance of those duties;
  - (b) enter upon any beach or reserve (both land and ocean) within the Republics' jurisdiction with any vehicle, boat, ship or aircraft necessary for or incidental to the performance of those duties;
  - (c) place or erect any permanent beacon, bench mark, reference mark or any temporary flag, signal or other mark upon such land;
  - (d) make use of any natural material upon which no work has been expended, and except within a built-up area, of any water, whether conserved or not, found upon or in such land;

- (e) cut any vegetation growing wild in the vicinity of any such beacon, mark, trigonometrical station, flag or signal for the purpose of enabling observations to be made thereto or therefrom; and
- (f) enter at all reasonable hours any building or enclosed place:

Provided that -

- (i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of such land; and
  - (ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section, and such owner or occupier shall be entitled to compensation for any damage caused to or in any building or enclosed place, and for any unreasonable damage caused to any other property belonging to such owner or occupier.
- (2) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1), or who moves, obscures or destroys any flag, peg, signal or mark of a temporary nature lawfully placed on such land in connection with any surveying operations before the completion of such operations, shall be guilty of an offence and liable to prosecution.

### **Protection of Survey Marks**

10. Anyone who alters, moves, disturbs or willfully damages or destroys any hydrographic beacon, survey reference mark or hydrographic instrument shall be guilty of an offence and upon conviction therefore shall be liable to a fine not exceeding R 4000 or imprisonment for a period not exceeding 4 months or both to such fine and such imprisonment.

### **Archiving**

11. The Hydrographer shall be responsible for the keeping and management of all hydrographic information, source documentation, original surveys, nautical charts and nautical publications in the official hydrographic archives, as part of the State Archives of the Republic, situated at the Hydrographic Office.

### **Budget**

12. (1) The Hydrographic Budget shall be prepared annually by the Hydrographer, as a separate entity in the Defence Budget.

(2) The Hydrographic Budget shall be managed and controlled through the existing mechanisms of the South African National Defence Force, by the South African Navy.

### **Ships of the Hydrographic Survey Fleet**

13. Ships of the hydrographic survey fleet shall -

- (1) be an integral part of the South African Navy;
- (2) be managed in the same manner as other ships of the South African Navy;
- (3) fulfill all tasks necessary to provide a hydrographic service to the South African Navy and the national and international maritime community in accordance with the Republic's obligations;
- (4) fall under the professional control of the Hydrographer.

### **Exclusion of Civil Liability**

14. (1) A civil action may not be brought against the State on the basis of the preparation, dissemination or content of any official nautical chart, nautical publication or other nautical information unless such chart, publication, or information as the case may be, has been produced and disseminated by the Hydrographer or with his express consent.

(2) No civil action may be brought against the State by any natural or legal person who is -

- (a) under the jurisdiction of a non-reciprocating state, or
- (b) the owner of, a passenger on, a member of the crew of, or a person who has an interest in a ship registered in a non-reciprocating state, or
- (c) the owner of or a person who has an interest in the cargo or bunkers of such a ship.

### **Applicability**

15. This Act shall be binding on the State.

### **Short Title**

16. This Act shall be called the Hydrographic Act, 200.