



Bases of spatial planning and management of the national maritime space

Law n. 17/ 2014

(published in *Diário da República* on April, 10th, 2014)

Motivation

The exploration of the maritime space is a challenge for Portugal, taking into account the fact that this is a country with one of the largest exclusive economic zones in Europe, with a sea area of over 1,700,000 km², corresponding to about 18 times its land area. Additionally, in accordance with the proposal submitted to the United Nations, the continental shelf will significantly increase the maritime area under its sovereignty or national jurisdiction.

With this renewed maritime dimension, Portugal undertakes great responsibilities in the management of the North Atlantic Ocean, especially from the point of view of the conservation and preservation of natural resources, but also gains rights of sovereignty regarding these spaces that will grant the possibility to explore and use the resources existing there, which will be key to the future of the country.

Portugal's extensive maritime space is a unique heritage, which has not been fully taken advantage of and that must be valued, preserved and well-ordered, revitalizing it



in a sustainable manner. This fact has already been recognized in the National Ocean Strategy, approved by the Council of Ministers Resolution No. 163/2006, of 12 of December, which identifies the spatial planning of activities in the national maritime space as a strategic action capable of contributing towards the creation of the conditions conducive to a sustainable use of the sea and the construction of a thriving maritime economy.

The growth of economic activities in the national maritime space, many of them competing activities, increases the chances of conflicts between different sectors of activity, such as navigation and maritime transportation, energy production, exploration, research and exploitation of geological resources, fisheries or aquaculture. The intensification of the use of the maritime space and of the exploitation of marine resources also leads to the increase of pressure over the ecosystems.

In this context, the spatial planning of the national maritime space is critical for the creation of an effective framework of compatibility between competing uses or activities, contributing to a better and bigger economic use of the marine environment, allowing the coordination of the actions of public authorities and private initiative, and leading to the minimization of the impacts of human activities in the marine environment towards sustainability. On the other hand, predictability and transparency are essential for legal security, while also promoting economic growth, safeguarding investment and reducing the costs borne by operators and investors in maritime industries.

Consequently, the present law defines the framework of the spatial planning policy of the national maritime space, as well as the spatial planning system that is composed of situation plans and allocation plans of areas or volumes of the maritime space. The option for the autonomous regulation of the spatial planning of the national maritime space is justified by its specificity in relation to terrestrial space, especially with regard to the three-dimensional nature of the sea and the fact that a same maritime area may accommodate various uses and activities, provided that they are compatible with each other. The preparation of situation plans will be made using the elements developed by the multidisciplinary team formed for the preparation of the proposal of the Plan on Maritime Spatial Planning, which prove to be relevant and appropriate for a swift and



rigorous survey of the uses and current activities of the entire national maritime space, since the application of this law depends on it.

The effectiveness of the spatial planning of the national maritime space also depends on the creation of a legal regime applicable to the use of the maritime space that regulates the concession, licensing and authorization of uses in maritime areas under the sovereignty or national jurisdiction. This legal regime aims to ensure the protection of the marine environment, as well as the establishment of clear, swift and simplified procedures for activities in the national maritime space.

The spatial planning and management hereby established materialize a new vision and a new practice, intended to be simplified, for the use of all national maritime space and for the adaptation of the existing legal models. The full appreciation of the maritime space, within a framework of sustainability, requires appropriate treatment of three action vectors: use, preservation and exercise of economic activities. In the context of this law a new and extended framework applicable to the use-vector is now established, by laying the base for the spatial planning and management, without prejudice to the necessary coordination with the remaining vectors and respective controls, regulated in specific legislation.

Simplification will be achieved with the dematerialization of the access to licensing of the use of the sea through electronic platform, but especially by the articulation of the controls carried out in the various vectors.

Thus, this law shall be without prejudice to the legal regime applicable to environmental management and water quality management governed by Directive n. 2000/60/EC of the European Parliament and of the Council, of 23 October 2000, known as the Water Framework Directive, transposed by the Law of the Water, approved by Law n. 58/2005, of 29 December, amended and republished by Decree-Law No. 130/2012, 22 June, as well as the Directive n. 2008/56/EC, of the European Parliament and of the Council, of 17 June 2008, designated Marine Strategy Framework Directive, transposed by Decree-Law n. 108/2010, of 13 of October, as amended by Decree-Law n. 201/2012, of 27 of August.

The entry into force of the present law also safeguards and ensures the compatibility with other already regulated vectors, such as the exercise of several economic



activities that make private use of the national maritime space. On the other hand, the titles for resource utilization in the national maritime space issued under previous legislation are safeguarded in particular those concerning the use of the maritime public domain in pilot areas.

This law also ensures the coordination and compatibility of the instruments of spatial planning of the national maritime space with other instruments of spatial planning that may have an impact on the maritime space.

The organisms of the government of the autonomous regions and the National Association of Portuguese Municipalities were heard

Therefore:

In accordance with lit. *d)* of paragraph 1 of article 197 of the Constitution, the Government presents to the Parliament the following law:

CHAPTER I

General provisions

Article 1

Object and scope

1 - This law establishes the bases of spatial planning and management of the national maritime space identified in the following article.

2 – The spatial planning and management of the national maritime space policy defines and integrates the actions promoted by the Portuguese State, in order to ensure proper organization and use of national maritime space, in the perspective of its valorisation and safeguard, and aims to contribute to the sustainable development of the country.

3 - Without prejudice to the following paragraph, this law does not apply to activities which, by their nature and given their object, exclusively envisage the national defence or internal security of the Portuguese State.

4 - In the course of the activities referred in the preceding paragraph, whenever possible and in view of the national interest, the Government acts in accordance with



the principles and objectives of the planning and management of the national maritime space pursuant to this law and its complementary legislation.

Article 2

National maritime space

1 - National maritime space extends from the baselines to the outer edge of the continental shelf beyond 200 nautical miles, and is organized geographically in the following maritime areas:

- a) Between the baseline and the outer limit of the territorial sea;
- b) The exclusive economic zone;
- c) The Continental shelf, including beyond 200 nautical miles.

2 - For the purposes of this law, and in accordance with the United Nations Convention for the Law of the Sea, the term baselines refers to:

- a) The low-water line along the coast, as represented in officially recognized large scale charts;
- b) In the mouths of rivers that flow directly into the sea, and in the lagoons open to the sea, the straight line drawn between the points that the limit of the low-water lines.

3 - In ports and port facilities, the contour line formed by the low-water line along the outer protective piers and the closing line at the port entry or port facility.

Article 3

Principles

In addition to the principles established in the Base-Law of the Environment, the spatial planning and spatial management of the national maritime space must comply with the following principles:

- a) The ecosystem approach, which takes into account the complex nature and dynamics of the systems, as well as envisaging the good status of marine environment and coastal areas;
- b) Adaptive management, which takes into account the dynamics of the ecosystems and the evolution of knowledge and of the activities;
- c) Integrated, multidisciplinary and cross-sector management, ensuring:



- i)* The coordination and compatibility of the spatial planning and management of the national maritime space with the economic, social, environmental and planning policies;
 - ii)* The coordination and compatibility of spatial planning and management of the national maritime space with sectorial policies that have an impact on the national maritime space, ensuring the proper balance between the public and private interests concerned;
 - iii)* Consistency between the spatial planning of the national maritime space and the spatial planning of the land territory, in particular of coastal zone;
- d)* Improvement and promotion of economic activities in a long-term perspective, ensuring effective use under the conditions assigned by the titles of private use, under the stipulated conditions;
- e)* Regional and cross-border cooperation and coordination, ensuring cooperation and coordination of various uses and of on-going activities or of activities to be developed in the national maritime space, taking into consideration the potential effects arising from the use of the national maritime space for neighbouring or international maritime spaces.

Article 4

Objectives of spatial planning and management of the national maritime space

- 1 – The spatial planning and management of the national maritime space seek the promotion of the economic, rational and efficient exploitation of marine resources and the ecosystem services, ensuring the compatibility and sustainability of its various uses and activities, taking into account the intra and intergenerational responsibility in the use of the national maritime space and towards job creation.
- 2 – Actions within the spatial planning of the national maritime space shall take into account the preservation, protection and restoration of the natural values and of the marine and coastal ecosystems and the maintenance of good environmental status of the marine environment, as well as the prevention of risk and the minimization of the effects of natural disasters, climate change or human activities.
- 3 – Actions undertaken within the spatial planning and management of the national maritime space shall ensure the legal security and the transparency of procedures for



granting the titles of private spatial use and enable the exercise of the right to information and participation referred in this law.

4 – The spatial planning and management of the national maritime space will also seek to use the available information on the national maritime space.

5- Without foregoing article 11, the spatial planning and management of the national maritime space shall prevent or minimize possible conflicts between uses and activities carried out in the national maritime space.

Article 5

Jurisdiction

1 - The Government is competent for actively promoting policies on spatial planning and management of the national maritime space and to continue the necessary activities for the implementation of the present law and its complementary legislation.

2 – The member of the Government responsible for the sea is competent to develop and coordinate the necessary actions for the spatial planning and management of the national maritime space without prejudice to the powers exercised within the framework of shared management with the autonomous regions, and, where necessary, to ensure the adequate coordination and compatibility with the spatial planning and management of the land territory.

Article 6

Planning and management system of the national maritime space

The system of planning and management of the national maritime space comprises:

- a) Strategic instruments of policy planning and management of the national maritime space, namely the National Ocean Strategy;
- b) National maritime space planning instruments referred to in Article 7. ^o.

CHAPTER II

National maritime space spatial planning

Article 7

Spatial planning instruments



1 - The spatial planning of the national maritime space is achieved through the following instruments:

a) Situation plans for one or more areas and or volumes of the zones of the national maritime space referred in n. 1 of article 2, with the identification of the maritime areas for environmental protection and preservation and the distribution in time and space of current and potential uses and activities;

b) Allocation plans for areas and or volumes of the zones of the national maritime space referred in n. 1 of article 2 for different uses and activities.

2 - The approval of allocation plans is preceded by the evaluation of the effect of the plans on the environment, in accordance with the applicable legal regime.

3 - Allocation plans must be compatible or made compatible with the situation plans, and, once approved, will be automatically included into the situation plans.

Article 8

Drafting and approval of spatial planning instruments

1 - The spatial planning instruments of the national maritime space applicable to the area between the baseline and the outer limit of the territorial sea, the exclusive economic zone and the continental shelf up to 200 nautical miles shall be prepared by the Government, with prior consultation of the government of the autonomous regions.

2 - The spatial planning instruments of the national maritime space applicable to the areas identified in the preceding paragraph that are adjacent to the archipelago of the Azores or the archipelago of Madeira, can also be prepared by the governments of the autonomous regions, with prior consultation of the Government.

3 - The spatial planning instruments of the national maritime space applicable to the continental shelf beyond 200 nautical miles shall be prepared by the Government, after hearing the governments of the autonomous regions.

4 - The spatial planning instruments of the national maritime space referred in the preceding paragraphs are approved by the Government.

5 – All those concerned may submit to the entity referred in n. 2 of article 5, proposals for the elaboration of allocation plans referred to in lit. (b) of n. 1 of article 7.



Article 9

Amendment and review of spatial planning instruments

1 – The situation plans of the national maritime space referred to in lit. *a)* of n. 1 of article 7 shall be amended in the following situations:

a) Whenever the evolution of the environmental conditions or of the economic and social development so determine;

b) Following the approval of the allocation plans referred to in lit. *b)* of n. 1 of article 7.

2 - The situation plans of the national maritime space are reviewed from time to time and according to the conditions as established in specific legislation.

Article 10

Suspension of spatial planning instruments

The spatial planning instruments of the national maritime space can be totally or partially suspended under the conditions to be defined in specific legislation and only in the cases involving the fulfilment of the national interest.

Article 11

Conflict of uses or activities

1 - Within the framework of preparing the allocation plans and when there is a case of conflict between on-going or developing uses or activities in the national maritime space and to ensure the good environmental status of the marine environment and the good condition of the coastal waters, the following preference criteria are followed for the determination of the prevailing use or activity:

a) Greater social and economic benefit to the country, in particular by creating employment and qualification of human resources, by value creation and by the contribution to sustainable development;

b) Maximum coexistence of uses or activities.

2 - The preference criteria indicated in the preceding paragraph apply by descending order and shall be excluding, being sequentially applicable when equal, pursuant to the higher criterion in the outcome of the assessment and valuation of the conflicting uses and activities, or when the previous criterion does not apply.

3 – The entities referred in n. 1 and 2 of article 8 shall, in each case, assess and value the preference criteria referred in n. 1.



4 - The preference for a use or activity may involve the relocation of on-going uses or activities, under the conditions to be defined in specific legislation.

Article 12

Information and participation rights

1 - All those concerned have a right to be informed and to participate in the procedures for the preparation, amendment, revision and suspension of the spatial planning instruments of the national maritime space, namely through the use of electronic means.

2 – The preparation, amendment, revision and suspension of the spatial planning instruments guarantees:

a) The involvement of the various ministries that oversee the sectors of activities carried out in the national maritime space and the public entities responsible for the administration of the spaces or volumes that are the object of the situation plan or the allocation plan;

b) The participation of the authorities of the Autonomous Regions of the Azores and Madeira, in the area of their competence;

c) The participation of the municipalities directly concerned;

d) The involvement of scientific, professional, union and business associations, directly or indirectly related to maritime activities;

e) The participation of all those concerned through the process of public discussion;

f) The prior publication of the proposals of spatial planning instruments of the national maritime space and of all proposals and opinions received during the process of public discussion.

3 - The spatial planning instruments of the national maritime space are published in the Official Gazette.

Article 13

Monitoring of spatial planning

Instruments on permanent monitoring and technical assessment of the spatial planning of the national maritime space must be created, under the conditions to be defined in specific legislation.

Article 14



Legal regime

The legal regime applicable to the preparation, approval, amendment, revision and suspension of the instruments of spatial planning of the national maritime space is defined in specific legislation.

CHAPTER III

Spatial use of the national maritime space

Article 15

Common spatial use

1 – The national maritime space is for public use and benefit, particularly regarding their leisure functions.

2 – The common spatial use of the national maritime space is not subject to a title of spatial use, as long as it complies with the law and constraints defined in the applicable plans and does not harm the good environmental status of the marine environment and the good condition of coastal waters.

Article 16

Private spatial use

The private spatial use of the national maritime space is permissible, subject to the reservation of an area or volume, for the development of marine resources, means or ecosystems services usage, resulting in greater public benefits than that obtained by the common spatial use.

Article 17

Titles for the private spatial use

1 – The private spatial use of the national maritime space is carried out under a title of spatial use, issued in accordance with the terms and conditions provided for in this law and other applicable legislation.

2 - The right to private spatial use of the national maritime space can only be granted by concession, license or authorization, whatever the nature and legal status of its holder.

3 - The title of private spatial use is terminated with the end of its term and in accordance with the conditions defined in specific legislation.



4 – The granting of a title of private spatial use determines its effective use and the holder must ensure, at all times, the adoption of the necessary measures for the maintenance of the good environmental status of the marine environment and of coastal areas, and is bound, after the termination of the respective title, to perform the necessary steps for the reconstitution of the altered physical conditions that do not result in a benefit, under the conditions to be defined in specific legislation.

Article 18

Issuance of other concessions, licences or authorizations

1 – The granting of a title of private spatial use does not give its holder the right to use or exploit the resources of the national maritime space.

2 - Where the exercise of a use or activity depends on the issuance of other concessions, licences or authorization in addition to the title of private spatial use, the various procedures are coordinated in accordance with the conditions to be defined in specific legislation.

Article 19

Use subject to concession

1 - Without foregoing article 21, the prolonged private spatial use of an area or volume of the national maritime space is subject to prior concession.

2 - Prolonged use is defined as uninterrupted use, lasting more than 12 months.

3 – A concession has a maximum duration of 50 years, granted in accordance with the terms and conditions defined in specific legislation.

Article 20

Use subject to license

1 - Without foregoing the following article, the temporary, intermittent or seasonal private spatial use of an area or volume of the national maritime space is subject to a prior license.

2 – A license has a maximum duration of 25 years, granted in accordance with the terms and conditions defined in specific legislation.

Article 21

Use subject to authorization



Private spatial use of the national maritime space, in the framework of pilot projects for new uses or technologies, or activities that are not of a commercial nature, is subject to authorization.

Article 22

Requirements and conditions for granting titles for private spatial use

The granting of titles for private spatial use must ensure:

- a) The compliance with the rules and principles of the present law and other applicable legislation;
- b) The compliance with the spatial planning instruments of the national maritime space.

Article 23

Prior information request

1 – All those concerned may forward to the competent entity referred in n.2 of article 5 a request for prior information on the possibility of spatial uses or activities of the national maritime space not foreseen in the instruments of spatial planning of the national maritime space.

2 – The prior information issued shall be binding only as to the possibility of using the national maritime space for the intended use or activity, in accordance with the conditions defined in specific legislation.

Article 24

Economic and financial regime

The economic and financial regime concerning the private spatial use of the national maritime space is defined in specific legislation, which shall promote:

- a) The economic, social and environmental sustainability of the use of the national maritime space;
- b) The development of activities of marine scientific research deemed of public interest or conducted within the framework of research programmes promoted by the Portuguese State.

Article 25

Other uses



The spatial use of the national maritime space not included within the scope of the present law, and which is subject to the rules and principles of international law and international conventions applicable in the national legal order and to which the Portuguese State is bound to, shall be regulated by the Government towards the respective integration in the spatial planning of the national maritime space pursuant to the present law.

CHAPTER IV

Supplementary, transitional and final provisions

Article 26

Financing of public policies for the spatial planning and management of the national maritime space

The financing of public policies for the spatial planning and management of maritime space is provided by allocation from the State budget, by funds of the European Union and by revenues from licensing, concession and authorization of private use of the national maritime space, in accordance with the terms defined in specific legislation.

Article 27

Articulation and compatibility with spatial planning instruments

1 - The articulation and the compatibility of the instruments of spatial planning of the national maritime space with other instruments of spatial planning with legal or regulatory nature also applicable to the national maritime space, shall be made in accordance with the conditions to be defined in specific legislation.

2 - The instruments of spatial planning of the national maritime space ensure the respective articulation and compatibility with land programs and spatial plans, whenever they focus on the same area, or areas, over which the structural or functional interdependence of its elements require an integrated coordination.

Article 28

Use of brackish and coastal waters for aquaculture purposes

The use of brackish and coastal waters for aquaculture purposes, including fish and shellfish waters, as well as production areas for bivalve molluscs shall be subject, *mutatis mutandis*, to the arrangements provided for in this law and respective complementary legislation.



Article 29

Information availability

1 - The basic data relating to the spatial planning and management of the national maritime space, produced by public entities or made available in compliance with legal obligations, should be accessible to the public free of charge and with easy access, namely through the use of information and communication applications that allow search, display and availability services.

2 - The provisions of the preceding paragraph shall not prejudice the possibility of charging fees, when there is the need to significantly process the data, which may be subject to exemptions in specific situations, which must be duly justified.

3 - The provisions of the preceding paragraphs shall not prejudice the safeguarding of data confidentiality or the protection due to other existing rights, including commercial and industrial, or intellectual property rights, when properly justified.

Article 30

Complementary legislation

Within six months from the date of publication of the present law, the complementary legal diplomas shall be approved and shall define:

- a) The instrument for permanent monitoring and technical assessment of the national maritime space;
- b) The legal regime applicable to the preparation, amendment, revision and suspension of the instruments of spatial planning of the national maritime space;
- c) The legal regime applicable to the titles of private spatial use of the national maritime space;
- d) The legislation for spatial planning and management of the national maritime space financing policies.

Article 31

Reports on the state of planning and use of national maritime space

1 - Every three years, the Government shall present to the Assembly of the Republic a report on the state of planning and management of the national maritime space, including monitoring and evaluation of the environmental status of the marine environment and coastal areas, to ensure sustainable development.



2 - The Government gives knowledge of the above mentioned report to the government of the autonomous regions.

Article 32

Transitional provision

1 - Until the entry into force of the complementary legislation referred in the previous article, the spatial use of the national maritime space continues to be governed by the legal provisions previously in force.

2 - The titles for the use of the resources of the national maritime space issued under previous legislation shall remain in force in accordance with the applicable terms, particularly in what concerns the inherent rights of spatial use.

Article 33

Repealing clause

The rules established by Law nº 58/2005, of 29 of December, republished by Decree-Law nº 130/2012, of 22 of June, of Decree-Law nº 226-A/2007, of 31 of May, and its complementary legislation, which are contrary to the provisions of the present law, shall be deemed to be revoked with the entry into force of the complementary legislation referred in article 30.

Article 34

Entry into force

This law shall enter into force on the following day of its publication.

Viewed and approved by the Council of Ministers of 13 of March of 2013

Approved in the Parliament on February, 14th, 2014