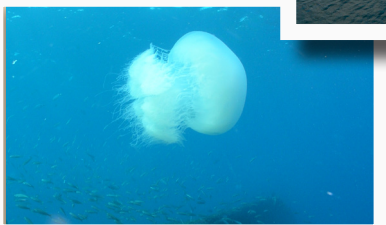
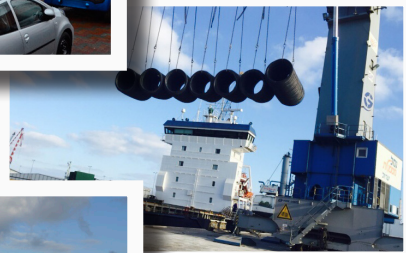
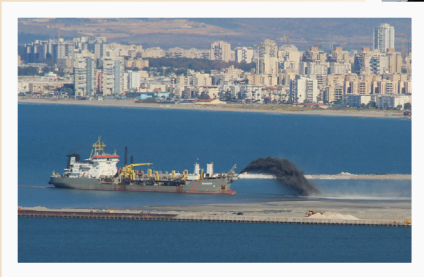


MARITIME STRATEGIC EVALUATION FOR ISRAEL 2018/19

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An Update Regarding the Marine Areas Law, 5778-2017 Currently Under Review by the Economics Committee in Preparation for the Second and Third Reading in the Knesset¹

Orin Shefler

1. What is the Status of the Proposed Law?

This chapter will survey the legislative progress of the proposed **Marine Areas Law, 5778-2017** (herein: the “Proposed Law”). The Proposed Law was drafted by the Government of Israel, approved by the Ministerial Committee for Regulatory Matters and the Ministerial Committee for Legislative Matters and passed a *First Reading* in the Knesset. Subsequently, it was submitted for review to the Economics Committee, chaired by MK Eitan Cabel, in preparation for the Second and Third Reading at a future date that has not yet been determined.

There have so far been three discussions held by the Economic Committee on this matter, each attended by relevant professionals. Most of the Committee members² attend the discussions and represent the full political spectrum. The current draft of the Proposed Law was approved after several government interventions regarding substantive matters that were a source of disagreement between various government ministries (these decisions will be described below). In the past, various other drafts of the Proposed Law were submitted as private legislative initiatives (these drafts differ from the current proposal), including a draft co-submitted by the Committee's Chairman, MK Eitan Cabel and others who are familiar with the issues in dispute. Representatives of various stakeholders attend the committee meetings as well, including environmental organizations, social activists, oil and gas companies, lobbyists, attorneys, defense organizations, academia, etc.

The Proposed Law sections are read out in public during the meetings of the Economics Committee and then discussed by the members and participants. So far, Sections 1 to 17 have been read (with a short discussion regarding section 16 out of a total 48 section in the Proposed Law).

1 The chapter relates to the proposed Marine Areas Law, 5778-2017, dated November 6, 2017, p. 48 which has passed First Reading in the Knesset.

2 Members of the Economic Committee in the 20th Knesset.

2. What are the Key Points of Disagreement, and Possible Solutions, Raised During the Economic Committee Discussions?

2.1 First Meeting (May 7, 2018)³

The first meeting focused on the goals of the Proposed Law with general statements. The meeting highlighted the rights and obligations of the State of Israel in the Exclusive Economic Zone (EEZ) according to local and international law. One of the Proposed Law's goals is to provide certainty to investors operating in the marine areas and to encourage them to make investments. The Proposed Law is based on similar laws in other countries and is consistent with the principles of international law. The Proposed Law will also enable the State of Israel to map out and delimitate its Marine Areas, including the State's maritime borders. Similarly, the Proposed Law will provide certainty with respect to the application of Israeli law in the Marine Areas.⁴



Fig. 1: Map of the Marine Areas and the Maritime Borders
(Unofficial, as of today)

³ See the press release of the Economic Committee on May 7, 2018.

⁴ See the video broadcast of the first meeting of the Economic Committee on May 7, 2018.

The current version of the Proposed Law was drafted in 2017 by the government and constitutes a continuation of two previous drafts dated 2009 and 2013, and of a legal opinion issue by Advocate Avi Licht, the former Assistant to the Attorney General (Economy) on the subject of the Marine Areas. Prior to issuing the current version, the Ministry of Justice and the Ministry of Energy held consultations with the relevant government ministries, including the Foreign Ministry, the Ministry of Defense, the Ministry of Energy, the Ministry of Environmental Protection, the Ministry of Transportation, the Ministry of the Economy, the Ministry of Finance, the Ministry of Communication, the Ministry of Health, the Ministry of Homeland Security, the Ministry of Labor and the Ministry of Welfare, as well as additional entities such as municipalities, environmental organizations, and representatives of industry and academia.

The Proposed Law resolves various issues that have been in contest between the Ministry of Energy and the Ministry of Environmental Protection concerning authority to approve *Petroleum Activities* (a defined term) and also, concerning major environmental aspects related to the Marine Areas, and in this way it differs from the previous versions.

Discussion, Disagreements, Alternatives and Decisions⁵

One of the main arguments against the Proposed Law is that it does not create a mechanism for the overall administration of Israel's EEZ. According to this view, the Proposed Law emphasizes the process of exploration, development and production of offshore oil and gas but does not pay enough attention to the variety of additional activities in the EEZ. Proponents of this claim suggest introducing a mechanism that would coordinate between all of the activities, rather than concentrating the authority with the Director of Petroleum Affairs within the Ministry of Energy. To implement an effective governing authority over the Marine Areas, the Proposed Law introduces a *Policy Document* (defined hereafter).

The following are highlights of the issues discussed during the first Committee meeting:

- **Overall Administration of Israel's Maritime Domain.** A representative of the Planning Authority was asked to present the status of the *Policy Document*.⁶ The *Policy Document* is being drafted with the support and guidance of the EU and is expected to be completed by 2023. The team has been working on the *Policy*

⁵ See the minutes of the discussion of the Economic Committee on May 7, 2018.

⁶ See the Proposed Law, Chapter 6, Section 16.

Document for about two years in two parallel committees: the first is a small group that includes representatives of all the relevant government ministries; the second group is larger and also includes relevant representatives of the public, NGOs, academia, etc. In parallel to these group activities, the public is also being involved.⁷ The representative stated that the work is progressing and that they have already created maps of all the infrastructure in Israel's maritime domain. In addition, Israel is a member of the Union for the Mediterranean (UFM) initiative of the EU and in this context has accepted the EU's principles for wise exploitation of the sea's economic potential (development of a blue economy).⁸ It appears that holistic work is being done with some of the Mediterranean countries with respect to all of the issues combined, which is manifested in the *Policy Document*.

At this point, the *Policy Document* presents three options for managing Israel's maritime domain: **the first option** includes the creation of a "maritime authority" within the Prime Minister's Office and/or as a designated committee within the Planning Authority in the Ministry of Finance.⁹ The new authority would be responsible for all aspects of managing Israel's maritime domain (other than exploration, development and production). The authority would be made up of committees, which would include a Committee for Maritime Affairs, and would formulate policy guidelines. **The second option** would also include the creation of a "maritime authority" within the Prime Minister's Office or under the National Security Council within the Prime Ministers Office, but with the goal of managing and coordinating all of the various elements of the maritime domain, but not as a single stand-alone authority with actual regulatory power. Essentially, this proposal does not involve the creation of a new regulatory body but rather leaves all of the powers with existing bodies and attempts to coordinate and manage those bodies with greater efficiency. The responsibility of the new authority according to this option would include matters common to all the stakeholders, such as security, sharing of databases, etc. The guiding principle of this option is to avoid the creation of another mechanism that might detract from efficiency and effective management.¹⁰ The Haifa Center for Maritime Policy and Research

7 See the Policy Document for Israel's Maritime Domain, expanded formulation committee, April 23, 2018.

8 See the minutes (page 19).

9 See the article in *Globes*, July 3, 2018.

10 See the proposal of the Haifa Center for Maritime Policy and Strategy which was submitted to the Planning Authority as part of the request for public comments regarding the management of

supports this option. **The third option** has not been finalized and will be presented by the Ministry of Environmental Protection and therefore has not yet come up for discussion. The process of preparing the *Policy Document* is identical to that of preparing a National Zoning Plan according to the Planning and Building Law,¹¹ including discussions with the local committees and the approval of the National Council and up to the government level approval. The critics of the Proposed Law claim that the *Policy Document* is lacking and creates a “quasi-planning” framework that circumvents the Planning and Building Law, which does not apply in Israel's EEZ.

- **Protected Maritime Zones.**¹² At this stage, the *Policy Document* defines about **18 percent** of Israel's **territorial waters** as a Protected Maritime Zones. It has not yet been determined what **percentage** of the EEZ will be declared as a Protected Maritime Zones. It should be noted that this is an issue of dispute between the government and the environmental organizations. Opponents claim that further differentiation and clarification is needed to distinguish between a Protected Maritime Zone (under the Proposed Law) and a Nature Reserve, and that the primary concern is that during the time that passes between the approval of the Proposed Law in the Knesset and until the subsequent approval of the *Policy Document*, the Ministry of Energy will have absolute and unconstrained authority to authorize oil and gas exploration and development activities in the EEZ, without Protected Maritime Zones being effectively declared. This situation will permit activity up until the declaration of the Protected Maritime Zones in the EEZ. Some claim that in some cases the interests of the Ministry of Energy and of the oil and gas companies are far from being aligned with those of the public and therefore they should be constrained immediately rather than gradually over time. In this context, the Ministry of Energy representative pointed to the strategic environmental survey carried out in 2016, which is an important benchmark for determining the Protected Maritime Zones and which is guiding its actions.

the maritime domain issued on April 24, 2018. The position paper emphasizes the importance of concentrating all responsibilities related to the management of the maritime domain under one roof within the Prime Minister's Office, but would leave in place the powers of the government ministries in the maritime domain and simply reorganize them. The Maritime Authority should be responsible for national and strategic maritime goals and the coordination of the government ministries accordingly. It should be mentioned that the more detailed position paper has practical implications and is implementable in the relevant circumstances.

11 See the Planning and Building Law, 5725-1965.

12 See the Proposed Law, Chapter 8, Section 29.

- **Separation of Powers.** The question was raised if the entity responsible for resource exploration and development of natural resources in the maritime domain should be the same body that oversees and supervises this activity? In order to explain the issue, the representative of the Ministry of Justice described certain changes in the US following the Gulf of Mexico offshore disaster (The Macondo incident). The US decided to separate some of the government authority between various different entities, however the authority was divided between divisions in the same department (in the US, the Department of the Interior – Bureau of Land and Minerals Management) with the goal of preserving the power for decision-making on disputed issues. Similarly, the Ministry of Energy in Israel has established a new body for environmental matters, which is separate from the Director of Petroleum Affairs. According to the Ministry of Justice's position, the separation itself is more important than the final identity of the entity that is authorized to approve oil and gas activity in the EEZ, since it is difficult to create complete separation between entities that have similar areas of responsibility. The separation in practice exists and therefore is balanced and preserves the principle of separation of powers. The Director for Petroleum Affairs gave the example of Australia, where two government ministries were acting without synchronization between them and therefore decided to consolidate their powers.

2.2 Second Meeting (July 12, 2018)

In this meeting, the slow process of reading out the sections of the Proposed Law began, starting from Section 1.¹³ The goal of reading each section is not to generate discussion and/or an argument over every section but rather to concentrate only on the most substantive issues, along with minimal text modification, without delaying the entire process. During the meeting, it was decided to approve some small changes, however discussions on some important issues was delayed to a later date. It was noted, that the government has already made key determinations on the main issues in dispute and there is expectation that the meetings will not drag-on more than is reasonably necessary. Following are the highlights of the Meeting:

Discussion, Disputes, Alternatives and Decisions¹⁴

- **National Assets and Cross-Border Hydrocarbon Deposits.** With regard to Section 1 (3) of the Proposed Law (The Goal of the Law), the point was raised that the text does not establish the need to protect cross-border hydrocarbon

¹³ See the video of the Second Meeting of the Economic Committee, June 12, 2018.

¹⁴ See the minutes of the meeting in the Economic Committee, June 12, 2018.

deposits.¹⁵ In other words, the Proposed Law does not include a mechanism that protects from depletion of State Assets through exploitation of an oil and gas reservoir from the other side of the border, without obtaining the consent and/or a diplomatic agreement between countries. The need for said protection is exemplified in light of the slow mediation process taking place in the case of the Aphrodite-Yishai deposits. The concern is that parties on one side will develop the joint-reservoir without reaching an agreement with the other. This type of cross-border hydrocarbon dispute could potentially arise with respect to other deposits in the future.

A proposal was made to amend the text of the section so as to adopt a principle stated in section 77 (2) of the Convention of the Law of the Sea¹⁶ (UNCLOS) which requires **Express Consent** to be given by a Coastal State for the exploitation of natural resources on its continental shelf (the seabed). One interpretation relates the mechanism of **Express Consent** in UNCLOS as a form of protective measure for cross-border hydrocarbon deposits which encourages negotiations, dialog and prior agreement between countries.

A Question that Arises from Comments Made During the Meeting (O.S):

May one side develop and/or exploit a hydrocarbon reservoir located within its Exclusive Economic Zone, which crosses into the border of a neighboring country, without securing the neighboring countries consent?

The simple answer is that there are certainly worldwide precedents and examples of cases and scenarios similar to this, as cross-border disputes are quite common around the world. But in the specific case of Aphrodite -Yishai, one must recall that Israel and Cyprus have voluntarily submitted the issue to international mediation/arbitration with the intent on agreeing on the best course of action for this cross border reservoir or otherwise to consolidate the Aphrodite and Yishai fields. The two States have undertaken to act according to the outcome of said voluntary process, in accordance with the principles of international law. This is of course a very complex legal question that must be studied thoroughly in order to achieve protection and/or make valid claims.

15 A cross-border gas deposit is one whose geological structure straddles the border between two countries and the countries share it according to percentages. The quantitative measurement of the deposit is sometimes difficult and requires international mediation in order to reach a resolution.

16 UNCLOS, Article 77 (2) "The rights referred to in Section 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State".



Fig. 2: Map of the EEZ and Maritime Border between Israel and Cyprus
 Source: An article in Calcalist titled “Nerve Gas”, October 16, 2018.

Due to the economic and diplomatic ramifications of the depletion of an oil and gas deposit without consent, a far-more reaching proposal was raised to include the possibility of imposing economic sanctions on countries and/or commercial companies involved in the depletion of the country’s natural resources without obtaining consent from the other side.

On this, the Ministry of Justice noted that the Proposed Law is not intended to provide a solution to every single issue connected to oil and gas reserves development in the EEZ. The Ministry of Justice cites the Petroleum Law, 5712-1952 as the governing legislation over offshore oil and gas fields and as such should offer solutions for such situations. Similarly, this sensitive matter has for many years now been a focus of the Foreign Ministry. The Director for Petroleum Affairs asked that this matter not be given excessive attention in public. Following a short discussion in the Committee, it was agreed to add the following onto Section 11 of the Proposed Law (which deals with the status of the gas deposits as a national asset and the law that applies to them): “...unless a different arrangement is agreed in this context.”

- **International Tribunal for Maritime Affairs.** Advocate Moshe Shahal, the former Minister of Energy who was present at the meeting referenced a legal opinion

that he had published in the past on a previous draft of the law. Advocate Shahal stated for the protocol that he does not represent any commercial body and that he is appearing before the committee without being compensated due to the importance of the issue at hand. According to his opinion, the Proposed Law is a threat to the security of the State of Israel and should not be approved at this time, in view of the fact that Israel is not a signatory of the UNCLOS and because the Proposed Law is in conflict with Israel's national security interests. From his perspective, liability could be imposed on the State in disputes concerning maritime borders as a result of the provisions of UNCLOS and without an arrangement between Israel and its maritime neighbors, the issue of borders could be submitted to the International Tribunal, where Israel has traditionally incurred an inferior position. Thus, for example, he presented the issue of the maritime border dispute with Lebanon and with Gaza and the Palestinian Authority. From his perspective the contribution of the Proposed Law is limited at this point in time, since the legal opinion of Advocate Avi Licht still provides the desired certainty without exposing the State to international law. The Ministry of Justice responded that the Proposed Law is essential to the State of Israel, both for fiscal reasons and because it is not sufficient to rely on the legal opinion of Advocate Avi Licht. Furthermore, since Israel is not a signatory of UNCLOS, but has only adopted some of its principles by way of common law, and the fact that Israel has not accepted the compulsory conflict resolutions provisions in the convention, the state will not be exposed to a compulsory proceeding of the Tribunal of the International Court of Justice without its consent.

On this matter, the issue of the maritime border dispute between Israel and Lebanon was surveyed in detail by Advocate Nadia Zimmerman as part of the Maritime Strategic Evaluation for 2017-18 published by the Haifa Center for Maritime Policy and Strategy¹⁷ and it provides support for the position of the Ministry of Justice that as long as Israel does not become a signatory of UNCLSO it cannot be forced into the conflict resolution mechanism mentioned in Section 15 of the Convention to which Advocate Shahal refers.

- **Protected Maritime Zones.**¹⁸ The Committee considered the definition of the term "Protected Maritime Zones" in relation to the term "Nature Reserve" which appears

17 "The Dispute over the Maritime Border between Israel and Lebanon – Legal Elements," Maritime Strategic Evaluation for Israel 2017-18, p. 148.

<http://hms.haifa.ac.il/images/reports/report-2018.pdf>

18 See the Proposed Law, Chapter 8, Section 29.

in the National Parks Law.¹⁹ The Ministry of Energy stressed the importance of preserving nature in the sea and referred to the strategic environmental survey it carried out in 2016,²⁰ which found that there were sensitive spawning grounds of rare corals within Israel's EEZ. These spawning grounds were defined as having major environmental importance and in the future are to be declared as Protected Maritime Zones according to the *Policy Document*. In addition, the Planning Authority stated that the future *Policy Document* will refer in detail to the maritime zones that will be closed to activity for environmental reasons and as natural heritage areas, as has been done in zones that are sensitive from a security viewpoint. It was agreed that the relevant Section that deals with this subject in the Proposed Law is Section 29, which has not yet been considered by the Committee and since this involves a substantive issue, an amendment of the definition of a "Protected Maritime Zone" should be considered following the discussion of this important section. The Chairman of the Committee defined this as a core issue and stated that it should be examined in depth.

- **Distinction between an "Offshore Facility"²¹ and a "Permanent Offshore Facility"²².** Questions were raised as to the need for a *Pro-Active Declaration* by the appointed Minister on the legal status of a Permanent Offshore Facility in the EEZ, and why the actual activity of the facility is not itself sufficient, de facto. The Ministry of Justice is of the opinion that a *Pro-Active Declaration* made by a Minister is intended to create absolute certainty and to avoid the need for interpretation – the legal status of an offshore facility has far-reaching

19 National Parks, Nature Preserves, National Sites and Memorial Sites Law, 5758-1998.

20 See the Proposed Law, Section 16 (8) and also the Strategic Environmental Survey for the Exploration and Production of Offshore Oil and Gas, October 2016. [Hebrew]

21 See the Proposed Law, Section 2 (Definitions). "An Offshore Facility is a structure or facility including a rig or platform in the Exclusive Economic Zone, whether or not it is attached to the seabed, that is required for one of the activities in the Exclusive Economic Zone including if it is a vessel as defined in the Shipping Law (Vessels), 5720-1960, listed below:

1. Exploration, Production, Exploitation, Conservation, or Management of Natural Resources.
2. Laying cables or pipelines
3. Conducting research in marine sciences
4. Construction or Abandonment of infrastructure or other facility including a rig or platform, intended for use on items 1 to 3 above".

22 See the Proposed Law, Chapter 2 (Definitions). "A Permanent Offshore Facility is an offshore facility that is planned to be in place permanently or for an extended period of time, which the Minister of Justice has declared in an announcement in *Reshumot* and which is necessary for conducting the activity stated in paragraph (1) of the definition of a "Offshore Facility" – that the Minister of Justice has declared following consultation with the Minister of Energy."

economic implications on the cost of operating such facilities. The concern here is that the Minister will not declare the status of a facility due to political or other considerations at the time, which will create a kind of exemption, deferral and/or circumvention of the intent of the law. The Ministry of Justice mentioned that there is full intention to apply all labor laws to a Permanent Offshore Facility as if it were a factory located within Israel, although there is no intention to do so for a regular Offshore Facilities that will operate for a limited amount of time in Israel's marine areas and then leave. In light of these questions, the Chairman of the Committee requested a precise definition of the "extended period" that would be determined according to the nature of the facilities operations and an amendment will be inserted into the law.

There is a possible scenario in which the legal status of a Floating Production Storage and Offloading (FPSO) unit would change over the lifetime of the project, such that it will shift from being an "Offshore Facility" to a "Permanent Offshore Facility", which would automatically induce upon it the **Fourth Addendum to the Law**²³ (and all that that implies with it). This would happen over time and according to the function of the facility, at the time of the declaration if intended by the Minister of Justice, following consultation with the Minister of Energy.

- **Adoption of the Straight Baselines Method for Delineating the Marine Areas.**²⁴ A representative of the Israel Mapping Center described the designated use of the straight baselines method in order to determine Israel's Marine Areas. The points and the baselines will constitute the boundaries for determining the marine areas from the coastline. These points touch and/or are tangent to the coastline. Following the approval of the Proposed Law, the government intends to declare the points from which the marine areas are measured and to publish their coordinates. According to the representative of the Israel Mapping Center, the proposed points (still unofficial) are as follows:
 - The Rosh Hanikra point.
 - The "techelet" point.

23 "The List of Laws that Apply to Permanent Offshore Facilities that are located in the Exclusive Economic Zone."

24 See the Proposed Law, Section 3, Definitions in the explanation. "The definition of a "baseline". As mentioned in the General section, the Proposed Law changes the method adopted by Israel for measuring the various Marine Areas adjacent to its coastline. According to the proposed method, the Marine Areas will be measured from straight lines that extend between the geographic points on the coast or nearby that are determined according to the accepted cartographic practice. Those straight lines that will serve as a point of reference for measuring the various marine areas from the baselines."

- The Rosh Carmel point.
 - The end of the Orot Rabin coal jetty (2 km out to sea).
 - The wave barrier point in Ashdod.
 - The border with Gaza point.
- **The Extension of the Antiquities Law to the Contiguous Zone.**²⁵ The Ministry of Justice stated that accumulated experience indicates that antiquities are sometimes discovered in the Continuous Zone during infrastructure construction in the maritime domain and therefore there is a need to regulate the issues of ownership, obligations, rights and rules in order to preserve antiquities that are part of Israel's heritage. Accordingly, the Antiquities Law should be extended to the Contiguous Zone, which will include the policing powers with regard to antiquities according to the Penal Code. The only reservation is that an exemption should be granted from the obligation to register a comment in the Land Registry with respect to antiquities and that no comment will be recorded with the District Committee since it is not relevant to the Contiguous Zone.
 - **Payment of Municipal Tax for Facilities, Pipelines and Infrastructures in the Territorial Waters and Shore Approach.** This is an issue with important economic implications for stakeholders in the Marine Areas [O.S.]. The question of the obligation to pay municipal tax to a municipality/coastal authority for facilities and infrastructure near the coast has been considered on a number of occasions in legal proceedings and by the Supreme Court over the years. Thus, for example, the municipalities of Haifa, Ashdod and Hadera have tried in the past to clarify this issue. So far, the courts in Israel have tended to rule against the obligation to pay municipal tax in the Territorial Waters. So was in the case of, for example, the waters enclosed by the piers and wave barriers in the Port of Ashdod²⁶ and also in the case of the coal unloading facility in Hadera.²⁷ In some of the cases, the legal proceedings have not yet come to a conclusion. At the Meeting, the Chairman, who raised the subject, instructed to determine whether the obligation to pay municipal tax on Offshore Facilities in the Territorial Waters can be included within the law. The Planning Authority Representative responded that this is under the authority of the Ministry of the Interior and their position on the matter should be ascertained. It was agreed that the issue would

25 See the Proposed Law, the Contiguous Zone, Section 7.

26 Land Ownership Appeal 86/329 Israel Ports Company Development and Assets Ltd. versus the Municipality of Ashdod.

27 Land Ownership Appeal 99-80-86361 Israel Electricity Company Ltd. versus the Municipality of Hadera.

be dealt with in the *Policy Document* and therefore there is no need to include it as a separate section in the Proposed Law.

- **Approval of the List of Laws in the First, Second, Third and Fourth Addendums.** The Ministry of Justice reported that it has drawn up the list of laws on the Addendums over the past three years based on discussions with the relevant government ministries, and according to international law (UNCLOS and others). The goal was to identify which local laws can be applied in the EEZ. During this activity, it was decided not to include the Planning and Building Law in the Addendums and therefore not to apply said law to Israel's EEZ. Instead, an alternative regulatory "quasi-planning" mechanism was proposed through a policy tool called a "*Policy Document*" under the responsibility of the Planning Authority. Said policy tool would introduce a process similar to a National Zoning Plan [O.S.]. On this, it is worth mentioning that the Second Addendum to the Proposed Law extends the Natural Gas Sector Law²⁸ to the Marine Areas, which will allow for, among other things, the construction of natural gas transmission systems beyond the territorial waters. This extension is likely to pave the way for a new international gas transmission network to Europe or beyond, outside the scope of the government leases granted to the offshore oil & gas companies.

The Chairman of the Committee concluded that the question of the application of the Planning and Building Law - yes or no - in the EEZ is in his opinion a substantive matter and it will be necessary to discuss it again later. Towards the end of the meeting, the question was also raised on how the State is planning to budget the enforcement of the laws in the EEZ.

- **The Policy Document.** The Planning Authority presented a detailed update on the progress of the preparation of the *Policy Document*, which includes both the territorial waters and the EEZ. International experts are also involved in the preparation of the *Policy Document*, through government ministries involved in the matter. The main problem in determining future-oriented policy is the lack of knowledge about the existing maritime situation and therefore there is need to enrich the sources of knowledge beforehand. Currently, there are bathymetric maps available for shallow water (a system for mapping objects on the seabed and their shape) for most of the Marine Areas. At greater water depths it is more difficult to obtain accurate information. The Planning Authority has created an information center that is bringing together all of the existing information. Similarly, the Planning Authority is interested in obtaining a decision as to which

28 The Natural Gas Sector Law, 5762-2002.

single entity will manage Israel's Marine Areas. International experience indicates that there should be a **single body** that manages the maritime domain. Upon completion, the *Policy Document* will have the status of a government decision and all the government bodies will operate according to it. The Chairman of the Committee emphasized that the *Policy Document* should be flexible so that it can be revised when the gaps in knowledge are narrowed in the future. The Ministry of Justice listed the tools used for maintaining such flexibility. The status of the *Policy Document* was presented to the public at a conference held by the Planning Authority in April 2018.²⁹

Before the discussion ended, Sections 1 to 15 — with minor changes — were approved by a vote by the members of the Committee. Similarly, the first to fourth Addendums were approved. Section 16 passed only an initial reading and there was a short discussion of it; it was not brought for approval and will be discussed again at a later stage.

2.3 Third Meeting (November 5, 2018)³⁰

At the beginning of the third meeting, a reservation was submitted by a number of MKs regarding cross-border hydrocarbon deposits. The Chairman of the Committee instructed the Ministry of Justice to convene a meeting with these MKs, with the goal of finding an agreed-upon resolution to this substantive issue.

Similarly, and in spite of the issue's importance, it was decided not to resume the discussion on Section 16 (the *Policy Document*) since the Chairman of the Committee requested additional time to hold an interministerial discussion before presenting the section for additional reading in the Committee and its approval.

The meeting centered on Section 17, which also identifies the **Authorized Entity** (as defined) that will have the authority to approve Petroleum Activities (as defined) in the EEZ.³¹ The Section grants the responsibility and powers to officials from the Ministry

29 See the *Policy Document for Israel's Maritime Domain*, expanded editorial committee, April 23, 2018.

30 See the minutes of the third meeting held on November 5, 2018.

31 The Proposed Law, Section 17, Definitions. "Petroleum Activity – drilling for Petroleum during the exploration for Petroleum or during the production of Petroleum, the laying of infrastructure and pipelines to transport Petroleum or the creation of a Permanent Offshore facilities for Petroleum drilling or to handle the products of drilling or their storage, and the dismantling of said Offshore Facilities; even if the facility is not recorded in the *Reshumot* as stated in the definition of a Permanent Offshore facility".

of Energy.³² This substantive issue was previously determined by the government before the Proposed Law was issued for First Reading in the Knesset.

Section 17 – The “Authorized Entity” – The Director for Petroleum Affairs who was appointed according to the Petroleum Law, and with respect to Petroleum Activity to which the Natural Gas Sector Law applies – the Minister or the Director of the National Gas Authority who was appointed according to the Natural Gas Sector Law, according to the circumstances.

According to the Ministry of Justice and the Ministry of Energy, the current text of the law provides the balance point necessary for approving offshore Petroleum Activities and also in light of the Petroleum Law, 5712-1952 (herein the “Petroleum Law”).

Discussion, Disputes, Alternatives and Decisions

- **Responsibility for Approving “Petroleum Activity” in the EEZ.** Opponents to the definition in Section 17 argue that it grants almost complete control of the approval of offshore Petroleum Activity to the Ministry of Energy. This control / authority circumvents the Planning Authority, the Ministry of Environmental Protection and other regulators while taking on a major environmental risk without supervision. The opponents argue that it is not consistent with the planning and building principles that are in place on-land, the coast and the territorial waters. It is important to remember that the Planning and Building Law does not apply beyond the territorial waters, even according to the text of the Proposed Law, and therefore the government is assembling a “quasi-planning” mechanism that includes only some of the planning and building principles for the EEZ.

In contrast, environmentalists are proposing that decisions regarding the EEZ be made by a special Committee for Maritime Affairs that will be operated under the Planning Authority of the Ministry of Finance. The Planning Authority and all the other relevant government entities will operate according to the *Policy Document* that will receive the status of an obligatory zoning plan, **after** the approval of Petroleum Activity by the Ministry of Energy. The claim here is that this alternative proposed model is similar to the existing one. For example, this is the method of operating of the Committee for Coastal Matters and the Committee for National Infrastructures. These committees have been found to operate very efficiently. Environmentalists claim that the Committee for Maritime Affairs should be comprised of representatives from a number of government ministries and headed by the Ministry of Finance. Furthermore, an additional

32 See the video broadcast of meeting number three of the Economic Committee, November 5, 2018.

variation of this alternative is to establish a Maritime Authority that will report to the Prime Minister's Office and will also be involved in areas that the Proposed Law does not touch on, such as the management of the national sand resources and/or the creation of other maritime infrastructure like communication lines, natural gas transmission systems, vocational training, etc.³³

The discussion on this issue did not lead to agreement with respect to the entity authorized to approve Petroleum Activity. It should be mentioned that the attempts to find a creative solution to the problem are ongoing, and meanwhile the government decision, as expressed in the text of the Proposed Law, remains valid.

- **The Licensing Process for the Approval of "Petroleum Activity"**. At the request of the Chairman of the Committee, the Ministry of Justice and the Ministry of Energy prepared **slides** in order to explain the division of responsibility between the different ministries in the procedure for issuing permits, licenses and leases for offshore Petroleum Activity according to the mechanism specified in the Proposed Law.

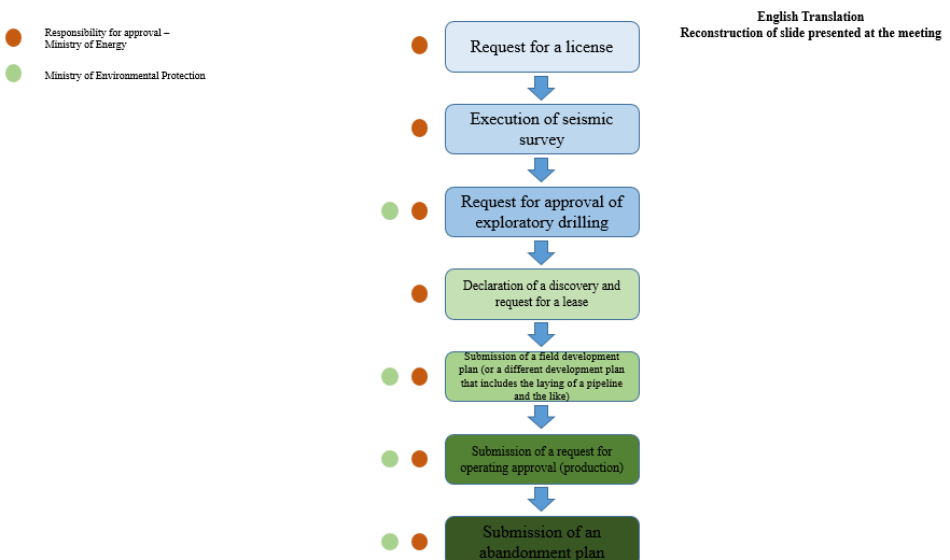


Fig. 3: Responsibility of the Ministry of Energy in consultation with the Ministry of Environmental Protection

33 See the *Globes* website article. "A sea of potential: who will manage Israel's prestigious maritime domain?" July 7, 2018 [Hebrew]

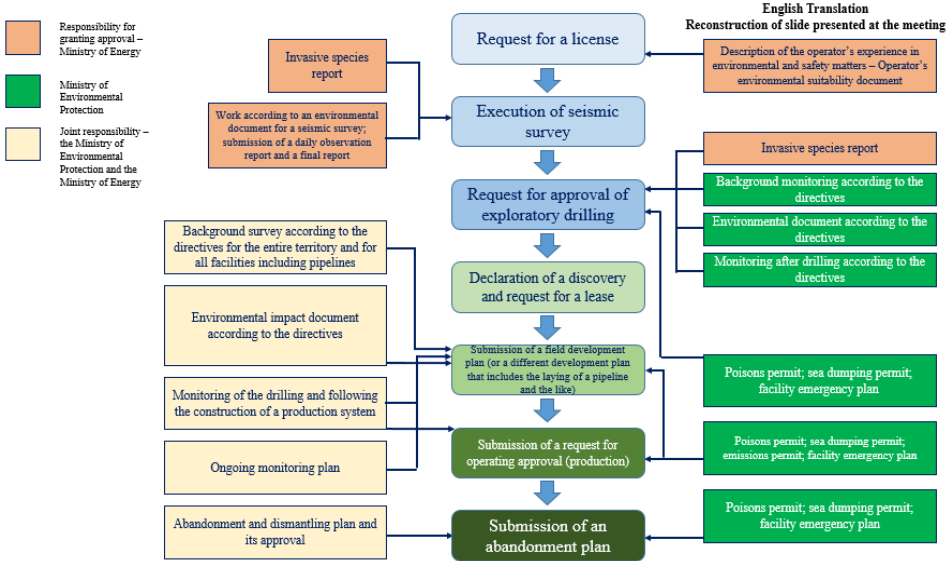


Fig. 4: Presentation of the Licensing Process and the Environmental Requirements

Under the emerging arrangement, the Ministry of Energy will be responsible for managing the procedure for licensing Petroleum Activity, including approval of development plans for hydrocarbon deposits in the EEZ. The approval process will take into account a number of environmental factors that are presented above and which are under the responsibility of the Ministry of Energy and in consultation with the Ministry of Environmental Protection. Any deviation from the position of the Ministry of Environmental Protection requires written justification. In this context, the opponents of the arrangement expressed their dissatisfaction that the body that approves Petroleum Activities is the same one that supervises and monitors the activity. They claim that this violates the principle of separation of powers (as was discussed at length in previous meetings). A member of the committee even quoted an official American report that investigated the disaster in the Gulf of Mexico. He claims that according to the findings of the report one of the reasons that the disaster was not prevented was that the body which approves Petroleum Activity also supervised and monitored that activity. He claims that the report reinforces the idea that the licensing of Petroleum Activity should be transferred to a body separate from the Ministry of Energy, such as the proposed Committee for Maritime Affairs and/or a separate regulatory authority. Here again, agreement was not reached and therefore the government determination remains valid.

- **Involvement of the General Public in the Planning Process.** During the meeting, a number of MKs and other representatives expressed their dissatisfaction that according to the proposal the public will not be involved in the licensing process of Petroleum Activity and particularly in the approval of the development plans of offshore hydrocarbon deposits. This debate is related to the opposition of some residents of the coastal area to the construction of the Leviathan platform in the territorial waters according to National Zoning Plan 37h and their attempts to move the treatment facility farther from the shore, perhaps to the EEZ. As a result, the Chairman of the Committee urged that without an efficient process to involve the public in the approval of Petroleum Activity, the Proposed Law would not pass in his view. The Director of Petroleum Affairs stated at the end of the discussion that he understands the demand of the Chairman and that in upcoming discussions representatives of the ministries will provide an improved proposal that also includes the involvement of the public in the process.

3. Conclusions and Recommendations

The Proposed Law should be promoted while attempting to achieve a broad consensus among all professional entities, up to final enactment by the Knesset as early as possible. The focus should be on the following issues:

- 3.1 Completion of the *Section-by-Section* analysis in the Economic Committee and approval without delay.
- 3.2 Advancement and/or completion of diplomatic activities concerning Israel's maritime borders, including:
 - 3.2.1 Trying to reach agreement with Lebanon (either publicly or quietly) or by mediation if necessary, with regard to the overlap points of Israel's EEZ.
 - 3.2.2 Completion of voluntary international arbitration proceedings with **Cyprus**³⁴ to determine the separation and/or unification of the Aphrodite and Yishai hydrocarbon deposits located on the maritime border between the countries. The two sides should refrain from any activity involving these deposits until the end of the arbitration process.
 - 3.2.3 Preparation of a comprehensive study and legal arguments with regard to international law for future cases of lack of agreement regarding maritime borders and/or cross-border hydrocarbon deposits, including

34 See the article in *Globes* on May 1, 2018.

among other things an examination of the Express Consent mechanism introduced in Section 77 of UNCLOS as a pre-condition for the development of cross-border hydrocarbon deposits and/or, examination of models for the prevention and/or creation of deterrence against the depletion of national assets without consent.

- 3.3 Agreement and/or Determination on issues that have so far been raised during the Economic Committee Meetings, as follows: (a) Declaration of the Protected Maritime Areas in the EEZ according to Israel's international obligations; (b) Specifying the entity responsible for the management of the Marine Areas; **it is recommended to adopt the position presented by the Haifa Center for Maritime Policy and Strategy**³⁵ regarding the creation of a Maritime Authority that will coordinate the activity of the government ministries and the regulators in this domain; (c) Formalizing the approval process for Petroleum Activity, with effective integration of the Ministry of Environmental Protection and the inclusion of the public in the process; and finally (d) Determining a budget policy for the enforcement of laws in the Marine Areas; in the absence of consensus, the position of the government should be adopted in order not to delay the legislative process.
- 3.4 Completion of the Policy Document. An effort should be made to approve the Policy Document by the government at approximately the same time, or in sync with the approval of the Proposed Law by the Knesset.
- 3.5 Advance the exploration and development of the new hydrocarbon deposits in Israel and establish international collaborations, such as constructing an international natural gas pipeline, creating joint infrastructure and development of cross-border deposits.
- 3.6 Completion of the Second Offshore Licensing Round ("Opening of the Sea #2") without delays; attracting operators and investors to Israel. Ensure that the operators and investors that come to Israel are aligned with the countries national interests by their character, quality and capabilities, and that their geopolitical alignment is consistent with Israel's existence, independence and continuing development; Develop ways to reduce regulation and push for "fast-track" approval of projects.

35 See the position paper "Comments of the Haifa Center for Maritime Policy and Strategy on the draft maritime policy document of the Planning Branch of the Ministry of Finance," April 24, 2018.

- 3.7 Train professional manpower that can effectively represent the interests of the State of Israel in areas of maritime law in international organizations.
- 3.8 Adopt methods and practices used in the applicable western countries with the goal of (a) Developing offshore energy infrastructures; (b) Finding the correct balance between exploitation of energy resources and environmental values; (c) Use of profits and revenues from natural resources in order to strengthen Israel's economy and education system; and (d) Protect Israel's heritage and maritime ecology.