
GOVERNMENT NOTICES

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 203

13 February 2004

NOTICE OF INTENTION TO DECLARE THE BIRD ISLAND MARINE PROTECTED AREA UNDER SECTION 43 OF THE MARINE LIVING RESOURCES ACT, 18 OF 1998

I, Mohammed Valli Moosa, the Minister of Environmental Affairs and Tourism, hereby publish for notice and comment, my intention to declare the Bird Island Marine Protected Area in terms of section 43, and to regulate the management and protection of the Bird Island Marine Protected Area in terms of section 77(2)(x)(i), of the Marine Living Resources Act, 18 of 1998 ("the Act") as set out in the Regulations in the Schedule, below.

Interested and affected parties may submit written comment to the Deputy Director-General at the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department"), Private Bag X2, Roggebaai, 8012. Written comments can be hand delivered to the Department's offices located at 7th Floor, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town. The Department must receive all written comment by no later than 16h00 on 18 May 2004.

Schedule

To protect the marine environment and the marine biodiversity within the Bird Island Marine Protected Area; to allow overexploited species of fish a sanctuary in which to recover; to protect seabird breeding colonies; and to promote and regulate tourist-related activities and scientific research in a way that does not adversely affect the marine environment and biodiversity of the Bird Island Marine Protected Area and to prescribe penalties for contraventions.

Definitions

1. In these regulations any word or expression given a meaning in the Act has that meaning, unless such word or expression is defined in these regulations for the purposes of these regulations, and unless, the context indicates otherwise -

Act means the Marine Living Resources Act, 18 of 1998, inclusive of amendments and regulations promulgated thereunder;

Dive means to swim below the surface of the water or enter the water, with or without diving gear;

Demarcation buoy means a buoy installed to mark the boundaries of the marine protected area;

the Manager means the Manager of the Bird Island Marine Protected Area;

Marine Protected Area means the Bird Island Marine Protected Area as declared by the Minister in terms of section 43 of the Act;

the Minister means the Minister of Environmental Affairs and Tourism;

Spearfishing means fishing with the use of a speargun; and

WGS 84 means the World Geodetic System of 1984 (G730), which is a geographic co-ordinate system.

Objectives

2. The objectives of declaring the Marine Protected Area are to:
 - (1) Protect marine ecosystems and populations of threatened marine species, specifically seabirds that utilize Bird Island;
 - (2) Protect the reproductive capacity of economically important species, specifically abalone and linefish, and to allow their populations to recover by providing areas where fishing will not take place; and
 - (3) Regulate other marine activities in the Marine Protected Area to reduce the risks of pollution and habitat degradation.

Interpretation

3. All geographic co-ordinates refer to the *WGS 84* datum.

Boundaries

4. The Bird Island Marine Protected Area in Algoa Bay includes the water, the seabed and the airspace to 1000 m above sea-level in a rectangular area bounded by the latitudes 33° 48'.0 S and 33° 52'.5 S and the longitudes 026° 14'.5 E and 026° 20'.0 E.

Protection measures

5. (1) Commercial, recreational and subsistence fishing rights may not be exercised in the Marine Protected Area.
- (2) All forms of fishing shall be prohibited within the Marine Protected Area.
- (3) No person may be in possession of fish in the Marine Protected Area.
- (4) No vessel may transport fish or have fish on board when in the Marine Protected Area.
- (5) When a fishing vessel is in the Marine Protected Area all fishing gear aboard that vessel must be stowed.

Diving permit

6. (1) No person shall dive in the Marine Protected Area unless such person has been granted a diving permit applied for and issued in terms of this regulation.
- (2) The Manager of the Marine Protected Area shall not grant any diving permits until the Minister has authorised the number of diving permits that may be issued by the Manager of the Marine Protected Area.
- (3) Applications for a diving permit shall be made to the Manager of the Marine Protected Area on an application form and subject to an application fee stipulated by the Manager in consultation with the Minister.
- (4) Diving permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (5) Diving permits shall be issued subject to conditions.

Presumptions

7. If in the course of any proceedings in connection with an offence under these regulations it is proved that –
 - (1) A person was found to be in the Marine Protected Area with gear or equipment used for the purposes of spearfishing, it shall be presumed that such a person was spearfishing;

- (2) A person was diving without a diving permit in the Marine Protected Area, it shall be presumed that such a person was fishing;
- (3) A person was found to be in possession of fish in the Marine Protected Area, it shall be presumed that the person caught the fish inside the Marine Protected Area; and
- (4) A fishing vessel was found to be in the Marine Protected Area and its fishing gear was not stowed or it had fish on board or both, it shall be presumed that the persons on board the vessel were fishing, and that the fish were caught in the Marine Protected Area.

General Prohibitions

8. (1) No person may remove, move, be in possession of, damage or in any way interfere with a demarcation buoy or sign in the Marine Protected Area.
- (2) No person may establish, carry on or operate a mariculture operation in the Marine Protected Area, unless authorised to do so in writing by the Minister.
- (3) No person may erect any permanent mooring, buoy or sign in the Marine Protected Area unless authorised to do so in writing by the Minister.
- (4) No person may directly discharge or cause to be discharged any untreated human waste, biodegradable waste, or industrial waste or effluent into the Marine Protected Area.
- (5) No person may deposit or cause to be deposited any form of filling, including rocks, gravel or sand or other such material in the Marine Protected Area.

Offences and penalties

9. Any person who contravenes a provision of these Regulations shall be guilty of an offence and liable on conviction to minimum fine of R2000 but not exceeding R100000, or to imprisonment for a minimum period of six months but not exceeding two years, or to both such fine and imprisonment.