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## GOVERNMENT NOTICES

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 202

13 February 2004

#### **NOTICE OF INTENTION TO DECLARE THE PONDOLAND 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 Pondoland Marine Protected Area in terms of section 43, and to regulate the management and protection of the Pondoland 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 Pondoland Marine Protected Area; to allow overexploited and commercially collapsed species of fish stocks a sanctuary in which to recover and breed; to promote and regulate tourist-related activities, other commercial activities and scientific research in a way that does not adversely affect the marine environment and biodiversity of the Pondoland 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;

**Alpha flag** means the 'diver down flag' used to indicate that diving operations are in progress and other vessels must keep clear;

**Controlled Zone** means that zone established under regulation 5 in which some fishing is allowed;

**Demarcation buoy** means a buoy installed to mark the boundaries of the marine protected area and its zones;

**Department** means the Department of Environmental Affairs and Tourism;

**Electro-acoustic discharging device** means any device that emits electrical or sonic pulses intended to stun, paralyse, disorientate, repel or kill any form of marine life;

**Hovercraft** means a vehicle that travels on a cushion of air;

**Inshore** means that part of the sea that lies within (i.e. on the landward side) of the 10 m depth line;

**the Manager** means the Manager of the Pondoland **Marine Protected Area**;

**Marine Protected Area** means the Pondoland 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;

**Offshore** means that part of the sea that lies beyond (i.e. on the seaward side) of the 10 m depth line;

**Personal watercraft** means a power driven vessel that has a fully enclosed hull and that is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it;

**Sanctuary zones** means those zones established under regulation 5 in which no fishing is allowed;

**Scientific research** means research carried out by a recognised institute established for the purposes of research, or research carried on by a recognised institute of higher learning, provided that to undertake such scientific research the recognised institute requires its staff, students or contractors to enter the Marine Protected Area;

**SCUBA diving** means swimming below the surface of the sea with the aid of compressed or pumped air or other gases;

**SCUBA diving business** means a commercial enterprise which involves transporting, guiding or in any way supporting SCUBA divers;

**Spearfisher** means a person who undertakes fishing with the use of a speargun;

**Speargun** means a device by which a spear is projected by mechanical or pneumatic means;

**Water** means, with reference to the Marine Protected Area, the tidal waters located within the boundaries of the Marine Protected Area, as defined in regulation 4;

**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;
  - (2) Protect the reproductive capacity of economically important fish species, including shellfish, rock lobster and linefish and to allow their populations to recover by providing areas where fishing may not take place;
  - (3) Regulate non-consumptive marine activities in the Marine Protected Area by protecting certain areas from fishing and by minimising risks of pollution and habitat degradation; and
  - (4) Promote eco-tourism within the protected area by providing a properly regulated environment in which tourist operators may conduct their business.

## **Interpretation**

3.
  - (1) All geographic co-ordinates are determined in accordance with the *WGS 84* datum.
  - (2) All bearings are true bearings, and not compass or magnetic bearings.
  - (3) Isobath positions and depths are taken from Chart SAN 130, and refer to depth below Chart Datum (lowest low water level).

## Boundaries

4. The Marine Protected area includes the water, the seabed and the air space to 1000 m above sea level in the area bounded by:
  - (1) The high water mark between the southern head of the Mzamba River, at position 31° 06.6'S; 030° 10.5'E, and the northern head of the Mzimvubu River, at position 31° 37.4'S; 029° 33.2'E, and including the banks of the tidal portions of the Mnyameni, Sikombe, Mtentu, Msikaba, Mkweni, Mboyti, Mzintlava, Mntafufu and Nkodusweni Rivers;
  - (2) A line running 128° from the south head of the Mzamba River at position 31° 06.8'S; 030° 10.5'E, to the 1000 m isobath at position 31° 11.2'S; 030° 17.4'E;
  - (3) A line running 128° from the north head of the Mzimvubu River at position 31° 37.4'S; 029° 33.2'E to the 1000 m isobath at position 31° 41.7'S; 029° 39.8'E.
  - (4) The 1000 m isobath, joining the following positions:
    - (a) 31° 11.2'S; 030° 17.4'E
    - (b) 31° 15.3'S; 030° 13.7'E
    - (c) 31° 19.4'S; 030° 10.4'E
    - (d) 31° 22.9'S; 030° 06.1'E
    - (e) 31° 26.4'S; 030° 02.1'E
    - (f) 31° 30.6'S; 029° 57.5'E
    - (g) 31° 34.7'S; 029° 54.5'E
    - (h) 31° 37.5'S; 029° 50.1'E
    - (i) 31° 40.7'S; 029° 45.6'E
    - (j) 31° 41.7'S; 029° 39.8'E

## Zonation

5. (1) The Marine Protected Area shall be divided into two offshore Controlled Zones, one offshore Sanctuary Zone, five inshore Controlled Zones, four inshore Sanctuary Zones, seven estuarine Controlled Zones and two estuarine Sanctuaries.
- (2) The first offshore Controlled Zone shall comprise that part of the Marine Protected Area, which lies to the north-east of a line running 128° from the southern head of the Sikombe River at position 31° 13.2'S; 030° 04.1'E to the 1000 m isobath at position 31° 18.2'S; 030° 11.6'E, but which excludes estuaries and the inter-tidal zone.
- (3) The offshore Sanctuary Zone shall comprise that part of the Marine

Protected Area, which lies to the south-west of a line running 128° from the southern head of the Sikombe River at position 31° 13.2'S; 030° 04.1'E to the 1000 m isobath at position 31° 18.2'S; 030° 11.6'E, and lies to the north-east of a line running 128° from the northern head of the Mboyti River at position 31° 27.9'S; 029° 44.1'E to the 1000 m isobath at position 31° 34.7'S; 029° 54.5'E, but which excludes estuaries and the inter-tidal zone.

- (4) The second offshore Controlled Zone shall comprise that part of the Marine Protected Area, which lies to the south-west of a line running 128° from the northern head of the Mboyti River at position 31° 27.9'S; 029° 44.1'E to the 1000 m isobath at position 31° 34.7'S; 029° 54.5'E, but which excludes estuaries and the inter-tidal zone.
- (5) The area within the Marine Protected Area which includes the inter-tidal zone and the immediate sub-tidal zone to a charted depth of 10 m, but which excludes estuaries, is divided into inshore Controlled Zones and inshore Sanctuary Zones as indicated in the Table below.

Type of Zone	From	To
Inshore Controlled Zone	31° 06.6'S; 030° 10.5'E	31° 10.3'S; 030° 07.5'E
Inshore Sanctuary Zone	31° 10.3'S; 030° 07.5'E	31° 12.5'S; 030° 05.2'E
Inshore Controlled Zone	31° 12.5'S; 030° 05.2'E	31° 14.8'S; 030° 02.9'E
Inshore Sanctuary Zone	31° 15.0'S; 030° 02.9'E	31° 16.8'S; 030° 01.2'E
Inshore Controlled Zone	31° 16.8'S; 030° 01.2'E	31° 17.6'S; 030° 00.6'E
Inshore Sanctuary Zone	31° 17.6'S; 030° 00.6'E	31° 19.1'S; 029° 58.2'E
Inshore Controlled Zone	31° 19.3'S; 029° 58.0'E	31° 25.4'S; 029° 51.2'E
Inshore Sanctuary Zone	31° 25.4'S; 029° 51.2'E	31° 27.0'S; 029° 45.5'E
Inshore Controlled Zone	31° 27.0'S; 029° 45.5'E	31° 37.4'S; 029° 33.2'E

- (6) The tidal portions of the Mnyameni, Sikombe, Mkwani, Mboyti, Mzintlava, Mntafufu and Nkodusweni Rivers are estuarine Controlled Zones.
- (7) The tidal portions of the Mtentu and Msikaba Rivers are estuarine Sanctuaries.

### Sanctuary Zones

6. (1) The purpose of Sanctuary Zones is to allow marine species and ecosystems in those sanctuary zones to exist in a natural state to further fulfill South Africa's commitments to the conservation of biodiversity, to protect heavily exploited fish resources and to enhance eco-tourism opportunities.

- (2) All forms of fishing shall be prohibited within the Sanctuary Zones.
- (3) Spearfishers shall under no circumstances be permitted to enter the water in a Sanctuary Zone.
- (4) When a fishing vessel is in a Sanctuary Zone all fishing gear aboard that vessel must be stowed.

### **Controlled Zones**

7. (1) The purpose of the Controlled Zone is to allow controlled and monitored exploitation of marine species that is consistent with the objectives of the Marine Protected Area.
- (2) The holders of commercial, recreational and subsistence fishing permits granted in terms of section 13 of the Act shall only be permitted to fish within the Controlled Zone if permission to do so is granted by the Minister in terms of section 43(3) of the Act.
- (3) Should the Minister grant such permission, then the Minister may do so subject to conditions he or she may consider necessary for the sustainable exploitation of marine species.

### **SCUBA diving permit**

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

### **SCUBA diving operator permit**

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

### **Prohibitions on SCUBA divers**

- 10 Any persons authorised to undertake SCUBA diving within the Marine Protected Area shall not:
  - (1) feed fish, chum or dump any material or discharge any attractants;
  - (2) use any form or type of cage;
  - (3) use or possess any electro acoustic-discharging device or powerhead; or
  - (4) remove any part or article from a ship wreck.

### **Commercial permits**

- 11 (1) No person shall undertake any tourism business or commercial filming activity within the Marine Protected Area unless such person has been granted a tour-operator permit, or commercial filming permit, respectively, applied for and issued in terms of this regulation.
- (2) The Manager of the Marine Protected Area shall not grant any tour-operator permits or commercial filming permits until the Minister has authorised the number of such permits that may be issued by the Manager of the Marine Protected Area.



- (3) Applications for a tour-operator permit and commercial filming 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) Commercial operator permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (5) Commercial operator permits shall be issued subject to conditions.

### **Scientific research**

- 12. (1) No person shall undertake any scientific research within the Marine Protected Area unless such person has been granted a scientific research permit applied for and issued in terms of this regulation.
- (2) Applications for a scientific research permit shall be made to the Minister on an application form and subject to an application fee stipulated by the Minister.
- (3) Scientific research permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (4) Scientific research permits shall be issued subject to conditions.

### **Use of vessels**

- 13. (1) All vessels that have deployed divers within the Marine Protected Area shall display an alpha flag.
- (2) No vessel shall be attached to a demarcation buoy within the Marine Protected Area.
- (3) No person shall be entitled to use any type of personal watercraft, or hovercraft, within the Marine Protected Area.
- (4) No person shall be entitled to moor or anchor any vessel within a Sanctuary Zone for a period in excess of twenty-four hours without the written permission from the Manager.
- (5) No person shall be entitled to organise, promote or carry on any form of organized competition or event utilizing motorized vessels, hovercrafts or personal watercrafts anywhere within the Marine Protected Area, without the written permission of the Manager.

## **General Prohibitions**

14. (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, 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.
- (6) No person may extract water from any estuary within the Marine Protected Area.

## **Offences and penalties**

15. 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.

## **Presumptions**

16. 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 a Sanctuary Zone with gear or equipment used for the purposes of spearfishing, it shall be presumed that such a person was spearfishing in a Sanctuary Zone.
  - (2) A fishing vessel was found to be in a Sanctuary Zone and its fishing gear was not stowed, it shall be presumed that the persons on board the vessel were fishing in a Sanctuary Zone, and that all fish on board the vessel were caught in the Sanctuary Zone.

## **REPEAL OF LEGISLATION**

17. Regulation 9 of Government Notice 1429 (Government Gazette No. 6978 of 29 December 2000) is hereby repealed.