
GOVERNMENT NOTICES

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 204

13 February 2004

NOTICE OF INTENTION TO DECLARE THE CAPE PENINSULA 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 Cape Peninsula Marine Protected Area in terms of section 43, and to regulate the management and protection of the Cape Peninsula 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 Cape Peninsula 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 Cape Peninsula 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(1);

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;

the Manager means the Park Manager of the Cape Peninsula National Park;

Marine Protected Area means the Cape Peninsula 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;

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;

Powerhead means a device by means of which a fish may be taken and may be attached to a spear or speargun and that consists of or contains an explosive charge;

Sanctuary zones means those zones established under regulation 5(1);

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 territorial 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:

Protect marine ecosystems and populations of threatened marine species;
Protect the reproductive capacity of economically important species, including abalone, rock lobster and linefish and to allow their populations to recover by providing areas where fishing will not take place;
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
Promote eco-tourism within the Marine Protected Area by providing a properly regulated environment in which tourism 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.

Boundaries

4. The Marine Protected Area shall include the water, the seabed and the airspace to 1000 m above sea level in the area bounded by:

the high-water mark between Green Point at position 33°54'.075S; 018°24'.037E and Bailey's Cottage, Muizenberg at position 34°06'.590S; 018°28'.125E;

a line drawn east (090°) from the beacon at Bailey's Cottage to position 34°06'.590S; 018°33'.413E;

a line drawn south (180°) in False Bay from position 34°06'.590S; 018°33'.413E to position 34°24'.444S; 018°33'.413E;

a line drawn west (270°) from position 34°24'.444S; 018°33'.413E to a position 34°24'.444S; 018°15'.000E;

a line drawn north (000°) from position 34°24'.444S; 018°15'.000E to position 33°54'.075S; 018°15'.000E; and

a line drawn east (090°) from position 33°54'.075S; 018°15'.000E to Green Point.

Zonation

5. (1) The Marine Protected Area shall be divided into six *Sanctuary Zones* and one *Controlled Zone*.

The Karbonkelberg Sanctuary Zone shall include the area bounded by:

the high-water mark between Hout Bay at position 34°03'.660S; 018°20'.252E and Oudekraal at position 33°58'.757S; 018°21'.847E;
a line drawn west (270°) from Hout Bay to position 34°03'.660S; 018°17'.797E,
a line drawn west (270°) from Oudekraal to a position 33°58'.757S; 018°17'.797E; and
a line drawn north-south joining positions 34°03'.660S; 018°17'.797E and 33°58'.757S; 018°17'.797E.

- (3) The Cape of Good Hope Sanctuary Zone shall include the area bounded by:

- (a) the high-water mark between Schusters Bay Point, Scarborough, at position 34°12'.271S; 018°22'.194E, and Hoek van die Bobbejaan at position 34°18'.393S; 018°24'.258E;
(b) a line drawn west (270°) from Schuster's Bay point to position 34°12'.271S; 018°21'.800E;
(c) a line drawn south (180°) from position 34°12'.271S; 018°21'.800E to position 34°16'.314S; 018°21'.800E;
(e) a line drawn east (090°) from position 34°16'.314S; 018°21'.800E to position 34°16'.314S; 018°22'.300E;
(f) a line drawn south (180°) from position 34°16'.314S; 018°22'.300E to position 34°18'.393S; 018°22'.300E; and
(g) a line drawn west (270°) from position 34°18'.393S; 018°22'.300E to Hoek van die Bobbejaan.

The Paulsberg Sanctuary Zone shall include the area bounded by:

the high-water mark between Venus Pool at position 34°17'.744S; 018°28'.020E and Smitswinkel Point at position 34°16.549S; 018°28'.464E;
a line drawn east (090°) from Smitswinkel Point to position 34°16.549S; 018°29'.000E;
a line drawn east (090°) from Venus Pool to position 34°17'.744S; 018°29'.000E; and
a line drawn north-south joining positions 34°16.549S; 018°29'.000E and 34°17'.744S; 018°29'.000E.

The Castle Rock Sanctuary Zone shall include the area bounded by:

the high-water mark between Partridge Point at position 34°15'.480S; 018°28'.344E and Millers Point at position 34°14'.100S; 018°28'.508E;
a line drawn east (090°) from Millers Point to position 34°14'.100S; 018°29'.300E;
a line drawn east (090°) from Partridge Point to position 34°15'.480S; 018°29'.300E; and
a line drawn north-south joining positions 34°14'.100S; 018°29'.300E and 34°15'.480S; 018°29'.300E.

The Boulders Sanctuary Zone shall include the area bounded by:

the high-water mark between Seafourth, Simonstown at position 34°11'.567S; 018°26'.762E and Rocklands, at position 34°12'.705S; 018°27'.781E;
a line drawn from Seafourth at position 34°11'.567S; 018°26'.762E to position 34°10'.581S; 018°27'.196E;
a line drawn east (090°) from position 34°10'.581S; 018°27'.196E to position 34°10'.581S; 018°27'.781E; and
a line drawn south (180°) from position 34°10'.581S; 018°27'.781E to Rocklands at position 34°12'.705S; 018°27'.781E.

The St James Sanctuary Zone shall include the area bounded by:

the high-water mark between the St James Tidal Pool at position 34°07'.123S; 018°27'.568E and the Kalk Bay Tidal Pool at position 34°07'.567S; 018°27'.050E;
a line drawn east (090°) from the St. James Tidal Pool to position 34°07'.567S; 018°27'.568E; and
a line drawn south from position 34°07'.567S; 018°27'.568E to the Kalk Bay Tidal Pool at position 34°07'.567S; 018°27'.050E.

The remaining extent of the Marine Protected Area shall be a *Controlled Zone*.

Sanctuary Zones

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

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.

The Controlled Zone

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 in the Controlled Zone.

SCUBA diving permit

- (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 of the Marine Protected Area shall not grant any SCUBA diving permits until the Minister has authorised the number of SCUBA diving permits that may be issued by the Manager of the Marine Protected Area.

- (3) Applications for a SCUBA 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) SCUBA diving permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (5) SCUBA diving permits shall be issued subject to conditions.

SCUBA diving operator permit

- (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 of the Marine Protected Area shall not grant any SCUBA diving operator permits until the Minister has authorised the number of SCUBA diving operator permits that may be issued by the Manager of the Marine Protected Area.
- (3) Applications for a SCUBA diving operator 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) 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 person authorised to undertake SCUBA diving within the Marine Protected Area shall not:
 - Feed fish, chum or dump any material or discharge any attractants;
 - use any form or type of cage;
 - use or possess any electro acoustic-discharging device or powerhead; or
 - remove any part or article from a ship wreck.

Commercial permits

- (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, as the case may be, 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

- (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 permit 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.

No person shall use any type of personal watercraft, or hovercraft, within the Marine Protected Area.

No person shall 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 organise, promote or carry on any form of organised competition or event utilising motorised 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, 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

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 –

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.

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.

Transitional Provisions

17. Notwithstanding any provision in these regulations, it shall not be an offence to undertake an activity requiring a permit in terms of these regulations until 31 December 2004.

Management Plan

18. The Department, together with the Manager, shall commence with the implementation of a plan for the management and administration of the Marine Protected Area in terms of these regulations within six months of the date of commencement of these regulations.