

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 103

03 FEBRUARY 2016

**NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT,
2003
(ACT NO. 57 OF 2003)**

**DRAFT REGULATIONS FOR THE MANAGEMENT OF THE UTHUKELA
BANKS MARINE PROTECTED AREA**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby publish for public comment, the draft Regulations for the Management of the UThukela Banks Marine Protected Area in terms of sections 48A(2) and 86(1)(a), (b), (c) and (d) of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the draft regulations are invited to do so within 90 days from the date of publication in the *Government Gazette* and by no later than 16h00 on the last day. Comments received after this time may not be considered. All representations and comments must be submitted in writing to the Deputy Director-General of the Department of Environmental Affairs, Branch Oceans and Coasts:

By post to: The Deputy Director-General
Environmental Affairs
Oceans and Coasts
Attention: Xola Mkefe
P.O Box 52126
V and A Waterfront, Cape Town
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Waterfront, Cape Town

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BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS
Schedule

1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression that is defined in the Act bears the same meaning in these Regulations, and in addition—

“Act” means the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);

“certificate of competence” means a certificate of competence as defined in the National Small Vessel Safety Regulations, 2007;

“certificate of fitness” means a certificate of fitness as defined in the National Small Vessel Safety Regulations, 2007;

“Controlled Zone” means an area within a marine protected area where fishing or any other activity in terms of section 48A(1) of the Act may take place if authorised in terms of these regulations as contemplated in terms of section 48A(2) of the Act;

“Controlled-Pelagic Zone” means a Controlled Zone within a marine protected area where pelagic fishing may occur as detailed in a fish list attached to these regulations as Annexure 2;

“environment” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“fish” means any aquatic plant or animal whether piscine or not, and any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and includes their eggs, larvae and all juvenile stages, but does not include sea birds, seals or any marine mammal;

“fishing” or to **“fish”** means—

- (a) searching for, catching, taking or harvesting fish or an attempt to any such activity;
- (b) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
- (c) placing, searching for or recovering any fish aggregating device or associated gear, including radio beacons;
- (d) any operation in support or in preparation of any activity described in this definition; or
- (e) the use of an aircraft in relation to any activity described in this definition;

“hovercraft” means a craft that floats on a cushion of air and is capable of traversing water;

“Integrated Coastal Management Act” means the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008);

“Marine Living Resources Act” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“Marine Protected Area” means the uThukela Banks Marine Protected Area as declared by the Minister in terms of section 22A of the Act;

“National Small Vessel Safety Regulations” means the Merchant Shipping (National Small Vessel Safety) Regulations, 2007, published in terms of section 356 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) and promulgated in Government Notice No. R. 705 of 8 August 2007;

“operate” in respect of a vessel, includes mooring in the water, drifting in the water and ascending or descending from its mooring, the shore, launch site, a buoy or a jetty;

“personal watercraft” means a vessel that uses an inboard motor powering a water jet pump as its primary source of propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on rather than within the confines of a hull;

“Restricted Zone” means an area within the Marine Protected Area where no fishing may take place, but where any other activity in terms of section 48A(1) of the Act may take place if authorised in terms of these regulations as contemplated in terms of section 48A(2) of the Act.

“SCUBA Diving” means swimming below the surface of the water, with the aid of compressed or pumped air or other gasses;

“TICZ” means uThukela Banks Inshore Controlled Zone;

“TOCZ” means uThukela Banks Offshore Controlled Zone;

“TOCPZ” means uThukela Banks Offshore Controlled-Pelagic Zone;

“TIRZ” means uThukela Banks Inshore Restricted Zone;

“TORZ” means uThukela Banks Offshore Restricted Zone;

“vessel” means a waterborne craft of any kind whether a surface craft or submarine, and whether self-propelled or not, and includes any moored floating structure that can be used as a means of transport by water and includes a hovercraft and personal watercraft; and

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

2. Zonation within the Marine Protected Area

The Marine Protected Area consists of an inshore and offshore area. The inshore area consists of two Inshore Restricted zones and the remainder is an Inshore Controlled Zone. The offshore area consists of two offshore Controlled zones, two offshore Controlled-Pelagic zones and one offshore Restricted Zone, which are determined by using WGS 84 as detailed in Annexure 1 hereto as follows:

- (a) one (1) inshore Restricted Zone, indicated as TIRZ1.
- (b) one (1) inshore Restricted Zone, indicated as TIRZ2.
- (c) one (1) inshore Controlled Zone indicated as TICZ;
- (d) one (1) off shore Controlled Zone, indicated as TOCZ1;
- (e) one (1) off shore Controlled Zone, indicated as TOCZ2;
- (f) one (1) off shore Controlled-Pelagic Zone, indicated as TOCPZ1;
- (g) one (1) off shore Controlled-Pelagic Zone, indicated as TOCPZ2; and
- (h) one (1) off shore Restricted Zone, indicated as TORZ.

3. Scientific research permit

- (1) No person may undertake any scientific research within the Marine Protected Area, except on the authority of a scientific research permit issued by the Minister.
- (2) Application for a scientific research permit in terms of sub-regulation (1) must be made to the Minister in accordance with the provisions of section 83 of the Marine Living Resources Act or any regulations published under the Integrated Coastal Management Act.

4. General restrictions within the Marine Protected Area

- (1) The owner, skipper or operator of a vessel shall not enter or operate a vessel in the Marine Protected Area without a valid certificate of competence and a certificate of fitness issued in respect of such vessel, and such original certificates must be available for inspection at all times.
- (2) A vessel shall not enter the Marine Protected Area unless the marking approved for that vessel in accordance with the provisions of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), is

displayed on the vessel at all times while the vessel is inside the Marine Protected Area.

- (3) The owner, skipper or operator of a vessel shall not enter or operate a vessel in the Marine Protected Area unless such vessel and any other equipment or contents of such vessel, comply with the safety and other requirements specified in the Merchant Shipping Act, 1951 (Act No. 57 of 1951) for such vessel.

5. Use of vessels

- (1) No person may moor or anchor any vessel in the Marine Protected Area except—
 - (a) under conditions of *force majeure*; or
 - (b) for the use of a vessel by an employee of the Department or any other organ of state acting in the course and scope of their employment or mandate.
- (2) Despite sub-regulation (1), the Minister may on application and on such conditions as he or she may deem appropriate, authorise the anchoring or mooring of a vessel in the following circumstances:
 - (a) in an emergency; or
 - (b) where the Minister may deem it to be necessary in order to ensure the proper management of the Marine Protected Area.
- (3) The Minister may verbally authorise a vessel to moor or anchor within the Marine Protected Area as contemplated in sub-regulation (2), which verbal authorisation must be confirmed in writing within 3 working days.
- (4) Any motorized vessel that enters or traverses a Restricted Zone within the Marine Protected Area may not stop or move at less than 5 knots at any time while in a Restricted Zone.
- (5) A motorized vessel, prior to entering or while traversing a Restricted Zone within the Marine Protected Area with fishing gear on board must have a Global Positioning System (GPS) Mapping Device with an active trail operational on the vessel, and such GPS data may not be deleted from this device for forty eight hours after passing through a Restricted Zone.
- (6) A vessel required by law to have a Vessel Monitoring System must, when entering or traversing the Marine Protected Area with fishing gear on board, ensure that the Vessel Monitoring System is active.

6. Restriction of activities

No person may undertake any activity listed in section 48A(1) of the Act in the Marine Protected Area unless authorised in terms of these regulations.

7. Control of activities in Restricted Zone

- (1) No person shall fish, or attempt to fish, in the TIRZ 1, TIRZ 2 or TORZ, including collecting or harvesting of invertebrates or intertidal organisms.
- (2) Fishing gear onboard a vessel or in possession of any person that enters or is present in the TIRZ 1, TIRZ 2 or TORZ must be stowed in the following manner:
 - (a) In the case of line-fishing—
 - (i) from a vessel, all hooks, lures, and weights are disconnected from the line, all the line is reeled onto the reel or rolled up, and that rolled up line, hooks, lures, bait and weights on the vessel are placed away in the cabin, wheel house or console of the vessel;
 - (ii) from the shore, all hooks, lures, and weights are disconnected from the line, all the line is reeled onto the reel or rolled up, and that rolled up line, hooks, lures, bait and weights are placed away in a bag or container.
 - (b) in the case of purse-seine fishing, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations;
 - (c) in the case of a trawl fishing, all nets, trawl boards and weights shall be disconnected from their towing or hauling wires, ropes or rigid frames and either stowed below deck or securely lashed to some part of the superstructure of the fishing vessel;
 - (d) in the case of rock lobster fishing, all traps shall be on board and tied down; and all dinghies shall be on board and securely lashed to some part of the superstructure of the fishing vessel;
 - (e) in the case of fishing with traps other than rock lobster traps, all traps shall be on board and tied down; and
 - (f) in the case of longline fishing, all gear shall be covered and the cover secured.

8. Control of activities in Controlled Zone

- (1) No person shall fish, or attempt to fish, from a vessel in the TICZ, TOCZ 1, and TOCZ 2 or TOCPZ 1 and TOCPZ 2 unless—
 - (a) they are in possession of a valid fishing permit in the line fish commercial fishing sector issued in terms of the Marine Living Resources Act and such permit authorises fishing within the TICZ, TOCZ 1, TOCZ 2, TOCPZ 1 or TOCPZ 2 of the Marine Protected Area; or
 - (b) they are in possession of a valid recreational fishing permit issued in terms of the Marine Living Resources Act.
- (2) Notwithstanding anything to the contrary, a person in possession of a recreational fishing permit as contemplated in sub-regulation (1)(b) may only fish for the species specified in Annexure 2 to these regulations, when fishing in the TOCPZ 1 and TOCPZ 2.
- (3) No person may undertake recreational fishing in the Marine Protected Area in the period between 17h00 in the evening and 06h00 of the following day.
- (4) Fishing gear onboard a vessel or in possession of any person that enters or is present in the TICZ, TOCZ 1, TOCZ 2, TOCPZ 1 and TOCPZ 2 and who is not authorised to fish in terms of sub-regulation (1), must be stowed in accordance with regulation 7(2).

9. SCUBA diving

- (1) No person may operate or attempt to operate a SCUBA diving business in the Marine Protected Area without a permit.
- (2) Application for a permit referred to in sub-regulation (1) must be made to the Minister and may be issued subject to conditions.
- (3) Any vessel that has deployed divers in the Marine Protected Area must display an alpha flag.

10. Suspension, amendment and cancellation of permits

- (1) Subject to sub-regulation (2) and (3), a permit issued under these regulations may be suspended, cancelled or amended at any time.

- (2) A permit issued in terms of these regulations may be suspended, cancelled or amended, if—
 - (a) the Minister is satisfied on the basis of information that was not considered when the permit was issued, that it is necessary or desirable to suspend, cancel or amend the permit to prevent deterioration or further deterioration of the environment within the Marine Protected Area;
 - (b) other similar permits held by other persons have also been reviewed and the suspension, cancellation or amendment does not unfairly discriminate against the holder in relation to other holders of similar permits;
 - (c) the permit holder is in breach of a condition contained in the permit;
 - (d) the permit holder provided incorrect or false information in the application for the permit;
 - (e) the holder of a permit has been convicted of an offence in terms of the Act, the National Environmental Management Act or a specific environmental management act or any regulations issued thereunder; or
 - (f) the reason for the issuing of the permit no longer exists.
- (3) A permit issued in terms of these regulations may be amended—
 - (a) if an error needs to be corrected or rectified;
 - (b) at the request of the applicant;
 - (c) for the proper management and implementation of these regulations; or
 - (d) where the conditions or circumstances have changed since the original permit was issued.

11. Offences and penalties

In addition to any offence in terms of section 89 of the Act, any person who contravenes or fails to comply with—

- (a) regulations 3(1), 4, 5(1), 5(4) to 5(6), 7, 8, 9(1) or 9(3);

- (b) a condition mentioned in a permit issued in terms of these regulations; or
- (c) a prohibition, instruction, rule or order imposed, given or issued under these regulations;

is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.

12. Short title and commencement

These regulations are called the uThukela Banks Marine Protected Area Regulations and commence upon date of publication in the *Gazette*.

Annexure 1

INSHORE:

uThukela Banks Inshore Restricted Zone 1 (TIRZ1) comprises the inshore portion of the uThukela Banks Marine Protected Area and is defined as the section between the following two co-ordinates (I1) 29° 26.928' S, 31° 36.945' E and (I2) 29° 13.472' S, 31° 31.062' E running from the high water mark to the two meter depth contour.

uThukela Banks Inshore Restricted Zone 2 (TIRZ2) comprises the inshore portion of the uThukela Banks Marine Protected Area and is defined as the section between the following two co-ordinates (I3) 29° 24.08' S, 31° 19.7' E and (E) 29° 25.992' S, 31° 18' E running from the high water mark to the two meter depth contour.

uThukela Banks Inshore Controlled Zone (TICZ) comprises of the remainder of the inshore portion of the uThukela Banks Marine Protected Area between the two Inshore Restricted Zones.

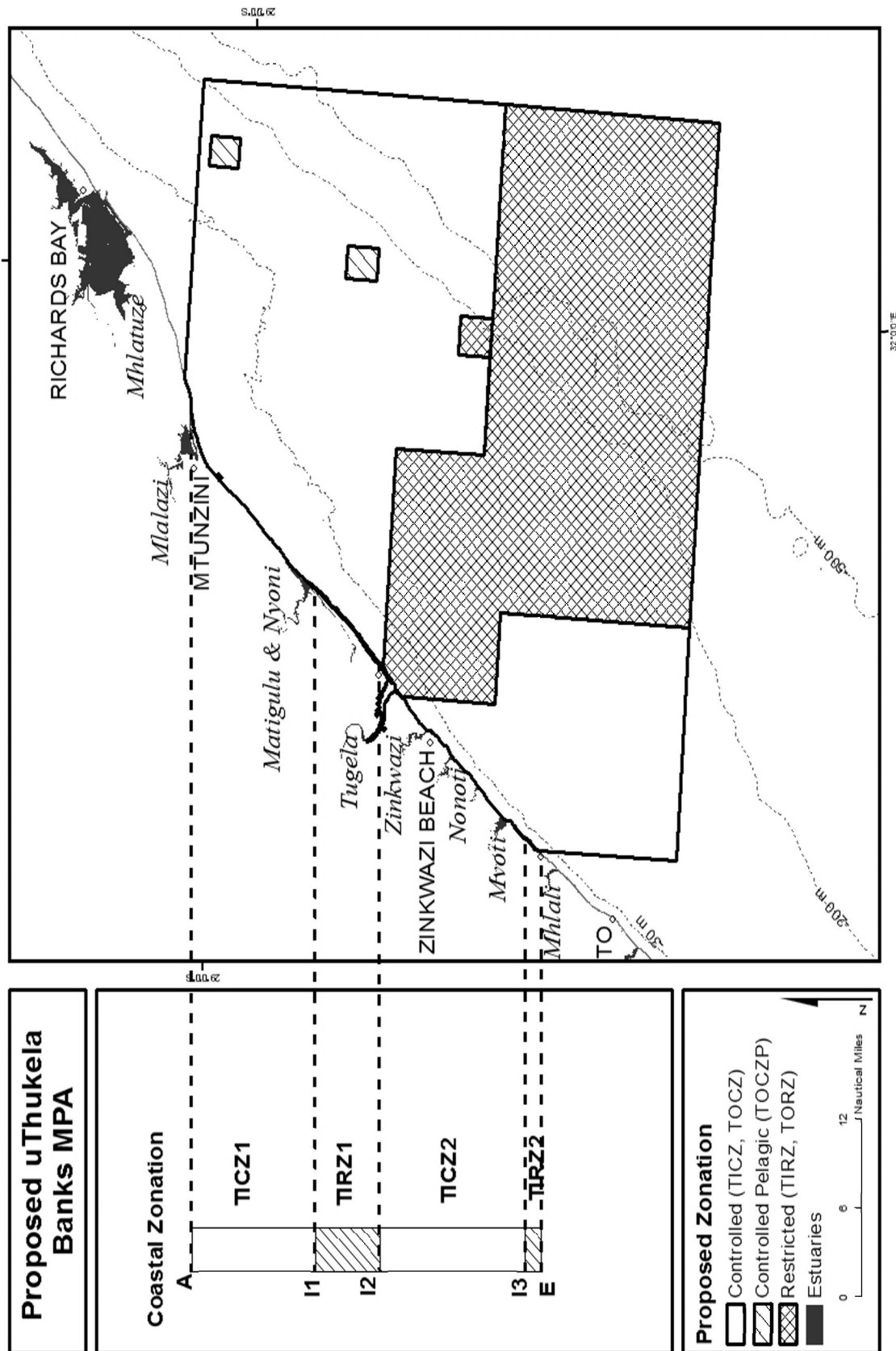


Figure 1: Proposed uThukela Banks MPA inshore zonation.

OFFSHORE:

uThukela Banks Offshore Restricted Zone (TORZ) comprises the offshore portion of the uThukela Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following thirteen co-ordinates, coordinates (F) 29° 13' S, 31° 31.162' E; (G) 29° 13' S, 31° 48' E; (H) 29° 20' S, 31° 48' E; (I) 29° 21' S, 31° 55.5' E; (J) 29° 17.5' S, 31° 55.5' E; (K) 29° 17.5' S, 31° 58.5' E; (L) 29° 21' S, 31° 58.5' E; (M) 29° 20' S, 32° 15' E; (C) 29° 37' S, 32° 15' S E; (N) 29° 37' S, 31° 36' S E; (O) 29° 22' S, 31° 36' S E; (P) 29° 22' S, 31° 29' S E; (Q) 29° 14.791' S, 31° 29' S E; linking the first co-ordinate to the last along the surfzone.

uThukela Banks offshore Controlled Zone 1 (TOCZ1) comprises the offshore portion of the uThukela Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following ten co-ordinates (A) 28° 56' S, 31° 51' E; (B) 28° 56' S, 32° 15' E; (M) 29° 20' S, 32° 15' E; (L) 29° 21' S, 31° 58.5' E; (K) 29° 17.5' S, 31° 58.5' E; (J) 29° 17.5' S, 31° 55.5' E; (I) 29° 21' S, 31° 55.5' E; (H) 29° 20' S, 31° 48' E; (G) 29° 13' S, 31° 48' E; (F) 29° 13' S, 31° 31.162' E; linking the first co-ordinate to the last along the surfzone.

UThukela Banks Offshore Controlled Zone 2 (TOCZ2) comprises the offshore portion of the uThukela Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following ten co-ordinates (Q) 29° 14.761' S, 31° 29' E; (P) 29° 22' S, 31° 29' E; (O) 29° 22' S, 31° 36' E; (N) 29° 37' S, 31° 36' E; (D) 29° 37' S, 31° 18' E; (E) 29° 25.992' S, 31° 18' E; linking the first co-ordinate to the last along the surfzone.

UThukela Banks Offshore Controlled-Pelagic Zone 1 (TOCPZ1) comprises the offshore portion of the uThukela Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following four co-ordinates (R) 28° 56.9' S, 32° 8.4' E; (S) 28° 56.9' S, 32° 10.7' E; (T) 28° 59.2' S, 32° 10.7' E; (U) 28° 59.2' S, 32° 8.4' E; linking the first co-ordinate to the last.

UThukela Banks Offshore Controlled-Pelagic Zone 2 (TOCPZ2) comprises the offshore portion of the uThukela Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following four co-ordinates (V) 29° 8.2' S, 32° 0.7' E; (W) 29° 58.2' S, 32° 3.2' E; (X) 29° 10.7' S, 32° 3.2' E; (Y) 29° 10.7' S, 32° 0.7' E; ; linking the first co-ordinate to the last.

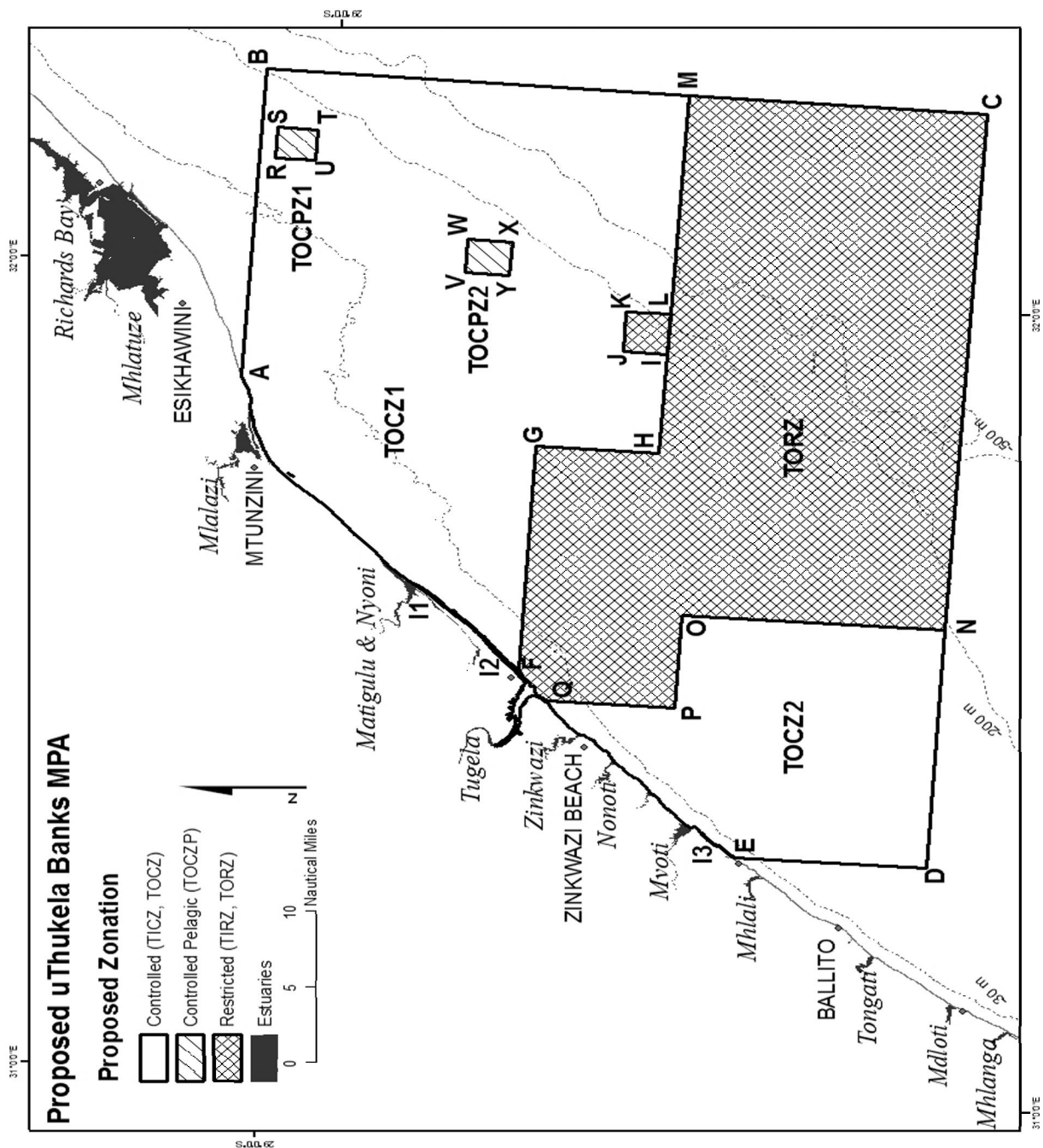


Figure 2: Proposed uThukela Banks MPA offshore proposed zonation

Table 1: Proposed uThukela Banks MPA table of co-ordinates.

INSHORE				
Corners	LATITUDE		LONGITUDE	
	South Deg.	South Min.	East Deg.	East Mins.
I1	29	26.928	31	36.945
I2	29	13.472	31	31.062
I3	29	24.080	31	19.700
OFFSHORE				
Corners	LATITUDE		LONGITUDE	
	South Deg.	South Min.	East Deg.	East Mins.
A	28	56.000	31	51.000
B	28	56.000	32	15.000
C	29	37.000	32	15.000
D	29	37.000	31	18.000
E	29	25.992	31	18.000
F	29	13.000	31	31.162
G	29	13.000	31	48.000
H	29	20.000	31	48.000
I	29	21.000	31	55.500
J	29	17.500	31	55.500
K	29	17.500	31	58.500
L	29	21.000	31	58.500
M	29	20.000	32	15.000
N	29	37.000	31	36.000
O	29	22.000	31	36.000
P	29	22.000	31	29.000
Q	29	14.791	31	29.000
R	28	56.900	32	8.400
S	28	56.900	32	10.700
T	28	59.200	32	10.700
U	28	59.200	32	8.400
V	29	8.200	32	0.700
W	29	58.200	32	3.200
X	29	10.700	32	3.200
Y	29	10.700	32	0.700

Annexure 2

Pelagic fish species list for the Controlled-Pelagic Zone

(Note: this is a list of game and bait fish species that MAY be caught in the Controlled-Pelagic Zone inside the ASCPZ of the Aliwal Shoal Marine Protected Area. Family names are given as all species in these families may be caught)

Pelagic gamefish species:

Carangidae – kingfish, garrick, yellowtail, queenfish, etc.

Coryphaenidae – Dorado/dolphin fish

Istiophoridae – Sailfish and marlin

Pomatomidae – Shad/elf

Rachycentridae – Prodigal son/Cobia

Scombridae – Tunas, mackerels, wahoo, etc.

Sphyrnidae – Barracudas

Xiphiidae – Swordfish/broadbill

Pelagic baitfish species (includes carangids and scombrids as indicated above):

Atherinidae – silversides

Belontiidae – garfish

Chirocentridae – wolf herring/slimy

Clupeidae – red-eyes, sardines, etc.

Engraulidae – anchovies, glass-noses/bonies, etc.

Exocoetidae - flyingfishes

Hemiramphidae – halfbeaks

Scomberesocidae - sauries