DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 110 03 FEBRUARY 2016

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

DRAFT REGULATIONS FOR THE MANAGEMENT OF THE ALIWAL SHOAL 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 Aliwal Shoal 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:

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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);

"ASCPZ" means Aliwal Shoal Controlled-Pelagic Zone;

"ASCZ" means Aliwal Shoal Controlled Zone;

"ASIRZ" means Aliwal Shoal Inshore Restricted Zone:

"ASORZ" means Aliwal Shoal Offshore Restricted Zone;

"ASISZ" means Aliwal Shoal Inshore Sanctuary Zone;

"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 the 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;
- "fossiking" means the search, collection and removal of fauna and flora;
- "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 Aliwal Shoal 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;

"Sanctuary Zone" means an area within the Marine Protected Area where no fishing may take place, and where limited recreational activities may take place as provided for in the management plan, and 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;

"snorkeling" means to swim with a diving mask, a snorkel or fins;

"speargun" means a device by which a spear is projected by mechanical or pneumatic means;

"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, including a personal watercraft or hovercraft; 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 one (1) inshore Restricted Zone, two (2) inshore Sanctuary Zones and the remainder is an Inshore Controlled Zone. The offshore area consists of one (1) offshore Controlled-Pelagic zone, two (2) offshore Controlled Zone and four (4) offshore Restricted Zones, which are determined by using WGS 84 as detailed in Annexure 1 hereto as follows:

- (a) one (1) inshore and off shore Controlled-Pelagic Zone, indicated as ASCPZ1;
- (b) one (1) inshore and off shore Controlled Zone, indicated as ASCZ1;
- (c) one (1) inshore and off shore Controlled Zone, indicated as ASCZ2;
- (d) one (1) off shore Restricted Zone, indicated as ASORZ1;
- (e) one (1) off shore Restricted Zone, indicated as ASORZ2;
- (f) one (1) off shore Restricted Zone, indicated as ASORZ3;
- (g) one (1) off shore Restricted Zone, indicated as ASORZ4;
- (h) one (1) inshore Restricted Zone, indicated as ASIRZ1;
- (i) one (1) inshore Sanctuary Zone, indicated as ASISZ1; and
- (j) one (1) inshore Sanctuary Zone, indicated as ASISZ2.

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 subregulation (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 majeur; 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 or Sanctuary Zone within the Marine Protected Area may not stop or move at less than 5 knots at any time while in a Restricted Zone or Sanctuary Zone.
- (5) A motorized vessel entering or traversing a Sanctuary Zone or 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, prior to entering and while traversing a Restricted Zone within the Marine Protected Area and such GPS data may not be deleted from this device for forty-eight hours after passing through a Restricted Zone or Sanctuary 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 Sanctuary Zone

(1) No person shall fish, or attempt to fish, in the ASISZ or ASOSZ, including collecting or harvesting of invertebrates or intertidal organisms.

- (2) No person may trample on rocks, engage in fossiking, collect or remove shells or any other organism in the ASISZ.
- (3) No person may engage in snorkeling or SCUBA diving in the ASISZ or ASOSZ.
- (4) A vessel within or traversing the ASISZ or ASOSZ, may not carry any fish or part thereof on board such vessel.
- (5) No person may have any fish or part thereof, any speargun or other spearfishing equipment within their possession within the ASISZ or ASOSZ.
- (6) Fishing gear onboard a vessel or in possession of any person that enters or is present in the ASISZ or ASOSZ must be stowed in accordance with regulation 8(2).

8. Control of activities in the Restricted Zone

- No person shall fish, or attempt to fish, in the ASIRZ or ASORZ 1-4, including invertebrates or collecting or harvesting of intertidal organisms.
- (2) Fishing gear onboard a vessel or in possession of any person that enters or is present in the ASIRZ or the ASORZ 1-4 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.
- (3) No person may have any speargun or other spearfishing equipment within their possession within the ASIRZ or ASORZ 1-4.

9. Control of activities in Controlled and Controlled Pelagic Zones

- (1) No person shall fish, or attempt to fish, in the ASCZ 1-2 or ASCPZ 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 ASCZ 1-2 or ASCPZ 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), and fishing in the ASCPZ, may only fish for the species specified in Annexure 2 to these regulations.
- (3) Notwithstanding anything to the contrary, any person in possession of a recreation fishing permit as contemplated in sub-regulations (1)(b), and fishing in the ASCPZ or ASCZ, may not fish for any shark species (Elasmobranchii) within the ASCPZ or ASCZ.

- (4) Notwithstanding anything to the contrary, any person in possession of a recreational or commercial fishing permit as contemplated in sub-regulation (1), and fishing in the ASCZ, may not fish for any benthic species during the period 1st August to 31st October of any year.
- (5) No person shall undertake recreational fishing in the ASCZ or ASCPZ in the period between 17h00 in the evening and 06h00 of the following day.
- (6) Fishing gear onboard a vessel or in possession of any person that enters or is present in the ASCZ or ASCPZ and who is not authorised to fish in terms of sub-regulation (1), must be stowed in accordance with regulation 8(2).

10. SCUBA diving

- (1) No person may operate or attempt to operate a SCUBA diving business in a Restricted, Controlled or Controlled Pelagic Zone 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.
- (4) Subject to regulation 3, no person may SCUBA dive in any Sanctuary Zone within the Marine Protected Area.

11. Discharge into Marine Protected Area

- (1) Any existing discharge of effluent occurring at the date of commencement of these regulations, as contemplated in section 69 of the Integrated Coastal Management Act is hereby authorised to continue within the Marine Protected Area provided such discharge is authorised in terms of section 69 of the Integrated Coastal Management Act.
- (2) No new discharges of effluent occurring after the date of commencement of these regulations, as contemplated in terms of section 69 of the Integrated Coastal Management Act may be authorised and are prohibited in accordance with section 48A of the Act.

12. Suspension, amendment and cancellation of permits

- (1) Subject to sub-regulations (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.

13. 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), 6, 7, 8, 9, 10(1), 10(3), 10(4) or 11;
- (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.

14. Withdrawal and repeal

The Regulations for the Management of the Alliwal Shoal Marine Protected Area as published in *Government Gazette* 26433 Notice No. 697 of 4 June 2004 are hereby repealed.

15. Short title and commencement

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

Annexure 1

(Zonation of Aliwal Shoal Marine Protected Area)

INSHORE

- (1) Aliwal Shoal Inshore Sanctuary Zones (ASISZ1) comprises the intertidal portion of the Aliwal Shoal Marine Protected Area and is defined as the section between the following two co-ordinates (a) 30° 13.464′ S, 30° 47.694′ E and (b) 30° 14.420′ S, 30° 47.071′ E running from the high water mark to the five meter depth contour.
- (2) Aliwal Shoal Inshore Sanctuary Zones (ASISZ2) comprises the intertidal portion of the Aliwal Shoal Marine Protected Area and is defined as the section between the following two co-ordinates (d) 30° 20.404' S, 30° 44.003' E and (e) 30° 20.807' S, 30° 43.618' E running from the high water mark to the five meter depth contour.
- (3) Aliwal Shoal Inshore Restricted Zone (ASIRZ) comprises the intertidal portion of the Aliwal Shoal Marine Protected Area and is defined as the section between the following two co-ordinates (b) 30° 14.420' S, 30° 47.071' E and (c) 30° 16.193' S, 30° 45.814' E running from the high water mark to the five meter depth contour.
- (4) Aliwal Shoal Controlled Zone (ASCZ) comprises of the remainder of the inshore portion of the Aliwal Shoal Marine Protected Area between the two Inshore Restricted Zones.

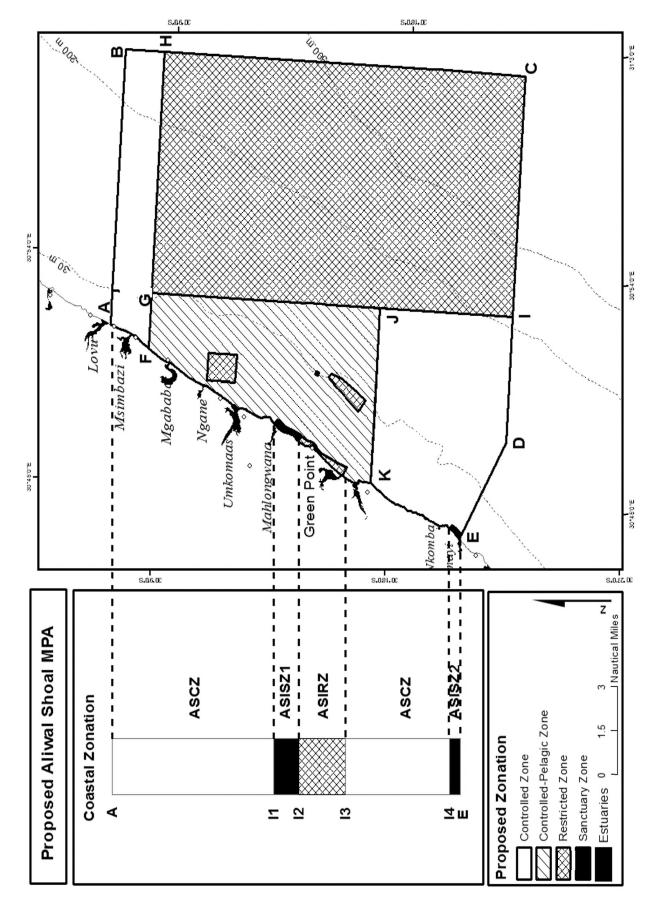


Figure 1: Proposed Aliwal Shoal Offshore Expansion and Inshore MPA

OFFSHORE

- (1) Aliwal Shoal Offshore Restricted Zone 1 (ASORZ1) comprises the offshore portion of the Aliwal Shoal Marine Protected Area and is defined as the area within straight lines sequentially joining the following four co-ordinates, coordinates (G) 30° 8.5' S, 30° 52.5' E; (H) 30° 8.5' S, 31° 2' E; (C) 30° 22.412' S, 31° 2' E; (I) 30° 22.412' S, 30° 52.5' E; linking the first co-ordinate to the last.
- (2) Aliwal Shoal Offshore Restricted Zone 2 (ASORZ2) comprises of a block offshore as part of the Aliwal Shoal Marine Protected Area and is defined as the area within straight lines sequentially joining the following four co-ordinates, coordinates (a) 30° 10.8' S, 30° 49.2' E; (b) 30° 10.8' S, 30° 50.3' E; (c) 30° 11.9' S, 30° 50.3' E; (d) 30° 11.9' S, 30° 49.2' E; linking the first co-ordinate to the last.
- (3) Aliwal Shoal Offshore Restricted Zone 3 (ASORZ3) comprising of the Produce Restricted Zone and is defined as the area within straight lines sequentially joining the following four co-ordinates (e) 30° 14',968S; 30° 49',723E; (f) 30° 14',985S; 30° 49',846E; (g) 30° 15',093S; 30° 49',827E; (h) 30° 15',076S; 30° 49',703E
- (4) **Aliwal Shoal Offshore Restricted Zone 4 (ASORZ4)** comprising of the Crown Area Restricted Zone and is enclosed by twelve points, which lie on the 25 meter isobath. The twelve points have the following coordinates: (i) 30° 15',600S; 30° 49',776E; (j) 30° 15',791S; 30° 49',714E; (k) 30° 15',982S; 30° 49',627E; (l) 30° 16',270S; 30° 49',409E; (m) 30° 16',673S; 30° 49',078E; (n) 30° 16',926S; 30° 48',835E; (o) 30° 16',800S; 30° 48',600E; (p) 30° 16',680S; 30° 48',376E; (q) 30° 16',189S; 30° 48',834E; (r) 30° 15',908S; 30° 49',143E; (s) 30° 15',518S; 30° 49',589E; (t) 30° 15',474S; 30° 49',671E
- (5) **Aliwal Shoal Controlled-Pelagic Zone (ASCPZ)** comprises the offshore portion of the Aliwal Shoal Marine Protected Area and is defined as the area within straight lines sequentially joining the following four co-ordinates (F) 30° 8.5' S, 30° 50.33' E; (G) 30° 8.5' S, 30° 52.5' E; (J) 30° 17.3' S, 30° 52.5' E; (K) 30° 17.3' S, 30° 45.586' E; linking the first co-ordinate to the last.
- (6) **Aliwal Shoal Controlled Zone 1 (ASCZ1)** comprises the offshore portion of the Aliwal Shoal Marine Protected Area and is defined as the area within straight lines sequentially joining the following five co-ordinates (A) 30° 7′ S, 30° 51.154′ E; (B) 31° 7′ S, 31° 2′ E; (H) 30° 8.5′ S, 31° 2′ E; (G) 30° 8.5′ S, 30° 52.5′ E; (F) 30° 8.5′ S, 30° 50.33′ E; linking the first co-ordinate to the last.
- (7) Aliwal Shoal Controlled Zone 2 (ASCZ2) comprises the offshore portion of the Aliwal Shoal Marine Protected Area and is defined as the area within straight lines sequentially joining the following five co-ordinates (K) 30° 17.3′ S, 30° 45.586′ E; (J) 30° 17.3′ S, 30° 52.5′ E; (I) 30° 22.412′ S, 30° 52.5′ E (D) 30° 47′ S, 30° 22′ E; (E) 30° 48′ S, 30° 11.9′ E; linking the first co-ordinate to the last.

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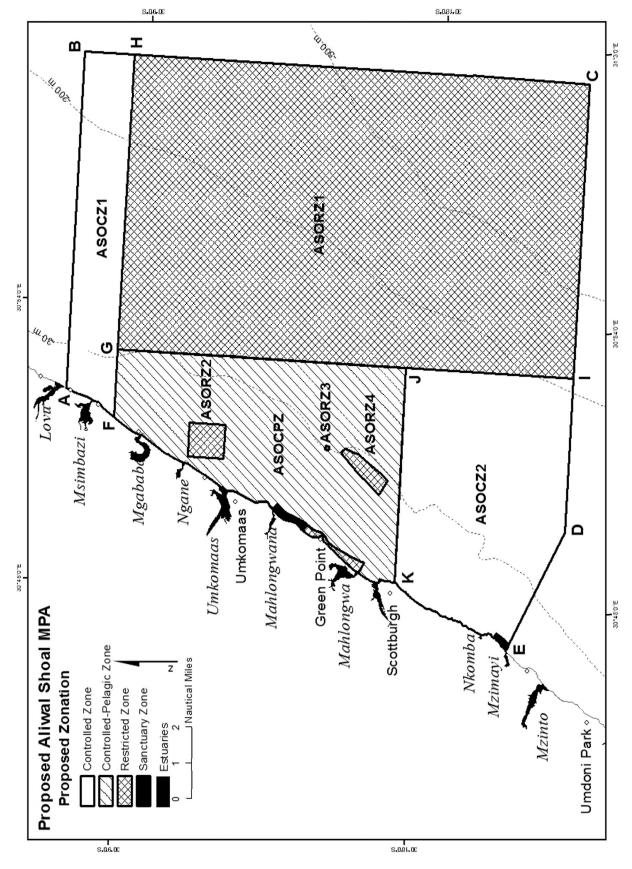


Figure 1: Proposed Zonation for Aliwal Shoal MPA

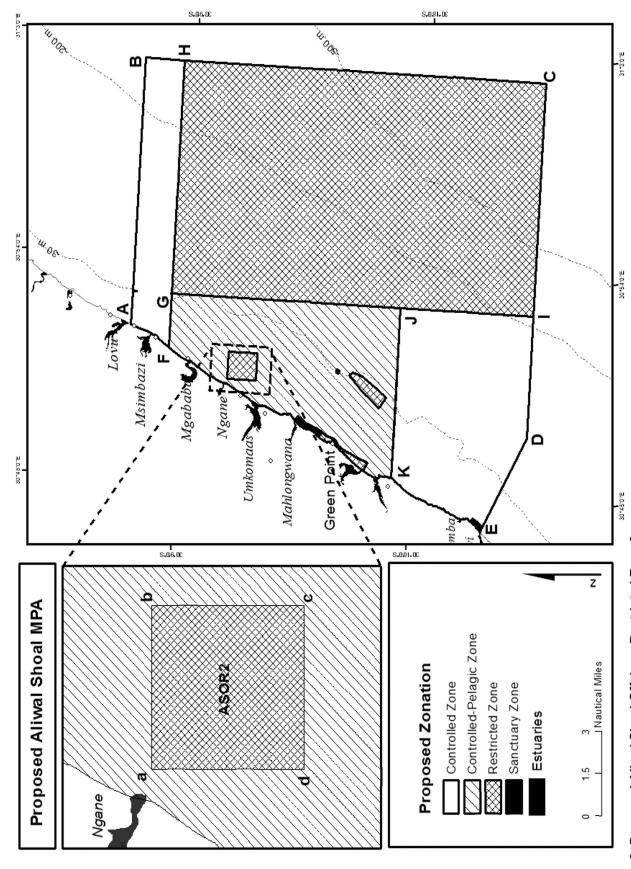


Figure 2: Proposed Aliwal Shoal Offshore Restricted Zone 2.

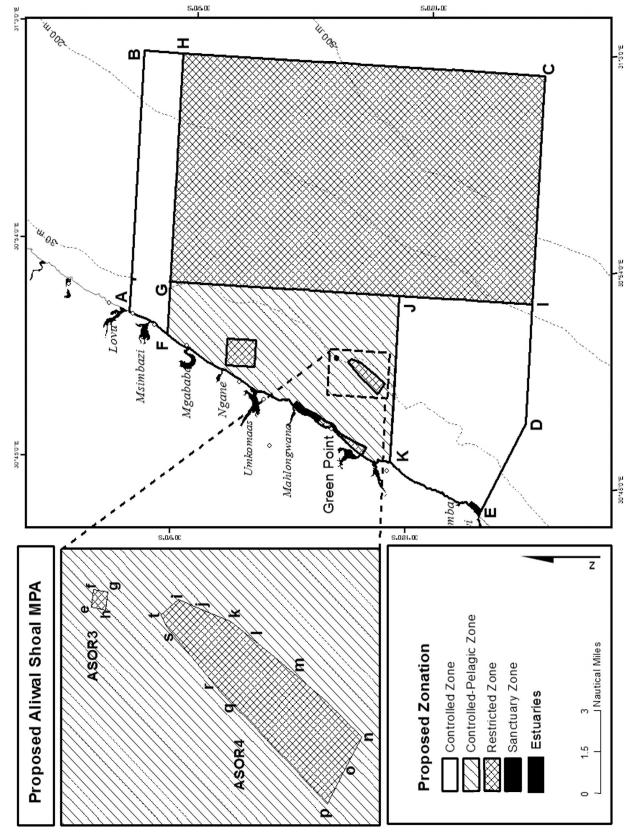


Figure 3: Proposed Aliwal Shoal Offshore Restricted Zones 3 and 4.

Table 1: Table of co-ordinates for the Proposed Aliwal Shoal Marine Protected Area

INSHORE				
Corner name	South Degrees	South Minutes	East Degrees	East Minutes
а	30	14.420	30	47.071
b	30	16.193	30	45.814
С	30	20.404	30	44.003
d	30	20.807	30	43.618
OFFSHORE				
Corner name	South Degrees	South Minutes	East Degrees	East Minutes
Α	30	7.000	30	51.154
В	30	7.000	31	2.000
С	30	22.412	31	2.000
D	30	22.410	30	47.530
E	30	11.920	30	48.290
F	30	8.500	30	50.330
G	30	8.500	30	52.500
Н	30	8.500	31	2.000
I	30	22.412	30	52.500
J	30	17.300	30	52.500
K	30	17.300	30	45.586
а	30	10.800	30	49.200
b	30	10.800	30	50.300
С	30	11.900	30	50.300
d	30	11.900	30	49.200
е	30	14.968	30	49.723
f	30	14.985	30	49.846
g	30	15.093	30	49.827
h	30	15.076	30	49.703
i	30	15.600	30	49.776
j	30	15.791	30	49.714
k	30	15.982	30	49.627
1	30	16.270	30	49.409
m	30	16.673	30	49.078
n	30	16.926	30	48.835
0	30	16.800	30	48.600
р	30	16.680	30	48.376
q	30	16.189	30	48.834
r	30	15.908	30	49.143
S	30	15.518	30	49.589
t	30	15.474	30	49.671

Annexure 2

Draft pelagic fish species list for the Controlled-Pelagic Zone

(Note: this is a list of game and bait fish species that <u>MAY</u> 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.

Sphyraenidae - Barracudas

Xiphiidae - Swordfish/broadbill

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

Atherinidae – silversides

Belonidae – garfish

Chirocentridae – wolf herring/slimy

Clupeidae – red-eyes, sardines, etc.

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

Exocoetidae - flyingfishes

Hemiramphidae – halfbeaks

Scomberesocidae - sauries