

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 125

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

**DRAFT REGULATIONS FOR THE MANAGEMENT OF THE NAMAQUA
NATIONAL PARK 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 Namaqua National Park 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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**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);

“alpha flag” means the “diver down” flag used to indicate that diving operations are in progress and other vessels must keep clear;

“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;

“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);

“management authority” means South African National Parks who is hereby formally designated as the management authority of the Marine Protected Area in terms of section 38(1)(aB) of the Act;

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

“Marine Protected Area” means the Namaqua National Park Marine Protected Area as declared by the Minister in terms of section 22A of the Act;

“NNPORZ” means Namaqua National Park Offshore Restricted Zone;

“NNPCCZ” means Namaqua National Park Coastal Controlled Zone;

“NNPCRZ” means Namaqua National Park Coastal Restricted Zone;

“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 a 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;

“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 personal watercraft and 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 one (1) offshore Restricted Zone, six (6) Coastal Controlled Zones, and six (6) Coastal Restricted Zones which are determined by using WGS 84 as detailed in Annexure 1 hereto as follows:

- (a) one (1) Offshore Restricted Zone, indicated as NNPORZ;
- (b) six (6) Coastal Controlled Zones, indicated as NNPC CZ 1-6; and
- (c) six (6) Coastal Restricted Zones, indicated as NNPCRZ 1-6.

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 and a scientific research permit issued by the management authority.
- (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.

2. 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.

- (4) The management authority may in the management plan for the Marine Protected Area or in an internal rule, identify activities, except for those activities listed in section 48A(1) of the Act; which may be restricted, controlled, limited or prohibited and such areas must be indicated by demarcation buoys, demarcation markers or notice boards.
- (5) No person shall conduct or carry out any activity that is restricted, controlled, limited or prohibited in terms of sub-regulation (4).

4. 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 management authority may on application and on such conditions as it may deem appropriate, authorise the anchoring or mooring of a vessel in the following circumstances:
 - (a) in an emergency; or
 - (b) where the management authority may deem it to be necessary in order to ensure the proper management of the Marine Protected Area.
- (3) The management authority 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 entering or 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, 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.

- (6) A vessel required by law to have a Vessel Monitoring System must, when entering or traversing the Marine Protected Area with fishing gear onboard, ensure that the Vessel Monitoring System is active.

5. 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.

6. Control of activities in Restricted Zones

- (1) No person shall fish, or attempt to fish, in the NNPORZ and the NNPCRZ 1-6.
- (2) Fishing gear onboard a vessel or in possession of any person that enters or is present in the NNPORZ and NNPCRZ 1-6 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; or
 - (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.

7. Control of activities in Controlled Zones

- (1) No person shall fish, or attempt to fish, in NNPCZ 1-6 unless 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) above, may only fish for linefish and west coast rock lobster in the NNPCZ 1 (south of the Lighthouse).
- (3) No person shall undertake recreational fishing in the NNPCZ 1-6 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 NNPCZ 1-6 and who is not authorised to fish in terms of sub-regulation (1), must be stowed in accordance with regulation 7(2).

8. 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 management authority and may be issued subject to conditions.
- (3) Any vessel that has deployed divers in the Marine Protected Area must display an alpha flag.

9. Suspension, amendment and cancellation of permits

- (1) Subject to sub-regulations (2) and (3), a permit issued under these regulations may at any time be suspended, cancelled or amended.
- (2) A permit issued in terms of these regulations may be suspended, cancelled or amended, if—
 - (a) the Minister or management authority 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.

10. 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(1) to 4(3), 4(5), 5(1), 5(4) to 5(6), 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.

11. Short title and commencement

These regulations are called the Namaqua National Park Marine Protected Area Regulations and commence upon date of publication in the *Gazette*.

Annexure 1

(Zonation for the Namaqua National Park Marine Protected Area)

(1) Namaqua National Park Offshore Restricted Zone (NNPORZ)

comprises the area from point A (30° 27.5400' S, 17° 16.8600' E) 100m seawards from the high-water mark, north of the Spoeg River, to offshore point B (30° 27.5400' S, 17° 20.8458' E), south to point C (30° 55.0020' S, 17° 36.4200' E), southwest to point D (30° 55.0020' S, 17° 19.9980' E) and east to point E (30° 55.0020' S, 17° 36.1794' E) at Island Point, 100m seawards from the high-water mark. The last line links the last co-ordinate (E) northwards to the first (A) along the coast at 100 m seawards from the high-water mark.

(2) Namaqua National Park Coastal Restricted Zones (NNPCRZ):

- (a) CRZ 1, point G (30° 52.7886' S, 17° 35.2344' E) to H (30° 49.6188' S, 17° 33.8454' E) along the coast 100m seawards to the boundary of the ORZ
- (b) CRZ 2, point I (30° 49.2918' S, 17° 33.5016' E) to J (30° 45.7830' S, 17° 32.0178' E) along the coast 100m seawards to the boundary of the ORZ
- (c) CRZ 3, point K (30° 44.0058' S, 17° 31.3314' E) to L (30° 42.0300' S, 17° 29.4672' E) along the coast 100m seawards to the boundary of the ORZ
- (d) CRZ 4, point M (30° 40.8342' S, 17° 28.2378' E) to N (30° 33.1404' S, 17° 24.6900' E) along the coast 100m seawards to the boundary of the ORZ
- (e) CRZ 5, point O (30° 30.8784' S, 17° 23.2404' E) to P (30° 30.0210' S, 17° 22.5036' E) along the coast 100m seawards to the boundary of the ORZ
- (f) CRZ 6, point Q (30° 29.7384' S, 17° 22.1694' E) to R (30° 27.5400' S, 17° 20.9400' E) along the coast 100m seawards to the boundary of the ORZ

(3) Namaqua National Park Coastal Controlled Zones (NNPCCZ):

- (a) CCZ 1, point F (30° 55.0020' S, 17° 36.4200' E) to G (30° 52.7886' S, 17° 35.2344' E) along the coast 100m seawards to the boundary of the ORZ
- (b) CCZ 2, point H (30° 49.6188' S, 17° 33.8454' E) to I (30° 49.2918' S, 17° 33.5016' E) along the coast 100m seawards to the boundary of the ORZ

- (c) CCZ 3, point J ($30^{\circ} 45.7830'$ S, $17^{\circ} 32.0178'$ E) to K ($30^{\circ} 44.0058'$ S, $17^{\circ} 31.3314'$ E) along the coast 100m seawards to the boundary of the ORZ
- (d) CCZ 4, point L ($30^{\circ} 42.0300'$ S, $17^{\circ} 29.4672'$ E) to M ($30^{\circ} 40.8342'$ S, $17^{\circ} 28.2378'$ E) along the coast 100m seawards to the boundary of the ORZ
- (e) CCZ 5, point N ($30^{\circ} 33.1404'$ S, $17^{\circ} 24.6900'$ E) to O ($30^{\circ} 30.8784'$ S, $17^{\circ} 23.2404'$ E) along the coast 100m seawards to the boundary of the ORZ
- (f) CCZ 6, point P ($30^{\circ} 30.0210'$ S, $17^{\circ} 22.5036'$ E) to Q ($30^{\circ} 29.7384'$ S, $17^{\circ} 22.1694'$ E) along the coast 100m seawards to the boundary of the ORZ

