

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 793

23 MAY 2019

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

**REGULATIONS FOR THE MANAGEMENT OF THE PROTEA MARINE
PROTECTED AREA**

I, Nomvula Paula Mokonyane, Minister of Environmental Affairs, hereby make, the Regulations for the Management of the Protea 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.



**NOMVULA PAULA MOKONYANE
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;

“attract” means to feed, chum or bait, or to use any other means, method or device to lure a live specimen of a shark species (Elasmobranchii);

“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;

“chum or chumming” means scenting or using pieces of an animal weighing less than 10 grams, in the water to lure a live specimen of any shark species (Elasmobranchii);

“commercial fishing” shall have the meaning assigned to it in section 1 of the Marine Living Resources Act;

“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 Linefish Zone” means a Controlled Zone within the Marine Protected Area where only pelagic linefishing may occur as detailed in a fish list attached to these regulations as Annexure 2 and includes the PCPLZ,

“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 undertake 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 or tracking 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;

“fishing permit” means a commercial, small scale or recreational fishing permit issued in terms of the Marine Living Resources Act, which authorises fishing in the area where the Marine Protected Area is located;

“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);

“linefishing” means fishing by handline or manually operating a rod, reel and line or one or more separate lines to which no more than ten hooks are attached per line;

“marine aquarium fishing” means fishing for the purposes of obtaining fish for live display;

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

“Marine Protected Area” means the Protea 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;

“**PCZ**” means the Protea Banks Controlled Zone;

“**PCPLZ**” means the Protea Banks Controlled-Pelagic Linefish Zone;

“**PRZ**” means the Protea Banks Restricted Zone;

“**recreational fishing**” has the meaning assigned to it in the Marine Living Resources Act;

“**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;

“**SCUBA diving vessel**” means any vessel that carries SCUBA divers and has no fishing gear on board;

“**small-scale fishing or fisher**” has the meaning ascribed to it in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

“**spearfishing**” means fishing with the use of a speargun;

“**speargun**” means a device by which a spear is projected by mechanical or pneumatic means;

“**specific environmental management Act**” has the meaning assigned to it in the National Environmental Management Act;

“**Threatened or Protected Marine Species Lists**” means the lists published in *Government Gazette* 40875 GN 476 of 30 May 2017, in terms of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);

“**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 one (1) offshore Controlled Zone, one (1) offshore Controlled-Pelagic Linefish Zone and one (1) offshore Restricted Zone, which are determined by using WGS 84 as detailed in Annexure 1 hereto as follows:

- (a) one (1) off shore Controlled Zone, indicated as the Protea Banks Controlled Zone (PCZ);
- (b) one (1) off shore Controlled-Pelagic Linefish Zone, indicated as the Protea Banks Controlled-Pelagic Linefish Zone (PCPLZ); and
- (c) one (1) off shore Restricted Zone, indicated as the Protea Banks Restricted Zone (PRZ).

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 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) No person may litter or leave any waste including fishing gear, hooks, bait packaging and fishing line within the Marine Protected Area.
- (5) No person or vessel, shall be in possession of or have on board, SCUBA diving gear and a speargun.

- (6) Subject to regulation 3, no person may undertake marine aquarium fishing, including fishing for or collecting invertebrates, or live rock within the Marine Protected Area.

5. Use of vessels

- (1) No person may moor or anchor any vessel in a Restricted or Controlled-Pelagic Linefish zone of the Marine Protected Area except—
 - (a) under conditions of *force majeure*;
 - (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; or
 - (c) for any vessel which has a permit in terms of these regulations for any activity which requires anchoring or mooring.
- (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 a Restricted or Controlled-Pelagic Linefish zone of the Marine Protected Area as contemplated in sub-regulation (2), which verbal authorisation must be confirmed in writing within 3 working days.
- (4) Any motorised vessel that enters or traverses a Restricted Zone within the Marine Protected Area may not stop for more than three minutes or move at less than—
 - (a) 5 knots if such vessel is 10 meters or more in length; or
 - (b) 3 knots if such vessel is less than 10 meters in length,unless authorised in terms of these regulations.
- (5) Sub-regulation (4), does not apply to a SCUBA diving vessel or to any vessel in the Protea Controlled-Pelagic Linefish Zone.
- (6) A motorised 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.

- (7) A motorised vessel entering or traversing a Restricted Zone within the Marine Protected Area, 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 7 calendar days after passing through a Restricted Zone.

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 the Restricted Zone

- (1) No person shall fish, or attempt to fish, in the PRZ.
- (2) No fishing gear including lines, hooks, lures, nets, trawl doors, warps, spearguns, buoys, traps or any other gear or equipment used for fishing, may be deployed overboard from any vessel within a Restricted Zone of the Marine Protected Area
- (3) Fishing gear and fish onboard a vessel or in possession of any person that enters or is present in the PRZ must be stowed in the following manner:
 - (a) In the case of line fishing from a vessel, all hooks, lures, sinkers 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 packed away in a cabin, locker, hatch, wheel house or console of the vessel, or where that is not possible, place such gear on the deck of the vessel;
 - (b) in the case of purse-seine fishing, no gear may be in the water;
 - (c) in the case of trawl fishing, all nets, trawl boards and weights shall be 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, nets and ropes shall be on board and tied down; and all dinghies shall be on board and lashed to 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;

- (f) in the case of any other nets including gillnets, cast nets and throw nets, nets shall be on board and packed away in a console, locker or any other container.
- (g) in the case of pole fishing, all poles will be secured above deck;
- (h) in the case of longline fishing, no branchline may be attached to the mainline and the entire mainline shall remain on the spool; and
- (i) in respect of all types of fishing where bait is used, such bait must remain packed away, or be placed into a bait well, where available.

8. Control of activities in the Controlled-Pelagic Linefish and Controlled Zones

- (1) No person shall fish, or attempt to fish in the Controlled-Pelagic Linefish or Controlled zone unless they are in possession of a valid fishing permit, which authorises them to fish for the species specified in sub-regulation (2).
- (2) Notwithstanding anything to the contrary, a person in possession of a fishing permit contemplated in sub-regulation (1)—
 - (a) may only undertake linefishing and spearfishing for the species specified in Annexure 2 to these regulations, when fishing in the Controlled-Pelagic Linefish Zone; and
 - (b) may only undertake linefishing and spearfishing in a Controlled Zone,subject to species restrictions, quantity, fish size limits, allowable effort, closed seasons or bag limits authorised by such fishing permit.
- (3) No person may fish for or be in possession of any shark or ray species (Elasmobranchii) within the Marine Protected Area.
- (4) No person shall fish in the Controlled-Pelagic Linefish or Controlled Zone in the period between sunset in the evening and sunrise of the following day.
- (5) Fishing gear onboard a vessel or in possession of any person that enters or is present in the Controlled-Pelagic Linefish or Controlled Zone and who is not authorised to fish in terms of sub-regulation (1), must be stowed in accordance with regulation 7(2) and 7(3).

- (6) No person shall in the Controlled-Pelagic Linefish Zone, be in possession of or have on board a vessel, any fish, except for the species listed in Annexure 2 to these regulations.
- (7) No person shall in any Controlled or Controlled-Pelagic Linefish Zone, chum for or in any other manner attract any shark species (Elasmobranchii), for the purpose of snorkeling or SCUBA diving with such species, without a permit.
- (8) Application for a permit referred to in sub-regulation (7) must be made to the Minister and may be issued subject to conditions.
- (9) No person may collect broodstock in a Controlled or Controlled-Pelagic Linefish Zone for undertaking aquaculture, without a permit from the Minister, which permit may be issued subject to conditions.
- (10) When considering a permit in terms of sub-regulation (9) the Minister must take into account the following factors-
 - (a) whether the species is listed as a threatened or protected species in terms of the Threatened or Protected Marine Species Lists and any prohibitions or restrictions therein;
 - (b) whether the species has been listed on an International Union for the Conservation of Nature Red list, including an international, regional, or national Red List;
 - (c) the objectives of this Marine Protected Area;
 - (d) whether the species can be collected outside the Marine Protected Area; and
 - (e) any other relevant criteria.

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-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.

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(7), 6, 7, 8(1) to 8(7), 8(9), 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 Protea Banks Marine Protected Area Regulations and commences on 1 August 2019.

Annexure 1

- (1) **Protea Banks Restricted Zone (PRZ)** comprises the offshore portion of the Protea Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following points; E, L, M, B, C, D with the line linking D and E lying adjacent to the offshore boundary of the existing Trafalgar marine protected area, following a line one nautical mile from the high water mark, and joining the first co-ordinate to the last. This includes Mzimkhulu Canyon north of Protea Banks.
- (2) **Protea Banks Controlled-Pelagic Linefish Zone (PCPLZ)** comprises the central portion of the Protea Banks Marine Protected Area and is defined as the area within straight lines sequentially joining the following points; G, H, I, J, K, L and joining the last co-ordinate to the first. This includes the Vungu Canyon and a large portion of Protea Banks.
- (3) **Protea Banks Controlled Zone (PCZ)** comprises the remaining section of the Protea Banks Marine Protected Area and is defined as the area within straight lines joining the following points; F, A, M, K, J, I, H, G and (a straight line) joining the last co-ordinate to the first.

Figure 1: The Offshore Zonation of the Protea Banks MPA

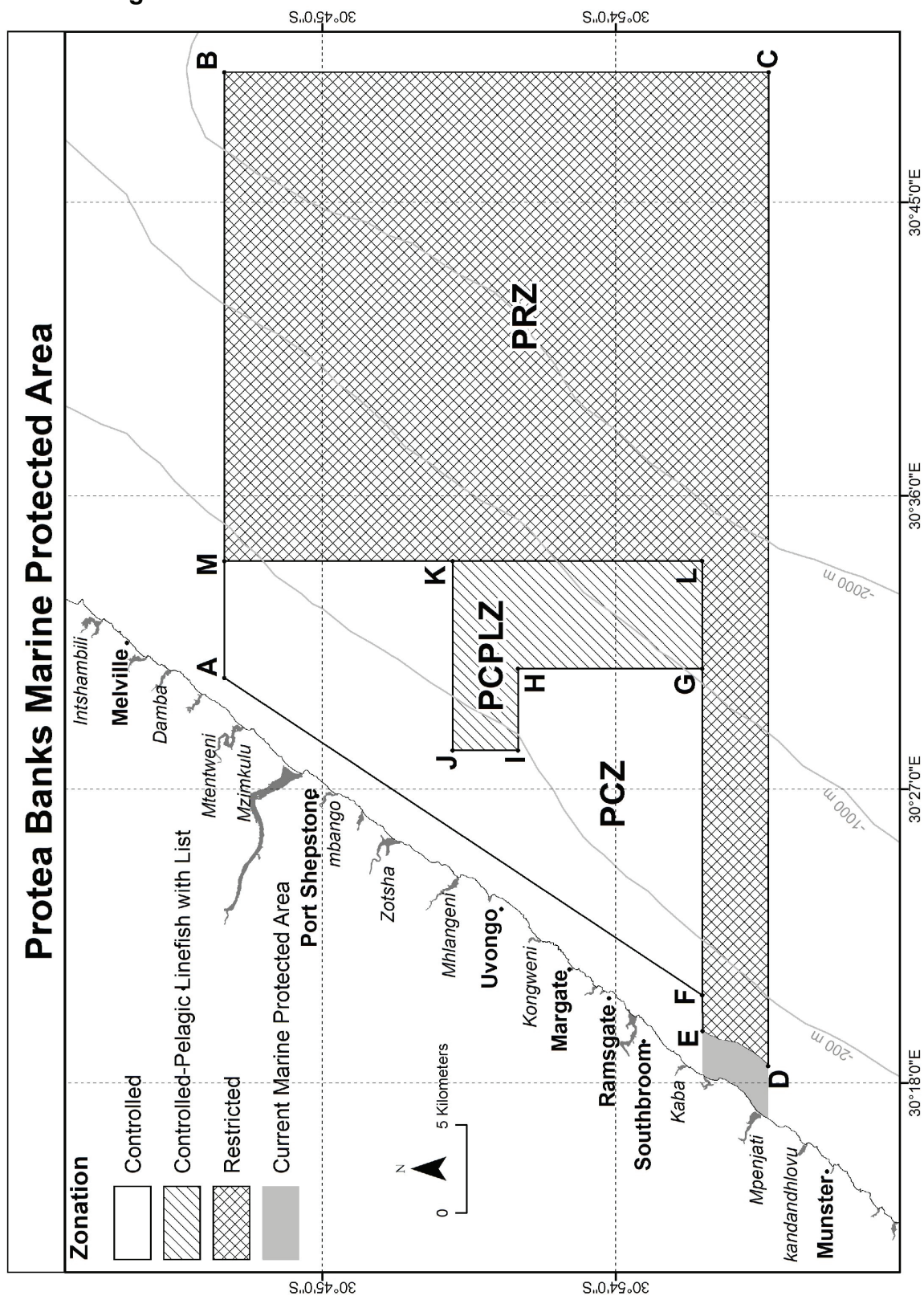


Table 1: Table of co-ordinates of the Protea Banks MPA

	POINT	X	Y
Protea Banks MPA	A	30.507	-30.7
Protea Banks MPA	B	30.8167	-30.7
Protea Banks MPA	C	30.8167	-30.977867
Protea Banks MPA	D	30.3085	-30.977867
Protea Banks MPA	E	30.3264	-30.944317
Protea Banks MPA	F	30.3448	-30.944317
Protea Banks MPA	G	30.5117	-30.944317
Protea Banks MPA	H	30.5117	-30.85
Protea Banks MPA	I	30.47	-30.85
Protea Banks MPA	J	30.47	-30.816667
Protea Banks MPA	K	30.5667	-30.816667
Protea Banks MPA	L	30.5667	-30.944317
Protea Banks MPA	M	30.5667	-30.7

Annexure 2

Pelagic fish species list for the Controlled-Pelagic Linefish Zone of the Protea Banks Marine Protected Area.

Family names are given as all species in these families may be caught, or used as bait.

Atherinidae – silversides
Belonidae – garfish
Carangidae – kingfish, garrick, yellowtail, queenfish, etc.
Chirocentridae – wolf herring/slimy
Clupeidae – red-eyes, sardines, etc.
Coryphaenidae – Dorado
Engraulidae – anchovies, glass-noses/bonies, etc.
Exocoetidae - flyingfishes
Hemiramphidae – halfbeaks
Istiophoridae – Sailfish and marlin
Pomatomidae – Shad/elf
Rachycentridae – Prodigal son/Cobia
Scomberesocidae - sauries
Scombridae – Tunas, mackerels, wahoo, etc.
Sphyraenidae – Barracudas