

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 780

23 MAY 2019

**NATIONAL ENVIRONMENTAL MANAGEMENT: PROTECTED AREAS ACT, 2003
(ACT NO. 57 OF 2003)****REGULATIONS FOR THE MANAGEMENT OF THE AGULHAS BANK COMPLEX
MARINE PROTECTED AREA**

I, Nomvula Paula Mokonyane, Minister of Environmental Affairs, hereby make the Regulations for the Management of the Agulhas Bank Complex 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);

“**ABRZ**” means the Agulhas Bank Complex Restricted Zone;

“**ABCZ**” means the Agulhas Bank Complex Controlled Zone;

“**ABCPLZ**” means the Alphard Banks Controlled-Pelagic Linefish 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;

“**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 a 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 Alphard Banks Controlled-Pelagic Linefish Zone ;

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

“Marine Protected Area” means the Agulhas Bank Complex 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 which is designed to be operated by a person or persons sitting, standing, or kneeling on, rather than within the confines of a hull;

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

“**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;

“**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);

“**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;

“**specific environmental management Act**” has the mean 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 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) Restricted Zone, one (1) Controlled Zone and one Controlled-Pelagic Linefish Zone, which are determined by using WGS 84 as detailed in Annexure 1 hereto as follows:

- (a) Restricted Zone, indicated as the Agulhas Bank Complex Restricted Zone (ABRZ); and
- (b) Controlled Zone, indicated as the Agulhas Bank Complex Controlled Zone (ABCZ); and

- (c) Controlled-Pelagic Linefish Zone, indicated as the Alphard Banks Controlled-Pelagic Linefish Zone (ABCPLZ).

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.
- (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.

5. Use of vessels

- (1) No person may moor or anchor any vessel in the Restricted Zone 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 the Restricted Zone 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 3 minutes or move at less than 5 knots at any time while in a Restricted Zone of the Marine Protected Area, unless authorised in terms of these regulations.
- (5) Sub-regulation (4) does not apply to a SCUBA diving vessel.
- (6) A motorised 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 7 calendar days after passing through a Restricted Zone.
- (7) 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.

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 to do so in terms of these regulations.

7. Control of activities in Restricted Zone

- (1) No person may fish, or attempt to fish, in the Agulhas Bank Complex Restricted Zone .
- (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 onboard a vessel or in possession of any person that enters or is present in the Restricted Zone of the Marine Protected Area 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 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 Controlled-Pelagic Linefish and Controlled Zones

- (1) No person may fish, or attempt to fish in the Controlled zone or Controlled Pelagic Linefish Zone unless they are in possession of a valid fishing permit which authorises such person to fish for any of 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 South Coast Rock Lobster fishing in the Agulhas Bank Complex Controlled Zone; and
 - (b) may only undertake linefishing for the species specified in Annexure 2 to these regulations, when fishing in the Alphard Banks Controlled-Pelagic Linefish Zone, subject to species restrictions, quantity, fish size limits, allowable effort, closed seasons or bag limits authorised by such fishing permit.
- (3) Where a person or vessel who enters or is present in the ABCZ is in possession of, or has fishing gear, on board, respectively, and that person or vessel is not authorised to fish in terms of sub-regulation (1), that fishing gear must be stowed in accordance with regulations 7(2) and 7(3).
- (4) No person may, in the Controlled Zone or Controlled-Pelagic Linefish Zone, fish in the period between sunset in the evening and sunrise in the morning, except for South Coast Rock Lobster.
- (5) No person may in a 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.
- (6) 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.
- (7) When considering a permit in terms of sub-regulation (6), 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 SCUBA dive or 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

- (1) 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(6), 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 Agulhas Bank Complex Marine Protected Area Regulations and shall commence on 1 August 2019.

Annexure 1**(Zonation of Agulhas Bank Complex Marine Protected Area)**

- (a) **Agulhas Bank Complex Restricted Zone (ABRZ)** is bounded by a series of straight lines sequentially joining the following coordinates F, G, C and H; and a straight line joining the first and last co-ordinate.
- (b) **Agulhas Bank Complex Controlled Zone (ABCZ)** is bounded by a series of straight lines sequentially joining the following coordinates E, F, H and D; and a straight line joining the first and last co-ordinate.
- (c) **Alphard Banks Controlled-Pelagic Linefish Zone (ABCPLZ)** is bounded by a series of straight lines sequentially joining the following coordinates A, B, G and F; and a straight line joining the first and last co-ordinate.

Fig. 1. The zonation for the Agulhas Bank Complex Marine Protected Area

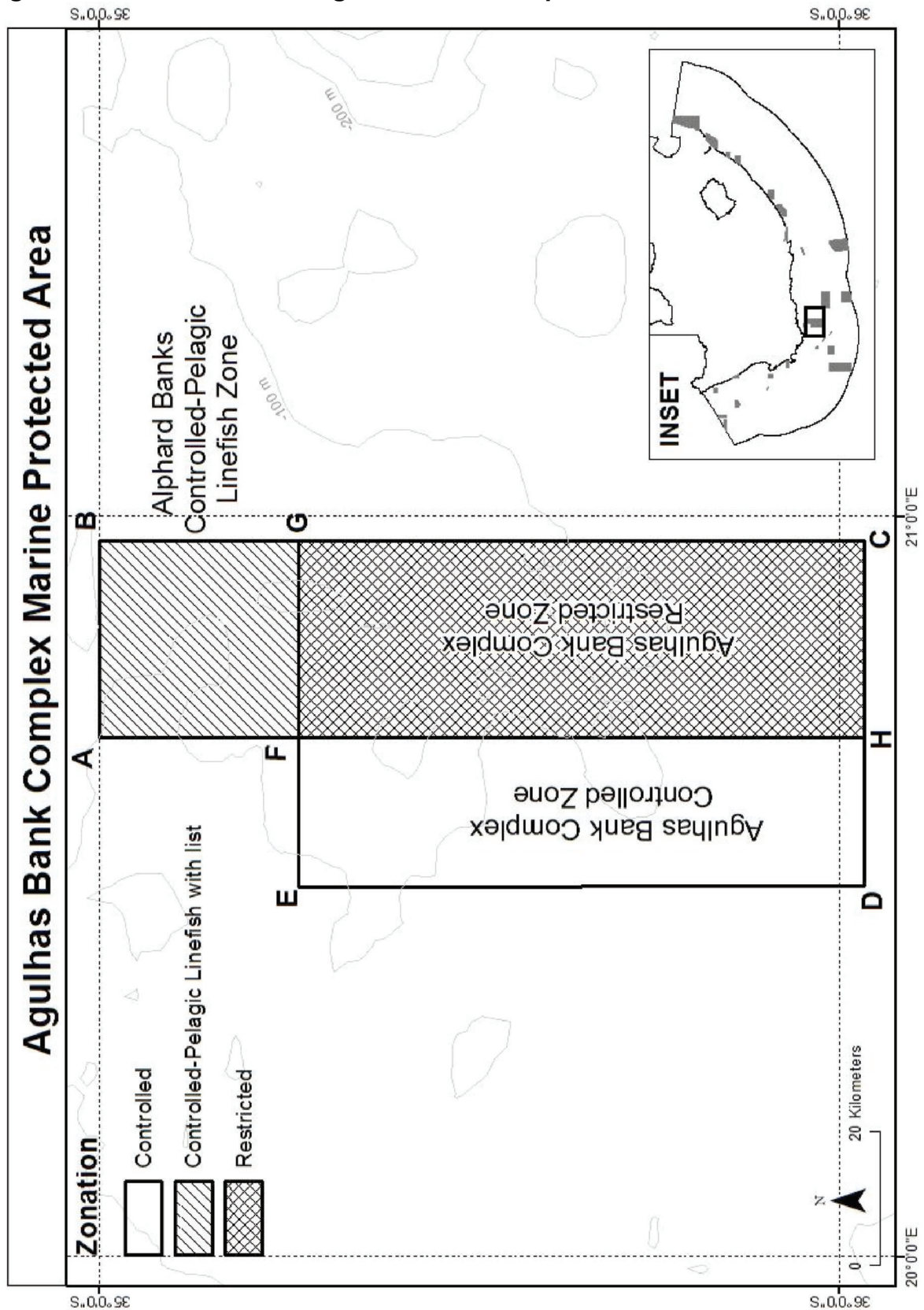


Table 1: The co-ordinates of the Agulhas Bank Complex Marine Protected Area

	POINT	X	Y
Agulhas Bank Complex MPA	A	20.7	-35
Agulhas Bank Complex MPA	B	20.966667	-35.00003
Agulhas Bank Complex MPA	C	20.966667	-36.033409
Agulhas Bank Complex MPA	D	20.5	-36.033333
Agulhas Bank Complex MPA	E	20.498833	-35.269333
Agulhas Bank Complex MPA	F	20.7	-35.269296
Agulhas Bank Complex MPA	G	20.966667	-35.268399
Agulhas Bank Complex MPA	H	20.700299	-36.033366

Annexure 2

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

Permitted families and species:

Argyrozona argyrozona - carpenter / silverfish

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

Rachycentridae – Prodigal son/Cobia

Scomberesocidae – sauries

Scombridae – Tunas, mackerels, wahoo, etc. Sphyraenidae – Barracudas