

**NOTICE OF INTENTION TO DECLARE THE ALI WAL SHOAL MARINE  
PROTECTED AREA UNDER SECTION 43 OF THE MARINE LIVING  
RESOURCES ACT, 18 OF 1998**

I, Mohammed Valli Moosa, the Minister of Environmental Affairs and Tourism, hereby publish for notice and comment, my intention to declare the Aliwal Shoal Marine Protected Area in terms of section 43, and to regulate the management and protection of the Aliwal Shoal Marine Protected Area in terms of section 77(2)(x)(i), of the Marine Living Resources Act, 18 of 1998 ("the Act") as set out in the Regulations in the Schedule, below.

Interested and affected parties may submit written comment to the Deputy Director-General at the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department"), Private Bag X2, Roggebaai, 8012. Written comments can be hand delivered to the Department's offices located at 7<sup>th</sup> Floor, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town. The Department must receive all written comment by no later than 16h00 on 18 May 2004.

**Schedule**

**To protect the marine environment and the marine biodiversity within the Aliwal Shoal Marine Protected Area; to allow overexploited and commercially collapsed species of fish stocks a sanctuary in which to recover and breed; to promote and regulate tourist-related activities, other commercial activities and scientific research in a way that does not adversely affect the marine environment and biodiversity of the Aliwal Shoal Marine Protected Area and to prescribe penalties for contraventions.**

**Definitions**

1. In these regulations any word or expression given a meaning in the Act has that meaning, unless such word or expression is defined in these regulations for the purposes of these regulations, and unless, the context indicates otherwise -

*Act* means the Marine Living Resources Act, 18 of 1998, inclusive of amendments and regulations promulgated thereunder;

*Alpha flag* means the 'diver down flag' used to indicate that diving operations are in progress and other vessels must keep clear;

*Controlled Zone* means that zone established under regulation 5(1);

*Demarcation buoy* means a buoy installed to mark the boundaries of the marine protected area and its zones;

*Department* means the Department of Environmental Affairs and Tourism;

***Electro-acoustic discharging device*** means any device that emits electrical or sonic pulses intended to stun, paralyse, disorientate, repel or kill any form of marine life;

***Hovercraft*** means a vehicle that travels on a cushion of air;

***the Manager*** means the manager of the Aliwal Shoal Marine Protected Area;

***Marine Protected Area*** means the Aliwal Shoal Marine Protected Area as declared by the Minister in terms of section 43 of the Act;

***the Minister*** means the Minister of Environmental Affairs and Tourism;

***Personal watercraft*** means a power driven vessel that has a fully enclosed hull and that is designed to be operated by a person standing, crouching or kneeling on it or sitting astride it;

***Powerhead*** means a device by means of which a fish may be taken and may be attached to a spear or speargun and that consists of or contains an explosive charge;

***Sanctuary zones*** means those zones established under regulation 5(1);

***Scientific research*** means research carried out by a recognised institute established for the purposes of research, or research carried on by a recognised institute of higher learning, provided that to undertake such scientific research the recognised institute requires its staff, students or contractors to enter the Marine Protected Area;

***SCUBA diving*** means swimming below the surface of the sea with the aid of compressed or pumped air or other gases;

***SCUBA diving business*** means a commercial enterprise which involves transporting, guiding or in any way supporting SCUBA divers;

***Spearfisher*** means a person who undertakes fishing with the use of a speargun;

***Speargun*** means a device by which a spear is projected by mechanical or pneumatic means;

***Water*** means, with reference to the Marine Protected Area, the territorial waters located within the boundaries of the Marine Protected Area, as defined in regulation 4;

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

## **Objectives**

2. The objectives of declaring the Marine Protected Area are to:
  - (1) Protect the ecosystem and populations of threatened marine species on and around the Aliwal Shoal;
  - (2) To reduce user-conflicts over the use of the shoal;
  - (3) Promote eco-tourism within the protected area by providing a properly regulated environment

## **Interpretation**

3. (1) All geographic co-ordinates are determined in accordance with the *WGS 84* datum.
- (2) All bearings are true bearings, and not compass or magnetic bearings.

## **Boundaries**

4. The Marine Protected Area shall include the water, the seabed and the airspace to 1000 m above sea level in the area bounded by:
  - (1) the high water mark between the mouth of the Mkomazi River at position 30°11'.92S; 030°48'.29 E and the mouth of the Mzimayi River at position 30°20'.80S; 030°43'.60E;
  - (2) a line drawn south-east (115° true bearing) from the north bank of the mouth of the Mkomazi River to a point 7 km off-shore at position 30°13'.478S; 030°52.246'E;
  - (3) a line drawn south-east (115° true bearing) from the mouth of the Mzimayi River to a position 7 km off-shore at 30°22'.41S; 030°47'.53E; and
  - (4) a straight line running approximately parallel to the shore joining the two offshore positions.

## **Zonation**

5. The Aliwal Shoal Marine Protected Area comprises two Sanctuary zones and a Control zone:
  - (1) the *Crown Area Sanctuary Zone* is enclosed by 12 points, which lie on the 25-m isobath, and covers approximately 2.5 km<sup>2</sup>. The 12 points have the following coordinates:

- (a) 30° 15',6002 S; 30° 49',7755 E
- (b) 30° 15',7914 S; 30° 49',7038 E
- (c) 30° 15',9820 S; 30° 49',6269 E
- (d) 30° 16',2700 S; 30° 49',3994 E
- (e) 30° 16',6730 S; 30° 49',0780 E
- (f) 30° 16',9258 S; 30° 48',8346 E
- (g) 30° 16',8001 S; 30° 48',6000 E
- (h) 30° 16',6797 S; 30° 48',3764 E
- (i) 30° 16',1886 S; 30° 48',8638 E
- (j) 30° 15',9077 S; 30° 49',1425 E
- (k) 30° 15',5176 S; 30° 49',5894 E
- (l) 30° 15',4743 S; 30° 49',6706 E

(2) The *Produce Sanctuary Zone* is defined by the following coordinates:

- (a) 30° 14',9682 S; 30° 49',7225 E
- (b) 30° 14',9854 S; 30° 49',8461 E
- (c) 30° 15',0928 S; 30° 49',8267 E
- (d) 30° 15',0759 S; 30° 49',7030 E

(3) The Controlled Zone forms the remainder of the MPA

### **Sanctuary Zones**

- 6.
- (1) The purpose of Sanctuary Zones is to allow marine species and ecosystems in those zones to exist in a natural state to further fulfill South Africa's commitments to the conservation of biodiversity and to enhance eco-tourism opportunities.
  - (2) All forms of fishing shall be prohibited within the Sanctuary Zones.
  - (3) Spearfishermen must not enter the water in a Sanctuary Zone.
  - (4) Spearfishermen who find themselves in a Sanctuary Zone whilst in the water must remain at the surface and disarm their spearguns.
  - (5) When a fishing vessel is in a Sanctuary Zone all fishing gear aboard that vessel must be stowed.

### **The Controlled Zone**

- 7.
- (1) The purpose of the Controlled Zone is to allow controlled and monitored exploitation of marine species that is consistent with the objectives of the Marine Protected Area.
  - (2) The holders of commercial, recreational and subsistence fishing permits granted in terms of section 13 of the Act shall only be

permitted to fish within the Controlled Zone if permission to do so is granted by the Minister in terms of section 43(3) of the Act.

- (3) Fishing by holders of recreational fishing permits in the Controlled Zone may only take place between 04H00 and 18H00.
- (4) Fishing by holders of commercial line fishing permits in the Controlled Zone is allowed throughout the day and night.
- (5) Beach seine nets may be used by holders of commercial net-fishing permits in the Controlled Zone.
- (6) No person may catch, transport or be in possession of any of the following species in the Marine Protected Area:

| <u>Scientific name</u>   | <u>Common name</u>                   |
|--------------------------|--------------------------------------|
| <i>Acanthuridae</i>      | Surgeon fishes                       |
| <i>Anthiinae</i>         | Goldies                              |
| <i>Apogonidae</i>        | Cardinal fishes                      |
| <i>Balistidae</i>        | Trigger fishes                       |
| <i>Blennidae</i>         | Blennies                             |
| <i>Caesionidae</i>       | Fusiliers                            |
| <i>Carcharias taurus</i> | Ragged-tooth shark                   |
| <i>Centriscidae</i>      | Razor fishes                         |
| <i>Cirrhitidae</i>       | Hawk fishes                          |
| <i>Dasyatidae</i>        | Stingrays                            |
| <i>Diodontidae</i>       | Porcupine fishes                     |
| <i>Galeocerdo cuvier</i> | Tiger shark                          |
| <i>Gobiidae</i>          | Gobies                               |
| <i>Grammistidae</i>      | Soap fishes                          |
| <i>Holocentridae</i>     | Squirrel fishes                      |
| <i>Malacanthidae</i>     | Tile fishes                          |
| <i>Mobulidae</i>         | Manta rays                           |
| <i>Mola spp.</i>         | Sunfish                              |
| <i>Monacanthidae</i>     | File fishes                          |
| <i>Monocentridae</i>     | Pineapple fish                       |
| <i>Muraenidae</i>        | Moray eels                           |
| <i>Myliobatidae</i>      | Eaglerays                            |
| <i>Ostraciidae</i>       | Box fishes                           |
| <i>Pomacanthidae</i>     | Angel fishes                         |
| <i>Pomacentridae</i>     | Damsel fishes (incl. Anemone fishes) |
| <i>Priacanthidae</i>     | Big eyes                             |
| <i>Pseudochromidae</i>   | Dottybacks                           |
| <i>Rajidae</i>           | Skates                               |
| <i>Rhinobatidae</i>      | Sand sharks                          |

|                            |                 |
|----------------------------|-----------------|
| <i>Rhincodon typus</i>     | Whale shark     |
| <i>Scorpaenidae</i>        | Scorpion fishes |
| <i>Tetraodontidae</i>      | Puffer fishes   |
| <i>Torpedinidae</i>        | Electric rays   |
| <i>Tripterygiidae</i>      | Triple fins     |
| <i>Umbrina canariensis</i> | Tasselfish      |
| <i>Zanclidae</i>           | Moorish idol    |

- (7.) Spearfishing is not allowed within 25 metres of any other person in the water.

### **SCUBA diving permit**

7. (1) No person shall SCUBA dive in the Marine Protected Area unless such person has been granted a SCUBA diving permit applied for and issued in terms of this regulation.
- (2) The Manager shall not grant any SCUBA diving permits until the Minister has authorised the number of SCUBA diving permits that may be issued.
- (3) Applications for a SCUBA diving permit shall be made to the Manager on an application form and subject to an application fee stipulated by the Manager in consultation with the Minister.
- (4) SCUBA diving permits shall not be granted to persons who intend to SCUBA dive as part of a commercial activity.
- (5) SCUBA diving permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (6) SCUBA diving permits shall be issued subject to conditions.

### **SCUBA diving operator permit**

8. (1) No person shall operate a SCUBA diving business in the Marine Protected Area unless such person has been granted a SCUBA diving operator permit applied for and issued in terms of this regulation.
- (2) The Manager shall not grant any SCUBA diving operator permits until the Minister has authorised the number of SCUBA diving operator permits that may be issued.
- (3) Applications for a SCUBA diving operator permit shall be made to the Manager on an application form and subject to an application fee stipulated by the Manager in consultation with the Minister.

- (4) SCUBA diving operator permits shall only be valid for maximum period of twenty-four months and shall be capable of being renewed.
- (5) SCUBA diving operator permits shall be issued subject to conditions.

### **Prohibitions on SCUBA divers**

- 10. (1) Any persons authorised to undertake SCUBA diving within the Marine Protected Area shall not:
  - (a) Feed fish, chum or dump any material or discharge any attractants;
  - (b) use any form or type of cage;
  - (c) use or possess any electro acoustic-discharging device or powerhead; or
  - (d) remove any part or article from a ship wreck.

### **Commercial permits**

- 11. (1) No person shall undertake any tourism business or commercial filming activity within the Marine Protected Area unless such person has been granted a tour-operator permit, or commercial filming permit, respectively, applied for and issued in terms of this regulation.
- (2) The Manager shall not grant any tour-operator permits or commercial filming permits until the Minister has authorised the number of such permits that may be issued.
- (3) Applications for a tour-operator permit and commercial filming permit shall be made to the Manager on an application form and subject to an application fee stipulated by the Manager in consultation with the Minister.
- (4) Commercial operator permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (5) Commercial operator permits shall be issued subject to conditions.

### **Scientific research**

- 12. (1) No person shall undertake any scientific research within the Marine Protected Area unless such person has been granted a scientific research permit applied for and issued in terms of this regulation.
- (2) Applications for a scientific research permit shall be made to the Minister on an application form and subject to an application fee stipulated by the Minister.

- (3) Scientific research permits shall only be valid for maximum period of twelve months and shall be capable of being renewed.
- (4) Scientific research permit shall be issued subject to conditions.

### **Use of vessels**

13. (1) All vessels that have deployed divers within the Marine Protected Area shall display an alpha flag.
- (2) No vessel shall be attached to a demarcation buoy within the Marine Protected Area.
- (3) No person shall be entitled to use any type of personal watercraft, or hovercraft, within the Marine Protected Area.
- (4) No person shall be entitled to moor or anchor any vessel within a Sanctuary Zone for a period in excess of twenty four hours without the written permission from the Manager.
- (5) No person shall be entitled to organise, promote or carry on any form of organized competition or event utilizing motorized vessels, hovercrafts or personal watercrafts anywhere within the Marine Protected Area, without the written permission of the Manager.

### **General Prohibitions**

14. (1) No person may remove, move, be in possession of, damage or in any way interfere with a demarcation buoy or sign in the Marine Protected Area.
- (2) No person may establish, carry on or operate a mariculture operation in the Marine Protected Area, unless authorised to do so in writing by the Minister.
- (3) No person may erect any permanent mooring, buoy or sign in the Marine Protected Area unless authorised to do so in writing by the Minister.
- (4) No person may discharge or cause to be discharged any human waste, offal from a fish, biodegradable waste, industrial waste or commercial waste into the Marine Protected Area.

- (5) No person may deposit or cause to be deposited any form of filling, including rocks, gravel or sand or other such material in the Marine Protected Area.

### **Offences and penalties**

15. Any person who contravenes a provision of these Regulations shall be guilty of an offence and liable on conviction to minimum fine of R2000 but not exceeding R10000, or to imprisonment for a minimum period of six months but not exceeding two years, or to both such fine and imprisonment.

### **Transitional Provisions**

16. Notwithstanding any provision in these regulations, it shall not be an offence to undertake an activity requiring a permit in terms of these regulations until 31 December 2004.

### **Management Plan**

17. The Department, together with the Manager, shall commence with the implementation of a plan for the management and administration of the Marine Protected Area in terms of these regulations within six months of the date of commencement of these regulations.