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## GOVERNMENT NOTICE

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### DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 694

4 June 2004

#### MARINE LIVING RESOURCES ACT, 1998 (ACT NO. 18 OF 1998)

#### NOTICE DECLARING THE PONDOLAND MARINE PROTECTED AREA UNDER SECTION 43 OF THE MARINE LIVING RESOURCES ACT, 18 OF 1998

I, Marthinus van Schalkwyk, the Minister of Environmental Affairs and Tourism, hereby declare the Pondoland Marine Protected Area in terms of section 43, and to prescribe the management and protection measures for the Pondoland 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.

#### Schedule

**To protect the marine environment and the marine biodiversity within the Pondoland Marine Protected Area; to allow over-exploited species of fish a sanctuary in which to recover and breed; to promote and regulate eco-tourism activities and scientific research in a way that does not adversely affect the marine environment and biodiversity of the Pondoland 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 in which some fishing is allowed;

*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;

**estuary** means a partially or fully enclosed body of water through which a river or fresh water source is open to the sea permanently or periodically, and in which the water level rises and falls as a result of the action of the tides whenever it is open to the sea, and / or within which sea water can be diluted to an extent which is measurable, with fresh water drained from land;

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

**Inshore** means that part of the sea where the water depth during the lowest tide of the year is less than 10 metres;

**Marine Protected Area** means the Pondoland 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;

**Offshore** means that part of the sea where the water depth during the lowest tide of the year exceeds 10 metres;

**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;

**Restricted zones** means those zones described in regulation 5 in which no fishing is allowed;

**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 providing SCUBA gear to 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 tidal 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 and conserve marine ecosystems and populations of marine species;
- (2) Protect the reproductive capacity of commercially important species of fish, including shellfish, rock lobster and traditional linefish and to allow their populations to recover;
- (3) Promote eco-tourism within the Marine Protected Area.

### **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.
- (3) Isobath positions and depths are taken from Chart SAN 130, and refer to depth below Chart Datum (lowest low water level).

### **Boundaries**

4. The Marine Protected area includes the water, the seabed and the air space to 1000 metres above sea level in the area bounded by:

- (1) The high water mark between the southern head of the Mzamba River, at position 31° 06'.6S; 030° 10'.5E, and the northern head of the Mzimvubu River, at position 31° 37'.4S; 029° 33'.2E, and including the banks of the tidal portions of the Mnyameni, Sikombe, Mtentu, Msikaba, Mkwani, Mboyti, Mzintlava, Mntafufu and Nkodusweni Rivers;
- (2) A line running 128° from the south head of the Mzamba River at position 31° 06'.8S; 030° 10'.5E, to the 1000 metre isobath at position 31° 11'.2S; 030° 17'.4E;

- (3) A line running  $128^\circ$  from the north head of the Mzimvubu River at position  $31^\circ 37'.4S$ ;  $029^\circ 33'.2E$  to the 1000 metre isobath at position  $31^\circ 41'.7S$ ;  $029^\circ 39'.8E$ ; and
- (4) The 1000 metre isobath, joining the following positions:
- (a)  $31^\circ 11'.2S$ ;  $030^\circ 17'.4E$
  - (b)  $31^\circ 15'.3S$ ;  $030^\circ 13'.7E$
  - (c)  $31^\circ 19'.4S$ ;  $030^\circ 10'.4E$
  - (d)  $31^\circ 22'.9S$ ;  $030^\circ 06'.1E$
  - (e)  $31^\circ 26'.4S$ ;  $030^\circ 02'.1E$
  - (f)  $31^\circ 30'.6S$ ;  $029^\circ 57'.5E$
  - (g)  $31^\circ 34'.7S$ ;  $029^\circ 54'.5E$
  - (h)  $31^\circ 37'.5S$ ;  $029^\circ 50'.1E$
  - (i)  $31^\circ 40'.7S$ ;  $029^\circ 45'.6E$
  - (j)  $31^\circ 41'.7S$ ;  $029^\circ 39'.8E$

### Zonation

5. (1) The Marine Protected Area shall be divided into two offshore Controlled zones, one offshore Restricted zone, five inshore Controlled zones, four inshore Restricted zones, seven estuarine Controlled zones and two estuarine Restricted zones.
- (2) The first offshore Controlled zone shall comprise that part of the Marine Protected Area, which lies to the north-east of a line running  $128^\circ$  from the southern head of the Sikombe River at position  $31^\circ 13'.2S$ ;  $030^\circ 04'.1E$  to the 1000 metre isobath at position  $31^\circ 18'.2S$ ;  $030^\circ 11'.6E$ , but which excludes estuaries and the inter-tidal zone.
- (3) The offshore Restricted zone shall comprise that part of the Marine Protected Area, which lies to the south-west of a line running  $128^\circ$  from the southern head of the Sikombe River at position  $31^\circ 13'.2S$ ;  $030^\circ 04'.1E$  to the 1000 metre isobath at position  $31^\circ 18'.2S$ ;  $030^\circ 11'.6E$ , and lies to the north-east of a line running  $128^\circ$  from the northern head of the Mboyti River at position  $31^\circ 27'.9S$ ;  $029^\circ 44'.1E$  to the 1000 metre isobath at position  $31^\circ 34'.7S$ ;  $029^\circ 54'.5E$ , but which excludes estuaries and the inter-tidal zone.
- (4) The second offshore Controlled zone shall comprise that part of the Marine Protected Area, which lies to the south-west of a line running  $128^\circ$  from the northern head of the Mboyti River at position  $31^\circ 27'.9S$ ;  $029^\circ 44'.1E$  to the 1000 metre isobath at position  $31^\circ 34'.7S$ ;  $029^\circ 54'.5E$ , but which excludes estuaries and the inter-tidal zone.
- (5) The inshore strip within the Marine Protected Area, which includes the inter-tidal zone and the immediate sub-tidal zone to a charted depth of 10



metres, but which excludes estuaries, is divided into five inshore Controlled zones and four inshore Restricted zones as described in Annexure A.

- (6) The tidal portions of the Mnyameni, Sikombe, Mkwani, Mboyti, Mzintlava, Mntafufu and Nkodusweni Rivers are estuarine Controlled zones.
- (7) The tidal portions of the Mtentu and Msikaba Rivers are estuarine Restricted zones.

#### **Control of activities in Restricted zones**

6. (1) No person may fish or attempt to fish within a Restricted zone.
- (2) Fishing gear on board fishing vessels that enter a Restricted zone for the purpose of passage must be stowed.
- (3) No person may undertake or attempt to undertake spearfishing in a Restricted zone or be in possession of an armed speargun in a Restricted zone.

#### **Control of activities in Controlled zones**

7. No person may fish or attempt to fish in a Controlled zone, unless authorised to do so by the Minister in terms of the Act.

#### **SCUBA diving permit**

8. (1) No person may SCUBA dive or attempt to SCUBA dive in the Marine Protected Area except on the authority of a SCUBA diving permit.
- (2) Applications for a SCUBA diving permit shall be made to the Minister on an application form and subject to an application fee determined by the Minister in terms of the Act.
- (3) SCUBA diving permits shall be valid for maximum period of twelve months and shall be capable of being renewed at a fee determined by the Minister in terms of the Act.
- (4) SCUBA diving permits may be issued subject to conditions.

**SCUBA diving business permit**

9. (1) No person may operate or attempt to operate a SCUBA diving business in the Marine Protected Area except on the authority of a SCUBA diving business permit.
- (2) Applications for a SCUBA diving business permit shall be made to the Minister on an application form and subject to criteria and an application fee determined by the Minister in terms of the Act.
- (3) SCUBA diving business permits shall be valid for a maximum period of sixty months and shall be capable of being renewed at a fee determined by the Minister in terms of the Act.
- (4) SCUBA diving business permits may be issued subject to conditions.

**Scientific research permit**

10. (1) No person may undertake any scientific research within the Marine Protected Area except on the authority of a scientific research permit.
- (2) Applications for a scientific research permit shall be made to the Minister on an application form and subject to criteria and an application fee determined by the Minister in terms of the Act.
- (3) Scientific research permits shall be valid for a maximum period of twelve months and shall be capable of being renewed by the Minister.
- (4) Scientific research permits may be issued subject to conditions.

**Use of vessels**

11. (1) All vessels that have deployed divers within the Marine Protected Area must display an alpha flag.
- (2) No vessel may be attached to a demarcation buoy.
- (3) No person may use or attempt to use any type of personal watercraft or hovercraft within the marine protected area.
- (4) No person may moor or anchor any vessel within the Restricted zones for a continuous period exceeding twenty four hours, except on the written authority of the Minister.



**Offences and penalties**

12. Any person who contravenes a provision of these regulations shall be guilty of an offence and liable on conviction to a maximum fine of one hundred thousand rand or to imprisonment for a period not exceeding two years.

**Management Plan**

13. The Department shall, after consulting with the Manager, commence with the implementation of a management plan for the Marine Protected Area within six months of the date of commencement of these regulations.

**Transitional Provision**

14. Notwithstanding the provisions of regulation 16, regulations 8, 9 and 10 shall commence on 31 December 2004.

**Conflict with other Regulations**

15. These regulations will prevail if there is any conflict between these regulations and Government Notice 1429 (Government Gazette No. 6978 of 29 December 2000).

**Commencement**

16. These regulations shall commence immediately upon promulgation.

**Annexure A**

Type of Zone	From	To
Inshore Controlled Zone	31° 06'.6S; 030° 10'.5E Mzamba River mouth	31° 10'.3S; 030° 07'.5E No available name
Inshore Restricted Zone	31° 10'.3S; 030° 07'.5E No available name	31° 12'.5S; 030° 05'.2E Red Hill
Inshore Controlled Zone	31° 12'.5S; 030° 05'.2E Red Hill	31° 14'.8S; 030° 02'.9E Mtentu River mouth
Inshore Restricted Zone	31° 15'.0S; 030° 02'.9E Mtentu River mouth	31° 16'.8S; 030° 01'.2E Mgwegwe (north)
Inshore Controlled Zone	31° 16'.8S; 030° 01'.2E Mgwegwe (north)	31° 17'.6S; 030° 00'.6E Mgwegwe (south)
Inshore Restricted Zone	31° 17'.6S; 030° 00'.6E Mgwegwe (south)	31° 19'.1S; 029° 58'.5E Msikaba River mouth
Inshore Controlled Zone	31° 19'.3S; 029° 58'.0E Msikaba River mouth	31° 25'.4S; 029° 51'.2E Lupatana River mouth
Inshore Restricted Zone	31° 25'.4S; 029° 51'.2E Lupatana River mouth	31° 27'.0S; 029° 45'.5E Mkozi River mouth
Inshore Controlled Zone	31° 27'.0S; 029° 45'.5E Mkozi River mouth	31° 37'.4S; 029° 33'.2E Mzimvubu River mouth



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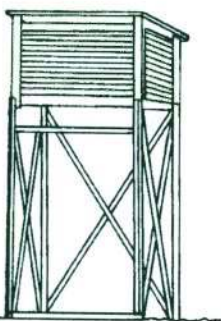
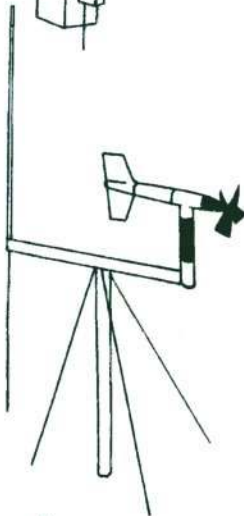
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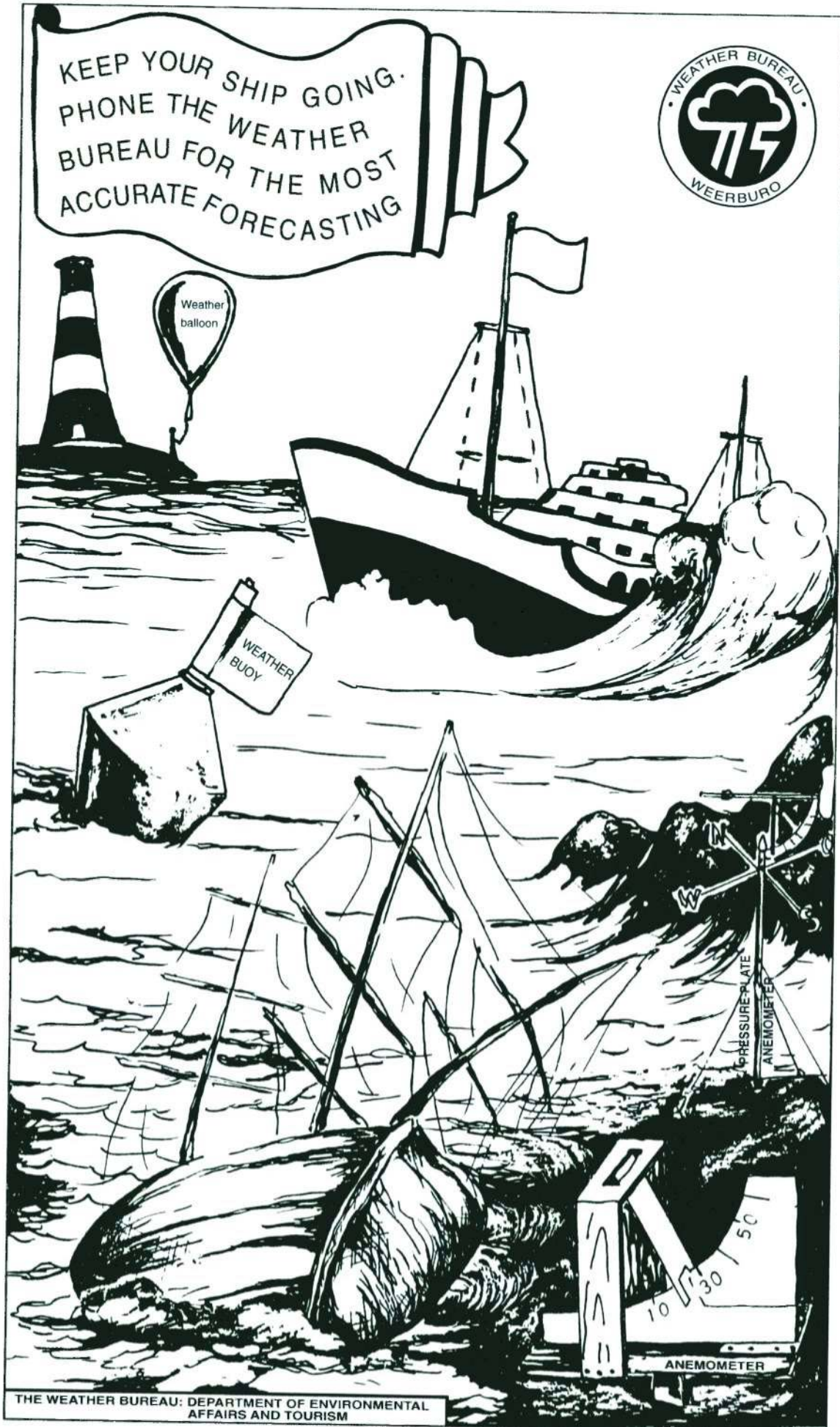
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