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DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 709 **21 JULY 2017**

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

DRAFT REGULATIONS FOR THE MANAGEMENT OF THE BETTY'S BAY 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 Betty's Bay 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 proposed regulations is invited to do so within 60 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:

Hand-deliver to: The Deputy Director-General
Environmental Affairs: Oceans and Coasts
Attention: Gcobani Popose
East Pier Building 2, East Pier Road
V and A Waterfront, Cape Town

By post to: Private Bag x4390, Cape Town, 8000

By e-mail to: BRGMPAS@environment.gov.za

Enquiries: 021 819 2411

BOMO EDITH EDNA MOLEWA
MINISTER OF ENVIRONMENTAL AFFAIRS

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Schedule

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act bears that meaning, unless the context otherwise indicates-

"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;

"demarcation buoy" means a buoy installed to mark the boundaries of the Marine Protected Area and its zones;

"dive" means to swim below the surface of the water, or to enter the water, with the aid of, or use of prohibited gear;

"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" 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;

"Marine Protected Area" means the Betty's Bay Marine Protected Area as declared by the Minister in terms of section 22A of the Act;

"prohibited gear" means artificial breathing apparatus, weight belts or weights, bags used for underwater collection of fish, shucking tools or any implement which could be used for harvesting abalone;

"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);

"SCUBA Diving" means swimming below the surface of the water, with the aid of compressed or pumped air or other gasses;

"spearfishing" means fishing with the use of a speargun;

"speargun" means a device by which a spear is projected by mechanical or pneumatic means;

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"vessel" includes any canoe, lighter, floating platform, decked boat, hovercraft, personal watercraft, carrier vessel, vessel equipped with an inboard or outboard motor or any other craft, whether a surface craft or submarine; and

"WGS 84" means the World Geodetic System of 1984 (G730), which is a geographic co-ordinate system used for the co-ordinates in these regulations.

2. Zonation

The Betty's Bay Marine Protected Area consists of a single Restricted Zone.

3. Control of activities in the Marine Protected Area

(1) No person may fish, or attempt to fish in the Marine Protected Area.

(2) No person may spearfish or attempt to spearfish in the Marine Protected Area.

4. Diving and SCUBA diving

(1) No person may –

(a) SCUBA dive or attempt to SCUBA dive in the Marine Protected Area; or

(b) operate or attempt to operate a SCUBA diving business in the Marine Protected Area;

without a permit.

(2) Individual SCUBA diving permits may be obtained from an office designated by the Minister, or a SCUBA diving business operator, subject to the payment of a fee if prescribed.

(3) Application for a permit referred to in sub-regulation (1)(b) must be made to the Minister, which permit may be issued subject to conditions.

(4) Subject to sub-regulation (1) and (5), no person shall dive or be in possession of or have onboard any vessel, prohibited gear in the Marine Protected Area.

(5) Any person who undertakes –
(a) scientific research and monitoring;
(b) white shark-cage diving;
(c) salvage operations;
(d) maintenance of legal underwater infrastructure;
(e) underwater photography; or
(f) any other activity authorised in terms of legislation,

must apply to the Minister for a permit to engage in diving or be in possession of prohibited gear in the Marine Protected Area.

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(6) No person may dive or SCUBA dive, or attempt to dive or SCUBA dive in the Marine Protected Area between the hours of 17h00 and 08h00 without a permit from the Minister.

5. Use of vessels

(1) A motorized vessel may only launch from a launch site authorised in terms of the Management of Public Launch Site Regulations GNR 497 of 27 June 2014 published in terms of the National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008).

(2) A vessel with deployed divers authorised in terms of these regulations within the Marine Protected Area must display an alpha flag.

(3) No vessel may be attached to a demarcation buoy.

(4) Fishing gear on board a vessel that enters or traverses the Marine Protected Area must be stowed, with all hooks disconnected and un-baited, all hoops, cages or any other device used to catch lobster must be un-baited; and such vessel may not stop or move at less than 5 knots at any time while in the Marine Protected Area.

(5) A vessel entering or traversing 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 the Marine Protected Area and such GPS data may not be deleted from this device for forty eight hours after passing through the Marine Protected Area.

(6) A 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 in the Marine Protected Area, listed in section 48A(1) of the Act, unless specifically authorised in terms of these regulations.

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7. 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) a provision of these regulations;

(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;

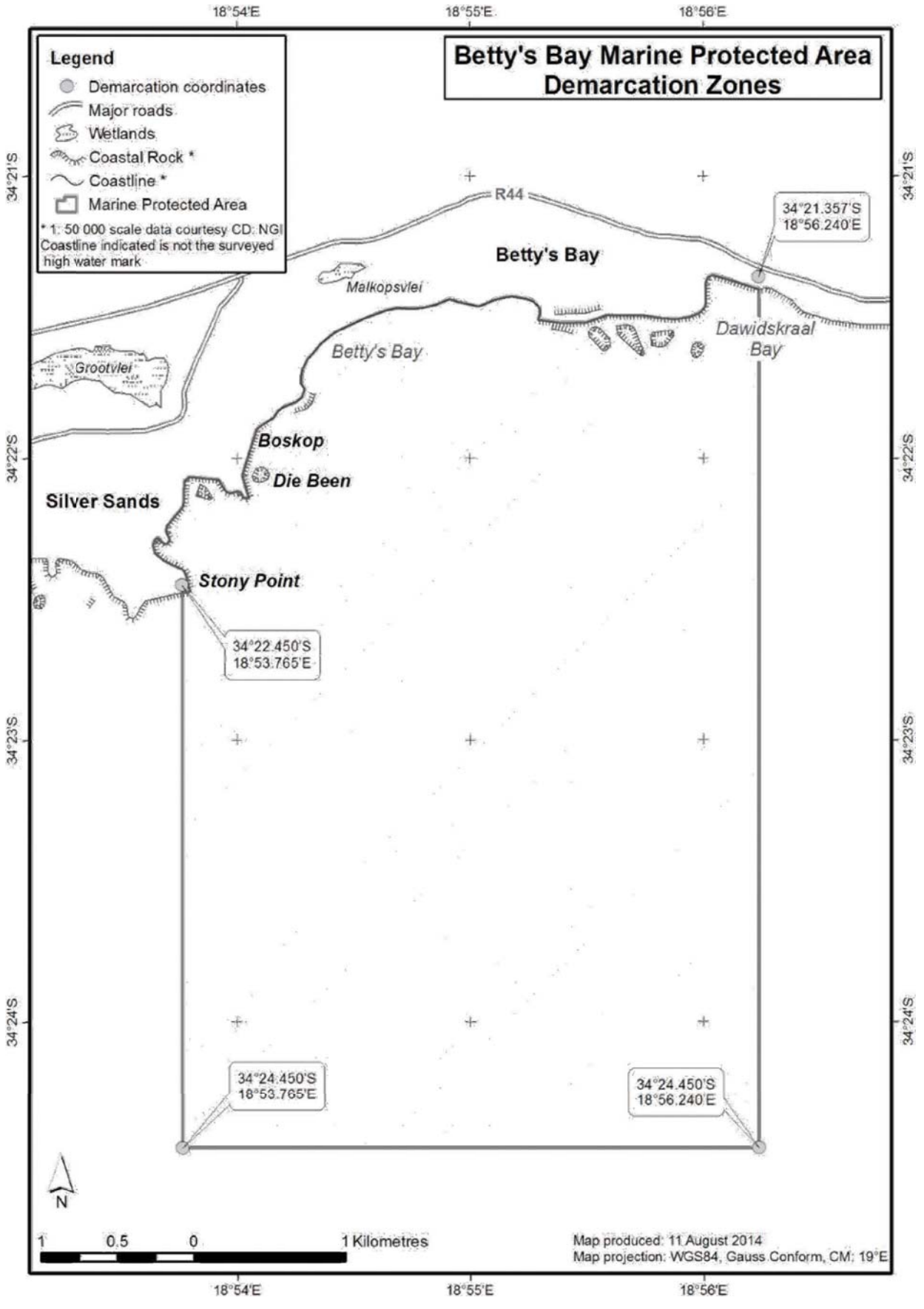
is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment.

8. Withdrawal and repeal

(1) The declaration of the Betty's Bay marine protected area as contained in stipulation 2(2) of the declaration notice named Declaration of Areas as Marine Protected Areas in *Government Gazette* 219487, Notice No. 1429 of 29 December 2000 is hereby withdrawn and repealed.

(2) The provisions of stipulation 3(1)(a) insofar as it relates to the Betty's Bay marine protected area, as contemplated in the notice named Declaration of Areas as Marine Protected Areas in *Government Gazette* 219487, Notice No. 1429 of 29 December 2000 is hereby repealed.

9. Short title and commencement

These regulations are called the Betty's Bay Marine Protected Area Regulations and commence upon date of publication in the *Gazette*.

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