

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. R. 794

23 MAY 2019

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

**REGULATIONS FOR THE MANAGEMENT OF THE ROB BEN ISLAND
MARINE PROTECTED AREA**

I, Nomvula Paula Mokonyane, Minister of Environmental Affairs, hereby make the regulations for the Management of the Robben Island 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;

“authorised official” means—

- (a) any person appointed as a fishery control officer in terms of the Marine Living Resources Act;
- (b) an environmental management inspector appointed in terms of the National Environmental Management Act; and
- (c) all peace officers as defined in the Criminal Procedure Act.

“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.

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“demarcation marker” means a marker installed to mark the boundaries of or the zones within the Marine Protected Area;

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

“environment” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“environmental management inspector” has the meaning assigned to it in 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;

“high-water mark” has the meaning assigned to it in the Integrated Coastal Management Act;

“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;

“management authority” means South African National Parks as designated in regulation 10;

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

“Marine Protected Area” means the Robben Island Marine Protected Area as declared by the Minister in terms of section 22A of the Act;

“Marine Traffic Act” means the Marine Traffic Act, 1981 (Act No. 2 of 1981);

“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-

(a) that uses an inboard motor powering a water jet pump as its primary source of propulsion;

(b) is designed to be operated by a person or persons sitting, standing, or kneeling on rather than within the confines of a hull; and

(c) is less than three meters in length;

“port” shall have the meaning assigned to it in the Integrated Coastal Management Act;

“prohibited gear” means dive torches, artificial breathing apparatus, weight belts or weights, bags used for underwater collection of fish, shucking tools or any tool that could be used for the collection of fish;

“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);

“RIO CZ” means the Robben Island Offshore Controlled Zone;

“RIM CZ” means the Robben Island Middle Controlled Zone;

“RIIC Z” means the Robben Island Inner Controlled Zone;

“RIR Z” means the Robben Island Restricted Zone;

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

“**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);

“**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 three (3) Controlled Zones and one (1) Restricted Zone which are determined by using WGS 84 as detailed in Annexure 1 hereto as follows:

- (a) one (1) Restricted Zone, indicated as the Robben Island Restricted Zone (RIRZ);
- (b) two (2) Offshore Controlled Zones, indicated as the Robben Island Offshore Controlled Zone (RIO CZ) and the Robben Island Middle Controlled Zone (RIM CZ); and
- (c) one (1) Inshore Controlled Zone, indicated as the Robben Island Inner Controlled Zone (RIICZ).

3. Scientific research permit

- (1) No person may undertake any scientific research within the Marine Protected Area, except—

- (a) on the authority of a scientific research permit issued by the Minister; and
 - (b) a scientific research permit issued by the management authority.
- (2) Application for a scientific research permit in terms of sub-regulation (1)(a) 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.
- (3) Application for a scientific research permit in terms of sub-regulation (1)(b) must be made on an application form provided by the management authority.

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) The management authority may in the management plan for the Marine Protected Area or in an internal rule, identify activities, except for those activities listed in section 48A(1) of the Act; which may be restricted, controlled, limited or prohibited and such areas must be indicated by demarcation buoys, demarcation markers or notice boards.
- (5) No person may conduct or carry out any activity that is prohibited, or undertake any activity in contravention of any restriction, control, or limitation provided for in terms of sub-regulation (4).

-
- (6) No person may litter or leave any waste including fishing gear, hooks, bait packaging and fishing line within the Marine Protected Area.
- (7) No person may place any shark protection, exclusion or repelling device, equipment or infrastructure, including nets, within the Marine Protected Area without a permit from the Minister, which permit may be issued subject to conditions.
- (8) No person may except on the authority of the management authority, move, deface or otherwise interfere with any demarcation buoy, demarcation marker or notice-board within the Marine Protected Area.
- (9) No person may moor, anchor or attach any vessel, to any demarcation buoy or demarcation marker within the Marine Protected Area.
- (10) No person may within the Marine Protected Area be in possession of or have onboard a vessel, any fire-arm, air-gun, explosives or poison.
- (11) Sub-regulations (9) and (10) shall not apply to, an authorised officer, including an official of any organ of state while performing official duties within the Marine Protected Area.
- (12) For purposes of these regulations, explosives or fire-arms do not include the following devices:
- (a) a flare gun;
 - (b) an illuminating rocket flare;
 - (c) a Department of Transport approved projectile distress flare;
 - (d) a Department of Transport approved hand-held distress flare;
 - (e) a Department of Transport approved rocket parachute distress flare;
 - (f) a Department of Transport approved floating orange smoke distress marker; and

- (g) a Department of Transport approved hand-held smoke distress marker.
- (13) No person may arrange, organize, or participate in any fishing competition, swimming, rowing, yachting, motorised vessel event, race, or regattas; or any other event, unless authorized by the management authority in writing.
- (14) No person or vessel may 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 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 management authority may on such conditions as it may deem appropriate, authorise the anchoring or mooring of a vessel in the following circumstances:
 - (a) in an emergency; or
 - (b) where *the* management authority may deem it to be necessary in order to ensure the proper management of the Marine Protected Area.
- (3) The management authority may verbally authorise a vessel to moor or anchor within the Restricted 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) Sub-regulations (1) and (2) shall not apply to a vessel moored or anchored in a recognized and approved mooring or anchoring site in terms of the Marine Traffic Act, for a vessel that is waiting to berth in a port, and authorisation has been granted by the National

Ports Authority of South Africa for such vessel to moor and anchor at such site.

- (5) No person may use a personal watercraft in the RIRZ.
- (6) 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 unless authorised in terms of these regulations.
- (7) A motorised vessel entering or 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, 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.
- (8) 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 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 RIRZ

- (1) No person may fish, or attempt to fish, in the RIRZ.
- (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 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;
- (i) in the case of abalone fishing, all gear on the vessel is placed away in the cabin, wheel house or console of the vessel; and
- (j) 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 Zones

- (1) No person may fish, or attempt to fish in a Controlled Zone unless they are in possession of a valid fishing permit, which authorises such person to fish for the species in sub-regulation (2).

- (2) Notwithstanding anything to the contrary, a person in possession of a fishing permit as contemplated in sub-regulation (1), may only fish from a vessel—
- (a) in the RIO CZ for small pelagic species, yellowtail or snoek;
 - (b) in the RIM CZ, by undertaking linefishing for yellow-tail and snoek; or
 - (c) in the RIICZ, between sunrise and sunset, for abalone, and by linefishing for snoek, yellowtail or hottentot,
- subject to species restrictions, quantity, fish size limits, allowable effort, closed seasons or bag limits authorised by such fishing permit.
- (3) Fishing gear onboard a vessel or in possession of any person that enters or is present in a Controlled Zone and who is not authorised to fish in terms of sub-regulations (1) or (2), must be stowed in accordance with regulations 7(2) and 7(3).
- (4) No person may collect broodstock in a Controlled Zone for undertaking aquaculture, without a permit from the management authority, which permit may be issued subject to conditions.
- (5) When considering a permit in terms of sub-regulation (4) the management authority 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) Subject to sub-regulation (2), no person shall engage in SCUBA diving, diving or be in possession of prohibited gear in the RIRZ of the Marine Protected Area.
- (2) Any person who undertakes—
 - (a) scientific research and monitoring;
 - (b) salvage operations;
 - (c) maintenance of legal underwater infrastructure;
 - (d) underwater photography; or
 - (e) any other activity authorised in terms of legislation, except for commercial or small-scale fishing for abalone,must apply to the management authority for a permit to engage in diving, SCUBA diving or be in possession of prohibited gear in the zones contemplated in sub-regulation (1).
- (3) No person may operate or attempt to operate a SCUBA diving business in a Controlled Zone of the Marine Protected Area without a permit.
- (4) Application for a permit referred to in sub-regulation (1) must be made to the management authority and may be issued subject to conditions.
- (5) Any vessel that has deployed divers in the Marine Protected Area must display an alpha flag.
- (6) No person may SCUBA dive in a Controlled Zone, except with a SCUBA diving business authorised in terms of sub-regulation (3).

10. Management authority

South African National Parks is hereby formally designated as the management authority for the Marine Protected Area in terms of section 38(1)(aB) of the Act.

11. 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 or management authority 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.

12. 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(1) to 4(3), 4(10), 4(13), 5(1), 5(5) to 5(8), 6, 7, 8(1) to 8(4), 9(1) to 9(3), 9(5) or 9(6);
- (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.

13. Short title and commencement

These regulations are called the Robben Island Marine Protected Area Regulations and commences on 1 August 2019.

Annexure 1**(Zonation of Robben Island Marine Protected Area)**

- 1) **Robben Island Restricted Zone (RIRZ)** is bounded by a series of straight lines sequentially joining the following coordinates, N, G, P, O, M; with the first and last co-ordinates being joined by a line along the high water mark along the western coastline of the Robben Island.
- 2) **Robben Island Offshore Controlled Zone (RIO CZ)** is bounded by a series of straight lines sequentially joining the following coordinates, A, E, F, D; and a straight line joining the first and last co-ordinates:
- 3) **Robben Island Middle Controlled Zone (RIM CZ)** is the area inside the **polygon formed by sequentially** joining the following co-ordinates, E, B, J, I, H, G, P, O, L, K C, F; and a straight line joining the first and last co-ordinate.
- 4) **Robben Island Inner Controlled Zone (RIICZ)** is bounded by a series of straight lines sequentially joining the following coordinates, N, H, I, J, K, L,M; with the first and last co-ordinates joined by a line along the high water mark along the northern, eastern and southern coastline of Robben Island.

Fig. 1. The zonation for the Robben Island Marine Protected Area

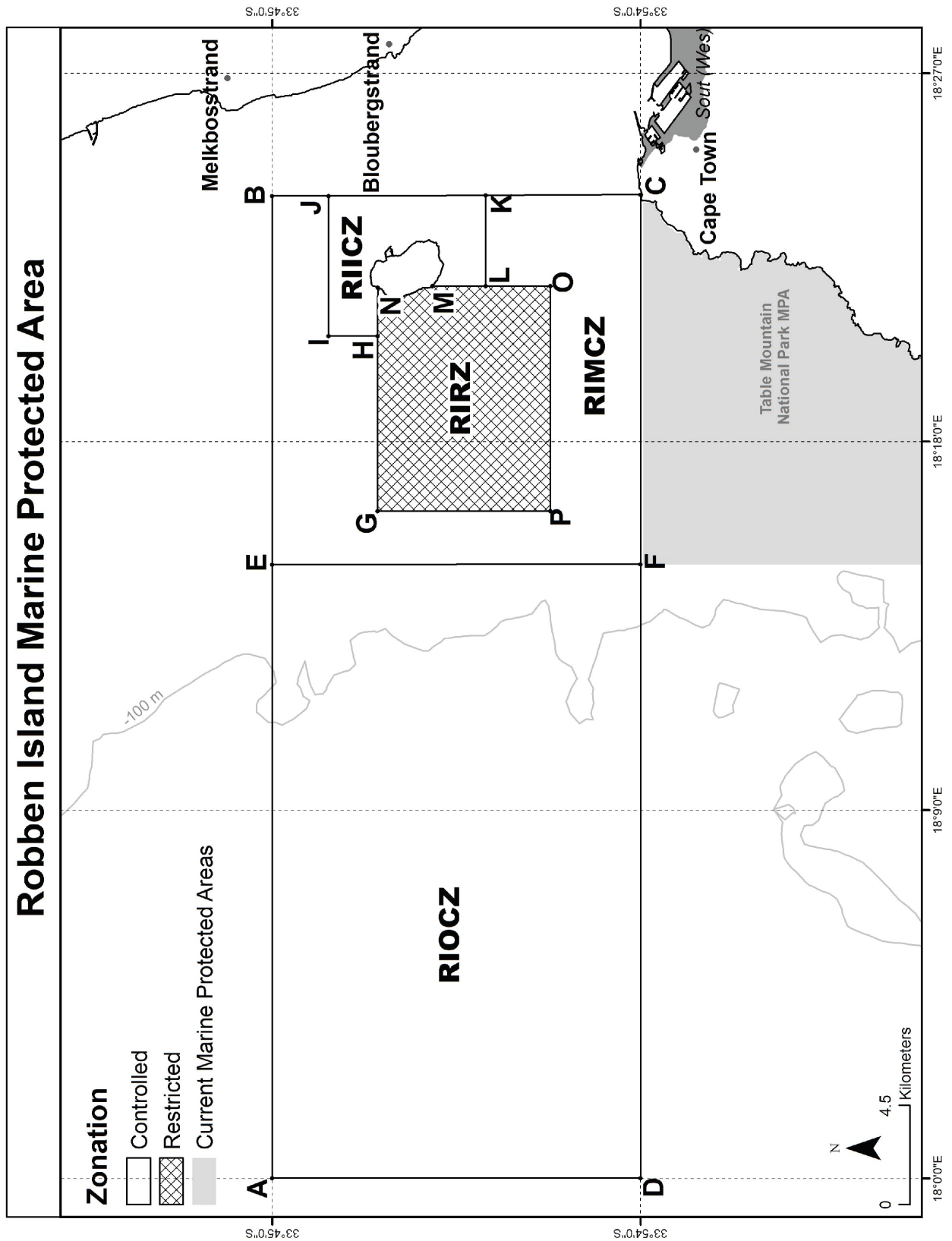


Table 1: Co-ordinates for the Robben Island Marine Protected Area

	POINT	X	Y
Robben Island MPA	A	18	-33.75
Robben Island MPA	B	18.4006	-33.75
Robben Island MPA	C	18.4006	-33.9
Robben Island MPA	D	18	-33.9
Robben Island MPA	E	18.25	-33.75
Robben Island MPA	F	18.25	-33.9
Robben Island MPA	G	18.2717	-33.793056
Robben Island MPA	H	18.343	-33.793056
Robben Island MPA	I	18.343	-33.773
Robben Island MPA	J	18.4006	-33.773
Robben Island MPA	K	18.4006	-33.837
Robben Island MPA	L	18.3633	-33.837
Robben Island MPA	M	18.3633	-33.815252
Robben Island MPA	N	18.3627	-33.793056
Robben Island MPA	O	18.3633	-33.863333
Robben Island MPA	P	18.2717	-33.863333