

**SOUTH AFRICAN CONSOLIDATED  
RECREATIONAL ANGLERS ASSOCIATION**



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Mr Xola Mkefe  
Deputy Director-General  
Department of Environmental Affairs  
Branch Oceans and Coasts  
P.O. Box 52126  
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07 December 2015

**Re: Tsitsikamma National Park Marine Protected Area**

Dear Mr Mkefe

Herewith are the submissions of the South African Consolidated Recreational Angling Association (SACRAA) in response to the publication of Government Notices 1145 and R1146 in Government Gazettes 39423 and 39424 (19 November 2015) respectively. SACRAA is a registered interest group in terms of Section 8 of the Marine Living Resources Act (Act 18 of 1998).

**1. GOVERNMENT NOTICE NO. 1145 IN GOVERNMENT GAZETTE NO. 39423 (19 NOVEMBER 2015)**

We fully support the declaration of the Tsitsikamma MPA as proposed in Figure 1 of Annexure 1 (i.e. without the delineation of the restricted and controlled zones) and acknowledge that the purpose for doing so as indicated in the Notice is fully justified.

However, as detailed below (Section 2), some of the proposed Regulations (Government Notice No. R1146; 19 November 2015) allowing access to Controlled Zones for the specific purpose of consumptive exploitation will significantly detract from the intended purpose of the MPA as indicated in the Notice.

**2. GOVERNMENT NOTICE NO. R1146 IN GOVERNMENT GAZETTE NO. 39424 (19 NOVEMBER 2015)**

We do not support the following proposed Regulations as they currently stand:

**Regulation 2 – Zonation within the MPA**

The demarcation of four coastal controlled zones, aimed at allowing access for consumptive exploitation, is unacceptable. Since the closure of the open-access section just west Storms

River in 2001, the entire MPA has been no-take. The rationale behind a no-take MPA is to facilitate the purpose for which the MPA is proclaimed. The purpose behind the Tsitsikamma MPA is detailed in Government Notice No. 1145 in Government Gazette No. 39423 (19 November 2015). Allowing access to exploit living resources does not in any way conform to the purpose of the MPA and severely undermines the integrity of the MPA as well as SANParks and the DEA. In fact one of the purposes is “to restrict or prohibit activities that may have an adverse effect on species, ecosystems and ecological processes.” Years of research in the Tsitsikamma MPA, which has been published in the primary scientific literature, provides a wealth of information that proves that any amount of fishing pressure will have an adverse effect on species and ultimately the purpose of the MPA’s existence. The DEA should take cognisance of these facts and make the only informed decision it can, to prohibit any form of consumptive exploitation by zoning the entire MPA as no-take.

According to the **National Protected Area Expansion Strategy 2008** (NPAES), the current network of protected areas in South Africa falls far short of being able to sustain biodiversity and ecological processes. The DEA should be supporting initiatives aimed at increasing the number or extent of MPAs in order to achieve targets rather than initiatives that reduce the efficacy of the existing network. The NPAES states that for inshore bioregions, there is a need to increase the extent of no-take zones within MPAs, and to reduce the impact of exploitation in controlled zones within MPAs. In order to reach just a quarter of the 20-year NPAES targets, an additional 59 km of no-take inshore zone needs to be added. The proposed Regulations that allow for access for consumptive exploitation in the pristine Tsitsikamma MPA undermines the NPAES as well as conservation and research efforts from the past 50 years. Restricted zones within MPAs that allow fishing activities become nodes for increased exploitation and thus contribute to over-exploitation.

According to the **Management Plan for the Garden Route National Park (GRNP) 2011**, the entire shoreline of the Tsitsikamma MPA is zoned as Primitive. The conservation objective is to *maintain the zone in a generally natural state with little or no impact on biodiversity processes, and very limited and site specific impacts on biodiversity pattern. Existing impacts on biodiversity either from historical usage or originating from outside the zone should be minimized.* In order to achieve these objectives, the GRNP management plan states that *the biophysical environment within this zone should be managed in such a way that deviation from a natural/ pristine state should be small and limited to restricted impact footprints. Existing impacts should be reduced. Any facilities constructed in these areas, and activities undertaken here should be done in a way that limits environmental impacts.*

Achieving the objectives for this zone will not be possible if any form of fishing and bait collecting is allowed. Research has shown that even minimal fishing effort has the potential to impact significantly on stocks and will forever alter biodiversity patterns. Decades worth of research data from the Tsitsikamma MPA as well as other MPAs such as De Hoop and iSimangaliso appears to have been overlooked or ignored in favour of political agendas in the drafting of these Regulations.

According to the **State of Management of South Africa’s MPAs, 2009**, the Tsitsikamma MPA plays a significant role in fish conservation, protecting both biodiversity (more than 200 species) and individual species that are severely threatened due to overexploitation by

recreational, commercial and small-scale fishers. The threats to the MPA include illegal fishing and political pressure to allow local communities access to fish.

In 2007 political pressure was used in an attempt to gain access for local communities. The proposal was rejected based on massive opposition, primarily from scientific institutions which cautioned against the initiative on the grounds that the integrity of the MPA would be irreversibly damaged. Political pressure is once again being applied in this latest attempt and yet nothing has changed in terms of the impact such an undertaking would have. The motives behind the rezoning need to be questioned. The risks to the functioning of the MPA far outweigh the benefits that would be enjoyed by a small section of the Nation's population.

One of the objectives of the NEM:PAA (Section 2e) is “to to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas.”

Although the motivation for the proposed Regulations allowing access for consumptive exploitation may be for the benefit of (selected) people, the activities will neither be sustainable nor will they be carried out in a manner that preserves the ecological character of the MPA. Many of the target species are highly resident, slow growing fish that are extremely vulnerable to even moderate levels of fishing effort. Their exploitation is not sustainable, as is evidenced from declining, and in some instances, collapsed stocks in areas where fishing does take place. Any fishing in the MPA will most certainly not preserve the ecological character of the MPA, which is pristine.

Furthermore, the NEM:PAA is founded on the principles of NEMA and as such any Regulations considered under the NEM:PAA must take this into account as detailed in Section 5 (of NEM:PAA). Section 2(2) of NEMA states that “environmental management must place people and their needs at the forefront of its concern by serving all their interests equitably.” While this may appear to justify allowing access to the MPA for consumptive exploitation, it is our submission that is in fact not the case. It is in the greater National interest that MPAs such as Tsitsikamma have been proclaimed in order to protect ecosystems, habitats and species. Allowing access to a selected portion of the population is neither equitable nor in the interests of the National population who have the right for our biodiversity to be protected for this and future generations.

Section 2(3) of NEMA further states that “any initiatives or development must be socially, environmentally and economically sustainable.” For the reasons already provided, any form of consumptive exploitation will not be sustainable.

The general objective of integrated environmental management (Section 23 of NEMA) is to:

- Identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimizing negative impacts, maximizing benefits, and promoting compliance with the principles of environmental management set out in section 2.

- Ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them.
- Ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment.

It is our submission that these provisions have not been adhered to. There has been no risk assessment, there is no indication that potential impacts have been assessed or that the effects of fishing in the MPA have received adequate attention. The opportunity for adequate and meaningful public participation has also not been provided for. Nowhere near enough information has been provided as required under Section 33(2b) of the NEM:PAA that enables the public to contribute from an informed base. The proposed “pilot project” that will allow anglers to access the proposed controlled zones from 15 December supposedly as a test to assess the feasibility of opening the four zones permanently is nothing more than an attempt by SANParks to appease local community members. The pilot project is not a risk assessment and will achieve nothing; the feasibility of fishing sustainably in MPAs has been assessed by researchers for decades and the conclusion is that it is not achievable.

### **Regulation 5 – Use of vessels**

The provisions under Regulation 5 will only be effective if SANParks has the capacity to enforce them. A single patrol vessel can hardly be expected to effectively patrol the entire MPA. We submit that a more effective Regulation would be to prohibit vessels from entering the MPA unless in an emergency or in order to facilitate proper management of the MPA. If a vessel is in the MPA, irrespective of whether it is anchored, drifting or underway, it is an offence. SANParks can respond to sightings which would be a more efficient use of their available resources.

### **Regulation 7(2ai)**

An approaching vessel can be seen for up to three nautical miles away. This provides more than enough time for illegal fishers on board a vessel to dismantle and stow away their gear, start engines and get underway if an approaching SANParks patrol vessel is sighted. Once again the more prudent Regulation would be to prohibit access to and traversing rights through the MPA. That way if a vessel is caught within the MPA boundaries, irrespective of what it is doing or what is on board it is an offence.

### **Regulation 7(2aii)**

A shore-based angler within the restricted zone can also dismantle and stow his gear if a SANParks ranger is spotted from a few hundred meters away. The Regulation should instead prohibit any anglers from being present in the restricted zone unless it is on a designated path used to access a controlled zone. Of course, if the controlled zones are not proclaimed, which is our recommendation, then this Regulation can be amended such that any person caught in the MPA in possession of fishing gear or marine resource they are committing an offence.

### **Regulation 8 – activities in controlled zones**

As already detailed above, we oppose any proclamation of controlled zones that allows for the exploitation of marine resources. Further comment on individual provisions is provided below in the event that the DEA intends to pursue this option.

#### **8(1-4)**

If the DEA still intends to establish the controlled zones to allow fishing, we submit that the exclusive use by Tsitsikamma anglers is unconstitutional.

According to Section 1(a) of **The Constitution of the Republic of South Africa 1996 (The Constitution)**, the Republic of South Africa is founded on the value of (amongst others) “the achievement of equality”. The proposed zoning for the use by Tsitsikamma anglers only excludes all other South Africans and is the worst form of exclusivity at the expense of others. There is no form of equality in this and it is unconstitutional. The existing regulations that prohibit access to everyone for the purpose of consumptive resource exploitation is the only reasonable approach if equality is to be achieved. This approach is also the only option if the purpose of the MPA, to protect biodiversity and enhance stocks, is to be achieved.

Section 7 of The Constitution introduces the Bill of Rights as the cornerstone of our democracy, which affirms the democratic value of equality. Once again the proposed Regulations that exclude the majority of South African citizens from accessing the controlled zones do not promote equality and are unconstitutional. Maintaining a strict no-access policy for exploitation by any persons will ensure equality while maintaining the integrity of the MPA, SANParks and the DEA.

In terms of Section 9 of the Bill of Rights, “equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.” It may be argued by some that the declaration of the Tsitsikamma MPA in 2000, when the open-access fishing area west of Storms River was closed, was unfair to local residents and denied them their right to access the area for consumptive exploitation activities. However, surely this argument would apply equally to all South African citizens and not just the Tsitsikamma and Koukamma residents. Furthermore, there is no mention in the Regulations of this being an initiative to redress past injustices through some form of restitution. If that were the case then there is a process that needs to be followed in terms of an Environmental or Risk Assessment that includes all stakeholders and which looks at both positive and negative impacts as well as alternatives. The assessment then needs to be published for comment and then used by the Minister to reach an informed decision. No such assessment has been done, which means that the DEA has failed to live up to their own responsibilities and procedural requirements. These Regulations have not been subject to due process and our only conclusion is that they are instead the result of a political move to engender loyalty from the beneficiary communities.

The way the Regulations stand, anyone who is a member of the Covie or Koukamma Municipality communities, whether they are historical or recent residents, will be allowed

access. Anyone who moves into the area and takes up residence will therefore have the right to apply for access in order to catch fish. This is completely irrational and demonstrates that that the only reason for the Regulations is to allow for the exclusive use of the MPAs resources by a select few who happen to have the correct residential address. The MPA was established in the National interest in order to protect unique habitat, biodiversity and enhance fish stocks by providing a safe haven for them to feed, grow and, in many cases, reproduce. Allowing access to only a section of the population is unconstitutional, and allowing consumptive exploitation serves only to erode the principles under which the MPA has been declared.

According to Section 24 of the Bill of Rights, everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:

- (i) Prevent pollution and ecological degradation;
- (ii) promote conservation; and
- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

There is nothing about the proposed new Regulations that allow consumptive exploitation of the MPA's living resources that conform to the above provisions. The MPA in its current form represents a near pristine environment for the resident fauna and allowing access to fishermen who will collect bait organisms and remove fish will promote ecological degradation and in no way promote conservation. Many of the fish species that will be caught are slow growing and highly resident (a 19-year long fish tagging and monitoring project has proven that beyond doubt) and their removal by fishermen will not be sustainable. There is also no justification in the form of economic development as anglers would be regulated in terms of the MLRA which prohibits any form of economic beneficiation from the activity.

In accordance with Section 13(1) of the **NEM: Integrated Coastal Management Act (Act 24 of 2008; ICMA)**, any person has the right of reasonable access to coastal public property and is entitled to use and enjoy coastal public property, provided such use:

- (i) Does not hinder the State in the performance of its duty to protect the environment; and
- (ii) does not cause an adverse effect.

Allowing access to fishermen who will remove bait organisms and fish will hinder the State in its duty to protect the environment. In fact the no-take MPA was proclaimed to facilitate this duty. In addition, the removal of bait organisms and fish from what can be considered a pristine environment will definitely have an adverse effect. The slow growth, longevity and high degree of residency of many of the fish species means that even under moderate levels of fishing pressure they will never be replaced, i.e. fishing will be unsustainable.

Section 13(2) of the ICMA specifically allows for prohibitions or restrictions on access to coastal public property:

- a. Which is or forms part of a protected area;

- b. to protect the environment, including biodiversity; or
- c. if it is in the national interest.

The proposed controlled zones are clearly in a protected area, a no-take policy will protect a pristine environment and its associated biodiversity, which in turn is definitely in the National interest. Instead of trying to find ways to circumvent these types of provisions for the benefit of a small section of the Republic's population, the DEA should actively enforce these provisions in order to fulfil one of its mandates to protect the environment and biodiversity.

Shore-based anglers from around the country frequently travel to reach their fishing destinations. Anglers from the Koukamma Municipality and Covie area will need to do the same even to access the proposed controlled zones. There is therefore no justification in allowing them access to the Tsitsikamma MPA when they can travel to nearby areas outside the MPA boundaries to fish. There are also a host of accessible fishing spots to the east of the MPA, which can be accessed by Koukamma residents. While much of the land along the coast is private property, access can be established via the designation of coastal access land servitudes in terms of Section 18 of the ICMA. These alternatives need to be considered in place of the controlled zones.

With regards to Regulation 8(4) specifically, the fact that the intention is to allow each registered angler access for a maximum of four days per month demonstrates that this has little to do with providing for communities that have no food-security and everything to do with providing a select few with the privilege of fishing in a pristine MPA. When an angler takes a few fish home for food, as was the case when communities had access to the open area west of Storms River prior to 2000, this does not automatically imply that those anglers are subsistence or small-scale anglers. For the communities to claim that they have historical subsistence rights is disingenuous and misleading. When one considers the rezoning of the Dwesa-Cwebe MPA, there are valid reasons based on the significant level of reliance on marine resources by the rural communities and the historical importance of recreational angling to the tourism industry in the area. Neither of these reasons are valid in the context of the Tsitsikamma MPA. The problems with enforcing these Regulations is covered in more detail in Section 3 below.

### **8(5c)**

The prohibited species list is nowhere near comprehensive enough. If red and white steenbras are prohibited because their respective stocks are collapsed and they have high conservation value, we submit that dusky kob (*Argyrosomus japonicas*) should be added to the list for the same reasons. In addition, species such as black steenbras (*Cymatoceps nasutus*), yellowbelly rockcod (*Epinephelus marginatus*) and Roman (*Chrysoblephus laticeps*) should be listed as prohibited as well, due to their slow growth rate, longevity and high degree of residency. These factors combined make them extremely susceptible to over-exploitation even under moderate levels of fishing effort. It is rare to catch any of these species from the shore where any level of fishing effort is present. Even if controlled zones are allowed, one must remember that they are still within an MPA, whose purpose is to protect species such as these. Special considerations beyond the existing MLRA Regulations for recreational angling must therefore be included

(daily bag limit for black steenbras, yellowbelly rockcod and dusky kob is already only one per person, which demonstrates the dire situation in terms of National stocks).

### **8(6)**

The organisms that are allowed to be collected for bait need to be listed and a Regulation prohibiting the removal of certain “bait organisms” to take home for food needs to be drafted. Although some organisms such as alikreukel, octopus and brown/black mussels are used as bait they are also commonly collected as a food item. The Regulation should stipulate that no one may be in possession of any of these items outside of the controlled zones.

In addition, a Regulation prohibiting the making of fires should be included as this will prevent the harvesting and cooking on-site of prohibited species (bait and fish).

### **8(10)**

This Regulation needs to include the prohibition of being in possession of a gaff, hooked instrument or any diving gear (e.g. mask & snorkel), as these can be used to collect bait organisms from below the low-water mark.

## **3. MONITORING & ENFORCEMENT**

Regulation 10 designates SANParks as the management authority of the Tsitsikamma MPA, which means they will be required to enforce these Regulations. A considerable amount of effort and capacity will be required in order to fulfil this obligation. During the 19-year period when SAIAB and DIFS (Rhodes University) were conducting a fish tagging and monitoring study, it was clear that illegal fishing activities were rife throughout the MPA. This was evident for both the onshore section wherever access could be gained via forestry roads or SANParks service roads, and the offshore section particularly in the western section which is close enough to boat launch sites at Natures Valley and Plettenberg Bay. Illegal fishers are predominantly from the immediate surrounding area, but it is known that anglers travel from as far afield as Knysna, Port Elizabeth and Uitenhage. More often than not during the research programme, ski-boats as well as deck-boats were observed fishing (either at anchor or drifting) within the MPA boundary. There was not a single occasion during those 19 years that illegal shore-based fishers were not seen or evidence of their activities was not visible. SANParks rangers were seldom seen conducting shore patrols and the SANParks patrol vessel was never observed. Although SANParks does have a monitoring strategy we fail to see how they have the capacity to adapt this strategy to deal with the proposed zoning and activities. One of the most heavily poached areas was from the Bloukrans River to just west of the Klip River. This area has been proposed as part of the restricted zone, but it will require just as much effort in terms of compliance monitoring. Due to its proximity to the Covie community (much closer than TCCZ4) and the ease of access, the area will continue to be fished.

The SANParks vessel will need to conduct patrols at sea whenever conditions allow. Given the area that needs to be covered it is doubtful whether they have the manpower or finances to support this undertaking. The prohibition of vessels entering or traversing the MPA will go a

long way in reducing the amount of time needed on the water. As mentioned earlier, SANParks can conduct weekly patrols and then respond to visual reports of vessels in the MPA as required.

All accessible areas of the shoreline in the MPA will need to be patrolled daily. The enforcement of Regulation 8(4) alone will require this as there is no other way to ensure that an angler does not fish for more than four days in any calendar month. In addition to the four proposed controlled zones, there are many other sections of the shoreline that are accessible and which will need to be patrolled as there is no reason to believe that illegal fishing activities in these areas will cease. Areas outside of the proposed control zones where significant levels of illegal fishing have been observed include the area around Lottering River and the section from Bloukrans River to just beyond Klip River. The manpower required to achieve this will be substantial – at least 12 rangers whose only responsibility is monitoring and enforcement in the controlled zones and anti-poaching patrols in the restricted zone.

We believe the current strategy of SANParks is not sufficient to achieve the required levels of compliance monitoring. If the DEA intends to pursue this option of allowing access for fishers, SANParks will need to provide a comprehensive monitoring and enforcement strategy that proves they have capacity to enforce these Regulations. This strategy should be made available to the DEA as well as all stakeholders for comment prior to any further consideration being given to these Regulations.

#### **4. CONCLUDING REMARKS**

We call on the DEA to consider the National interest over the interests of a selected few and to reject the call for controlled zones that allow for the exploitation of marine resources. If the integrity and the purpose of the MPA is to be maintained, the entire area needs to be zoned as restricted (no-take). In the event that controlled zones are allowed, we do not believe that SANParks will have the capacity to enforce these Regulations to the extent that will be required to ensure any meaningful level of compliance.

If the DEA succeeds in their bid to pass these Regulations as they stand into law it will set a very dangerous precedent for other no-take MPAs in South Africa and greatly hinder the proclamation of new MPAs. The existing MPA network is currently unable to sustain biodiversity and ecological processes and needs to be expanded not eroded. Anglers need to accept that they are one of the main reasons for the decline in our fish stocks, but they can also be a part of the solution by recognizing the vital role no-take MPAs play in helping preserve biodiversity for future generations. We believe that sacrificing the privilege of being allowed to fish in one of our few pristine marine areas is small price to ask, and one which any true angler should be more than willing to pay, when there are other alternatives.

The DEA has not followed due process in the drafting of these Regulations. There has been no risk assessment and no meaningful public participation. The Regulations do not contain sufficient information (which would be provided by a risk assessment) which would enable members of the public to submit meaningful representations or objections. The draft Regulations need to be withdrawn and the correct process needs to be initiated.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Aidan Wood', with a horizontal line underneath.

Dr Aidan Wood (for SACRAA)