

(31 July 2009 – 6 August 2009)

MARINE LIVING RESOURCES ACT 18 OF 1998

(Gazette No. 18930, Notice No. 747. Commencement date: 1 September 1998 [Proc. No. 80, Gazette No. 19148])

REGULATIONS FOR THE MANAGEMENT OF WHITE SHARK CAGE DIVING

Published under Government Notice R724 in Government Gazette 31211. Commencement date: 4 July 2008

As amended by

*Amendment of Regulations – Government Notice R803 in Government Gazette 32457 dated 31 July 2009.
Commencement date: 31 July 2009.*

The Minister of Environmental Affairs and Tourism has in terms of subsections (1)(b), 2(g) and (2)(y) of section 77 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), made the regulations relating to the management of white shark cage diving as set out in the Schedule hereto.

MARTHINUS VAN SCHALKWYK
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

Schedule

1. Definitions

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act, has the same meaning, and—

"**acoustic device**" means a device capable of producing sound;

"**chumming**" means to attract white sharks by any means;

"**DTI**" means Department of Trade and Industry;

"**feed**" means to supply food or other objects which will be perceived as food by white sharks;

"**free dive**" means to dive in the vicinity of white sharks without the protection of a cage;

"**person**" includes a juristic person;

Prepared by:

In partnership with:

"**white shark**" means the species *Carcharodon carcharias*;

"**SAMSA**" means the South African Marine Authority established in terms of section 2 of the South African maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

"**SATOUR**" means South African Tourism;

"**South African Qualification Authority**" means the authority established in terms of section 3 of the South African Qualification Authority Act, 1995 (Act No. 58 Of 1995);

"**shark**" means all species of *Conr-richthyes Elasmobranchii Squalomorpha*;

"**the Act**" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

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

"**white shark cage diving operator**" means a person that is permitted to carry on the business of a white shark cage diving operation in terms of regulation 5;

"**white shark cage diving vessel**" means a suitable vessel that is registered by SAMSA as suitable for white shark cage diving.

2. Objectives

The objectives of these regulations are to:

- (1) Promote the economic growth of the white shark industry and the sustainable non-consumptive use of white sharks, particularly for ecotourism through—
 - (a) the allocation of the optimal number of permits that could be safely issued;
 - (b) the allocation of permits to persons who will be able to beneficially exercise the allocation;
- (2) Improve the regulatory and compliance framework pertaining to the specific industry;
- (3) Redress past racial and gender discrimination in the white shark cage diving industry;
- (4) Provide for control over diving to view white sharks or the boat base viewing of white sharks so that these activities may take place in a manner that does not threaten the safety of divers or the well-being of the white sharks; and

- (5) Provide for control over the number of white shark cage diving operations in order to manage any adverse impact on white shark behaviour and to protect white sharks.

3. General prohibitions

- (1) No person shall, except on the authority of a permit—
- (a) engage in fishing, collecting, killing, attempting to kill, disturbing, harassing, chumming or attracting using bait or other means, keeping or controlling, or be in possession of any white shark or part thereof: Provided that if caught or killed unintentionally, such shark shall be kept in the whole state, and shall be handed to a fishery control officer as soon as possible; or
 - (b) purchase, be in possession of or sell any white shark or any part or product thereof.
- (2) No person may carry on a white shark cage diving operation, including chumming or attracting white sharks using bait or any other means, except on the authority of a permit issued under regulation 5.
- (3) No person may undertake white shark cage diving, except under the supervision of a permitted white shark cage diving operator.
- (4) No white shark cage diving operator may take any client to free- dive with sharks without the authority of a permit.
- (5) No person may approach closer than 80 metres to a natural predation on seals by a white shark, with the exception of a permitted white shark cage diving operator, who may do so on the authority of a permit.
- (6) No person shall advertise, or cause to be advertised, white shark cage diving operations or services, or boat based white shark viewing operations or services, unless such an operation or service is permitted in terms of these regulations.

4. Areas and number of operations

The Minister may determine the number of white shark cage diving permits and the areas of operation.

- (2) The current areas and number of permits per area where white shark cage diving activity is allowed are listed in Annexure 1 to these regulations.

(Numbering of Section 4 as in Government Gazette 3121, GNR 724 dated 4 July 2008)

(Regulation 4(2) amended by regulation 2 of Government Notice R803, Gazette No 32457 dated 31 July 2009)

5. White shark cage diving operation permits

- (1) An application to operate a white shark cage diving operation must:
 - (a) be made to the Minister on the application form obtained from the Department;
 - (b) be accompanied by the application fee determined by the Minister in terms of section 25 of the Act;
 - (c) be accompanied by all supporting documents required to assess the application including those criteria and factors in regulation 5(4) and regulation 6;
 - (d) be lodged
 - (i) in duplicate together with any other copies as may be required;
 - (ii) electronically if required;
 - (iii) with the original or certified documentation in support of the application as required.
- (2) No person shall operate a white shark cage diving operation unless such person has been granted a white shark cage diving permit issued in terms of these regulations against payment of the prescribed permit fee determined by the Minister in terms of section 25 of the Act.
- (3) A white shark cage diving operator may conduct a white shark viewing operation with the same vessel and the same permit issued for shark cage diving.
- (4) A white shark cage diving operation permit, may not be issued unless the applicant demonstrated that he or she has—
 - (a) applied for the permit on the form obtained from [sic] the Department;
 - (b) signed the application form and attested to the declaration obtained from the Department;
 - (c) paid the permit fees determined by the Minister in terms of section 25 of the Act;
 - (d) access to a suitable white shark cage diving vessel and cage;

- (e) employed or will employ one or more tourist guides, who have obtained their SATOUR "DTI" certification and badge and who have been certified as Level 2: General Guides, as a minimum, by the South African Qualifications Authority;
 - (f) is South African;
 - (g) complied with or will comply any other essential requirement in terms of the policy issued by the Minister.
- (5) A white shark cage diving operation permit is valid for a period of twelve months, but may be renewed.
- (6) White shark cage diving operation permits may be issued subject to conditions.
- (7) A permit of a white shark cage diving operator may be renewed by the Minister on application and the payment of the application fee, after considering the factors in regulation 6 and on evidence that the operator has not contravened the conditions of his or her permit.

6. Factors to be considered when issuing white shark cage diving permits

- (1) The Minister must consider the following factors when considering renewal or issuing a white shark cage diving permit:
- (a) Whether the applicant has access to a suitable white shark cage diving vessel;
 - (b) whether the applicant employed or will employ one or more tourist guides, who have obtained their SATOUR "DTI" certification and badge and who have been certified as Level 2: General Guides, as a minimum, by the South African Qualifications Authority;
 - (c) Whether the applicant employed or will contract with a qualified dive master;
 - (d) Whether the applicant demonstrated that he or she has adequate public liability insurance or undertook to obtain adequate public liability insurance;
 - (e) Whether the applicant, while in possession of an existing permit or exemption optimally utilised the rights contained in the permit or exemption;
 - (f) Whether the applicant has been convicted of any offence in terms of the Act or regulations made in terms of the Act and the seriousness thereof;
 - (g) The extent to which the applicant invested or participated in the white shark industry;
 - (h) The need to redress past racial and gender discrimination;

- (i) The number, working conditions of and opportunities for the employees of the applicant;
- (j) Whether the applicant employed or will employ a skipper certified by SAMSA as capable of skipping the nominated suitable vessel with passengers;
- (k) The operational plan;
- (l) Whether the nominated vessels have a vessel monitoring system;
- (m) Any other factor that may be relevant for the specific industry or specific area of operations.

7. Prohibitions when white shark cage diving

- (1) When white shark cage diving, no person shall—
 - (a) dump any material into the sea other than in the manner provided for in regulation 8;
 - (b) dive outside the cage;
 - (c) touch, tag or interfere with any shark.

8. Chumming

- (1) No person other than a white shark cage diving operator may engage in chumming to attract white sharks.
- (2) Chumming may only be conducted within the areas stipulated in the permit.
- (3) Chumming may only be conducted in the manner set out in the white shark cage diving permit conditions.

9. Vessels and cages

- (1) White shark cage diving operations may only be undertaken on a vessel and with a cage certified by the South African Maritime Safety Authority as being safe and suitable for this purpose.
- (2) Further specifications for vessels and cages to be used for white shark cage diving, may be imposed by the Minister through permit conditions.
- (3) White shark cage diving operators may only use the vessels specified in the permit and may not use more than one vessel at a time.

- (4) If a white shark cage diving operator wishes to utilise a different vessel from those stated in the permit, he or she must apply to the Minister for written permission to change the nominated vessel and provide proof of compliance with sub-regulation (1).

10. Display of permits

- (1) The white shark cage diving operator must display the permit in a visible place on the boat when engaging in operations or services.
- (2) When advertising shark cage diving operations or services reference must be made to the operator's permit number.

11. White shark research

- (1) No person may approach a white shark, tags it, or in any other manner interfere with it, in order to do research other than on the written authority of exemption or permit issued by the Minister.
- (2) No researchers are allowed to advertise their services on a permitted operator's website.

12. Offences and penalties

- (1) Any person who,
 - (a) contravenes a provision of Regulations 3,5(2), 7,8,9, 10 or 11;
 - (b) undertakes a white shark cage diving operation outside of one of the areas specified in Annexure 1 in contravention of regulation 4;
 - (c) fails to comply with a permit condition imposed in terms of regulation 5(c)

shall be guilty of an offence and liable on conviction to a fine not exceeding R300 000, or to imprisonment for a maximum period not exceeding two years.

- (2) Should a white shark cage diving operator contravene any provision of the Act, these Regulations or fail to adhere to a permit condition, the Minister may refuse to renew such a permit, or may revoke cancelled, suspend or amend such a permit in terms of section 28 of the Act.

13. Amendment of regulations

Regulation 30 of GN Regulation 1111 of 2 September 1998 is hereby amended by the deletion of sub-regulation (1) of regulation 30.

ANNEXURE 1
AVAILABLE PERMITS AND AREAS OF OPERATION

1. The attraction of white sharks for the purposes of cage diving and surface viewing shall be limited to the following areas:
 - Seal Island, False Bay (3 commercial permits);
 - Dyer Island, Gansbaai (8 commercial permits);
 - Quoin Rock, Quoin Point (2 commercial permits);
 - Seal Island, Mossel Bay (1 commercial permit); and
 - Algoa Bay, Port Elizabeth area (2 commercial permits).

2. Permit holders in the Seal Island, Mossel Bay and Quoin Point areas will not be allowed to operate from 1 December until 20 January of the next year due to school holidays.

(Annexure 1 substituted by regulation 3 of Government Notice R803, Gazette No 32457 dated 31 July 2009)