

(7 August 2009 – to date)

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 BOAT BASED WHALE WATCHING AND PROTECTION OF TURTLES

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Commencement date: 4 July 2008

As amended by:

Amendment of Regulations – Government Notice R802 in Government Gazette 32457 dated 31 July 2009.

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Amendment of Regulations – Government Notice R819 in Government Gazette 32463 dated 7 August 2009.

Commencement date: 7 August 2009

The Minister of Environmental Affairs and Tourism has in terms of subsections (1)(b), 2(g), (2) (x) (v) 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 boat based whale watching and the protection of turtles 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—

"boat based whale and dolphin watching operator" means a person that is permitted to carry on the business of a boat based whale watching operation in terms of regulation 5;

"boat based whale and dolphin watching vessel" means a suitable vessel that is registered by SAMSA as suitable for boat based whale watching;

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"**dolphin**" means any species of the super family *Delphinidae*;

"**harassment**" means behaviour or conduct that threatens, disturbs or torments cetaceans;

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

"**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);

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

"**turtle**" means the families *Chelonidae* and *Dermochelidae*;

"**whale**" means any member of the order *Cetacea* *Cetacean* but does not include a dolphin.

2. Objectives

The objectives of these regulations are to:

- (1) Promote the economic growth of the boat-based whale watching industry and the sustainable non-consumptive use of whales and dolphins, particularly for eco-tourism 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 boat based whale watching industry;
- (4) Provide for control over the boat based viewing of whales and dolphins so that these activities may take place in a manner that does not threaten the safety of individuals or the well-being of the whales and dolphins;
- (5) Provide for control over the number of boat based whale and dolphin watching operations in order to manage any adverse impact on whale and dolphin behaviour and to protect whales and dolphins; and

- (6) Provide for control over the viewing of turtles and to protect and minimise any adverse impacts on turtles.

3. General Prohibitions

- (1) No person shall, except on the authority of a permit—
 - (a) kill, or attempt to kill, fish for or harass a whale or a dolphin;
 - (b) feed, keep or control a whale or a dolphin;
 - (c) be in possession of any part of, or a product made from, a whale or a dolphin;
 - (d) use any vessel or fish processing establishment for the purpose of fishing, freezing or processing of a whale or a dolphin or any part thereof, or participate in the operation or activities of such an establishment or vessel;
 - (e) have on board any vessel or at any fish processing establishment any gear, apparatus or appliances intended to be used in any manner for the fishing or the processing of whales or dolphins or participate in the operation or activities of such a vessel or establishment;
 - (f) supply any ship stores to any vessel used for or in connection with the fishing, freezing or processing of whales and dolphins;
 - (g) if in charge of a vessel or aircraft, approach closer than 300 metres to any whale or fail to proceed to a distance of 300 metres if a whale surfaces closer than 300 metres from the vessel or aircraft;
 - (h) deliberately drive through a school of dolphins;
 - (i) Advertise [capitalisation sic] or undertake a vessel trip, whether for gain or not, which is intended to provide for a swim-with-dolphin-experience;
 - (j) offer their services or derive financial gain in connection with any activities prohibited in this sub-regulation,

provided that paragraphs (a), (b) and (j) of this sub-regulation shall not apply to a *bona fide* effort by any person to render assistance to a beached whale or dolphin or to efforts made by persons appointed by the Department to render assistance to trapped or entangled whales or dolphins.

- (2) The Minister has discretion to determine the fate of stranded or entangled cetaceans.

- (3) No person may carry on a boat-based whale watching or dolphin watching operation except on the authority of a permit issued under regulation 5 against payment of the prescribed permit fee determined by the Minister in terms of section 25 of the Act.
- (4) No person shall advertise, or cause to be advertised, boat-based whale watching or dolphin watching operations or services, unless such an operation or service is permitted in terms of these regulations.
- (5) No person under the control or supervision of an operator may feed or swim with whales or dolphins
- (6) No operator, crew member, or client under the control or supervision of an operator may enter a closed or restricted area other than on the written authority of the Director General.
- (7) No person may approach whales or dolphins, tag them, or in any other manner interfere with them, in order to do research other than on the authority of a permit or exemption issued by the Minister.
- (8) No researchers are allowed to advertise their services on a permitted operator's website.

4. Areas and number of operations

- (1) The Minister may determine the number of boat-based whale and dolphin watching permits and the areas of operation.
- (2) The current areas and number of permits per area where boat-based whale and dolphin watching activity is allowed are listed in Annexure 1 to these regulations.

(Regulation 4(2) amended by regulation 2 of Government Notice R802, Gazette No 32457 dated 31 July 2009)

5. Boat based whale and dolphin watching permits

- (1) An application to operate a boat based whale and dolphin watching 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(2) 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) A boat based whale and dolphin watching permit may not be issued, unless the applicant demonstrated that he or she has—
- (a) applied for the permit on the form obtained from 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 vessel suitable for boat based whale and dolphin watching;
 - (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 or equivalent qualification;

(Regulation 5(2)(e) amended by regulation 2 of Government Notice R819, Gazette No 32463 dated 7 August 2009)

- (f) is South African
 - (g) complied with or will comply with any other essential requirement in terms of the policy issued by the Minister.
- (3) A boat-based whale and dolphin watching permit is valid for a period of twelve months but may be renewed.
- (4) A boat-based whale and dolphin watching permit may be issued subject to conditions.
- (5) A boat-based whale and dolphin watching operator permit may be renewed, provided that the stipulated fee is paid and after considering the factors in regulation 6 and the operator, has, in the opinion of the Minister complied with all permit conditions.

6. Factors to be considered when issuing whale and dolphin watching permits

- (1) The following factors must be considered when deciding to renew or issue a boat based whale and dolphin watching permit—
- (a) Whether the applicant has access to a suitable boat based whale and dolphin watching 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 or equivalent qualification;

(Regulation 6(1)(b) amended by regulation 3 of Government Notice R819, Gazette No 32463 dated 7 August 2009)

- (c) Whether the applicant demonstrated that he or she has adequate public liability insurance or undertook to obtain adequate public liability insurance;
- (d) Whether the applicant, while in possession of an existing permit or exemption optimally exercised the rights contained in the permit or exemption;
- (e) 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;
- (f) The extent to which the applicant invested or participated in the boat based whale and dolphin watching industry;
- (g) The need to redress past racial and gender discrimination;
- (h) The number, working conditions of and opportunities for the employees of the applicant;
- (i) Whether the applicant employed or will employ a skipper certified by SAMSA as capable of skippering the nominated suitable vessel with passengers;
- (j) The operational plan;
- (k) Whether the nominated vessels have a vessel monitoring system;
- (l) Any other factor that may be relevant for the specific industry or specific area of operation.

7. Vessels

- (1) Boat based whale and dolphin watching operations may only be undertaken on a vessel certified by the South African Maritime Safety Authority as being safe and suitable for this purpose.

- (2) Further specifications for vessels to be used for boat based whale and dolphin watching, may be imposed by the Minister through permit conditions.
- (3) Boat based whale and dolphin watching operators may only use the vessels specified in the permit and may not use more than one vessel at a time.
- (4) If a boat based whale and dolphin watching 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).

8. Display of permits

- (1) The operator must display the permit in a visible place on the boat when engaging in operations or services.
- (2) When advertising boat based whale and dolphin watching operation or services reference must be made to the operator's permit number.

9. Turtles

No person shall, except on the authority of a permit—

- (a) view, disturb or photograph turtles during nesting or hatchling periods;
- (b) engage in fishing, collecting, killing, attempting to kill, disturbing, harassing, feeding, keeping or controlling of turtles;
- (c) digging up or disturbing turtle nests or eggs; or
- (d) be in possession of, any turtle or turtle eggs or any part or product thereof at any time.

10. Offences and penalties

- (1) Any person who,
 - (a) contravenes a provision of Regulations 3, 7, 8 or 9;
 - (b) fails to adhere to a permit condition imposed in terms of regulation 5(4);
 - (c) undertakes a boat based whale or dolphin watching operation outside of one of the areas specified in Annexure 1 in contravention of regulation 4

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 boat based whale and dolphin watching 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 cancel, suspend or amend such a permit in terms of section 28 of the Act.

11. Repeal of regulation

Regulation 58 of GN Regulation 1111 of 2 September 1998 is hereby repealed.

ANNEXURE 1 AREAS AND NUMBER OF PERMITS FOR BOAT-BASED WHALE AND DOLPHIN WATCHING OPERATIONS

(Annexure 1 substituted by regulation 3 of Government Notice R802, Gazette No 32457 dated 31 July 2009)

(Please note that a copy of Annexure 1 will be provided upon request. Kindly refer to our website for our contact details.)