

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 517

Pretoria, 4 July
Julie 2008

No. 31210

CONTENTS • INHOUD

No.

*Page
No. Gazette
 No.*

GOVERNMENT NOTICE

Environmental Affairs and Tourism, Department of

Government Notice

723 Marine Living Resources Act (18/1998): Policy on White Shark Cage Diving (WSCD) 3 31210

GOVERNMENT NOTICE

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

No. 723

4 July 2008

**MARINE LIVING RESOURCES ACT, 1998 (ACT NO. 18 OF 1998):
POLICY ON WHITE SHARK CAGE DIVING (WSCD)**

I, Marthinus van Schalkwyk, Minister of Environmental Affairs and Tourism, hereby publish the Policy on White Shark Cage Diving in the Schedule hereto for general information.

**MARTHINUS VAN SCHALKWYK
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM**



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

POLICY FOR THE MANAGEMENT OF WHITE SHARK CAGE DIVING (WSCD)

This Policy is also available at www.deat.gov.za

July 2008

TABLE OF CONTENTS

1.	Introduction	5
2.	Background to the development of the industry	5
3.	What informs this Policy?	6
4.	Why regulate WSCD?	6
5.	Policy Objective	7
6.	Policy Implementation	8
6.1	Growth of the WSCD industry	8
6.2	Transformation of the WSCD industry	8
6.3	Regulation of the WSCD industry	9
7.	Permits	9
8.	Transfer of permits	9
9.	Management measures	10
10	Annexure A: Criteria for the evaluation of WSCD applications	
11.	Annexure B: Application Process	

GLOSSARY OF TERMS

Department	The Department of Environmental Affairs and Tourism
Minister	The Minister of Environmental Affairs and Tourism
Fishery Control Officer	Any incumbent of a post of Fishery Control Officer designated by the Minister in terms of section 9 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
IUCN	International Union for the Conservation of Nature and Natural Resources.
White Shark Cage Diving	White shark cage diving is the observing of a free-swimming white shark (<i>Carcharodon carcharias</i>) from within a submerged protective cage or from a vessel.
Delegated Authority	A person to whom power has been delegated in terms of section 79 of the Marine Living Resources Act, 1998.
MLRA	Marine Living Resources Act, 1998 (Act No. 18 of 1998).
SAMSA	South African Maritime Safety Authority, a statutory body established in terms of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998)
Suitable WSCD vessel	A vessel that is registered by SAMSA as being suitable for WSCD.
WSCD	White Shark Cage Diving.

1. Introduction

This Policy is informed by The Constitution of the Republic of South Africa, 1996 (the Constitution), the country's international obligations, environmental best practice and the MLRA. Section 24 of the Constitution provides for "ecologically sustainable development and use of natural resources." In terms of international practice, the sustainable use of natural resources includes both consumptive and non-consumptive use of such resources.

This policy is issued together with a set of *Regulations for the Management of the White Shark Cage Diving Industry* (the WSCD Regulations).

The aim of this policy is to regulate WSCD. It does not cover the non-consumptive or consumptive use of other species of shark. The consumptive and non-consumptive use of sharks is regulated by the Marine Living Resources, 1998 (Act No. 18 of 1998) (MLRA) and the *General Regulations* promulgated in GN 1111 in GG 19205 of 2 September 1998, as amended. Further regulations and policy will be adopted to regulate the non-consumptive use of other species of shark.

2. Background to the development of the industry

WSCD is the observing of a free-swimming White Shark (*Carcharodon carcharias*) from within a submerged protective cage. However, White Sharks on or near the surface may also be observed from vessels. Although the WSCD Regulations provide for the issuing of only one type of permit, the holder of a WSCD permit may also engage in a boat-based White Shark viewing operation. The use of the acronym 'WSCD' in this policy, unless otherwise specified, covers both viewing from a cage or from a boat.

WSCD started in South Africa in 1991. After 1995, and in line with global trends, the South African WSCD industry grew quickly. In 2004, for example, more than 26 000 tourists went on WSCD trips. A recent independent socio-economic study undertaken showed that eight WSCD operators in the Gansbaai area alone generated an income of almost R30 million from direct ticket sales over a twelve month period.

There are currently 12 authorised WSCD operators, each restricted to operating one vessel. The South African WSCD industry is capable of substantial growth. However, the lack of a proper regulatory framework has not been conducive to investment in the sector.

In the past, few requirements were laid down for the allocation of permits. Permits were issued to natural as well as juristic persons provided that they were South African citizen. In 2001, additional requirements were applied. These additional requirements prescribed that nominated WSCD vessels had to be SAMSA registered for WSCD, and skippers and guides had to be qualified. The permits/exemptions of current operators expire when new allocations are made. These operators are referred to as the “*current permit/exemption holders*” in this policy document.

3. What informs this policy?

Available global data show significant decreases in White Shark population numbers over time; even in areas where the species has long been protected. As a result, White Sharks have been on the IUCN Red List of Threatened Species for many years and have been listed on Appendix I and II of the Convention for the Conservation of Migratory Species and Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). This requires that White Sharks be accommodated within the management framework provided for in the applicable South African legislation and regulations.

The MLRA, which provides for the conservation of the marine ecosystem and the long-term sustainable utilisation of marine living resources, makes provision for the regulation of both consumptive and non-consumptive uses of marine resources and provides the legislative framework for the exercise of control over marine living resources in a fair and equitable manner for the benefit of all South Africans.

4. Why regulate WSCD?

The need to manage the WSCD industry, in terms of sound scientific and sustainable principles, is based on the White Shark’s vulnerability because of its slow growth rate, late age at maturity, and low reproductive capacity. Being a rare top predator, the White Shark has been

mythically portrayed and sensationalised in the media as a vicious man-eating killer. Its numbers have dwindled as it was targeted by zealous hunters. WSCD has contributed to a better understanding of the importance of this predator in our marine ecosystem.

White Sharks tend to occur more frequently in temperate coastal waters, although the species has an almost global distribution. Recent scientific evidence indicates that adults can migrate across ocean basins. However, the lack of detailed knowledge about the White Shark, combined with the fact that available global data shows a decline in numbers even in protected areas, requires WSCD be managed in such a way that it does not interfere with the normal functioning of these sharks.

The management of White Sharks, based on observation, research and study, remains an inexact science with new rules for best practice evolving and adapting as new evidence comes to light. However, a sound approach, and one which has gained wide acceptance in marine management, is contained in Principle 15 of 1992 Rio Declaration:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

5. Policy Objectives

The objectives of this Policy are:

- Improve the regulatory and compliance framework through a more effective monitoring of the impact of shark cage diving on White Sharks and the ecosystem;
- Promote the growth of the South African WSCD industry through the allocation of a greater number of permits;
- To transformation of the WSCD industry.

6. Policy Implementation

6.1 Regulation of the WSCD industry

Responsible white shark cage diving is a key objective of this policy. The Department shall, through its WSCD regulations or other appropriate means, prohibit whale and dolphin watching operations (and the advertising of such operations) without a permit. The Department will set the requirements for qualification (See Annexure "A") which shall include:

- i. Accreditation of a vessel and its skipper;
- ii. Safety precautions for the customers;
- iii. Tourism standards to be observed by operators;
- iv. Conduct of customers relating to sharks.

6.2 Transformation of the WSCD industry

There has been limited transformation in the industry. Thus, the transformation of the WSCD industry remains an important sectoral objective. The transformation profile of this sector will be monitored regularly. In promoting transformation, the Department shall actively adopt and prescribe actions or conditions that should advance this objective. .

In promoting transformation the Department will place restrictions on the changing of shareholding or controlling interest in a Company or Close Corporation that has been allocated permits so that transformation objectives are not compromised. If the majority of shares are sold and/or the controlling interest of a Company or Close Corporation is changed to an extent that the equity considerations on the basis of which the permit was issued do not exist any longer, this will be regarded as a change in ownership and therefore a transfer of a permit and must comply with the provisions of paragraph 9 below. A Transfer of a permit without the authority of the Department may result in the cancellation of the permit. The Department when considering competing permit applications, will give preference to the applicant whose operation will have the biggest impact in terms of transformation and black economic empowerment.

6.3 Growth of the WSCD industry

The Department will facilitate growth of the industry. The Department will seek to encourage the development of, investment into and creation of jobs in WSCD in those areas where it has not yet been taken up.

7. Permit

Permits will be issued for designated areas. The designation of areas of operation and the number of permits will be informed by a precautionary management plan that is flexible to allow for feedback from scientific studies. The designation of areas and number of permits to be allocated will be reviewed and adjusted from time to time, based on scientific grounds. Permits will be allocated only under section 13 of the MLRA for a maximum period of one (1) year. Successful permit holders will be re-allocated their permits each year for five (5) years from the date of the first allocations, provided that they fully complied with permit conditions. There will be a review of the number of WSCD operators in each of the designated areas five (5) years from the date of the first allocations. A fresh invitation for applications will therefore occur every five years (see paragraph 10).

Each WSCD permit shall be issued subject to such conditions considered necessary to satisfy the objectives of this policy. Permit conditions may be amended from time to time. The attraction of White Sharks for the purposes of cage diving and surface viewing will be allowed in the areas specified in the white shark cage diving regulations. Permit holders in the Seal Island, Mossel Bay and Quoin Point areas will not be allowed to operate from 1 December until 20 January each year due to municipal requirements.

8. Transfer of Permits

Transformation and black economic empowerment are some of the factors that will be taken into account when permits are issued. The Delegated Authority, in transferring a permit, must be satisfied that the application for a transfer of a permit will not result in the undermining of the

transformation objectives of the Department in the WSCD industry, especially by allocating the transferred permit to applicants who do not satisfy the transformation criteria.

There will be a one year moratorium on the transfer of permits, during which time the Department will develop a regulatory framework to manage the transfer of permits.

9. Management Measures

The management measures to be applied after the allocation of permits are set out below:

9.1 Management Plan

This sector will be managed in accordance with an approved management plan compiled by the Department. The Department also intends adopting an ecosystem - based management approach in the future. An ecosystem approach to fisheries management is a holistic and integrated policy recognising that fishing and various other activities impact on the broader marine environment.

9.2 Vessels

A suitable WSCD vessel is a vessel that is registered by (SAMSA) as being suitable for white shark cage diving.

Each successful applicant will be restricted to two vessels per permit and the use of the vessels specifically nominated in the application form. The permit conditions will, however, prohibit the simultaneous use of the vessels for the purposes of WSCD. Should the permit holder subsequently wish to change the nominated vessel/s, the permit holder shall advise the Department of the change and to provide proof that the vessel is certified by SAMSA as being suitable for WSCD.

Should the vessel change occur without SAMSA certification, the permit holder will not be allowed to operate until SAMSA has formally certified the replacement vessel as being safe for white shark cage diving.

9.3. Ongoing applications for Permits

Should there be a vacant area; a permit may be allocated to any other person who, in response to an invitation placed in the *Government Gazette*, satisfies the criteria set out in this policy and the WSCD regulations

9.4. Observer Programme

All permit holders will be required to carry independent observers upon written instruction by the Department. The costs of accommodating the observer will be for the permit holder.

ANNEXURE A

Criteria for the Evaluation of WSCD Applications

The following are criteria that will be considered in the evaluation of applications for White Shark Cage Diving (WSCD) permits. Some of these criteria will have the effect of excluding applications that do not comply with them, hence called "Exclusionary Criteria. The other set of criteria listed refers to "Balancing Criteria", which are mainly intended to bring transformation into the industry so as to be representative of the South African demographics in a number of its key aspects and its effects (i.e. economic benefits) and improve growth of the industry. While the rest of other criteria listed will definitely be considered in the evaluation of applications, the manner of their consideration shall be determined during the application process and thus referred to as Other Criteria.

1. Exclusionary Criteria

Every applicant will be expected to adhere to certain requirements pertaining to the completion and submission of application forms. If these requirements are not adhered to, the application will be excluded. These will also be stated in detail in the *Instructions* attached to the WSCD application form and may include:

- (a) Using only the applicable application form
- (b) Paying the application fee in full; and
- (c) Signing the application form and attesting to the declaration.

2 Balancing Criteria

Although the following criteria will generally be applied to both current permit/exemption holder applicants and new entrant applicants, the weighting that will be applied to each of the categories will differ. All criteria will be objectively scored and appropriately weighted.

(a) Transformation

One objective with allocating permits in this sector is to improve on the present levels of transformation. Accordingly, applicants will be assessed and scored on -

- The percentage of Black people and Black Women representation at ownership and executive management level as well as other employment levels below it;
- Compliance with the Employment Equity Act 55 of 1998, and skills development laws;
- Preferential Procurement;
- Enterprise development;
- Corporate social investment;
- Training: Apart from the requirements relating to crew already mentioned, WSCD operators are encouraged to provide ongoing training and education for crew members pertaining to all facets of running a WSCD operation.

(b) Investment in the Sector

Applicants will be evaluated having regard to investments made in the WSCD sector.

As far as current permit/exemption holder applicants are concerned, specific consideration will be given to:

- Investments in suitable vessels and equipment. In this regard, investment in the form of shareholding will be recognised.

- Investment in marketing. In this regard, the Minister or delegated authority will give preference to applicants that have invested in marketing South Africa and their local area as a tourist destination.
- Optimal use of current permits / exemptions.

New entrant applicants will be required to demonstrate whether they have or intend to invest in a suitable vessel and equipment. New entrant applicants must also indicate how they intend marketing WSCD to both local and international tourists.

(c) Local Economic Development

WSCD permits are allocated on an area basis. A number of new areas have now been added. Accordingly, further WSCD operators may now be accommodated. The intention is to stimulate further growth of the WSCD industry in coastal towns. Those current permit/exemption holder applicants that demonstrate that they have made investment in infrastructure in the area from which they have operated will be rewarded.

(d) Jobs

If current permit/exemption holders provide (or new entrants undertake to provide) their employees with –

- Secure employment benefits;
- Safe working conditions.

they will be rewarded.

(e) Operational Plan

Applicants will have to compile an operational plan on which they will be evaluated. An operational plan should include the following at a minimum:

- The expected frequency of trips and numbers of passengers;
- The marketing strategy;

- The anticipated duration of trips;
- The areas of intended operation; and
- A description of the anticipated trip activity, safety precautions (this should include a full emergency medical plan in the event of injury) and tourist education.

The education that will be given to tourists will, in particular, be assessed. Not only does education enrich the experience of tourists, but also adds to the eco-tourism bottom line, which in turn also encourages compliance with regulations and code of conduct. WSCD operators capable of educating tourists and to provide educational material for their clients will be favourably considered.

(f) Compliance

Minor infringements of the Marine Living Resources Act, including its Regulations, by the applicant, its directors or controlling shareholders or members will result in the applicant being negatively scored. Applicants unable to demonstrate that they comply with their obligations under the Employment Equity Act 55 of 1998, the Skills Development Act 97 of 1998 and the Skills Development Levies Act 9 of 1999 (if applicable), the Occupational Health and Safety Act, 1993 and the Compensation for Occupational Injuries and Diseases Act, 1993, will not be favorably considered.

(g) Vessel Monitoring System.

WSCD applicants that have or are going to invest in a vessel monitoring system will be positively scored.

3. Other Criteria

In addition, the following criteria will also be considered during the evaluation of applications. Applicants are expected to;

- a) demonstrate access to a suitable WSCD vessel and equipment.

- b) employ or contract with a skipper certified by the SAMSA as capable of operating and managing the nominated suitable vessel with passengers.
- c) employ or contract a tour guide who has obtained their SATOUR "DTI" certification and badge. All tour guides must be certified as Level 2: General Guides, as a minimum by the South African Qualifications Authority. All crew members must have completed a Site Guide course, accredited by the Department.
- d) employ or contract with a skipper and at least one tour guide if the nominated suitable vessel is certified to carry more than 5 persons. Applicants that nominate a suitable vessel that is certified to carry 5 persons and less must employ or contract with a skipper who may also be the tour guide.
- e) employ or contract with a qualified dive master who must be on board every WSCD trip. The dive master may be the same person as the tour guide.
- f) demonstrate that they have public liability insurance. New entrant applicants will have to provide an undertaking confirming that they will purchase public liability insurance up to an amount to be determined and for the duration of the permit.
- g) understand that if they are the current permit/exemption holders and failed to utilise their WSCD permits or exemptions, or that they failed to regularly submit logbooks in terms of their permit or exemption conditions, or undertook an average of less than 50 trips per season over the duration of the exemption period, may not be allocated a permit. This criterion will be applied in a flexible manner.
- h) understand that if they or their members, directors or controlling shareholders have been convicted of a serious infringement of the MLRA, the regulations, permit conditions or other serious fishery related offences during the exemption period, they will not be allocated a WSCD permit. This does not include the payment of an admission of guilt fine. Permits may also not be allocated to an applicant if the applicant, or its members, directors or controlling

shareholders, have had any right or permit cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) or the MLRA. Decisions may be deferred if an applicant (or its members, directors or controlling shareholders) is being investigated for a contravention of the provisions of the MLRA. Directors and members with controlling interests must declare any offences or contraventions outlined above whether in their personal capacity or as members or directors of other organisations which were convicted of the above offences.

- i) show significant investment or participation in the WSCD sector, if they are they are current permit/exemption holders. As a minimum, significant investment or participation by exemption holders (as at 31 July 2005) will comprise:
- Investment in a suitable WSCD vessel and equipment, whether as sole owner or as a shareholder (provided that the value of the shareholding is equal to or more than 5% of the market value of the vessel); and
 - Some of the natural persons, shareholder(s) or members must have actively participated in the operation of the business.
- j) demonstrate that they have obtained access to a suitable white shark cage diving vessel and that they are committed to participate in the operation of the business, if they are new entrant applicants. This commitment will be determined having regard to, *inter alia*, knowledge of the sector and the ability to safely carry on the business of white shark cage diving.
- k) provide an undertaking that they will commence operation within one year of being issued a permit. If the applicant has not commenced operations within one year of being issued a permit, the permit will be cancelled.

ANNEXURE B

APPLICATION PROCESS FOR WSCD

The procedures described below are intended to inform prospective applicants of the process to be followed subsequent to the invitation to apply for WSCD permits.

(i) **Public participation in policy formulation**

The policy sets out the basis in terms of which permits will be allocated. The policy will also be distributed along with the application forms used in the permit allocation process. It will be assumed that applicants have read this policy when applications are evaluated.

(ii) **Communication Processes**

After applications for permits are invited by notice in the *Government Gazette*, the Minister will not communicate with individual applicants, other than in the manner set out in this policy document or invitation for applications. Communication will take place only through electronic media and the *Government Gazette*.

(iii) **Language**

This Policy, the application form and all explanatory notes to the application forms will be available in English. See www.mcm-deat.gov.za.

(iv) **Fees**

Application and permit fees are payable in accordance with the Schedule of fees set out in *Government Gazette* Notice 878 of 2 September 2005 published in terms of section 25 of the MLRA. These fees may in consultation with the Minister of Finance be amended from time to time.

(v) Departmental Assistance

Applicants will be able to submit queries relating to the application process to the Department. The query period will be open for a specified time, after which all queries will be collated and responses published on the Departmental website prior to the closing date for applications. The Department's customer services centre may also be contacted on 0861 123 626.

(vi) Number of Copies

All applicants will be required to submit one hard copy of the application and annexures, together with the original application.

(vii) Oral Hearings, Calls for Further Information and Investigations

If it is suspected that an applicant may have provided false information or documents or failed to disclose material information or misrepresented information, the matter will be investigated.

(viii) Capturing of information on a database and development of detailed criteria and weighting

Information submitted by applicants will be captured on a database. The policy and the database will be used for the development of detailed criteria and weighting for the purposes of assessing the applications.

(ix) Notification of decision and the reasons therefore

All applicants will be notified in writing of the decision on their applications. Letters to unsuccessful applicants will include the reason for the application being unsuccessful. All applicants will further be furnished with a document recording the process followed in allocating the permits, which will include the detailed criteria and weighting applied in the allocation of permits.

(x) Appeals

An applicant may submit a written appeal against a decision to the Minister or his delegated authority in terms of section 80 of the MLRA.
