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DEPARTMENT OF ENVIRONMENTAL AFFAIRS**NO. 145****17 FEBRUARY 2017****NATIONAL DEPARTMENT OF ENVIRONMENTAL AFFAIRS****MARINE LIVING RESOURCES ACT, 1998 (ACT NO. 18 OF 1998)****DRAFT POLICY ON BOAT-BASED WHALE AND DOLPHIN WATCHING**

I, Bomo Edith Edna Molewa, Minister of Environmental Affairs, hereby publish for public comment, the draft Policy on Boat-Based Whale and Dolphin Watching as set out in the Schedule hereto.

Any person who wishes to submit representations or comments in connection with the draft policy is invited to do so within 30 days from the date of publication in the *Government Gazette* and by no later than 16:00 on the last day. Comments received after this time may not be considered. All representations and comments must be submitted to the following addresses:

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MINISTER OF ENVIRONMENTAL AFFAIRS



DEPARTMENT OF ENVIRONMENTAL AFFAIRS

POLICY ON BOAT-BASED WHALE AND DOLPHIN WATCHING

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

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Glossary of Terms

Minister	The Minister of Environmental Affairs
BBWW	Boat-Based Whale and Dolphin Watching
BBWW regulations	means the Regulations for the Management of Boat-Based Whale Watching and Protection of Turtles published in GNR 725 of 4 July 2008
DEA	National Department of Environmental Affairs
HDIs	Historically Disadvantaged Individuals
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)

1. Introduction

This policy on *Whale and Dolphin Watching* ("BBWW") intends to guide the process and decision making for the second permit allocation process for boat-based whale and dolphin watching permits. The policy must be read with the BBWW regulations published under Government Notice R725 in *Government Gazette* 31212 of 4 July 2008.

Objectives and criteria as set out in this policy will guide the evaluation and allocation of permits in the boat-based whale watching industry to ensure that all eco-tourism related activities related to whales and dolphins are sustainable and effectively managed. It also provides an overview of the South African BBWW industry as well as opportunities to support biodiversity and socio-economic priority actions. The policy provides strategic objectives and actions needed to achieve the overarching goal of conservation and sustainable use.

2. Background to the development of the industry in South Africa

Whale and dolphin watching in South Africa started in the early 1980s with BBWW operating unofficially in the early 1990s. It forms part of marine tourism sector benefiting economically and socially from accessibility of these cetaceans (i.e. Southern Right, Humpback and Bryde's whales and dolphins). It was then in early year 1999 that the Government responded to the need to officially regulate and manage these activities. In that year, the former Department of Environmental Affairs and Tourism issued the first three year permits to undertake BBWW which was restricted to 20 designated areas around the South African coastline; with only one permit holder per designated area. Recognising the potential of this activity to generate considerable economic and social benefits for coastal communities; in the year 2008, the Department gazetted, 28 designated areas for potential BBWW as well as the number of permits that may be allocated per designated area. As a result, in 2011, the Department of Environmental Affairs (DEA) allocated BBWW permits valid for five (5) years to 23 BBWW operators.

3. Previous management efforts to regulate whale watching

Whale watching is recognised as having substantial social, economic and educational benefits and this activity is growing worldwide. For example in Australia, whale watching has for many years been used as an intervention to address the knowledge gap that is needed to inform the management of conservation areas as well as the sustainability of activities such as tourism and fishing. In addition, the educational experience visitors receive observing the whales in accordance with permit conditions is more valuable and emphasizes the need for management strategies to conserve these species. The South African ocean environment has suitable ecosystems, nursery and transit areas for whales that migrate to South Africa from the Southern Ocean. As a result, a number of options, used individually or in combination, have been recognised and implemented to manage the effects and impact of whale watching on these cetaceans.

3.1. Whale watching industry today

South Africa has established a greater level of management and control through its legislative framework and permitting system. Since the inception of this industry, the Department responsible for environmental affairs has facilitated the growth of whale watching along the coast. This included officially gazetting and designating 28 potential BBWW areas in 2008 (*Government Gazette* 31212 of 4 July 2008). These areas stretch along the coastline, from Port Nolloth, in the West coast, to Sodwana Bay in the North-East. Other efforts implemented to support the sustainable non-consumptive utilisation of these protected marine species include limits on the number of boats (effort control) approaching a cetacean or pod of cetaceans, limiting the duration and number of encounters per group of cetaceans per day.

In addition to the permit system, the notable success of establishing an industrial body provided an important space in which the Department can engage with the industry on most aspects. Despite the imposed restrictions through permitting and applicable codes of conduct, effective monitoring and enforcement is prioritised to ensure that the objectives of this policy are met, both in terms of supporting economic growth while ensuring environmental sustainability. Similarly in other maritime nations, there is a growing demand for BBWW operations along the coast.

4. Policy Objectives

The objectives of this policy are to:

- manage the South African BBWW industry through the allocation of a sustainable number of permits;
- transform the BBWW industry in line with B-BBEE Tourism Sector Codes and B-BBEE Act;
- set out procedures and assessment criteria which will guide the evaluation and allocation of permits; and
- outline a process to be followed in the allocation of permits.

5. Policy Implementation

5.1. Regulation of the BBWW industry

Responsible whale and dolphin watching is a key objective of this policy. The Department shall, through its BBWW 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 the vessel and its skipper;
- ii. Safety precautions for the customers;
- iii. Applicable tourism standards to be observed by operators;
- iv. Conduct of customers relating to cetaceans.

5.2. Transformation of the BBWW industry

In promoting transformation, the Department shall use the B-BBEE Tourism Sector Codes and applicable tools in order to advance this objective. Additional factors to be considered include placing restrictions on changing of shareholding or controlling interest in Companies or Close Corporations that have been allocated permits. If the BEE contributor level rating is reduced or lowered during the period of the permit, from what it was as determined at the time of allocation of the BBWW permit or if any other transformation criteria identified by the Department changes, this may result in the permit being cancelled or withdrawn or considered as a transfer of a permit and must comply with the provisions of paragraph 10 below. Transfer of a permit is prohibited unless it complies with the provision of paragraph 10 below. This condition will form part of the permit conditions.

When considering competing permit applications, applicants will be evaluated on whether the operation complies with *Government Gazette* No. 39430 of 20 November 2015 on Codes of Good Practice on Broad-Based Black Economic Empowerment (B-BBEE): Amended Tourism Sector Code (as amended) published by the Department of Trade and Industry (DTI). Preference will be given to applicants whose operation integrated or aim to integrate Historically Disadvantaged Individuals (HDIs) in the ownership and management of the operation. Applicants whose operations contribute to corporate social investment within the local communities in the area of operation may also be positively scored.

5.3. Growth of the BBWW industry

The Department will facilitate growth of the industry. Through the implementation of the objectives of this policy, the Department will seek to encourage the development of this activity in current vacant areas where no permit has been allocated.

6. Permits

Permits will be issued for designated areas as detailed in the BBWW regulations. The determination of the number of permits will be informed by the best available scientific evidence and a precautionary approach that is flexible to allow feedback from scientific studies. The areas and the number of permits will be reviewed and adjusted from time to time, based on scientific evidence. There will be a review of the performance of BBWW operators in each of the designated areas during the period of the permit.

Each BBWW permit shall be issued subject to such conditions as provided for in the BBWW regulations and considered necessary to satisfy the objectives of this policy.

7. Vessels

A suitable BBWW vessel is a vessel that:

- is registered by SAMSA as being suitable for BBWW; and
- has a functioning logging Global Positioning System (GPS).

It is important that properly adapted vessels in line with SAMSA requirements are used for whale and dolphin watching tours. Operators will be required to provide proof that they have and intend to use such vessels, and will be expected to provide a detailed description of the nominated vessel. In order to encourage responsible

behaviour and minimize potentially conflicting operations, the Department may require that each vessel is equipped with a GPS appropriate for the vessel size and category.

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

No vessel change shall occur without SAMSA certification and the permit holder will not be allowed to operate until SAMSA has formally certified the replacement vessel as being safe for BBWW.

8. Responsibilities

The Department in consultation with the recognised industrial body and relevant organs of state will facilitate support services to the industry. Permit Holders will be required to contribute to monitoring and reporting within the sector and particularly in instances of non-compliance in the industry.

9. Ongoing Applications for Permits

Should an area become vacant or where no permit was allocated in an area, a permit may be allocated to any person who applied during the most recent allocation process, provided such applicant complies with the requirements determined in this policy and the BBWW regulations. Alternatively, a permit may be allocated to any other person in response to an invitation published by the delegated authority, for that area/s and which then satisfies the criteria set out in this policy and the BBWW regulations.

10. Transfer of Permits

The transfer of a permit will be dealt with in a manner determined by the Minister or Delegated Authority and subject to the provisions of the BBWW regulations and any applicable legislation. While it may be expected that some permit holders may apply for a transfer of a permit, the Minister or Delegated Authority must be satisfied that such application does not undermine the objectives of the policy. While a juristic person can change its shareholding/ownership, management and other aspects in the ordinary course of business for such entities, such changes may not result in a reduction of the BEE contributor level rating or the assessment score

of the Delegated Authority for any of the transformation criteria evaluated in the BBWW permit application process.

11. Monitoring

The Department will undertake monitoring for the duration of the permit in order to monitor whether the objectives of the policy are met and as well as ensuring that the practices of the industry support conservation and sustainable utilization of these species. This process will commence a year after allocation of permits and every 2 years thereafter.

Although the precise criteria against which permit holders will be monitored is not finalized, the following may be used:

- (i) Transformation in accordance with relevant legislation;
- (ii) Submission of data depicting distribution and/or abundance of whales and
- (iii) Compliance with Codes of Conduct and applicable legislation;

ANNEXURE A

CRITERIA FOR THE ALLOCATION OF BBWW PERMITS

1. EXCLUSIONARY CRITERIA

Every applicant is 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. The requirements will be stated in detail in the *Instructions* attached to the BBWW application form and may include:

- Using only the applicable application form;
- Paying the application fee in full; and
- Signing the application form and attesting to the declaration.

In addition to the above, existing permit holders will be evaluated on how they have optimally utilized their permit issued over the last allocation period. The assessment may include compliance with permit conditions such as submission of log books, submission of electronic data as well as quality of data submitted.

2. COMPULSORY REQUIREMENTS

An applicant must comply with the compulsory requirements provided for in the BBWW regulations.

2.1. Operational plan

One of these requirements is that Applicants will be required to compile an operational plan on which they will be evaluated. An operational plan should include the following as a minimum:

- Details of how the successful applicant will undertake the operation including availability of technical expertise;
- Details of environmental sustainability of the operation;
- The expected frequency of trips and numbers of passengers;
- The areas of intended operation and knowledge thereof; and

- A description of the anticipated trip activity, safety precautions and tourist education.

The education that will be given to cetacean watching tourists will, in particular be assessed. Not only does education enrich the experience of tourists, but also adds to the eco-tourism benefits, which in turn also increases compliance pressure to adhere to regulations and codes of conduct. BBWW operators capable of educating tourists and to provide educational material for their clients will be positively scored.

Since BBWW is growing into a lucrative form of eco-tourism in which more than half the clientele comes from abroad, a solid reputation for safety needs to be fostered and maintained in order to portray a positive image of the industry. Experience in tourism and knowledge of local sea and weather conditions will therefore be taken into account.

2.2. Tour Guide

An applicant must provide proof that the applicant has employed, or will employ one or more registered tourist guide(s) as provided for in the relevant tourism legislation appropriate for BBWW. Such tour guide must have completed training with a CATHSSETA (Culture Arts, Tourism, Hospitality and Sport Sector Education and Training Authority) accredited training provider.

2.3. Vessel Access

BBWW applicants will have to demonstrate that they have or are going to invest in a vessel certified by SAMSA as suitable for BBWW and equipped with functioning Vessel Monitoring System with integrated Global Positioning System appropriate for the vessel size and category. Vessels that cause the least amount of disturbance to the species and ecosystem as a whole, are more desirable.

2.4. Public Liability Insurance

Current permit holders will need to demonstrate that they have public liability insurance. New entrant applicants will have to provide an undertaking confirming that they will, ahead of commencing operations, purchase public liability insurance up to an amount to be determined by the relevant insurance consultant and for the duration of the permit.

3. BALANCING CRITERIA

In addition to the compulsory requirements for all applicants there are additional or balancing criteria which will be considered by the Delegated Authority. Some of these are detailed in the BBWW regulations and are further elaborated on in this section to indicate how the criteria will be assessed. Although the following criteria will generally be applied to both existing permit holder applicants and new entrant applicants, the weighting that will be applied to each of the categories may differ.

3.1. Transformation

One objective in allocating permits in this sector is to improve the levels of transformation. Accordingly, preference will be given to applicants with a higher BEE contributor level rating, as provided in *Government Gazette* 39430 of 20 November 2015: B-BBEE Tourism Sector Codes (as amended) published by the Department of Trade and Industry (DTI). In addition to the contributor level rating additional emphasis and scores will be allocated to the following specific transformation elements:

- **Ownership:** Applicants whose operations demonstrate ownership by HDIs will be positively scored.
- **Management control element:** The representation of HDI persons and women at the various levels of management as outlined in the tourism B-BBEE Sector Code, will be positively scored.
- **Corporate Social Investment:** BBWW permits are allocated on an area basis. Accordingly, a certain number of BBWW operators may be accommodated in each area. The intention is to support tourism initiatives and stimulate further growth of the BBWW industry in coastal towns. Those current permit holder applicants that demonstrate that they have made investments and contributions in corporate social initiatives and community upliftment programmes that benefitted the communities in the area from which they have operated may be positively scored.

All applicants will be required to demonstrate how they intend to be actively involved in corporate social responsibility initiatives that contribute to community development. Positive consideration will be given to operators whose contributions include educational trips for at least 75% HDI learners or who raise awareness about cetaceans through other educational means.

- **Enterprise Development:** As far as current permit holder applicants are concerned, specific consideration will be given to applicants who can demonstrate how they intend to provide training or mentorship to new entrants in the BBWW industry.

3.2. Investment in the Sector

Applicants will be evaluated having regard to investments made in the BBWW sector and level of contribution to the tourism of the local community.

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

- Investment in marketing: In this regard, the delegated authority will positively score current permit holder applicants that have invested in marketing South Africa and their local area as a BBWW tourist destination.

New entrant applicants must also demonstrate how they intend marketing BBWW to both local and international tourists.

3.3. Jobs/ Employment

Those current permit holders that have provided (or new entrants that undertake to provide) their employees with –

- Secure employment during the entire duration of the BBWW season and/or permit;
- Medical aid and pension;
- Safe working conditions; and
- Other employment benefits.

will be positively scored. As far as current permit holder applicants are concerned, specific consideration will be given to current permit holders who indicate compliance with the Employment Equity Act, 1998 (Act No. 55 of 1998) during the past five (5) year permit period.

Applicants who demonstrate an effort to employ young people (under 35) from historically disadvantaged communities and specifically those adjacent to the area of operation will also be positively scored.

3.4. Compliance

It will be considered whether the applicant has been convicted of any offence related to an existing permit or any other offence in terms of any other environmental legislation and the seriousness thereof. Applicant includes any individual applicant and whether the directors or majority shareholders or members have been convicted of such an offence.

It will also be considered whether an applicant, or its members, directors or majority shareholders, has had any permit cancelled, revoked or suspended in terms of the BBWW regulations or any environmental laws or assets seized under the Prevention of Organised Crime Act 121 of 1998 or any environmental law. Decisions may be deferred on applications if an applicant (or its members, directors or majority shareholders) is being investigated for a contravention of the provisions of the BBWW regulations or any other environmental law. Individual applicants, directors, majority shareholders and members with controlling interests must declare any offences or contraventions outlined above whether in their personal capacity or as members, shareholders or directors of other organisations which were convicted of the above offences or were subject to the relevant administrative actions outlined above.

3.5. Declaration

All applicants but particularly new entrants must undertake 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 may be cancelled.

ANNEXURE B

APPLICATION PROCEDURES

The process described below informs prospective applicants of the procedures to be followed subsequent to the invitation to apply for BBWW permits.

(i) Public participation in policy formulation

The policy sets out the basis or terms on which permits will be evaluated and allocated. The policy will also be distributed along with the application form, during registration process. It will be assumed that applicants will have read this policy when applications are evaluated.

(ii) Language

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

(iii) Fees

Application and permit fees are payable in accordance with the Schedule of fees set out in *Government Gazette* 33518 of 10 September 2010 published in terms of section 25 of the MLRA or the BBWW regulations. These fees may be amended by the Minister of Finance from time to time.

(iv) Departmental Assistance

Applicants will be able to submit queries relating to the application process to the Department prior to the closing date for applications. The query period will be open for a specified time, after which all queries will be collated and responses will be published on the Departmental website and via the general BBWW email address which will be published at the time of the invitation.

(v) Number of Copies

All applicants will be required to submit one original and a copy of the application (including annexures).

(vi) Calls for Further Information and Investigations

A matter may be investigated where it is suspected that an applicant may have provided false information or documents or failed to disclose material information or misrepresented information (in any other matter) and random verification of information provided may be undertaken.

(vii) 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, the BBWW regulations and the database will be used for the development of detailed criteria and weighting for the purposes of assessing the applications.

(viii) 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. The process followed in allocating the permits, including the detailed criteria and weighting applied will be made available on request.