

WHALE WATCHING AND WHALE SWIMMING ACT 2008

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I assent,

GEORGE TUPOU V,

1st June, 2009.

## AN ACT

### TO ESTABLISH LICENSING REQUIREMENTS FOR THE REGULATING OF WHALE WATCHING AND WHALE SWIMMING INDUSTRY AND RELATED MATTERS

[28th October, 2008]

**BE IT ENACTED** by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

#### 1. **Short Title and Commencement**

This Act may be cited as the Whale Watching and Swimming Act 2008.

#### 2. **Interpretation**

In this Act, unless the contrary intention appears –

"consumer" means a person who is the recipient of a commercial expedition;

"License" means either a Whale Watching Licence or Whale Swimming License issued under this Act;

"Minister" means the Minister of Tourism;

"Ministry" means the Ministry of Tourism;

"whale" means a cetacean that is primarily ocean-dwelling or depend on the ocean for food, that evolved from land dwelling ancestors and share adaptive features for life at sea such as generally large size, hydrodynamic body shapes, modified appendages and various thermoregulatory adaptations;

"Whale Swimming License" means a commercial license issued by the Minister under this Act authorizing the provision of whale swimming services to the consumer; and

"Whale Watching License" means a commercial license issued by the Minister under this Act authorizing the provision of whale watching services to the consumer;

### **3. Functions of the Minister**

The functions of the Minister are to—

- (a) receive and determine applications for Licenses under this Act;
- (b) register Licenses issued under this Act;
- (c) provide training courses to service providers.

### **4. Whale Watching License**

- (1) An application for a Whale Watching License shall be lodged with the Minister in the prescribed form and accompanied by the prescribed fee.
- (2) The Minister shall consider an application lodged under subsection (1) and determine whether or not to issue such a License according to prescribed conditions and any other matter he considers appropriate.
- (3) A License granted under subsection (1) shall be made in the prescribed form and subject to the conditions contained therein.

### **5. Whale Swimming License**

- (1) An application for a Whale Swimming License shall be lodged with the Minister in the prescribed form and accompanied by the prescribed fee.
- (2) The Minister shall consider an application lodged under subsection (1) and determine whether or not to issue such a License according to prescribed conditions and any other matter he considers appropriate.
- (3) A License granted under subsection (1) shall be made in the prescribed form and subject to the conditions contained therein.

### **6. Suspension of License**

The Minister may suspend or cancel all Licenses issued under this Act.

### **7. Renewal**

All Licenses issued under this Act shall be valid for a prescribed period before renewal.

### **8. Transferable**

Licenses granted under this Act are not transferable.

**9. Authority to act as an operator**

- (1) A person granted a Whale Watching License may act as a whale watching provider under this Act.
- (2) A person granted a Whale Swimming License may act as a Whale Swimming provider under this Act.

**10. Offences**

- (1) Every person who,
  - (a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
  - (b) fails to comply with any order, direction or other requirement made under this Act or the regulations;
  - (c) holds himself out to be a licensee without a License granted under this Act; or
  - (d) contravenes any provision of this Act or the regulations,

is guilty of an offence and on conviction is liable to a penalty of not less than \$1,000 and not exceeding \$10,000 and upon failure to pay a prison term not exceeding three years.

- (2) Where a corporation is convicted of an offence under subsection (1), it shall be liable to a penalty of not less than \$10,000 and not exceeding \$50,000 and upon failure to pay a prison term not less than three years.

**11. Regulations**

The Minister may, with the consent of Cabinet, make regulations for giving effect to and carrying out the purpose of this Act.

**12. Savings**

- (1) All persons or businesses currently operating whale watching and whale swimming services at the commencement of this Act, shall operate as if they have been granted a License under this Act, until such time that their application for a license under this Act has been approved or denied.
- (2) All persons or businesses currently operating whale watching and whale swimming services at the commencement of this Act, shall within three months upon the commencement of this Act, apply for a License under this Act.