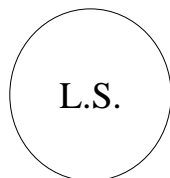


Legal Notice No. 9 of 2023



ST HELENA



ENVIRONMENTAL PROTECTION ORDINANCE, 2016

*MARINE REGULATIONS (TOURISM AND INTERACTION WITH MARINE LIFE),
2023*

In exercise of the powers conferred by sections 11 of the Environmental Protection Ordinance, 2016, the Governor on the advice of the Executive Council makes the following Regulations:

Citation

1. These Regulations may be cited as the Marine Regulations (Tourism and Interaction with Marine Life), 2023.

Interpretation

2. For the purposes of these Regulations—
“**accreditation certificate**” means a certificate awarded pursuant to regulation 3;
“**codes of practice**” mean the codes of practice in accordance with section 12;
“**licence**” means a licence granted in accordance with regulation 6 but does not include a licence referred to in regulation 9;
“**Master**” means the person for the time being in command or in charge of a vessel; and
“**regulated activity**” means an activity specified in regulation 5.

Accreditation

3. If the Chief Environmental Officer is satisfied that a person has completed a form of study approved under the codes of practice by which the person is taught to interact with marine wildlife in a manner considered appropriate by the Chief Environmental Officer, the Chief Environmental Officer may award the person with a certificate which—
(a) bears the signature of the Chief Environmental Officer; and
(b) confirms that the person is trained to interact with marine wildlife.

HB 12 No. 9 Marine Regulations (Tourism and Interaction with Marine Life), 2023.

Prohibited

4. Any activity which is determined by the Chief Environmental Officer to unreasonably harm or cause any form of detriment to marine life is prohibited and further to the foregoing, any activity which purposefully interacts with wildlife in the marine environment that is not regulated by these Regulations is prohibited.

Regulated activities in a marine protected area

5. (1) For purpose of the conservation and management of a marine protected area and further to regulation 4, a person may only perform or participate in an activity which is planned or intended for viewing or interacting with wildlife in the natural habitat of the wildlife, within a marine protected area which is regulated and prescribed to be a regulated activity.

- (2) A regulated activity includes but is not limited to—
- (a) scuba diving, snorkelling, swimming and free diving;
 - (b) scenic or coastal touring by boat; or
 - (c) wildlife viewing or interaction touring by boat.

(3) For the purpose of regulation 4 and sub-regulation (1) and (2), fishing in compliance with the Fisheries Ordinance 2021 is not a regulated activity and is not prohibited under these Regulations.

(4) If the Chief Environmental Officer considers it necessary for compatibility with the goals and objectives of the Marine Management Plan, the Chief Environmental Officer may, by notice published in the Gazette—

- (a) declare any activity other than that specified in sub-regulation (2) to be a regulated activity; or
- (b) declare that an activity is not a regulated activity or that an activity is no longer a regulated activity.

(5) A notice under sub-regulation (4) may specify a period of time for the duration of which an activity is considered, under these Regulations, to be a regulated activity.

Requirement for licence

6. (1) A person—
- (a) who, for payment or reward, conducts or facilitates a regulated activity, whether by vessel or by leading a tour from shore, must be licenced in accordance with these Regulations and must apply for a licence in the manner specified by the Chief Environmental Officer by Notice published in the Gazette; and
 - (b) must not for payment or reward, conduct or facilitate any regulated activity without a valid licence.

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2023.

(2) A person making an application under sub-regulation (1) must be at least 18 years of age.

(3) The Chief Environmental Officer may, if satisfied that a person making an application under this regulation meets the requirements set out in sub-regulation (5), grant a licence to the person and may impose conditions relating to the licence which may include but which are not limited to the inclusion of, a requirement for observing and monitoring data in respect of the area to which the licence refers and submitting a log of such data to the Chief Environmental Officer.

(4) An application for a licence must be accompanied by the prescribed fee and the prescribed licence fee must be paid upon the grant of the licence.

(5) The Chief Environmental Officer must not grant a licence unless the Chief Environmental Officer is satisfied that—

- (a) the person applying for a licence holds a valid accreditation certificate; and
- (b) the access to recreation within the marine protected area sought under the application is compatible with any applicable prescribed management plan.

(6) A licence—

- (a) is valid for a period of one year;
- (b) is subject to any conditions imposed by the Chief Environmental Officer under sub-regulation (3);
- (c) may specify the activities that are authorised under the licence; and
- (d) must specify—
 - (i) the name and address of the licence holder;
 - (ii) the registered master of a vessel to which the licence applies;
 - (iii) details of any vessel that the licence holder may use to carry out specified activities; and
 - (iv) the dates in respect of which the licence is valid.

(7) The Chief Environmental Officer may vary, amend or revoke a licence, or any conditions attached to such licence, upon breach of a licence condition or upon the commission of an offence under these regulations or for any other reason the Chief Environmental Officer considers necessary or expedient to ensure the objectives of the Marine Management Plan are achieved.

(8) If a licence is revoked under sub-regulation (7), the Chief Environmental Officer may preclude the person from obtaining any licence either indefinitely or for a set period of time and may impose further restrictions on any such licence granted in the future.

Appeal

7. A person may appeal a decision of the Chief Environmental Officer made pursuant to these regulations in the manner prescribed under section 10.

Marine Recreation Notices

8. (1) The Chief Environmental Officer may, if the Chief Environmental Officer considers it necessary for the management of a Marine Protected Area, issue a notice regulating tourism and recreation activities by—

- (a) specifying the manner in which a person is required to act when interacting with marine species, including but not limited to—
 - (i) the minimum distance that must be maintained between a person and a specified marine species,
 - (ii) the minimum distance that must be maintained between a vessel and a specified marine species,
 - (iii) the maximum number of persons permitted to interact with a specified species in specific circumstances,
 - (iv) the maximum duration of any single interaction with a marine species;
- (b) creating a temporal prohibition on interaction with any specified marine species during any specified period; or
- (c) creating a spatial prohibition on interaction in specified areas.

(2) A notice issued under sub-section (1) may have effect immediately upon being made but must, as soon as reasonably practicable be published in the Gazette and the Chief Environmental Officer must serve a copy of such notice to all persons with a valid licence granted under these Regulations.

Diving, free diving or snorkelling with specified species prohibited

- 9.** Further to regulation 4 and 5 a person must not knowingly and intentionally—
- (a) scuba dive with whale sharks, otherwise than in accordance with a licence granted under section 25; or
 - (b) scuba dive, snorkel or free dive with whales, dolphins or porpoises, otherwise than in accordance with a licence granted under section 25.

Criminal offence provisions

10. (1) A person who contravenes regulation 4 commits an offence.
Penalty in accordance with section 109(4).

(2) A person who for payment or reward, conducts or facilitates a regulated activity referred to in regulation 5, whether by vessel or by leading a tour from shore in contravention of regulation 6(1)(b) commits an offence.
Penalty in accordance with section 109(4).

(3) A person who fails to comply with a condition of a licence commits an offence.
Penalty in accordance with section 109(4).

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2023.

(4) A person who falsely holds themselves out as having a valid licence commits an offence.

Penalty in accordance with section 109(4).

(5) A person who participates in any activities in contravention of a notice issued under regulation 8(1), commits an offence.

Penalty in accordance with section 109(4).

(6) A person who scuba dives, snorkels or free dives with any species in contravention of the prohibition in regulation 9 commits an offence.

Penalty in accordance with section 109(4).

(7) Subject to sub-regulation (8), it is a defence to a charge of committing an offence under sub-regulation (4) and under sub-regulation (5) to prove that the defendant took all reasonable steps and exercised all due diligence to avoid committing the offence.

(8) For the purpose of sub-regulation (6) “reasonable steps” include applying or following any relevant code of practice.

(9) If a defence provided by sub-regulation (6) involves an allegation that the commission of the offence was due to the act or default of another person, the person charged is not, without leave of the court, entitled to rely on the defence unless, within a period ending seven clear days before the hearing, the person has served upon the prosecutor a notice giving any information identifying or assisting in the identification of the other person as was then in the possession of the person charged.

(10) The master of a vessel engaged in any activity that constitutes an offence under these regulations, may be found liable for that offence, in addition to any liability to which any other person is subject, if that activity was performed with the master’s knowledge, consent or acquiescence, or if the master did not exercise reasonable diligence to prevent the commission of that offence.

SCHEDULE

FEES
(Regulation 6)

(a) Application fee - £20

(b) Licence fee - £100

HB 16 *Marine Regulations (Tourism and Interaction with Marine Life), No. 9*
2023.

Made by the Governor on the advice of the Executive Council this 9th day of October 2023.

Nigel Phillips CBE
Governor

EXPLANATORY NOTE

(This note is not part of the Regulations)

The purpose of these Regulations is to manage tourism and the interaction of persons with marine wildlife in the marine protected area to minimise any impact from such activities on the marine environment.