Tonga

WHALE WATCHING AND SWIMMING REGULATIONS

Chapter 17.17.01

2020 Revised Edition

Tonga

WHALE WATCHING AND SWIMMING REGULATIONS 2013

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Tonga

WHALE WATCHING AND SWIMMING REGULATIONS[1]

Made under section 11 of the Whale Watching and Swimming Act

Commencement [17th May 2013]

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1 Short Title

These Regulations may be cited as the Whale Watching and Swimming Regulations.

2 Interpretation

In these Regulations, unless the context otherwise requires —

"commercial fishing" means taking fish for sale within Tonga or Tongan fisheries waters;

"commercial services" or **"services"** means any services carried on for any form of hire or reward in which persons are transported, conveyed, conducted, or guided where either the purpose or a significant purpose is to watch or swim with any whale within Tongan fisheries waters;

"calf" means a young whale, approximately half the size or less, of adult individuals of its species;

"Minister" means the Minister responsible for tourism;

"fisheries waters" means the territorial waters of the Kingdom, internal waters including lagoons, and such other waters over which the Kingdom from time to time claims sovereign rights or jurisdiction with respect to the marine living resources;

"harass" includes any act that —

(a) causes or is likely to cause injury or distress to any whale; or

(b) disrupts significantly or is likely to disrupt significantly the normal behavioural patterns of any whale;

"leap-frogging" means the manoeuvre of moving past a vessel or vessels that may be engaged in whale-watching or whale-swimming in order to place a vessel or swimmers in the path of a whale so as to achieve the closest approach to it;

"**licence**" means a whale watching licence or whale watching and swimming licence granted and issued under the Act and in the form prescribed in these Regulations;

"pod" means an individual or a group of more than one whale;

"prohibited activity" means any activity contrary to a condition specified in regulations 9, 10 or 11 of these Regulations;

"service provider" means a whale watching provider or a whale watching and swimming provider;

"Special Interaction Permit" means a permit issued by the Minister in consultation with the Ministry of Agriculture, Foods, Forests and Fisheries and the Ministry responsible for environment and climate change for interacting with whales for the purpose of scientific research, education, photography (still and film) including by aircraft;

"whale swimming provider" means a person or company who has been granted a Whale Watching and Swimming licence; and

"whale watching provider" means a person or company who has been granted a Whale Watching licence.

3 Application

(1) These Regulations shall apply throughout the Kingdom and Tongan fisheries waters.

(2) Nothing in these Regulations applies to any fishing vessel engaged in commercial fishing, unless —

(a) the vessel is also engaged in commercial services; or

(b) the vessel deviates off course to engage in recreational viewing of or swimming with whales.

(3) Nothing in these Regulations applies to any locals travelling to other islands, unless –

(a) they are also engaged in commercial services; or

(b) they deviate off course to engage in recreational viewing of or swimming with whales.

4 Purpose

The purpose of these Regulations is to provide for:

(a) the management and licensing of commercial services; and

(b) the protection, conservation, and management of whales by:

(i) regulating human contact or behaviour with whales either by service providers or other persons, in order to prevent adverse effects on and interference with whales; and

(ii) prescribing appropriate behaviour by service providers and other persons seeking to come into contact with whales.

5 Application for Licence

(1) An application for a licence shall be made in writing to the Minister in the form prescribed in Schedule 1.

(2) The Minister upon granting an application under sub-regulation (1) shall issue the licence in the form set out in Schedule 3 and may impose such conditions as he considers proper.

(3) The fees payable for an application for a licence are those set out in Schedule 4.

(4) In considering any application for a licence, the Minister shall have regard to the following:

(a) that the commercial services should not be contrary to the purposes and provisions of the Act and these Regulations;

(b) whether the commercial services is likely to have any significant adverse effect on the behavioural patterns of the whales to which the application refers, having regard to, among other things, the number and effect of existing commercial services and the applicant's proposed plan of operation;

(c) that it should be in the interest of the conservation, management, or protection of the whales that a licence be issued;

(d) whether the applicant, and such of the applicant's staff who may come into contact with whales, have sufficient experience with whales;

(e) whether the applicant, and such of the applicant's staff who may come into contact with whales have sufficient knowledge of the local area and of sea and weather conditions;

(f) whether the applicant and such of the applicant's staff who may come into contact with whales have convictions for offences involving mistreatment of animals;

(g) whether the applicant and such of the applicant's staff who may come into contact with whales have the required skills and knowledge to provide valued services to customers; and

(h) that the commercial services should not be contrary to the provisions of relevant legislation which may include but is not limited the Business Licence Act, Foreign Investment Act and Shipping Act.

(5) An application for a licence shall be accompanied by the following required documentation:

(a) a third party public liability insurance policy and a copy of the insurance policy;

(b) approved seaworthiness certification from the Marine Division of the Ministry responsible for transport for all vessels used for commercial services;

(c) valid Master's certificate; and

(d) Certificate of a Coasting Trading licence issued by the Marine Division of the Ministry responsible for transport.

(6) The Minister shall issue, where appropriate, to every service provider a certificate identifying each vessel operating under a licence and such certificate shall be affixed at all times to the vessel.

(7) The Minister may, by notice published in the gazette, limit the number of licences, and the number of vessels certified under each licence, granted and issued for a specified period of time where the Minister believes on reasonable grounds that:

(a) it is necessary for the management, protection or conservation of whales; and

(b) there is a need to sustain the economic viability of the whale watching and whale swimming industry in the Kingdom.

6 Duration of Licence

(1) A Licence granted and issued under these Regulations shall be valid for 3 years, as of the date of issuance, and may be renewed upon application under these Regulations.

(2) A service provider shall throughout the duration of the validity of a licence, whether it be the initial licence or a renewed licence under these Regulations, submit before 31 December of each year to the Ministry a notice of continued activity as prescribed in Schedule 7 and accompanied by the prescribed annual notification fees.

7 Renewal of Licences

(1) A licence issued by the Minister may be renewed for the duration of 3 years upon expiry of the initial or renewed licence.

(2) A licence renewal application shall be:

(a) made in the form prescribed in Schedule 2;

(b) accompanied by the renewal application fee as prescribed in Schedule 4; and

(c) accompanied with copies of required documents provided in regulation 5(5).

8 Suspension or cancellation of a Licence

(1) A licence may be suspended or cancelled by the Minister under any of the following conditions, if:

(a) the application form or any subsequent submittals to the Minister in relation to the licence contains any material misrepresentation or false statement;

(b) any information given in the application or any other submittals to the Minister related to the business licence was materially incorrect so as to create a false impression of the ownership of the business or the nature of its business activity;

(c) the service provider carries on a prohibited activity;

(d) a condition imposed on the licence is breached or a necessary approval or permit from another government agency is absent or cancelled;

(e) the service provider or members of its staff are convicted of an offence under the Act or these Regulations; or

(f) the service provider is a foreign national and is found to be operating without a valid business visa.

(2) Where the Minister suspends or cancels a licence he shall notify the service provider in writing of the reason for suspension or cancellation.

(3) The Minister may temporarily suspend some or all licences issued under the Act and these Regulations for such period of time as he deems necessary due to:

(a) a major disturbance to the whale population in the Kingdom which has been identified;

(b) the poor health of any whale population;

(c) the serious injury or death of a whale watcher, swimmer or whale or a serious accident involving a vessel certified under licence; or

(d) the failure of a licence holder to comply with the terms of the licence, the Act or these Regulations.

9 Conditions governing all interaction around any whale

Every service provider and every person coming into contact with whales shall comply with the following conditions:

(a) a service provider shall not have more than one of its certified vessels under licence interact with any pod in one day, unless two certified vessels under licence are required, one solely for whale watching purposes and the other solely for whale swimming purposes;

(b) a person shall use their best endeavours to operate vessels and aircraft so as not to disrupt the normal movement or behaviour of any whale;

(c) stop contact with any whale at any sign of the animal becoming disturbed or alarmed;

(d) no person shall cause any whale to become separated from a group of whales or cause any members of such a group to be scattered;

(e) no rubbish or food shall be thrown near or around any whale;

(f) no sudden or repeated change in the speed or direction of any vessel shall be made except in the case of emergency;

(g) where a vessel stops for the passengers to watch any whale, the engines shall be placed in neutral or be switched off within a minute of the vessel stopping;

(h) no person shall disturb or harass any whale;

(i) a vessel shall not chase, encircle, block the direction of travel of, or position itself in the middle of a pod of whales;

(j) no person shall touch or feed any whale;

(k) no person shall place a vessel up wind of, or in a position where it will drift into, the direction of travel of any whale;

(l) any vessel within 10 metres of a whale shall move at a constant slow speed no faster than the slowest whale in the vicinity, or at idle or "no wake" speed; and

(m) vessels departing from the vicinity of any whale shall proceed slowly at idle or "no wake" speed until the vessel is at least 300 metres from the nearest whale.

10 Special conditions applying to whales

In addition to complying with the conditions set out in regulation 9 every commercial service and every person coming into contact with any whale shall also comply with the following conditions:

(a) no person shall be in the water with any whale unless he enters the water from the certified vessel of a whale swimming provider;

(b) no operator of a private vessel may approach closer than 300 metres to any whale unless it complies with regulation 11;

(c) whale watching providers may approach an adult whale no closer than 10 metres and any pod containing a calf, no closer than 50 metres;

(d) whale watching and swimming providers may approach only in accordance with regulation 9;

(e) if a whale approaches a vessel, the master of the vessel shall, wherever practicable:

(i) manoeuvre the vessel so as to keep out of the whale's direction of travel; and

(ii) maintain a minimum distance of 300 metres from the whale unless the vessel is operated by a service provider;

(f) a vessel shall approach a whale from a direction that is parallel to the whale and slightly to the rear of the whale and never in the area directly in front or behind a whale;

(g) a helicopter shall not get closer (in height or distance) than 500 metres to a whale;

(h) a plane shall not get closer (in height or distance) than 300 metres to a whale;

(i) no person shall make any loud or disturbing noise near whales;

(j) no person shall use Self Contained Underwater Breathing Apparatus (SCUBA) for diving or swimming with whales;

(k) no person shall use artificial light sources around whales;

(l) no person shall use jet skis or motorized swimming aids for whale watching or swimming;

(m) no person shall use a jet ski to approach closer than 2,000 metres of any whale; and

(n) the maximum interaction time of any vessel or vessels with any individual pod of whales including a mother and a calf pairing is one and a half hours unless under a Special Interaction Permit under regulation 13. After any one-and-a-half hour interaction, during which a service provider may leave the pod and another may interact with it, no vessel may attempt to interact with the pod for at least one and a half hours.

11 Special conditions applying to swimming with whales

In addition to complying with regulations 9 and 10 every service provider shall also comply with the following conditions:

(a) only whale swimming providers are permitted to put swimmers in the water with whales;

(b) each service provider shall enter into and sign a written waiver agreement with each client, in the form set out in Schedule 5;

(c) no more than four clients plus one trained local guide per certified vessel may be in the water with any one pod of whales at a time;

(d) only one certified vessel under licence may put swimmers in the water with any one pod of whales;

(e) each licenced service provider is solely responsible for determining whether the conditions for clients to swim with whales are safe;

(f) vessels carrying six or more passengers shall carry a minimum of two crew including the master;

(g) vessels with swimmers in the water shall fly the alpha flag;

(h) vessels shall carry an approved first aid kit and at least one member of the crew is to have a current First Aid Certificate or has first aid knowledge to the satisfaction of the Minister;

(i) all vessels shall be sea-worthy in accordance with the Shipping Act;

(j) all service providers shall have third party liability insurance coverage;

(k) if a second service provider arrives, the approaching vessel shall make contact by VHF radio (Channel 74 – low power) and stay outside 100 metres;

(l) the practice of leap-frogging is prohibited;

(m) no swimmer shall approach any whale closer than 5 metres;

(n) no vessel shall approach any whale closer than 10 metres for the purposes of dropping off or picking up any swimmer except in an emergency where the safety of a swimmer is at risk;

(o) any dinghy, small boat, kayak that is launched for the purpose of whale watching and approaches closer than 100 metres to a whale shall carry a handheld VHF radio; and

(p) two or more kayaks within 100 metres of a whale shall be considered as one provider.

12 Offences and penalties

(1) Any person who breaches any of the conditions in regulations 9, 10 or 11 commits an offence and is liable upon conviction:

(a) if it is an individual:

(i) in the case of a first time offence to a fine of not less than $1,000 and not exceeding $5,000 or to imprisonment for a period not exceeding 18 months or both; and

(ii) in the case of a subsequent offence to a fine of not less than $1,000 and not exceeding $10,000 or to imprisonment for a period not exceeding 3 years or both,

(b) if it is a company:

(i) in the case of a first time offence to a fine of not less than $10,000 and not exceeding $20,000; and

(ii) in the case of a subsequent offence to a fine of not less than $10,000 and not exceeding $ 50,000.

(2) If a company is convicted of an offence against these regulations, every director and every person concerned in the management of the company shall be guilty of a like offence if it is proved that the act which constituted the offence took place with his authority, permission or consent.

13 Special interaction permit

(1) An application for a Special Interaction Permit shall be made in writing to the Minister in the form prescribed in Schedule 6.

(2) Every applicant for a Special Interaction Permit shall name a local guide or observer from a service provider who will be responsible for ensuring compliance with the conditions of the Permit.

(3) The Minister may grant and issue a permit for any period of time not exceeding one year.

(4) Fees payable for Special Interaction Permits are those prescribed in Schedule 4.

14 Exemption for rendering assistance

Nothing in these Regulations shall apply to persons or vessels rendering assistance to:

(a) stranded or injured whales; or

(b) vessels or passengers in distress.

15 Transitional

All persons or businesses currently operating whale watching or whale swimming services at the commencement of these Regulations and who want to continue that service, shall within one month from the commencement of these Regulations, apply for a licence under the Act and these Regulations.

SCHEDULE 1

APPLICATION FOR A WHALE WATCHING LICENCE OR WHALE SWIMMING LICENCE

NOTE: All commercial services, and their masters, must meet the statutory requirements relating to licensing and qualifications, as the case may require.

PLEASE attach any supporting documents and further pages if space is not adequate for the details required.

1. Applicant's Details

(a) Name (Company, Partnership or Individual – Trade names alone are not acceptable). Please include contact details of a designated contact person for all licence processing matters:

(b) Address

(c) Postal Address (if different from above)

(d) Telephone – Business: Private:

(e) Fax:

(f) Email Address:

(g) Website (if applicable):

2. Details of proposed operation

Specify:

(a) Total number of boats

(b) Description of boat(s): size, model, construction, motive power, carrying capacity:

Boat 1:

Boat 2:

Boat 3:

(c) Details of all employees to be engaged in the commercial services:

Names	Employment	Expatriate/Local	Full Time/Part Time

(d) Base of operation:

(e) Please define the proposed area of operation (a map must be included) and where appropriate, the specific locations where contact with whales is proposed:

(f) Frequency of trips per month

(g) Time of the year you intend to operate:

(h) Maximum number of passengers or persons per trip:

3. Describe in detail your intended operation. This must include information on all aspects of the activity, including the following:

(a) The nature of contact with whales;

(b) Whether swimming with whales is intended;

(c) How contact will be initiated and what the process will be;

(d) Maximum duration of contact with whales;

(e) A detailed procedure and chronology of the trips.

4. Please set out the experience with whales of the proposed applicant and such of the applicant's staff who may come into contact with whales:

5. Please set out the knowledge of the local area and sea/weather conditions of the proposed applicant and such of the applicant's staff who may come into contact with whales:

6. Please set out details of any convictions of the proposed applicant and of those employees of the applicant who may come into contact with whales, for offences against any Act involving the mistreatment of animals:

7. Name, occupation, address and telephone number of two independent persons who will vouch for the applicant.

(i)

(ii)

Application Form

Signed:

Name:

Application date:

Application fee of $.....

STATUTORY DECLARATION

This declaration must accompany the application and is to be signed by the applicant, or in the case of a company, by the Managing Director or Chief Executive Officer. Where the application is being made by a partnership, each and every partner needs to make and sign the declaration in the form indicated below:

I/We

(i)
(ii)
(iii)
(iv)
(v)_____
[Full Name]
of
(i)
(ii)
(iii)
(iv)
(v)_____
[PLACE] [OCCUPATION]

do [severally] solemnly declare that all the information contained in this application form is true and correct, and I [we severally] make this solemn declaration conscientiously believing the same to be true and correct.

(i) (iv)
(ii) (v)
(iii)_____
[Signature(s) of declarant(s)

Declared at this day of 20

Foreign Investors Only

Where the business is a foreign investment business under the Foreign Investment Act 2002, a Foreign Investment Certificate is REQUIRED before issuance of a Licence. Please attach a copy of the Certificate ONLY if you are a foreign investor (i.e. do not hold a Tongan passport or legal residence in Tonga).

SECTION 2 – ADDITIONAL INFORMATION

NOTE: This information will assist in your application for a Business Licence.

Before you obtain a licence you may be required to obtain other governmental approvals, permits or satisfactory inspection results. The following is a list of requirements that each applicant is required to obtain. By submitting this application for a licence you certify under penalty of law that all such governmental approvals, permits or satisfactory inspection results have been obtained.

- A third party public liability insurance policy and a copy of the insurance policy;
- Approved seaworthiness certification from the Marine Division of the Ministry responsible for Transport for all vessels used for commercial services;
- Valid Master's certificate;
- Certificate of a Coasting Trading licence issued by the Marine Division of the Ministry responsible for transport;

SCHEDULE 2

APPLICATION FOR RENEWAL OF WHALE WATCHING LICENCE OR WHALE SWIMMING LICENCE

NOTE: Every applicant must cover the prescribed fee of processing the application pursuant to the Whale Watching and Swimming Regulations 2013, payable in advance.

Application fees are not refundable if the application is unsuccessful.

NOTE: All service providers, and their employees, must meet the statutory requirements relating to licensing and qualifications, as the case may require.

PLEASE attach any supporting documents and further pages if space is not adequate for the details required.

1. Applicant's Details

(a) Name (Company, Partnership or Individual – Trade names alone are not acceptable). Please include contact details of a designated contact person for all licence processing matters:

(b) Address

(c) Postal Address (if different from above)

(d) Telephone – Business: Private:

(e) Fax:

(f) Email Address:

(g) Website (if applicable):

2. Details of operation

Specify:

(a) Total number of boats

(b) Description of boat(s): size, model, construction, motive power, carrying capacity:

Boat 1:

Boat 2:

Boat 3:

(c) Details of all employees to be engaged in the commercial operation:

Names	Employment	Expatriate/Local	Full Time/Part Time

(d) Average Annual Turnover
Year 1;
Year 2:
Year 3:

(e) Area of Operation:

(i) Base of operation:

(ii) Indicate area of operation (a map must be included) and where appropriate, the specific locations where contact with whales was made:

(f) Indicate the time of the year that your business is in operation

(g) During specified time in (f) indicate frequency of trips made each year

(h) During specified time in (f), indicate the average number of passengers or persons per trip:

3. Describe in detail your operation. This must include information on all aspects of the activity, including the following:

(a) The nature of contact with whales;

(b) Whether swimming with whales is intended;

(c) How contact will be initiated and what the process will be;

(d) Maximum duration of contact with whales;

(e) A detailed procedure and chronology of the trips.

4. Please set out the experience with whales of the service provider and such of the provider's staff who may come into contact with whales:

5. Please set out the knowledge of the local area and sea/weather conditions of the service provider and such of the provider's staff who may come into contact with whales:

6. Please set out details of any convictions of the service provider and of those employees of the provider who may come into contact with whales, for offences against any Act involving the mistreatment of animals:

7. Name, occupation, address and telephone number of two independent persons who will vouch for the applicant.

(i)

(ii)

Application Form

Signed:

Name:

Application date:

Application fee of $.....

STATUTORY DECLARATION

This declaration must accompany the application and is to be signed by the applicant, or in the case of a company, by the Managing Director or Chief Executive Officer. Where the application is being made by a partnership, each and every partner needs to make and sign the declaration in the form indicated below:

I/We
(i)
(ii)
(iii)
(iv)
(v)_____
[Full Name]
of

(i)
(ii)
(iii)
(iv)
(v)_____
[PLACE] [OCCUPATION]

do [severally] solemnly declare that all the information contained in this application form is true and correct, and I [we severally] make this solemn declaration conscientiously believing the same to be true and correct.

(i) (iv)
(ii) (v)
(iii)_____
[Signature(s) of declarant(s)

Declared at this day of 20

Foreign Investors Only

Where the business is a foreign investment business under the Foreign Investment Act 2002, a Foreign Investment Certificate is REQUIRED before issuance of a Licence. Please attach a copy of the Certificate ONLY if you are a foreign investor (i.e. do not hold a Tongan passport or legal residence in Tonga).

SECTION 2 – ADDITIONAL INFORMATION

NOTE: This information will assist in your application for a Business licence.

Before you obtain a licence you may be required to obtain other governmental approvals, permits or satisfactory inspection results. The following is a list of requirements that each applicant is required to obtain. By submitting this application for a licence you certify under penalty of law that all such governmental approvals, permits or satisfactory inspection results have been obtained.

- A third party public liability insurance policy and a copy of the insurance policy;
- Approved certification from the Marine Division of the Ministry responsible for Transport for all vessels used for commercial services;
- Valid Master's certificate;
- Certificate of a Coasting Trading licence issued by the Marine Division of the Ministry responsible for transport;

SCHEDULE 3

WHALE WATCHING LICENCE OR WHALE SWIMMING LICENCE

MINISTRY OF COMMERCE, TOURISM AND LABOUR

Regulation 5(2)

WHALE WATCHING LICENCE OR WHALE SWIMMING LICENCE

LICENCE NO :

Pursuant to the Whale Watching and Swimming Regulations 2013
[insert name of Licencee]

Of

[insert address for business]

is hereby authorized to * be a whale watching service provider or
whale swimming service provider to carry passengers to view whales and/or for whale swimming.

Conditions of Licence:

*Date of Issue :*_____ *Expiry Date Unless Renewed* **:** _____

……
Minister responsible for tourism

** cross out if not applicable*

SCHEDULE 4

FEES

Item	Activity	Notes	Fee ($TOP)
1	Application fee for any Licence or Permit	Payable whether application is approved or not	100
2	Whale Watching Licence	Payable when Licence is Granted	3,000 per certified vessel
3	Annual Notification Fee for a Whale Watching Licence		1,000
4	Renewal of Whale Watching Licence	Payable when renewal of Licence is granted	2,000 per certified vessel
5	Whale Swimming Licence combined with Whale Watching Licence	The licence allows Whale Swimming and Whale Watching and is a combined licence. Payable when Licence is granted	3,450 per certified vessel
6	Annual Notification Fee for a Whale Swimming Licence combined Whale Watching Licence	This licence relates to Whale Swimming and Whale Watching	1,150
7	Renewal of Whale Swimming Licence combined with Whale Watching Licence	Payable when renewal of Licence is granted	2,300 per certified vessel
8	Special Interaction Permit	Payable when permit is granted, not exceeding one year	2,500

SCHEDULE 5

FORM OF WAIVER & INDEMNITY.

To: Service Provider and All Their Employed Staff.

Activity: Whale Watching or Whale Swimming.

Equipment: Mask, fins and snorkel.

I the above named (hereinafter called the Provider) hereby covenant you:

A Knowledge

1 I undertake full responsibility for having full knowledge and awareness of the hazardous activities that I wish to undertake and all of the risks of personal injury and property damage loss. I expressly exonerate you from any responsibility for providing me with the knowledge of the risks of injury whether minor or serious. All of those items are my full responsibility.

B Invitation to Activity

2 I invite you to assist me to undertake the activity nominated by me, but in all respects upon the premise that:

(a) it is my responsibility to decide whether or not to engage in any physical activity:

(b) it is my risk and responsibility before engaging in any hazardous activity to:

(i) accept full responsibility for inviting you to participate with me;

(ii) exonerate you and all of your associates, employees, the Government, contractors, and assigns from any personal injury, damage or death should result; and

(iii) indemnify you against any of my actions should they give rise to personal injury or death, or property loss or damage on the part of any other person.

3 I acknowledge that you have made it plain that I am electing a hazardous activity, that there is no criminal or civil remedy whatsoever available to me against you or your company or your associates, employees, the Government, invitees in any way whatsoever, and that I must undertake the hazard on my own personal knowledge, responsibility and acceptance.

4 I undertake and acknowledge that:

You have not offered any particular expertise or skill and are not expert for the purpose of this contract. You will provide an opportunity for me to carry out my chosen hazardous activity and direct me to potential areas and routes but this is the whole extent of the service that you provide.

I will pay you a fee for providing the opportunity and if requested equipment for that opportunity and if requested you or a member of your staff will accompany me. I do not rely on your skill or judgment. I expressly acknowledge that in all the circumstances it is unreasonable for me to rely on your skill and judgement and I do not do so.

C Property

5 I undertake not to do any action which may cause loss or damage to your property, or the property of any other person or injury or loss to you or any other person who is present by reason of your invitation, employment, contractual arrangements or otherwise.

D Fee

6 I undertake to pay you the agreed fee to help me facilitate my agreed wish to undertake a hazardous activity with full knowledge it is my risk and responsibility and on these terms.

E Indemnity

7 I indemnify you expressly from and against all liability from any injuries or damage, and from any claim or prosecution by me, my family, estate, agents, heirs or assigns whatever, arising in any way from my participation in any or all activities in association with you or your company.

F Special Cancellation Rights

8 I formally acknowledge that if at any time you notify me that you are not prepared to accompany me or facilitate my nominated hazardous activity then I will accept and abide by your direction that you are entitled to cancel any arrangements with me.

G Acknowledgement

9 I expressly acknowledge that I have carefully read and considered the above, and that it is no defence that I lack knowledge and information AND I accept that I am not entitled to suggest that any knowledge or information is not available to me.

Client Name: _____**Witness Name**: _____

Address: _____ _____

Signature: _____ _____

SCHEDULE 6

SPECIAL INTERACTION PERMIT

(Regulation 13)

For the purpose of Scientific Research, Education, Photography (still and film) and or by aircraft

1. Applicant
   (a) Name: _____
   (b) Company or institution:_____
   (c) Address: _____
   (d) Telephone: _____
   (e) Email: _____
   (f) Mobile: _____
   (g) Local number:_____

2. Name of local guide or observer_____
   (responsible for compliance with the conditions of the permit).

3. Type and number of vessels intended to use.

   _____

   (a) Proposed area of operation.

   _____

   (b) The proposed base of operation.

   _____

   (c) The duration of the trip proposed.

   _____

(d) The frequency of the trip proposed.

_____

(e) The proposed kind of contact with the whales.

_____

(f) The maximum number of passengers intended to be taken at any one time.

_____

(g) The species of whales with which the operation will have contact.

_____

(h) The masters proposed to be engaged in the operation and their qualification.

_____

4. The experience with whales of the proposed operation and such as the operator's proposed staff who may come into contact with whales.

5. The detail of any convictions of the proposed operator and of those employees of the operator who may come into contact with whales, for offences involving the mistreatment of animals.

6. The details of any educational material to be provided or educational aspects of the proposed operation.

7. Fees paid_____

*Permit may be issued to a period not exceeding one year.

Approved/not approved

SCHEDULE 7

WHALE WATCHING OR WHALE SWIMMING NOTICE OF CONTINUED ACTIVITY

Note
If there is insufficient space on the form to supply information required, attach a separate sheet containing the information set out in the prescribed format.

For official use only
Document number

Place barcode here

1. Name of business

2. Taxpayer Identification number

3. Ownership structure

☐ No change

4. Activities

☐ **Whale Watching only; or**

☐ **Whale Watching and Whale Swimming**

5 . Whale Watching/ or Whale Watching and Swimming Specific requirements

If you are engaged in Whale Watching or Whale Watching and Swimming you are required to obtain other governmental approvals, permits or satisfactory inspection results. The following is a list of requirements that each provider is required to obtain. By submitting this Whale Watching and Swimming annual notification you certify that under penalty of law that all such governmental approvals, permits or satisfactory inspection results have been obtained or will be obtained prior to commencing any of these activities.

☐ A third party public liability insurance policy and a copy of the insurance policy;

☐ Approved certification from the Marine Division of the Ministry responsible for transport for all vessels used for commercial services;

☐ Valid Master's certificate; and

☐ Certificate of a Coasting Trading Licence issued by the Marine Division of the Ministry responsible for transport.

6. Addresses

☐ No Change

If there are changes to the addresses related to the business from those listed on the existing Whale Watching licence or Whale Watching and Swimming licence, provide details below.

Principal place of business
This is the primary address at which business is conducted.
It must be a specific street location.
A P.O BOX is not allowed.

Island Group

Additional places where business is conducted
If there are more than three additional locations at which business will be conducted please attach a separate sheet containing the information set out in the prescribed format.

Island Group

All addresses should be in BLOCK letter format

Island Group

Postal address (if different)
Postal address to which communications may be sent.

Island Group

Email address	

7. Waiver Agreement

We certify that in compliance with regulation 11(b) every client during the year has signed a waiver agreement in the form in Schedule 5 and we hold these available for inspection.

Whale Watching - Number of clients in the past year	……..(*here insert total number of clients)*
Whale Watching and Whale Swimming - Number of clients in the past year	……*(here insert total number of clients)*

8. Signed by authorized person(s)

I/We declare the above information is true and complete and that I/We are eligible to hold a Whale Watching/ or Whale Watching and Swimming licence under the Act. I/We understand that if it is subsequently discovered that any statement contained herewith is false or misleading, or that relevant information has been withheld, or that I/We are not qualified to hold a business licence, my/our application may be disqualified or, if a Whale Watching/ or Whale Watching and Swimming licence has been issued, it may be revoked, and that I/We may be subject to prosecution for making a false declaration.

Name:

Signature

Designation: ☐ Owner or authorised person ☐ Date

Name:

Signature

Designation: ☐ Owner or authorised person ☐ Date

Name:

Signature

Designation: ☐ Owner or authorised person ☐ Date

9. Lodged by

Name:
Address

Telephone:

Email (optional):

Please deliver documents to Ministry of Commerce, Tourism and Labour

ENDNOTE

ENDNOTES

[1] GE 16/2003