

Shark Cage Diving (Permitting and Safety) Bill

Member's Bill

Explanatory note

General policy statement

This Bill seeks to regulate the operation of commercial shark cage diving businesses and in doing so avoid, remedy, or mitigate adverse effects of the operation on sharks and ensure the safety of the public in the vicinity of the operation.

It also allows the Department of Conservation to put in place and to enforce minimum standards of operation by way of permit and includes an offence should shark cage diving operations occur without the grant of a permit.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force 6 months after the date on which it receives the Royal assent.

Clause 3 is the purpose clause. It provides that the purpose of the Bill is to regulate commercial shark cage diving operations.

Clause 4 is the interpretation clause.

Clause 5 is the application clause. It provides that the Bill applies throughout New Zealand and New Zealand fisheries waters, but not in respect of any fishing vessel engaged in commercial fishing unless the vessel is also engaged in a commercial shark cage diving operation.

Clause 6 provides that the transitional, savings and related provisions set out in *Schedule 1* have effect according to their terms. *Schedule 1* provides that there are currently no transitional, savings, or related provisions for this Bill.

Clause 7 provides that the Act will bind the Crown.

Clause 8 prohibits commercial shark cage diving operations without a permit.

Clause 9 sets out the requirements for an application for a commercial shark cage diving permit.

Clause 10 provides for public consultation on applications for commercial shark cage diving permits.

Clause 11 deals with the criteria for a grant of a permit by the Director-General.

Clause 12 sets out requirements which the Director-General must be satisfied of, before they may grant a permit.

Clause 13 specifies the conditions which may be attached to a permit. This includes a requirement to comply with a code of practice approved under the Bill.

Clause 14 provides for the revocation or suspension of a permit.

Clause 15 prohibits a permit from being transferred without the written consent of the Director-General.

Clause 16 requires the Director-General to maintain a publicly available register of the permits granted under the Bill.

Clause 17 provides that it is an offence to knowingly carry out a commercial shark cage diving operation without a permit or contrary to the conditions of a permit.

Clause 18 requires the Minister to prepare and approve a code of practice for the purposes of the Bill.

Clauses 19 and 20 deal with publication, commencement and access to the approved code of practice.

Clause 21 empowers the making of regulations under the Bill.

Sarah Dowie

Shark Cage Diving (Permitting and Safety) Bill

Member's Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Preliminary provisions		
3	Purpose	2
4	Interpretation	2
5	Application	3
6	Transitional, savings, and related provisions	3
7	Act binds the Crown	3
Part 2		
Provisions relating to permits		
8	Commercial shark cage diving operations without permit prohibited	4
9	Contents of application for permit	4
10	Public consultation on application for permit	5
11	Grant of permit	5
12	Requirements to be satisfied before grant of permit	6
13	Conditions of permit	6
14	Revocation or suspension of permit	6
15	Permit not transferable	7
16	Register of permits	7
17	Offence to knowingly carry out commercial shark cage diving without permit or contrary to permit	7

Part 3		
Commercial shark cage diving code of practice		
18	Code of practice must be prepared and approved	7
19	Publication and commencement of approved code of practice	8
20	Access to approved code of practice	8
Part 4		
Miscellaneous provisions		
21	Regulations	8
Schedule 1		
Transitional, savings, and related provisions		
		10

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Shark Cage Diving (Permitting and Safety) Act **2018**.

2 Commencement

This Act comes into force 6 months after the date on which it receives the Royal assent. 5

Part 1
Preliminary provisions

3 Purpose

The purpose of this Act is to regulate commercial shark cage diving operations and, in particular,— 10

- (a) to establish a permitting regime for commercial shark cage diving operators: 15
- (b) to ensure that potential adverse effects of commercial shark cage diving operations, including adverse effects on public safety, are avoided, remedied, or mitigated.

4 Interpretation

In this Act, unless the context otherwise requires,—

commercial operator or **operator** means a person who carries on a commercial shark cage diving operation 20

commercial shark cage diving operation or **operation** means an operation carried on for any form of hire or reward in which persons are transported, conveyed, conducted, or guided for the purpose of shark cage diving in New Zealand or in New Zealand fisheries waters

Director-General means the Director-General of Conservation 25

effect means any effect on people, the environment, or the economy, and includes—

- (a) any positive or adverse effect; and
- (b) any temporary or permanent effect; and
- (c) any past, present, or future effects; and 5
- (d) any cumulative effect which arises over time or in combination with other effects, regardless of the scale, intensity, duration, or frequency of the effect; and
- (e) any potential effect of high probability; and
- (f) any potential effect of low probability which has a high potential impact 10

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand fisheries waters has the same meaning as in section 2(1) of the Fisheries Act 1996 15

permit means a permit granted under this Act

shark means all species commonly known as sharks; and includes great white sharks

shark cage diving means diving with the use of an underwater cage for the purpose of viewing sharks. 20

5 Application

- (1) This Act applies throughout New Zealand and New Zealand fisheries waters.
- (2) Nothing in this Act applies in respect of any fishing vessel while the vessel is engaged in commercial fishing (as defined in section 2(1) of the Fisheries Act 1983), unless the vessel is also engaged in a commercial shark cage diving operation. 25

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

7 Act binds the Crown

This Act binds the Crown. 30

Part 2

Provisions relating to permits

- 8 Commercial shark cage diving operations without permit prohibited**
 No person may carry out a commercial shark cage diving operation, except with a permit to do so issued by the Director-General under **section 11**. 5
- 9 Contents of application for permit**
- (1) Every applicant for a commercial shark cage diving permit must submit to the Director-General an application in writing setting out the following:
- (a) details of the proposed commercial shark cage diving operation, including— 10
 - (i) the type and number of vessels intended for use:
 - (ii) the proposed area of operation, including a map showing the boundaries of the proposed area of operation and, where appropriate, the specific locations where contact with sharks is proposed:
 - (iii) the maximum number of vessels the operator proposes to operate at any one time: 15
 - (iv) the proposed base of operation:
 - (v) the duration and frequency of trips proposed:
 - (vi) the proposed nature of the contact with sharks:
 - (vii) the maximum number of passengers intended to be taken at any one time: 20
 - (viii) the species of sharks with which the operation is intended to have contact:
 - (b) the experience with shark cage diving of the applicant and the applicant's staff who may come into contact with sharks: 25
 - (c) the knowledge of the local area and sea conditions of the applicant and the applicant's staff who may come into contact with sharks:
 - (d) the details of any convictions of the applicant and of the applicant's staff who may come into contact with sharks, for offences against this Act, or any other Act involving the mistreatment of animals: 30
 - (e) the details of any educational aspects of the proposed operation:
 - (f) a description of—
 - (i) the potential effects of the proposed operation:
 - (ii) any actions that the applicant proposes to take to avoid, remedy, or mitigate any adverse effects of the proposed operation. 35
- (2) Every application for a permit made under **subsection (1)** must be accompanied by the prescribed fee (if any).

10 Public consultation on application for permit

- (1) Before granting a permit for a commercial shark cage diving operation, the Director-General must require the applicant, at the applicant's own expense, to advertise details of the application in a form agreed by the Director-General.
- (2) The advertisement must set out such details of the proposed operation as required by the Director-General, the name and address of the applicant, and call for submissions within 20 working days after publication of the notice. 5
- (3) Submissions must be sent to the Director-General at such place as the Director-General may specify in the notice; and the Director-General must send to the applicant a copy of every submission received in respect of the applicant's proposed operation. 10
- (4) The applicant must make any comments on the submissions to the Director-General within 10 working days after the date on which the submissions are due.
- (5) Before deciding whether or not to grant a permit for any commercial shark cage diving operation, the Director-General must consider every submission received under this section in respect of the proposed operation and the comments received under subsection (4). 15
- (6) This section does not apply to an application for a further permit to renew an existing permit on terms and conditions that, in the opinion of the Director-General, are substantially the same. 20

11 Grant of permit

- (1) The Director-General, in their discretion, may grant a permit authorising an operator to carry on a commercial shark cage diving operation where the following requirements have been met: 25
 - (a) they have considered all the submissions and comments received under **section 10**; and
 - (b) they are satisfied that the operation complies with the requirements in **section 12**; and
 - (c) the maximum number of permits for that year, as prescribed by regulations, has not been exceeded. 30
- (2) The Director-General, in their discretion, may renew a permit authorising an operator to carry on a commercial shark cage diving operation where the requirements specified in **subsection (1)(b) and (c)** have been met.
- (3) The Director-General must not grant a permit authorising an operator to carry on a commercial shark cage diving operation where the permit would exceed the maximum number of permits for the year, as prescribed in regulations made under this Act. 35

12 Requirements to be satisfied before grant of permit

Before granting a permit, the Director-General must be satisfied that the proposed operation complies with the following requirements:

- (a) that the operation will not have any significant adverse effect on the behavioural patterns of the sharks to which the application refers, having regard to, among other things, the number and effect of existing commercial shark cage diving operations: 5
- (b) that the proposed operator, and the operator's staff who may come into contact with sharks, have sufficient experience with sharks, the local area, and of sea and weather conditions: 10
- (c) that it is in the interests of the conservation or protection of sharks that a permit be issued:
- (d) that the proposed operator, and the operator's staff who may come into contact with sharks, do not have convictions for offences involving the mistreatment of animals: 15
- (e) that the operation will have sufficient educational value to participants or to the public:
- (f) that the potential adverse effects of the commercial shark cage diving operation are able to be avoided, remedied, or mitigated.

13 Conditions of permit 20

The Director-General may grant a permit for any period of time not exceeding 10 years and may specify such conditions as they consider appropriate, including conditions relating to—

- (a) the geographical area within which the commercial shark cage diving operation may operate: 25
- (b) minimum distances of operation from specified locations:
- (c) the time periods within which a commercial shark cage diving operation may operate:
- (d) the equipment that a commercial shark cage diving operation may use:
- (e) compliance with a code of practice approved under this Act: 30
- (f) any conditions prescribed by regulations made under this Act.

14 Revocation or suspension of permit

(1) The Director-General may revoke or suspend a permit if they have reasonable grounds to believe that—

- (a) an operation is no longer meets the requirements in **section 12**; or 35
- (b) there has been a failure to comply with a condition imposed under **section 13**; or

- (c) the revocation or suspension is necessary in the interests of public safety, or compliance with any of New Zealand's international obligations.
- (2) The Director-General must notify the operator in writing if they intend to revoke or suspend a permit.
- (3) **Subsection (2)** does not apply if the Director-General considers that there is good reason not to give notice of the revocation or suspension. 5
- (4) If the Director-General revokes or suspends a permit, they must notify the operator in writing of the revocation or suspension.
- (5) A person who is dissatisfied with a decision of the Director-General under this section may, within 20 working days after the date on which notice of the decision is given, appeal to the District Court against that decision. 10
- 15 Permit not transferable**
- No permit may be transferred to any other person except with the consent in writing of the Director-General.
- 16 Register of permits** 15
- (1) The Director-General must set up and maintain a register of permits granted under the Act.
- (2) The register must be open to inspection by the public
- 17 Offence to knowingly carry out commercial shark cage diving without permit or contrary to permit** 20
- Every person commits an offence and is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$250,000 who knowingly and without lawful excuse, —
- (a) operates a commercial shark cage diving operation without a permit; or
- (b) operates a commercial shark cage diving operation in a manner that is contrary to the conditions of their permit. 25

Part 3

Commercial shark cage diving code of practice

- 18 Code of practice must be prepared and approved**
- (1) The Minister must approve a code of practice for the purposes of this Act which sets out best practice for commercial shark cage diving in New Zealand. 30
- (2) The Minister may amend or revoke an approved code of practice.
- (3) The Minister may approve, amend, or revoke a code of practice under **subsections (1) and (2)** only if the Minister is satisfied that the code of practice, amendment, or revocation was developed by a process that involved consult- 35

- ation with persons who in the Minister's opinion are affected, or reasonably likely to be affected, by the code, amendment, or revocation.
- (4) A code of practice may incorporate, adopt, or apply (with or without modification) all or any part of any other document that is prepared or issued by any person or body, and that is in force at a particular time. 5
- (5) A code of practice approved under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- 19 Publication and commencement of approved code of practice**
- (1) As soon as practicable after a code of practice has been approved, amended, or revoked, the Director-General must ensure that notice of the approval, amendment, or revocation is published in the *Gazette*. 10
- (2) A notice in the *Gazette* for the purpose of **subsection (1)** does not have to incorporate the code of practice.
- (3) An approved code of practice, an amendment, or a revocation does not come into force until at least 28 days after it has been notified in the *Gazette*. 15
- 20 Access to approved code of practice**
- (1) The *Gazette* notice published under **section 17(1)** must specify the place or places at which copies of the code of practice or amendment (as the case may be) are available for public inspection and purchase. 20
- (2) The Director-General must ensure that the approved code of practice is available—
- (a) free of charge on an Internet site maintained by them or on their behalf; and
- (b) for purchase in hard copy at a reasonable charge. 25

Part 4

Miscellaneous provisions

21 Regulations

- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for one or more of the following purposes: 30
- (a) prescribing forms for the purposes of this Act:
- (b) prescribing the amount of any fee to be paid in respect of an application made under this Act, and in respect of the granting of any permit:
- (c) prescribing conditions pursuant to which permits may be issued, and conditions which may be attached to permits already issued: 35
- (d) prescribing and limiting the number of permits that may be issued in any year:

- (e) giving effect to the terms of any international agreement to which New Zealand is a party:
- (f) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

5

Schedule 1
Transitional, savings, and related provisions

s 6

Part 1
Provisions relating to this Act as enacted

5

There are no transitional, savings, or related provisions relating to this Act as enacted.