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DEPARTMENT OF HEALTH
KWAZULU-NATAL SHARKS BOARD ACT, 2008
(No. 05 of 2008)

Assented to on 05-12-2008

ACT

To provide for the establishment of the KwaZulu-Natal Sharks Board; to determine the objectives, powers, duties and functions of the KwaZulu-Natal Sharks Board; to determine the manner in which the KwaZulu-Natal Sharks Board is to be managed, governed, staffed and financed; and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Legislature of the Province of KwaZulu-Natal, as follows:-

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CHAPTER 1
DEFINITIONS AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise –

"bather" means any person who enters the sea or any waters adjacent to or
flowing into the sea, in such a manner that the whole or any portion of their body
is wholly or partly immersed in the sea or such waters;

"Board" means the KwaZulu-Natal Sharks Board established in terms of section
3;

"Chief Executive Officer" means the Chief Executive Officer of the Board
appointed in terms of section 17;
"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Department" means the Department of arts, culture and tourism in the Province of KwaZulu-Natal or, where the Premier assigns the administration of this Act to another member of the Executive Council, the department in the Provincial Government of KwaZulu-Natal for which that member of the Executive Council is responsible;

"Executive Council" means the Executive Council of the Province of KwaZulu-Natal;

"financial year" means the period as contemplated in section 25;

"Gazette" means the official Provincial Gazette of KwaZulu-Natal;

"Head of Department" means the person appointed as head of the Department of arts, culture and tourism in terms of section 12 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"Member of the Executive Council responsible for environmental affairs" means the member of the Executive Council responsible for environmental affairs in the Province;

"Member of the Executive Council responsible for finance" means the member of the Executive Council responsible for finance in the Province;

"Member of the Executive Council responsible for local government" means the member of the Executive Council responsible for local government in the Province;

"municipality" means a municipality contemplated in section 155 of the Constitution, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);
"Portfolio Committee" means the Portfolio Committee of the Provincial Legislature responsible for arts, culture and tourism;

"prescribed" means prescribed by regulation under section 31, and "prescribe" has a corresponding meaning;

"Province" means the province of KwaZulu-Natal contemplated in section 103 of the Constitution, and "provincial" has a corresponding meaning;

"Provincial Government" means the government of the Province of KwaZulu-Natal;

"Provincial Legislature" means the Legislature of the Province of KwaZulu-Natal as contemplated in section 105 of the Constitution, and having legislative authority for the Province as contemplated in section 104(1) of the Constitution;

"regulations" means regulations made in terms of section 31;

"responsible Member of the Executive Council" means the member of the Executive Council of the Province of KwaZulu-Natal responsible for arts, culture and tourism or any other Member of the Executive Council to whom the Premier has assigned the administration of this Act in terms of section 132 of the Constitution;

"scheme" means any undertaking for the purpose of providing protection against shark attack on bathers;

"this Act" includes the regulations.

Application of Act

2. The provisions of this Act apply to the control of shark safety devices in the sea, sea shore and sea-bed of the Province.
CHAPTER 2
KWAZULU-NATAL SHARKS BOARD

Establishment of KwaZulu-Natal Sharks Board
3.(1) A Board to be known as the KwaZulu-Natal Sharks Board is hereby established.

(2) The Board is a juristic person.

(3) The Board is a provincial public entity subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Objectives of Board
4. The objectives of the Board are –
   (a) to undertake, initiate, control and approve measures for safeguarding bathers against shark attack in the Province and to provide for matters incidental thereto; and
   (b) to perform the powers, duties and functions specified in sections 5 and 6.

Powers, duties and functions of Board
5.(1) The Board must –
   (a) research, develop, install and maintain schemes, devices or measures necessary to safeguard bathers in the Province against shark attacks;
   (b) consider existing or proposed schemes to determine whether such schemes are reasonably effective to protect bathers in the Province from shark attacks:
      Provided that the Board shall also endeavor to introduce schemes that –
         (i) will reduce negative impact on all biodiversity; and
         (ii) will enhance the survival of caught sharks and other marine animals;
   (c) undertake research in order to –
      (i) consider and determine the feasibility of applying new or known methods of protection against shark attacks; and
      (ii) determine any environmental impact arising from the implementation
of any schemes or any methods of protection against shark attacks;
(d) consider reports, findings, representations and recommendations of scientific
and technical research bodies, associations or persons, on matters relating
to the protection of bathers against shark attacks in the Province;
(e) take reasonable steps to create awareness to bathers with regard to any
matter related to but not limited to -
   (i) schemes, devices or measures to protect bathers against shark
attacks; and
   (ii) safety precautions that must be adhered to by bathers;
(f) render assistance or place its services at the disposal of any municipality,
where such municipality is obliged by law to exercise powers, duties or functions
in connection with –
   (i) the sea and the sea-shore;
   (ii) inland waters;
   (iii) life-saving and other emergency services; or
   (iv) scientific research, studies and surveys undertaken by or on behalf of
such municipality;
(g) in exercising its powers and performing its duties in terms of this Act –
   (i) promote biodiversity and ecological integrity by striving to avoid,
mitigate and reduce any negative environmental impact;
   (ii) do anything in its power to promote the sustainability of marine life;
   (iii) endeavour to use all dead sharks and other marine animals caught by
the schemes implemented in terms of this Act, for scientific research;
(h) where possible, release all live marine animals, including sharks, caught or
affected by the schemes implemented in terms of this Act;
(i) keep accurate records of all sharks and other marine animals caught or
otherwise affected by the schemes implemented in terms of this Act;
(j) investigate and make recommendations to and advise the responsible
Member of the Executive Council regarding any matter related to the protection
of bathers against shark attacks in the Province.

(2) The Board may –
   (a) consult and liaise with any organ of state, organization, institution, body or
committee on any matter pertaining to the environment, tourism and economic
development in the Province;
(b) consult with any organ of state, organization, institution, body or committee on
any matter affecting any existing or proposed scheme or the protection of bathers
against shark attacks;
(c) enter into agreements for the attainment of its objects, the exercise of its
powers, duties and functions;
(d) purchase, lease or hire any movable or immovable property for the purposes
of research, development, manufacture, marketing and maintenance of
measures to safeguard bathers against shark attacks;
(e) sell, lease, hire or, donate —
   (i) any obsolete, worn-out or useless equipment or plant: Provided that
       the Board must determine policies and procedures with regard to the
       acquisition and disposal of movable property;
   (ii) accommodation, or immovable property owned or under the control of
       the Board: Provided that any immovable property under the control of the
       Board may only be disposed of —
       (aa) in accordance with the provisions of any applicable legislation
           regulating the disposal of state land;
       (bb) in accordance with policies and procedures contemplated in
           section 26 of this Act and in accordance with the provisions of the
           Public Finance Management Act, 1999 (Act No. 1 of 1999); and
       (cc) with the approval of the responsible Member of the Executive
           Council;
(f) subject to the prior approval of the responsible Member of the Executive
   Council and the Member of the Executive Council responsible for finance —
   (i) acquire an interest in companies, partnerships or other bodies and
       dispose of such interests in whole or in part; or
   (ii) enter into joint ventures with other institutions, organisations,
       municipalities, bodies or persons;
(g) register patents and trade marks, buy and sell patent rights and trade marks,
   and license the use of any trade mark, patent or patent rights held by the Board;
(h) raise funds by any lawful means including but not limited to —
(i) the acceptance of conditional and unconditional donations, bequests and sponsorships; or

(ii) revenue derived from tourism, levies and the issue of permits, and any other similar sources of funds;

(i) acquire or dispose of movable assets by any lawful means including but not limited to the acceptance and unconditional donations, bequests and sponsorships;

(j) render assistance to or place its services at the disposal of any organ of state, institution, body, association of persons or person in relation to the protection of the users of inshore waters against attacks by sharks;

(k) subject to the consent of the responsible Member of the Executive Council –

(i) render assistance to;

(ii) give advice to;

(iii) furnish supplies to;

(iv) place its services at the disposal of,

any person or body outside the borders of the Province or outside the borders of the Republic;

(l) subject to the regulations made in terms of this Act –

(i) provide humanitarian and other aid or assistance in connection with the saving of lives in the sea or on the sea shore; or,

(ii) place its staff, equipment and other resources at the disposal of appropriate authorities during times of natural or humanitarian disasters or emergencies;

(m) subject to section 31(2), charge fees for –

(i) the processing of any application or approval in terms of this Act; and

(ii) the provision of any service by the Board;

(iii) entrance into an exhibition or display of shark control resources by the Board; and

(n) generally, do anything –

(i) necessary or expedient for the carrying out of its powers, functions or duties in providing measures for the protection of the public against shark attacks; or

(ii) reasonably incidental or ancillary to the carrying out of such powers, functions or duties.
Powers of Board in regard to schemes

6.(1) The Board has authority, subject to the provisions of this Act, or any other law –
(a) to determine and approve the extent of any scheme; and
(b) to specify the procedures and control measures to be adopted in connection with any scheme.

(2) The Board may on the sea-shore, sea-bed and in the sea, develop and maintain such schemes as it deems necessary and practicable for the safety of bathers, subject to –
(a) the provisions of section 5(1)(f); and
(b) the prior consent of the relevant municipality where the scheme lies wholly or partially within its area of jurisdiction, unless the provisions of subsection (3) apply.

(3) Where, in the opinion of the Board, it is necessary for the safety of bathers to provide a scheme –
(a) in the sea;
(b) on the sea bed; or
(c) on the sea-shore,
within or adjoining an area of jurisdiction of a municipality and where agreement cannot be reached, with the municipality regarding –
(i) the nature or extent of the scheme; or
(ii) the basis on which the Board is to be remunerated,
the Board must, with the prior approval of the responsible Member of the Executive Council, enter the municipal area, and enter upon the areas contemplated in paragraphs (a) to (c) and carry out a scheme approved by the Board.

(4) The Board may recover from the municipality the whole or a portion of the cost, contemplated in subsection 3, as the responsible Member of the Executive Council may determine, in consultation with –
(a) the Member of the Executive Council responsible for local government;
(b) the Member of the Executive Council responsible for finance; and
(c) the Member of the Executive Council responsible for environmental affairs.

(5) The Board may enter the sea or go onto the sea-shore for the purpose of –
    (a) investigating the efficacy and proper maintenance of any scheme; or
    (b) carrying out any work deemed necessary to determine the suitability of any site or location of any scheme.

(6) The Board may only exercise the power contemplated in subsection 5(b) after consultation with the municipality having jurisdiction.

(7) The Board must exercise control over and operate any existing scheme as provided for in this Act.

Composition of Board
7.(1) The Board is composed of –
    (a) not less than seven and not more than 11 members appointed by the responsible Member of the Executive Council; and
    (b) the Chief Executive Officer, ex officio, as contemplated in section 17(7).

(2) The responsible Member of the Executive Council may designate an employee of the Department –
    (a) to facilitate liaison between the responsible Member of the Executive Council and the Board;
    (b) to report to the responsible Member of the Executive Council from time to time regarding matters which are considered relevant; and
    (c) to attend meetings of the Board and participate in discussion.

(3) The person designated in terms of subsection (2) does not have the right to vote when a decision of the Board is taken.

(4) Members of the Board must –
    (a) be fit and proper persons to serve the best interests of the Province;
(b) be characterised by their independence, impartiality and fairness; and
(c) collectively possess –
   (i) legal skills, experience and qualifications;
   (ii) financial skills, experience and qualifications;
   (iii) extensive knowledge of and experience in business management including human resources management and labour relations;
   (iv) extensive knowledge of and experience in marine conservation; and
   (v) any other skill, experience or qualification that might be of benefit to the Board.

(5) The membership contemplated in subsection (4) must include at least one person representing –
   (a) organised local government;
   (b) the tourism and hospitality industry;
   (c) a tertiary institution; and
   (d) non governmental environmental conservation community,
in the Province.

(6) In appointing members of the Board, the responsible Member of the Executive Council, must ensure –
   (a) that historic imbalances are addressed; and
   (b) that the Board, collectively possess the necessary and appropriate skills, experience and expertise.

(7) The responsible Member of the Executive Council must, by notice in the Gazette and at least two newspapers circulating in the Province, invite interested parties within the Province to nominate candidates to serve on the Board.

(8) The invitation for nominations in terms of subsection (7) must specify the –
   (a) nomination procedure;
   (b) requirements for nomination;
   (c) date by which a nomination must be received by the responsible Member of the Executive Council; and
   (d) acceptance by nominees.
(9) The responsible Member of the Executive Council must appoint a selection panel comprising –

(a) senior Departmental officials; and

(b) any other person that the responsible Member of Executive Council may deem fit,

to –

(i) review all the nominations,

(ii) shortlist, evaluate or interview the nominees; and

(iii) make recommendations to the responsible Member of the Executive Council on the nominees.

(10) The responsible Member of the Executive Council must, subject to subsection (9), appoint the members of the Board and designate –

(a) one of the members of the Board as the chairperson; and

(b) one of the members of the Board as the deputy chairperson.

(11) The responsible Member of the Executive Council must publish the names of the persons appointed to the Board in the *Gazette* and in at least two newspapers circulating in the Province, immediately after such persons have been notified, in writing, of their appointment to the Board.

(12) The responsible Member of the Executive Council must, within two months after the appointment of members of the Board, inform the Executive Council and the Portfolio Committee of the names of the appointed members including the term of their appointment.

(13) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

**Disqualification from being appointed to Board**

8.(1) A person is disqualified from being appointed to the Board or from remaining on the Board, by reason that he or she –
(a) is or becomes an unrehabilitated insolvent;
(b) is or has been declared by a competent court to be of unsound mind;
(c) has a direct or indirect interest in any contract with the Board and fails to declare the interest and the nature thereof in the manner required by this Act;
(d) is a person under curatorship;
(e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud;
(f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the responsible Member of the Executive Council may, upon a person who is nominated for appointment disclosing full details of an offence in an affidavit, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution; and
(g) fails to disclose an interest in accordance with section 10 or attended or participated in the proceedings of the Board while having an interest contemplated in section 10.

(2) A disqualification in terms of subsection (1)(f) ends five years after the sentence has been completed.

**Term of office of members of Board**

9.(1) Persons appointed to the Board hold office for a period of three years or such lesser period as the responsible Member of the Executive Council may determine and are, subject to section 7, eligible for reappointment at the expiration of such period.

(2) No person may be reappointed after having served on the Board for more than two consecutive terms.

**Declaration of financial or other interests by nominees to Board**

10.(1) A nominee to the Board must –

(a) within 10 days of having accepted the nomination as contemplated in subsection 7(8)(d), submit to the responsible Member of the Executive Council, a written declaration of any and all financial or other interests in the tourism sector or related sectors which could be related to or may be in conflict with an
appointment as a member of the Board, which declaration must include relevant information about any conviction for a Schedule 1 offence in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); and

(b) in the declaration referred to in paragraph (a), include financial and other interests in the activities of the Board or related sectors of family members or close associates, which could be related to or may be in conflict with an appointment as a member of the Board.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 8 to be considered for the position of the member of the Board.

(3) Every member of the Board must, upon assuming office and at the beginning of every financial year, submit a written declaration of his or her direct or indirect interest in any company or other business interest in the manner provided for in section 234(3)(a) of the Companies Act, 1973 (Act No. 61 of 1973).

(4) Where a member of the Board or family member or close associate experiences a change in financial or any other circumstances and acquires an interest in the activities of the Board or has reason to know of any changed circumstances, the member of the Board must, within 10 days of the date of the changed circumstances, submit a written declaration of change of financial or other interests to the responsible Member of the Executive Council.

(5) The responsible Member of the Executive Council must –

(a) keep a register of the interests of members of the Board disclosed in terms of this section; and

(b) update that register from time to time.

(6) For the purposes of this section -

(a) “a close associate” includes, but is not limited to, a business partner or employer; and

(b) “a family member” includes, but is not limited to –

(i) a spouse of a member;
(ii) a partner in a customary union or a person with whom a member cohabits or lives as though they were married; or
(iii) a child, parent or sibling of a member.

Failure to declare financial or other interests
11.(1) A member of the Board who fails to make a declaration envisaged in section 10 may, subject to subsection (2), be disqualified from remaining on the Board.

(2) The responsible Member of the Executive Council, on becoming aware that a member of the Board has failed to comply with the provisions of section 10, must investigate the matter and consider appropriate disciplinary action.

Recusal of member of Board
12.(1) A member of the Board must recuse himself or herself in any matter or proceeding where he or she, a family member or close associate has or reasonably could be expected to have, a financial or other interest in the outcome of a decision by the Board.

(2) Any person may make an application, orally or in writing, for a member of the Board to recuse himself or herself where that person has reason to believe that the member of the Board, a family member or close associate has or could reasonably be expected to have a financial or other conflict of interest in the outcome of a decision by the Board.

(3) A person making an application referred to in subsection (2) must give reasons for his or her request.

(4) In the event of an application referred to in subsection (2), the chairperson of the Board must decide on the matter, save that in cases where the application concerns the chairperson of the Board the matter must be decided on by the deputy chairperson.

(5) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.
(6) If it subsequently emerges that the Board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Board is invalid.

**Vacancies, removal and resignation from office of members of Board**

13.(1) A member of the Board must vacate office if he or she becomes subject to a disqualification contemplated in section 10.

(2) The responsible Member of the Executive Council may, after having afforded a member the opportunity to state his or her case, at any time terminate the term of office of such member if, in his or her discretion, there are good reasons for doing so.

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Board, from three consecutive meetings of the Board for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office in writing by giving not less than 30 days notice to the responsible Member of the Executive Council.

(5) The responsible Member of the Executive Council may waive the resignation notice contemplated in subsection (4), if such waiver would not be detrimental to the efficient functioning of the Board.

(6) Whenever a vacancy occurs on the Board, the responsible Member of the Executive Council must, subject to section 7, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(7) The responsible Member of the Executive Council may, subject to sub-section (2) and after consultation with the Executive Council, terminate the appointment of –

(a) all the members of the Board; or

(b) the majority of the members of the Board, which termination may render the
Board inoperable.

(8) In the event that the responsible Member of the Executive Council exercises his or her powers in terms of sub-section (7), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 7, subject to subsections 7(4), 7(5) and 7(6), appoint persons to serve as members of the Board on an interim basis: Provided that-

(a) the persons appointed in terms sub-section (8) may not remain on the Board for a period of more than 90 days from the date of their appointment; and

(b) the responsible Member of the Executive Council, shall, subject to section 7, appoint the members of the Board within 90 days of the appointment contemplated in sub-section (8).

Meetings of Board

14.(1) The Board must hold routine quarterly meetings and may convene special meetings as required and the chairperson may direct how the meetings should be held.

(2) Every member of the Board must be notified of each meeting in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

(3) In the event that the chairperson or the deputy chairperson of the Board is absent from any meeting of the Board, the members present at that meeting may elect one of their number to preside at that meeting.

(4) A special meeting of the Board may be called at the request of –

(a) the chairperson; or

(b) the majority of the members of the Board by written petition, whereupon the chairperson must, in writing, notify every member of the Board of the time and place of the special meeting.

(5) A quorum for a meeting of the Board is a majority of its members.
(6) Any decision of the Board must be taken by resolution of the majority of the members present at any meeting of the Board and, in the event of an equality of votes on any matter, the member presiding at the meeting in question will have a casting vote in addition to his or her deliberative vote as a member of the Board.

(7) No decision of the Board is invalid merely by reason of a vacancy in the Board: Provided that the decision is taken by the required majority of the members of the Board then present and entitled to sit as members of the Board.

(8) The proceedings of all meetings of the Board must be duly recorded, minuted and retained on file.

(9)(a) The minutes of the previous meeting must be read at the commencement of each meeting.
(b) The minutes may be regarded as read if copies thereof were furnished to the members of the Board prior to the meeting.
(c) The chairperson may only sign the minutes once objections or corrections have been dealt with.

(10) The chairperson must decide on issues of order or procedure: Provided that if any member objects to any such decision, the issue must be put to the vote and the decision of the majority of the members is final and binding on the Board.

(11) A member of the Board who has an interest in relation to any matter to be discussed at a meeting of the Board, which reasonably considered, may preclude him or her from performing his or her duties in a fair, unbiased and proper manner, must recuse himself or herself from such meeting.

(12) A member of staff of the Board may, on invitation by the Board, attend a meeting of the Board.

(13) The Board may invite any person to attend any of its meetings.
Committees of Board

15.(1) The Board may appoint one or more committees, not limited to its own members, to assist it in the exercise of its powers and the performance of its duties and functions.

(2) Any committee appointed in terms of subsection (1) must be chaired by a member of the Board.

(3) A committee contemplated in subsection (1) must perform such duties and functions as the Board may determine.

(4) The Board may, at any time, dissolve or reconstitute such a committee.

(5) The Board –
   (a) may delegate any of its powers or assign any of its duties or functions to a committee appointed in terms of subsection (1);
   (b) is not absolved from exercising or performing any power, duty or function so delegated or assigned; and
   (c) may amend, review or rescind any decision of a committee.

(6) Any delegated or assigned power, duty or function exercised or performed by a committee is regarded to have been exercised or performed by the Board.

(7)(a) The Chief Executive Officer may attend and take part in, but may not vote at, a meeting of a committee.
(b) A member of staff of the Board may, on invitation by the relevant committee, attend a meeting of that committee.

Remuneration of members of Board

16.(1)(a) A member of the Board may be paid such remuneration or allowances as may be determined by the responsible Member of the Executive Council in consultation with the Member of the Executive Council responsible for finance.
(b) A member of the Board who receives remuneration, allowances or other benefits by virtue of his or her post or employment in—
(i) the national government;
(ii) a provincial government;
(iii) a municipality; or
(iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

who continues to receive such remuneration, allowances or other benefits while serving as a member of the Board, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position in which he or she would have been were it not for such post or employment.

(2)(a) A member of the Board and a member of a committee of the Board may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board or a committee of the Board.
(b) The responsible Member of the Executive Council must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

CHAPTER 3
CHIEF EXECUTIVE OFFICER AND OTHER STAFF OF BOARD

Chief Executive Officer of Board

17.(1) The Board must, with the approval of the responsible Member of the Executive Council and using a method which will, in the opinion of the responsible Member of the Executive Council, reach the greatest number of residents of the Province, invite applications for the position of the Chief Executive Office.

(2) The Board must, with the approval of the responsible Member of the Executive Council, appoint a selection panel to review all the applications, shortlist and interview applicants.

(3) The Board must, subject to the provisions of subsection (2) and with the approval of the responsible Member of the Executive Council, appoint a suitably qualified, skilled and experienced person as the Chief Executive Officer of the Board.
(4) (a) The Chief Executive Officer is appointed for a period not exceeding five years.

(b) The Chief Executive Officer, may, with the approval of the responsible Member of the Executive Council be reappointed, for such period as the responsible Member of the Executive Council, may determine.

(5) (a) The appointment of the Chief Executive Officer is subject to the conclusion of annual written performance agreements to be entered into between that person and the Board.

(b) The Board and the Chief Executive Officer may, in writing and by agreement, amend the performance agreement.

(6) (a) For purposes of the declaration of financial or other interests, the provisions of section 10 apply with the necessary changes to the Chief Executive Officer except that the Chief Executive Officer must declare his or her interests to the Board.

(b) The Board must keep and maintain a register of financial or other interests declared by the Chief Executive Officer.

(7) The Chief Executive Officer is an ex officio member of the Board but does not have the right to vote at its meetings.

Functions of Chief Executive Officer

18. (1) The Chief Executive Officer is the chief administrative officer of the Board and is responsible for –

(a) the administrative and financial management of the Board in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the direction of the Board;

(b) in consultation with the Board, the appointment of members of staff of the Board contemplated in section 20 (1);

(c) in consultation with the Board, the determination of a code of conduct, applicable to the Chief Executive Officer, all staff of the Board and justiciable for purposes of disciplinary proceedings, to ensure –

(i) compliance with applicable law, including this Act;
(ii) the effective, efficient and economical use of the Board's funds and resources;
(iii) the promotion and maintenance of a high standard of professional ethics;
(iv) the prevention of conflicts of interest;
(v) the protection of confidential information held by the Board; and
(vi) professional, honest, impartial, fair, ethical and equitable service;
(d) the maintenance of discipline over the staff;
(e) the keeping and maintenance of the register of interests declared by members of staff of the Board; and
(f) ensuring compliance by the Board with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any other applicable legislation.

(2) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Board must, in writing, and with the approval of the responsible Member of the Executive Council, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions.

Resignation and removal from office of Chief Executive Officer

19.(1) The Chief Executive Officer vacates office –
   (a) in the case of resignation, when the resignation takes effect;
   (b) when, in terms of the Companies Act, 1973 (Act No. 61 of 1973), the person holding that office has become disqualified to serve as director of a company; and
   (c) upon having been removed from office in terms of subsection (2).

(2) The Board may, with the approval of the responsible Member of the Executive Council, terminate the Chief Executive Officer’s employment in accordance with applicable employment and labour law.

Staff of Board

20.(1) The Chief Executive Officer must, subject to subsection (2), employ members of
staff of the Board as may be reasonably necessary –
(a) to assist him or her in fulfilling his or her functions in terms of this Act; and
(b) to assist the Board with the work incidental to the performance of its functions.

(2) The Board must determine human resources policies for staff, including the Chief Executive Officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 18(1)(e), the provisions of section 10 apply with the necessary changes to staff.

(4) The Chief Executive Officer must keep an updated register of the interests of staff, disclosed in terms of subsection (3).

Secondment or transfer of staff to Board
21. The Board may utilise the services of persons seconded or transferred from the public service, in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or from a municipality, other organs of state and the private sector.

CHAPTER 4
FUNDING AND FINANCIAL MANAGEMENT OF BOARD

Funds of Board
22. (1) The funds of the Board consist of –
(a) money appropriated by the Provincial Legislature;
(b) donations or contributions or income lawfully received by the Board from any source;
(c) interest on investments of the Board;
(d) fees received by the Board in payment for –
(i) the processing of applications or approvals in terms of this Act;
(ii) the provision of services by the Board; or
(iii) the exhibition or display of shark control resources by the Board.
(e) revenue derived from—
   (i) the lease or hire of facilities; or
   (ii) sale of resources, souvenirs or curios:
Provided that such resources, souvenirs or curios do not contain any dead sharks or other marine animals, or part thereof, caught by the schemes implemented in terms of this Act.

(2) The Board must utilise its funds—
(a) for the payment of remuneration, allowances and subsistence and travelling expenses of the—
   (i) members of the Board;
   (ii) Chief Executive Officer; and
   (iii) members of staff of the Board;
(b) to cover costs in connection with the—
   (i) day to day operation and administration of the Board;
   (ii) performance of the duties and functions of the Board, and
   (iii) exercise of its powers in terms of this Act.

(3) The Chief Executive Officer must, with the concurrence of the Board and the responsible Member of the Executive Council—
   (a) open an account in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
   (b) deposit therein all money received in terms of subsection (1).

Financial management
23.(1) The Board must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Board must ensure that the Board’s annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) The Board must, in each financial year at such time as the responsible Member of
the Executive Council determines, submit to the responsible Member of the Executive Council for approval –

(a) a business plan for the Board, containing measurable objectives and the other information contemplated in section 24(3)(b) and such further information as the responsible Member of the Executive Council determines; and

(b) a statement of the Board’s estimated income and expenditure, in respect of the following three financial years or such longer or shorter period as the responsible Member of the Executive Council determines.

(4) In any financial year the Board must submit to the responsible Member of the Executive Council, for approval, supplementary statements of the Board’s estimated income and expenditure for that financial year.

(5) The Board may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(6) The Board may establish such reserve funds, and deposit therein such amounts, as the responsible Member of the Executive Council approves.

Audit and annual report

24. (1) Subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Auditor-General must audit the financial statements of the Board.

(2) The Board must, through the responsible Member of Executive Council, table the report on its activities in the Provincial Legislature within five months after the end of each financial year.

(3) The report must –

(a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

(b) state the extent to which the Board has achieved or advanced its objectives referred to in sections 5 and 6, and the measurable objectives as set out in its business plan as contemplated in section 23(3)(a) during the financial year.
concerned; and
(c) contain relevant performance information regarding the economic, efficient
and effective application of resources and specifically a comparison between
planned and actual performance indicators as set out in that business plan.

Financial year of Board
25. The financial year of the Board commences on 1 April of a particular year and ends
on 31 March of the following year.

CHAPTER 5
GENERAL PROVISIONS

Immovable property
26. The Board must determine the policies and procedures with regard to the
acquisition, management, maintenance and disposal of immovable property as
contemplated in sections 5(2)(d) and 5(2)(e)(ii).

Legal proceedings against Board
27.(1) Any legal proceedings against the Board must be instituted in accordance with the
Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of
2002).

(2) The Board is, for purposes of subsection (1), regarded as an organ of state
contemplated in section 239 of the Constitution.

Security of confidential information held by Board
28.(1) Subject to the Constitution and the Promotion of Access to Information Act, 2000
(Act No. 2 of 2000), no person may disclose any information submitted to the Board in
connection with any legal brief or instruction, unless he or she is ordered to do so by a
court of law or unless the person who gave such brief or instruction consents thereto in
writing.
(2) No person may disclose any information kept in the registers contemplated in sections 10(5), 17(6) and 20(4) unless such disclosure is –
   (a) in terms of any law that compels or authorises such disclosure;
   (b) materially necessary for the proper functioning of the Board; or
   (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Board.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Dissolution of Board
29. The Board may only be dissolved in terms of an Act of the Provincial Legislature.

Use of name of Board
30.(1) Unless authorised in writing by the Board to do so, no person may in any way represent or make use of the name, acronym, logos, plaques, designs or other material used or owned by the Board.

(2) No person may falsely claim to be acting on behalf of the Board.

(3) Any person who contravenes subsections (1) or (2) is guilty of an offence.

Regulations and notices
31.(1) The responsible Member of the Executive Council may, by notice in the Gazette and after consultation with the Board, make regulations prescribing –
   (a) any matter which is required or permitted to be prescribed in terms of this Act; or
   (b) any administrative or procedural matter necessary to give effect to the provisions of this Act.

(2) The responsible Member of the Executive Council must –
(a) in consultation with the Member of the Executive Council responsible for finance; and
(b) after consultation with the Board; and
(c) by notice in the Gazette,
determine fees for –

(i) the processing of any application or approval in terms of this Act; and
(ii) the provision of any service by the Board; and
(iii) entrance into an exhibition or display of shark control resources by the Board.

Delegations
32. (1) The responsible Member of the Executive Council may delegate to the Head of Department –

(a) any power conferred on the responsible Member of the Executive Council by this Act, except the power, in terms of section 31, to make regulations; or
(b) any duty imposed on the responsible Member of the Executive Council by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 7 and 13.

(2) The Board may delegate to the Chief Executive Officer any power or duty conferred or imposed on the Board by this Act.

(3) The Chief Executive Officer may delegate to any member of staff of the Board any power or duty conferred or imposed on him or her by this Act, except any duty as accounting officer of the Board.

(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.

(5) Any delegation in terms of subsection (1), (2) or (3) –

(a) must be in writing;
(b) must not prohibit the person or body that made the delegation from exercising
that power or performing that duty; and
(c) may at any time be withdrawn or amended in writing by that person or body.

General offences pertaining to Board
33.(1) A member of the Board, a member of staff, advisor, agent or other person employed by or acting on behalf of the Board is guilty of an offence if he or she directly or indirectly accepts any unauthorised fee or reward from any person in respect of or in connection with any service rendered or anything done or offered by the Board.

(2) Any person is guilty of an offence if he or she, in respect of or in connection with any service rendered or anything done or offered by the Board, bribes or attempts to bribe, or corruptly influences or attempts to corruptly influence, any member of staff or any adviser, agent or other person employed by or acting on behalf of the Board.

(3) Any person who falsely claims that he or she is authorised to charge or collect fees on behalf of or by direction of the Board, is guilty of an offence.

(4) Any person who obstructs the Board, including any officer or agent of the Board, in the exercise of any powers of the Board in terms of this Act, is guilty of an offence.

Penalties
34. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding 5 years.

Repeal of law
35. The Natal Sharks Board Ordinance, 1964 (Ordinance No. 10 of 1964), is hereby repealed.

Transitional arrangements and validation
36.(1)(a) The Board is the legal successor to the Natal Sharks Board established in
terms of section 2 of the repealed Ordinance.

(b) Persons who, on the day before the date of commencement of this Act, were members of the Natal Sharks Board established in terms of section 2 of the repealed Ordinance, must continue as members of the Board until the responsible Member of the Executive Council has appointed a new Board in terms of section 7 of this Act.

(c) Persons who, on the day before the date of commencement of this Act, were members of staff of the Natal Sharks Board, are regarded as having been appointed in terms of section 20 of this Act with the retention of all rights and benefits.

(2) Any act, determination, designation, decision, matter or any other thing done, made, taken, executed or carried out or purported to have been done, made, taken, executed or carried out by the Natal Sharks Board, the Administrator, an officer or member of staff of the Natal Sharks Board or the responsible Member of the Executive Council in terms of or in pursuance of the repealed Ordinance, to the date of commencement of this Act, is not invalid by reason of –

(a) the regulations referred to in the repealed Ordinance not having been published by the Administrator; or

(b) any procedure, process, requirement, condition or detail referred to in the repealed Ordinance not having been determined or prescribed by regulation, as contemplated in the repealed Ordinance.

(3)(a) The appointment of any officer or member of staff of the Natal Sharks Board established in terms of section 2 of the repealed Ordinance in terms of or in pursuance of the repealed Ordinance to the date of commencement of this Act, is not invalid by reason of –

(i) the regulations referred to in the repealed Ordinance not having been published by the Administrator; or

(ii) any procedure, process, requirement, condition or detail referred to in the repealed Ordinance not having been determined or prescribed by regulation, as contemplated in the repealed Ordinance.

(b) A person who, on the day before the date of commencement of this Act, was an officer or member of staff referred to in paragraph (a), is regarded as having been appointed in terms of section 20 of this Act with the retention of all rights and benefits.

(c) The person who, on the day before the date of commencement of this Act, was the
Chief Executive of the Natal Sharks Board established in terms of section 2 of the repealed Ordinance, is regarded as having been appointed as Chief Executive Officer in terms of section 17 of this Act with the retention of all rights and benefits.

Short title

37. This Act is called the KwaZulu-Natal Sharks Board Act, 2008.