

Executive Summary

1. Background and Introduction

In April 2005, the Minister of Environmental Affairs and Tourism indicated in a speech that the owners and users of inland 4x4 recreational driving tracks should move towards better regulated and more equitable practices, as the activities of some irresponsible 4x4 vehicle and track owners are damaging sensitive sections of South Africa's inland environment.

The Minister indicated that the National Off-Road Workshop, planned by industry for October 2005, was a pleasing indication that the sector was prepared to take its responsibilities seriously.

He did however go on to say that *“a grading system for 4x4 tracks, including environmental grading, and the creation of a representative industry body would be positive steps. However regulations will still be required and if there are not concrete proposals forthcoming from the industry within the next 6 months, Government will have to issue these unilaterally although this would not be our first choice”*.

In response to a call from the Minister of Environmental Affairs and Tourism, a National Off-Road Workshop was held in George in 2005, to discuss the development of a self-regulation strategy for the off-road sector.

During the course of the workshop, and in subsequent meetings it was agreed that a mechanism and legal framework needs to be developed **in order to prevent avoidable and manage unavoidable detrimental impacts to the environment and prohibit recreational off-road driving in sensitive areas except on a registered trail** by a licensed driver in a permitted vehicle. The concept of a licensed driver in a permitted vehicle was later changed to driver competency.

Four key focus areas that need to be addressed to ensure a sustainable off-road sector in South Africa, were identified, viz:

- Sensitive areas;
- Driver competency;
- Off-road guiding and tourism development; and
- Trails and tracks.

The National Off-Road Workshop gave rise to the National Off-Road Workgroup (“**NOW**” – “**the Client**”), which acts as a steering committee to drive the formulation of a self-regulation strategy and implementation framework. In addition, NOW will also be involved in setting up the process for the establishment of a representative body for the entire off-road sector.

NOW has developed a Business Plan to guide their activities. This Business Plan has been approved by the Department of Environmental Affairs and Tourism (“**DEAT**”) and with DEAT’s financial assistance, guides and directs the development and implementation of the following objectives:

1. The adoption of a self-regulating strategy for the off-road sector;
2. The promulgation or publication of enabling legislation or regulations, should it be proven necessary;
3. The establishment of an EMCA between the off-road sector and government, if appropriate, to agree the implementation of the envisaged self-regulation mechanisms; and
4. Development and establishment of an off-road sector, which supports the globally accepted, triple bottom line development principles.

A joint Strategy Planning Workshop was held in May 2007 between representatives of NOW and DEAT, to reflect on the strategic significance of the off-road sector to South Africa and to put forward guidelines for the key focus areas that will be incorporated in the formulation of a self-management/self-regulation framework for the sector.

Grant Thornton, in consortium with Felehetsa Environmental, has been appointed to develop the self-regulation strategy and implementation framework for the South African Off-Road Sector.

2. Overview of NOW and Other Stakeholders

There are 7 associations that formally constitute NOW, viz:

- National Association of Automobile Manufacturers of South Africa (“**NAAMSA**”);
- Association of Motorcycle Importers and Distributors (“**AMID**”);
- Southern African Vehicle Renting and Leasing Association (“**SAVRALA**”);
- Southern Africa Route Owners and Operators Forum (“**SAROOF**”);
- South African National Off-Road Trainers Association (“**SANOTA**”);
- 4-Wheel-Drive Guides Association of South Africa (“**4WDGSA**”); and
- Association of All-Wheel Drive Clubs of Southern Africa (“**AAWDC**”).

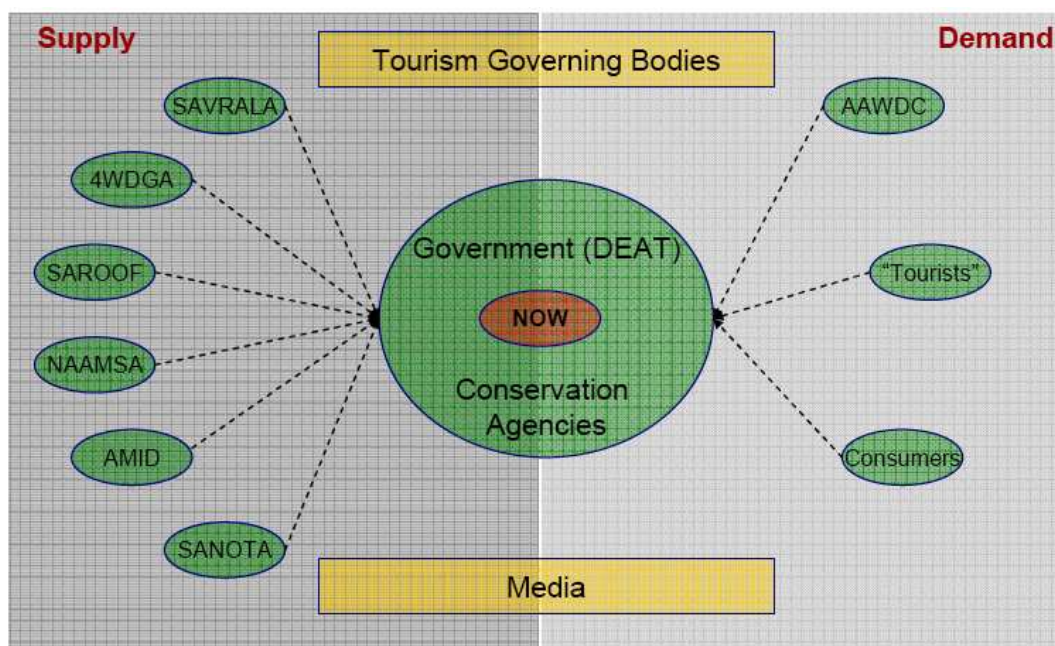
These associations are at varying degrees of development, with some being relatively new and un-formalised, while others have been in existence for many years, are well established and have a large membership base.

Other sector role players include:

- Media (printed etc.);
- Other clubs and umbrella bodies;
- Government (including DEAT, Department of Water Affairs and Forestry (“**DWAF**”), Department of Transport other relevant national government departments);
- Provinces;
- Industry associates e.g. insurance, Automobile Association (“**AA**”);
- Ancillary companies e.g. accessories;
- **Other Role Players:**
 - Tourism guiding associations;
 - Tourism associations e.g. Federated Hospitality Association of Southern Africa (“**FEDHASA**”), Tourism Business Council of South Africa (“**TBCSA**”), Southern African Tourism Services Association (“**SATSA**”) etc;
 - Tourism, Hospitality and Sport Education and Training Authority (“**THETA**”), South African Qualifications Authority (“**SAQA**”) and other relevant sector education and training authorities (“**SETAs**”);
 - Nature conservation agencies e.g. e.g. South African National Parks, Cape Nature, etc;
 - Non-governmental organisations (“**NGOs**”) e.g. World Wide Fund for Nature (“**WWF**”) etc;
 - Eskom;
 - Telkom;
 - Mining and agriculture sectors;
 - Off-road vehicle users;
 - Contributors e.g. forums (NOW website etc.);
 - Private landowners;
 - Neighbouring countries;
 - Metroserve; and
 - Mapping and geographic information system (“**GIS**”) e.g. Tracks4Africa.

Figure 1 provides an overview of the off-road industry in South Africa.

Figure 1: Off-Road Sector Stakeholders in South Africa



3. Deliverables, Phased Approach and Methodology

The primary focus of the Grant Thornton project is to develop a self-regulation and sustainable use strategy and implementation framework for the off-road sector in South Africa.

For the purposes of this exercise, off-road sector vehicles include 2-wheel, 3-wheel and 4-wheel vehicles, e.g:

- 2x4 and 4x4 motor vehicles;
- Quad bikes; and
- Motorbikes (e.g. trail bikes, off-road bikes and on-and-off road bikes).

The strategy will focus on off-road sector use under the following conditions:

- Inland (i.e. not coastal)
- Recreational use on private, public and government-owned land
- In sensitive areas – will apply to recreational and other use

The project includes 4 key outcomes, viz:

1. A holistic, effective and practical self-management/self-regulation and operating strategy for the off-road sector including implementation, management and monitoring mechanisms;
2. An implementation framework that will facilitate the adoption of a self-regulating strategy for the off-road sector;
3. Recommendations in terms of the promulgation or publication of enabling legislation, regulations and/or other compliancy enforcement mechanisms, should it be proven necessary; and
4. Recommendations for the establishment of an EMCA (or any other form of agreement), if required, between the sector and government towards implementation of the envisaged self-regulation mechanisms.

Developing the strategy and implementation framework includes the following elements:

- Research of existing policy and legislative provisions associated with the desired outcomes;
- Identification of gaps in the national and provincial policy, legislation, ordinances and regulations;
- National and international benchmarking in terms of self-regulation of this or similar sectors;
- Consultation with stakeholders, government and other identified (and agreed) role players;
- Development of a comprehensive strategy;
- Development of key issues to be covered by legislation if required;
- Recommendations on the establishment of a regulatory body/bodies including roles, functions and mandate, and the process to establish such a body;
- Compliance reporting and monitoring strategy;
- Development of incentives and disincentives, including socio-economic and business opportunities within incentives; and
- Development of the agreement between the off-road sector and the Minister if required.

Based on the project requirements, a 4-phased approach is being followed.

The four phases include:

- Phase 1: Project Inception and Planning;
- **Phase 2: Research and Benchmarking;**
- Phase 3: Stakeholder Consultation; and
- Phase 4: Strategy and Implementation Framework Development.

This report deals with Phase 2, which includes:

- Legal scan; and
- Benchmarking.

Legal Scan

We completed a **legal scan** of the applicable legal authorisation and process requirements that apply to the off-road sector so that potential existing legal requirements can be understood and used / enforced as required, and all legal gaps can be identified.

It must be noted that although legal gaps have been identified, the off-road strategy does not necessarily address all gaps, as in some cases addressing the gaps is not necessary and will not benefit the off-road sector. Rather, all legal gaps have been highlighted with some addressed in the strategy, while others have been flagged possibly for future interventions.

It covered areas such as environmental, development planning, passenger transport, vehicle and driver licensing, tourism grading, guide accreditation and training accreditation in order to gain a full understanding of its applicability to the off-road sector.

The following key areas were covered:

- Trail development and operation;
- Trail grading;
- Vehicle registration;
- Driver training and accreditation; and
- Guide training and accreditation.

Benchmarking

We conducted a **benchmarking exercise** of legal regulation and self-regulation in the off-road sector and other sectors, elsewhere in the world and in South Africa.

In terms of international benchmarking of off-road sectors, we researched and analysed the regulation of the off-road sectors in the following countries:

- United States of America (“**USA**”);
- Australia;
- Canada; and
- United Kingdom (“**UK**”).

In terms of national benchmarking, we researched and analysed the following sectors in South Africa:

- Other regulatory bodies e.g. amateur radio licensing;
- Black economic empowerment (“**BEE**”) charters;
- “Pleasure” boating;
- Scuba-diving;
- Go-karting;
- Hiking; and
- Liquor licensing.

4. Overview of Off-Road Sector Issues

The use of off-road vehicles can present serious detrimental impacts to the environment and incompatibility with other users of the land, if not managed in a responsible manner.

It is widely accepted that off-road use of vehicles may result in one or more detrimental environmental effects, including, but not limited to:

- Physical soil damage, often readily visible, resulting in:
 - Erosion, causing soil loss and damage to stream banks, streams, and fish habitat;
 - Soil compaction and serious adverse impact on flora and its regeneration; and
 - Degradation of trails, including rutting and breakdown of trail edges.
- Disruption of wildlife breeding and nesting habitats, especially of vulnerable species, resulting in loss of young;
- Disturbance of wildlife, leading to weakened physical condition, death, and possible extinction of some species;
- Damage to archaeological, scientific, historical and other significant sites, and damage to natural features, sometimes with irreversible effects, especially on rare features of interest for scientific study;
- Facilitation of illegal hunting, fishing and the illegal trade in fauna and flora;
- Danger to the safety of other land users because of vehicle speed, steep terrain, sharp curves, slippery or unstable trail surfaces, and/or limited visibility;
- Competition with other land users: vehicle operators, with their increased mobility, generally use a greater quantity of scarce land per recreational user;
- Introduction of air and water pollution to areas presently removed from any such sources; and
- Excessive noise, which, in close proximity, may result in physiological effects on humans and fauna, or may induce anxiety, altering animal behaviour patterns, and which, in most circumstances, seriously degrades the solitude of natural areas for other users.

Annexure A includes a detailed breakdown of impacts as identified in the Western Cape Guidelines Series.

5. Legal Scan – Trail Development and Operation

Overview of Legislation

The following national legislation relates directly to trail development and operation within the off-road sector:

- Constitution of the Republic of South Africa;
- NEMA;
- NEMA Environmental Impact Assessment Regulations, 2006;
- National Environmental Management Act: Control of Vehicles in the Coastal Zone Regulations, GN Regulation 1399 of 21 December 2001;
- National Environmental Management: Biodiversity Act, Act 10 of 2004 (“**NEMBA**”);
- National Environmental Management: Protected Areas Act, Act 57 of 2003;
- National Environmental Management: Air Quality Act, Act 39 of 2004;
- Environment Conservation Act (“**ECA**”) 73 of 1989 – Noise Regulations – GNR 154 of 10 January 1992;
- National Heritage Resources Act, Act 25 of 1999; and
- National Water Act, Act 36 of 1998 (“**NWA**”).

Gap Analysis and Conclusion

South African legislation does allow for some potential to control off-road vehicle use, viz:

- **NEMA** – Provides that the Minister may, in a province, together with the relevant MEC identify activities that may not be undertaken, as well as geographic areas in which specified activities may not be undertaken without prior authorisation. In addition, current activities can also be assessed.

Off-road vehicle use is not listed as a specific activity (NEMA EIA Regulations).

However, off-road driving track development and operation could become a listed activity and sensitive areas could be specified. In the Northern Cape and Western Cape off-road driving track development and operation are being treated as listed activities under EIA legislation.

- **Norms and Standards, NEMA (as amended)** – NEMA allows for the development of Norms and Standards specific to a sector or an activity. These specify the environmental standards and management requirements for that sector and can supercede or replace the normal EIA process. Such Norms and Standards might be able to be used for trail and track owners, operators and developers and require a specific process as opposed to full EIAs.
- **National Environmental Management: Protected Areas Act** – A management plan must be prepared by a municipality for a local protected area, which includes which activities may take place on the land. The management plan could control and zone for all aspects of off-road activity.
- **NEMAQA** – A list of activities which result in atmospheric emissions which may have a significant detrimental effect on the environment, must be published by the Minister (may be published by the MEC) by Notice in the Gazette. This is however listed by country or province, and not area. It could therefore be used to control emissions, but not by sensitive or defined areas.
- **ECA, Noise Regulations** – Noise levels are determined by relevant local authorities and apply throughout the authority area. However Regulation 8 only refers to the noise made when a vehicle is stationary. It is unlikely that this can cater for any aspects of controlling off-road noise levels.
- **Heritage Act** – The Act indicates that any person that intends undertaking construction and development activities (which **could** include off-road vehicle use facilities) must inform the responsible heritage resources authority. While this probably applies to off-road trails, it is unlikely that it is being applied or policed
- **NWA** – If a new off-road vehicle trail is developed and will requiring the altering of the bed, banks, course or characteristics of a watercourse, a water use license must be obtained. This applies to off-road trail development and use, but it is unlikely that it is being applied.

6. Legal Scan – Trail Grading

There is currently no legislation governing the grading or registration of trails and routes in South Africa, although a voluntary grading framework has been developed which is currently being tested.

7. Legal Scan – Vehicle Registration and Licensing

Overview of Vehicle Registration and Licensing

The following vehicle registration legislation relates to off-road vehicle use:

- National Road Traffic Act 93 of 1996;
- National Road Traffic Act Regulations;
- South African National Roads Agency Limited and National Roads Act 7 of 1998; and
- ECA – Noise Regulations.

Key points to note regarding vehicle registration and licensing in South Africa include:

- Vehicle registration and licensing are two separate processes;
- All vehicles need to be registered. Registration is necessary to control the number and type of vehicles on the road, to ensure roadworthiness of vehicles and therefore ensure safety on the road and lastly to have a reference for stolen vehicles;
- Any vehicle that is used on public roads must be registered, licensed and must be roadworthy (i.e. “street legal”); and
- All vehicles are recorded on the National Traffic Information System (“**NaTIS**”)¹ Registering authorities are responsible for registration, while licensing authorities are responsible for licensing.

Table 1 provides an indication of vehicle registration and licensing for the various classes of off-road vehicles.

Table 1: Vehicle Registration and Licensing for Off-Road Vehicles

Type of ORV	Registration	Licensing
Off-road and trail motorbikes	Compulsory for all vehicles	Compulsory only if used on public roads and the vehicle must be road-worthy
Quad bikes	Compulsory for all vehicles	Quad bikes may not be used on public roads thus no licensing is required
4x4s	Compulsory for all vehicles	Compulsory only if used on public roads and the vehicle must be roadworthy

Gap Analysis and Conclusion

¹ **NaTIS** is a system used by all the offices and/or appointed agents to execute the content of the National Road Traffic Act 93 of 1996

In terms of the registration of off-road vehicles, the issue is not one of legislation (it is currently compulsory for all types of off-road vehicles to be registered irrespective of where they are used), but rather of enforcement. Many off-road vehicles are used exclusively off-road, usually on private land, which makes policing and enforcement of registration nearly impossible.

In addition, registration of off-road only vehicles, such as private game vehicles and quad bikes, is not maintained i.e. on resale. Nor is it feasible to track owners through this registration process, especially if addresses change.

With regards to vehicle licensing, off-road vehicles only need to be licensed if they are to be used on public roads.

In terms of off-road vehicle registration and licensing, perhaps the only gap in the legislation is that there is no national legislated definition of an off-road vehicle, as well as no specific class of off-road vehicles for registration and licensing.

It should however be noted, that the issue of off-road vehicle licensing is not for consideration as part of the development of the off-road strategy but is being discussed and addressed by relevant stakeholders outside of this process.

8. Legal Scan – Driver Licensing and Training

Driver Licensing

A person requires a driver's licence if they are to operate a registered and licensed vehicle in South Africa on a public road. This is to ensure that the driver understands the rules of the road and knows how to operate a vehicle safely on roads.

The legal framework which supports and enforces driver licensing falls under the National Road Traffic Act 93 of 1996. The Act specifies different driver licenses for different vehicle types, viz:

- Motor cycle;
- Light motor car (car); and
- Heavy motor vehicle / trucks.

No driver's licence is required to operate off-road vehicles off of public roads. For off-road vehicles that may be legally operated on public roads, there is no specific driver licence code, and drivers are licensed under other codes.

Driver Training

There is currently no compulsory training for off-road vehicle owners, although training is provided by clubs, independent trainers and off-road retailers / manufacturers.

Off-road driver unit standards in line with the Skills Development Act requirements have been developed and presented to the Standards Generating Body (“**SGB**”) for review. These were then submitted by the SGB to the South African Qualifications Authority (“**SAQA**”) for approval and registration. Final approval is expected towards the end of 2007. SAQA will ultimately decide where the unit standards will reside i.e. TETA, THETA or Manufacturing, Engineering and Related Services Education Training Authority (“**MERSETA**”). Memoranda of Understanding (“**MOUs**”) will need to be put into place with TETA, MERSETA and THETA allowing the unit standards to be accessible to these bodies as an elective standard.

Once the Unit Standards are in place, curriculum and training materials can be prepared and the process of accrediting instructors and facilities can begin.

Gap Analysis and Conclusion

There is no legislation that governs the licensing of drivers driving off-road vehicles off-road. Only if an off-road vehicle is to be driven on public roads, must the driver be licensed. This is the first gap in current legislation.

Another gap is that there is no legislated off-road vehicle driver code, and drivers operating off-road vehicles on public roads are licensed under other codes, most specifically those related to the various classes of motor vehicles (including motorcycles).

Although the use of the Road Traffic Act was investigated to manage unacceptable driver behaviour off-road, this would entail declaring all trails and tracks as public roads. This would then result in an additional range of issues for the sector i.e. all trails and tracks would have to undergo EIA's, no quad bikes would be allowed, no children would be allowed to ride bikes, quads on trails and tracks etc.

In terms of driver training, there is no legislation that governs the training of off-road vehicle drivers, irrespective of whether the off-road vehicle is driven off-road or on public roads.

The off-road driver competency unit standard, currently with SAQA, concentrates predominantly on competent and safe vehicle operation, with limited (1 out of 14) outcomes relevant to environmental protection.

The environmental protection outcome(s) may need to be strengthened and also be available separately to ensure off-road environmentally sustainable driving competency.

Not all the legal gaps identified here are addressed in the final off-road strategy. The strategy contains more detail about how some gaps have been addressed. The other gaps highlighted here may be addressed through possible future interventions.

9. Legal Scan – Tourist Guide Registration and Training

Guide Registration

The guiding industry is governed by the Tourism Act, Act 72 of 1993, which deals with the regulation of tourist guides. Compared with the other off-road sub-sectors, tourist guides are the most regulated of all, although this is often not followed or adhered to.

DEAT is the governing body, which sets the rules and regulations, but tourist guides are registered with the provincial tourism department concerned. Guides may only operate in the category in which they have been trained and for which they have been registered.

There are some 8 000 tourist guides registered with the provincial departments, but according to industry stakeholders, not all tourist guides are registered, and thus there are most likely more than 8 000 operating in the industry. The figure of some 8 000 tourist guides includes independent tourist guides (self employed or freelance) as well as those that are employed by an organisation. It is currently not known how many of these are off-road guides.

Guide Training

There are only two qualifications registered on the National Qualifications Framework (“NQF”), viz:

- National Certificate in Tourism: Guiding (NQF2); and
- National Certificate in Tourism: Guiding (NQF4).

However, several Unit Standards, within the different areas of specialisation, have been registered on the NQF.

There are currently no specific off-road guiding Unit Standards and thus there are no THETA-accredited trainers and courses available, however the development and registration of Unit Standards is currently in progress.

Gap Analysis and Conclusion

There is legislation in place that governs the compulsory registration of tourist guides in South Africa. Many unregistered tourist guides still operate however. There is perhaps only one gap in the legislation and that is that there is no specific category for off-road guides. This gap is addressed in the final strategy.

Training of guides is indirectly legislated because tourist guides need to undergo training, before they can become registered. However, although training does exist, which is linked to the NQF, there are no specific off-road tourist guides Unit Standards in place, although this is currently in progress. Training of off-road tourist guides does still happen outside of the NQF framework.

10. Benchmarking of International Off-Road Sectors

Table 2 provides a comparison of off-road sector regulation in South Africa, the USA, Australia and Canada.

In Australia, the USA and Canada the off-road sectors are largely regulated through legislation, either at a national or state / territory level. In addition, most of these regulations have been in place for many years. In South Africa, there is no national or provincial legislation governing the off-road sector.

In South Africa, although there is no legislated definition of ORVs, the term is widely accepted to include 2x4 and 4x4 motor vehicles, quad bikes (ATVs) and various classes of motorbikes. In the Western Australia and some states in the USA, the term ORV is legislated, but excludes 4x4 motor vehicles.

In South Africa there is no legislated registration of off-road trails or areas, the same as Ontario in Canada. In the USA and Australia however, off-road trails and areas are legally designated for ORV driving.

None of the 4 countries have trail grading systems in place that we came across, although South Africa has developed a voluntary grading system framework, which is currently being tested.

In all 4 countries, registration of ORVs is legislated for both off-road and on public road use, in most cases. There are some exceptions, for example, in Michigan, ORVs used exclusively on private land, do not have to be registered. In most cases, there is no special class of ORV registration, except in Minnesota and Western Australia.

South Africa is the only country, of the 4, that does not require proof of registration to be displayed, either in the form of a permit or number plate, while the vehicle is being driven.

It must be noted however that ORV registration is largely to control who owns vehicles which are only used off-road and possibly aspects of roadworthiness, but not to control, manage or minimise environmental impacts in the way the vehicle is driven.

In all 4 countries driver licensing is only required for ORVs driven on public roads. With the exception of Wyoming, there is no specific class of ORV licence.

From what we could determine, nowhere (in Australia, Canada or the USA) is off-road driver competency required or managed in any way, except in Michigan where children under 16 are required to undergo compulsory safety training.

However despite these controls, the off-road sectors in the USA, Australia and Canada are still experiencing problems.

In Australia for example, the lack of co-ordinated management of the off-road sector and a lack of available ORV trails is resulting in a revision of their legislation.

Not having enough control also appears to be problematic. In Ontario for example, the shortage of officially designated off-road trails has resulted in issues arising between motorised and non-motorised trail users.

Some key take-home points with regards to the international off-road sectors, viz:

- No other country licenses ORV drivers and there is no driver competency;
- Licensing of ORVs is common;
- ORVs are usually a defined class of vehicle;
- Trails in certain areas must be registered
- Grading systems are not regulated nor are they common; and
- Off-road tourist guides are not regulated.

Table 2: Off-Road Sector Regulation in South Africa, USA², Australia³ and Canada⁴

	South Africa	USA	Australia	Canada
Level of Off-Road Sector Regulation	<ul style="list-style-type: none"> No legislation currently in place 	<ul style="list-style-type: none"> Some national legislation Regulation is controlled at state level, with many states having legislation in place 	<ul style="list-style-type: none"> Regulation is controlled at local government level In Western Australia and New South Wales, regulation is legislated at state level 	<ul style="list-style-type: none"> Regulation is controlled at state or territory level In Ontario regulation is legislated at state level
Classes of Vehicles	<ul style="list-style-type: none"> No legislated definition of ORVs ORVs generally include: <ul style="list-style-type: none"> 2x4 and 4x4 motor vehicles; Quad bikes; and Motorbikes (e.g. trail bikes, off-road bikes and on-and-off road bikes). 	<ul style="list-style-type: none"> Legislated definition at state level, applicable to ORVs (e.g. Wyoming and Michigan) or OHVs (Minnesota) Generally includes ATVs and various types of motorcycles In some states (e.g. Wyoming), 4x4s are not included in the definition 	<ul style="list-style-type: none"> Legislated definition at state level In Western Australia 4x4s are not included in the definition 	<ul style="list-style-type: none"> Legislated definition at state level ORVs include: <ul style="list-style-type: none"> 2- and 3-wheeled motorised vehicles Specific 4- or more wheel recreational vehicles
Site / Trail Registration	<ul style="list-style-type: none"> Not legislated No system currently in place 	<ul style="list-style-type: none"> Legislated registration of off-road trails and areas, with ORV use dictated by three classes – open, limited and closed 	<ul style="list-style-type: none"> Legislated designation of areas in which ORV use is permitted 	<ul style="list-style-type: none"> No legislated designated trails

² Applicable to Wyoming, Minnesota and Michigan

³ Applicable to Western Australia and New South Wales

⁴ Applicable to Ontario

	South Africa	USA	Australia	Canada
Site / Trail	<ul style="list-style-type: none"> • Not legislated 	<ul style="list-style-type: none"> • Not found 	<ul style="list-style-type: none"> • Not found 	<ul style="list-style-type: none"> • Not found
Grading	<ul style="list-style-type: none"> • A grading system framework has been developed, but this needs to be reworked and finalised. 			

11. Benchmarking of Other Sectors in South Africa

Amateur Radio Licensing

The amateur radio sector in South Africa is a good example of self-regulation within a regulatory framework, with government (i.e. ICASA) devolving compliance and other processes to the South African Radio League (“SARL”).

Thus although obtaining a licence is compulsory (legislated) if a person wishes to operate as an amateur radio operator, the way in which this is done involves a self-regulation mechanism i.e. SARL.

Although the SARL operates on behalf of ICASA to administer the Radio Amateur’s Examination (which a potential operator must pass, for a licence to be awarded), the licence is ultimately awarded by ICASA.

Pleasure Vessel Boating

The use of pleasure vessels on coastal waters and tidal estuaries has been regulated, through legislation for many years, mainly to ensure the safety of the vessel and its skipper and other passengers. This is achieved through the compulsory:

- Registration of vessels;
- Requirement for a Certificate of Fitness / Safety Certificate; and
- Licensing of skippers.

Much like the current focus of the off-road sector, the irresponsible behaviour of some vessels owners and skippers on inland waters has resulted in the development of regulations to control the use of vessels on inland waters. This includes the same conditions as those indicated for pleasure vessels on coastal waters and tidal estuaries.

Thus, the inland water use by vessels is being regulated through legislation.

Commercial Scuba Diving

Scuba diving in South Africa is largely regulated without legislation.

Commercial scuba divers in South Africa are required to be certified before they can dive. This qualification is linked to a training programme, and proof of competency i.e. a diver will not be issued with a certificate if he/she is unable to complete specified requirements. Thus, this is a good example of self-regulation i.e. control without legislation. Legislation is not always required to regulate an industry.

Legislation is however in place for divers who wish to dive in reefs which fall into marine protected areas. However, there are no environmental or other requirements to obtain permits to dive in these areas and the year-long validity indicates no capacity control element to permit licensing.

Motorsport

Go-karting, and other forms of motorsport in South Africa, are controlled through the licensing of drivers and race-tracks which is a self-regulatory system.

In the case of driver licensing, motorsport clubs play a pivotal role, as drivers have to be members of a club, in order to obtain a licence. Membership requires only proof of health and not of competency, and rules are conveyed in documented form, with no specific training or signing of a code.

Hiking

The use of hiking trails in South Africa does not appear to be regulated through legislation. However, a framework of self-regulation has been developed, based on a grading system.

This system is entirely aimed at informing the user of the nature and type of trail, not at ensuring the trail itself, or the trail users, are not damaging the environment, or are competent hikers.

Liquor Licensing

Liquor licensing is regulated entirely through legislation, both at a national and provincial level.

In terms of retail operations, licences are granted to an organisation / retail outlet and not a person.

Examples of Regulatory Bodies

The following regulatory bodies were investigated:

- SARL;
- South African Stud Book And Animal Improvement Association (“**SA Stud Book**”);
- Advertising Standards Authority of South Africa (“**ASA**”); and
- Broadcasting Complaints Commission of South Africa (“**BCCSA**”).

Key highlights from these regulatory bodies include:

- All four entities obtain their regulatory powers from legislation, which declares them to be competent authorities to carry out their various regulatory functions;
- With the exception of SARL, which performs representative and regulatory functions, the organisations investigated only carry out regulatory functions;
- Members of the entities are associations and other organisations representing various sectors, industries etc; and
- In the case of the BCCSA, sanctioning, including fines, of those in contravention with the law is included in legislation.

Conclusion

Table 3 provides a comparison of the regulation of the off-road sector in South Africa, with the benchmarked sectors included above.

Some sectors in South Africa are regulated entirely through legislation (e.g. pleasure boating, liquor licensing and amateur radio licensing), while others are controlled through self-regulation (e.g. hiking trails and motorsport). Others use a mixture of legislation and self-regulation (e.g. scuba diving).

Regulation is largely achieved through licensing and registration, which can occur on 3 levels, viz:

- The user (e.g. vehicle driver, scuba diver, boat skipper etc.);
- The object being used (e.g. boat etc.); and
- The place / location where activities occur (e.g. sea, dam, reef etc.).

Some key take-home points are listed below, viz:

- User competency is controlled for scuba diving (self-regulation), and boat skippers (legislated), mainly from a safety objective and not environmental objectives. Radio users' competency is controlled also for safety and general competency;

- Sites have to be registered for pleasure boating and liquor sales (legislated) and for motor racing (self-regulation). From a pleasure boating perspective, DWAF may take environmental factors into account when allowing registration, but for liquor licensing and motor racing and many aspects of pleasure boating, site regulation and control is mainly for safety / health;
- Only in the arena of diving, are guides / instructors required to undergo certain training and be certified, and the main objective behind this appears to be safety; and
- Bodies (i.e. those investigated) responsible for regulation obtain their regulatory powers from legislation, which declares them to be competent authorities to carry out their various regulatory functions. Most of these bodies only carry out regulatory functions.

Table 3: Regulation of Various Sectors in South Africa

Sector in South Africa	Type of Regulation	User Licensing	User Competency	Site Registration	Site Grading	“Vehicle” Registration and Licensing	Guide Registration
Off-road	<ul style="list-style-type: none"> No legislation specific to the off-road sector 	<ul style="list-style-type: none"> No licensing of drivers operating ORVs off-road 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Legislated registration of ORVs 	<ul style="list-style-type: none"> Legislated registration of guides
Amateur Radio Licensing	<ul style="list-style-type: none"> Largely legislated 	<ul style="list-style-type: none"> Legislated – linked to passing an exam 	<ul style="list-style-type: none"> Legislated – Radio Amateur’s Examination 	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Not found 	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Not found
Pleasure Vessel Boating	<ul style="list-style-type: none"> Largely legislated 	<ul style="list-style-type: none"> Legislated – obtaining a skipper’s ticket is dependent on proof of competency (i.e. Certificate of Competency must be obtained) 	<ul style="list-style-type: none"> Legislated – skippers must be trained in safety and vessel operation 	<ul style="list-style-type: none"> Legislated – dams and rivers have to be registered with DWAF 	<ul style="list-style-type: none"> Not found 	<ul style="list-style-type: none"> Legislated – vessels have to be licensed to the owner and must obtain a Safety Certificate / Certificate of Fitness 	<ul style="list-style-type: none"> Not found

Sector in South Africa	Type of Regulation	User Licensing	User Competency	Site Registration	Site Grading	“Vehicle” Registration and Licensing	Guide Registration
Commercial Scuba Diving	<ul style="list-style-type: none"> Mixture legislation and self-regulation 	<ul style="list-style-type: none"> Self-regulated – obtaining a diver’s licence is dependent on training and passing a written exam Legislated – Diver permit required for marine protected areas – easily obtained for a fee with no environmental code or conduct required 	<ul style="list-style-type: none"> Self-regulated – divers must be trained in safety and operation with some environmental included 	<ul style="list-style-type: none"> Dive sites not registered 	<ul style="list-style-type: none"> Not found 	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Self-regulated – Dive guides (instructors) under special training and need to be registered as such

Sector in South Africa	Type of Regulation	User Licensing	User Competency	Site Registration	Site Grading	“Vehicle” Registration and Licensing	Guide Registration
Motorsport	<ul style="list-style-type: none"> Self-regulated 	<ul style="list-style-type: none"> Self-regulation – drivers licensed – driver must belong to a motorsport club and have certified proof of good health 	<ul style="list-style-type: none"> None – only proof of health is required 	<ul style="list-style-type: none"> Self-regulation – race-tracks need to be licensed 	<ul style="list-style-type: none"> Not found 	<ul style="list-style-type: none"> No licensing 	<ul style="list-style-type: none"> Not found
Hiking	<ul style="list-style-type: none"> Self-regulation 	<ul style="list-style-type: none"> No licensing of hikers 	<ul style="list-style-type: none"> No hiker competency required 	<ul style="list-style-type: none"> No registration of hiking trails 	<ul style="list-style-type: none"> Self-regulation – grading of hiking trails occurs 	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Not found
Liquor Licensing	<ul style="list-style-type: none"> Largely legislated 	<ul style="list-style-type: none"> No licensing 	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> Legislated – retail outlets have to be licensed 	<ul style="list-style-type: none"> Not found 	<ul style="list-style-type: none"> n/a 	<ul style="list-style-type: none"> n/a

12. Conclusion

It is immediately apparent from **Table 4** that the South African off-road sector seeks to cover more focus areas than international off-road sectors in benchmarked countries as well as other sectors in South Africa.

It should however be noted, that activities have already been undertaken for some of the focus areas.

Table 4: Comparison of the South African Off-Road Sector’s Proposed Focus Areas with Others

	Trail Registration	Trail Grading	User Competency	Vehicle Licensing	Guide Registration	Guide Training
SA Off-Road proposed	Yes – for environmental control	Yes – to inform the user for expectations and enjoyment	Yes	Not as part of this strategy	Yes	Yes
Other similar off-road benchmarks	Fairly common internationally	None	None	Very Common	None	None
Other similar or same objectives	Possibly dams and rivers locally	Hiking trails	None	Pleasure boats for control and safety	None	None
Other	Motor racing and dams for safety and liquor outlets for public health/safety	None	Boat skippers and divers for safety, and enjoyment, radio operators for safety			Diving predominantly for safety