
GENERAL NOTICE

NOTICE 931 OF 2005

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

INVITATION TO APPLY FOR RIGHTS TO UNDERTAKE COMMERCIAL FISHING OF HAKE DEEP SEA TRAWL, HAKE INSHORE TRAWL, HORSE MACKEREL, SMALL PELAGICS (SARDINES AND ANCHOVY), SOUTH COAST ROCK LOBSTER, PATAGONIAN TOOTHFISH AND KWAZULU-NATAL PRAWN TRAWL IN TERMS OF SECTION 18 OF THE MARINE LIVING RESOURCES ACT 18 OF 1998

The Minister of Environmental Affairs and Tourism ("the Minister") hereby invites applications for rights to undertake commercial fishing in the following sectors:

1. Hake Deep Sea Trawl
2. Hake Inshore Trawl
3. Horse Mackerel
4. Small Pelagics (Sardines and Anchovy)
5. South Coast Rock Lobster
6. Patagonian Toothfish
7. KwaZulu-Natal Prawn Trawl.

The fishing rights will be allocated in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998). The following schedules are also published herewith:

1. Schedule A: the General Fisheries Policy.
2. Schedule B: the Fishery Specific Policies for Hake Deep Sea Trawl, Hake Inshore Trawl, Horse Mackerel, Small Pelagics (Sardines and Anchovy), South Coast Rock Lobster, Patagonian Toothfish and KwaZulu-Natal Prawn Trawl.
3. Schedule C: the final specimen Medium Term Right Holder Application Forms for each of the fisheries listed above with the exception of Patagonian Toothfish, for which an Experimental Permit Holder Application Form (together with Explanatory Notes) is published.
4. Schedule D: the Explanatory notes to the Medium Term Right Holder Application Forms
5. Schedule E: the final specimen New Entrant Application Forms
6. Schedule F: the Explanatory notes to the New Entrant Application Forms
7. Schedule G the final schedule of fees determined by the Minister in consultation with the Minister of Finance in terms of section 25(2) and section 25(1) of the Marine Living Resources Act. The schedule of fees published in Schedule E hereby repeal the provisions of clause 1(a) (i), (iv), (v), (vi), (viii) and (ix) of GN 26750 of 31 August 2004.

The electronic registration and application form distribution process will commence on Friday 17 June 2005 at 08h30 and closes on Friday 1 July 2005 at 17h00. Applicants may register at www.mcm-deat.gov.za and may obtain further information regarding the process at this website. Applications must be submitted on 14 July 2005 (between 08h00 – 19h00) or 15 July 2005 (between 08h00 – 17h00) at the Good Hope Centre in Cape Town.



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

GENERAL POLICY ON THE ALLOCATION AND MANAGEMENT OF LONG TERM COMMERCIAL FISHING RIGHTS: 2005

THIS POLICY MUST BE READ WITH THE APPLICABLE FISHERY SPECIFIC POLICY
(available at www.mcm-deat.gov.za)

This document is also available in Afrikaans, isiXhosa and isiZulu
Hierdie document is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu
Lencwadi iyatholakala nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu

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PART A: INTRODUCTION AND BACKGROUND

1. Introduction

This **General Policy on the Allocation and Management of Long Term Commercial Fishing Rights** is issued by the Minister of Environmental Affairs and Tourism and will be referred to as the “**General policy**”. The General policy must be read in conjunction with policies that will be referred to as the “**Fishery specific policies**” or “**Sector specific policies**” that have been adopted for each commercial and experimental fishing sector. In the General policy a number of issues are dealt with that are relevant to all the fishing sectors listed in paragraph 2. These cross-cutting policy considerations also inform the contents of the Fishery specific policies, which set out the Minister’s specific intentions with regard to the allocation of rights in each fishery. Potential applicants and interested parties should read this General policy in conjunction with the applicable Fishery specific policy.

2. Application

The General policy applies to the allocation of rights in the 19 commercial fishing sectors: Hake Deep Sea Trawl, Hake Inshore Trawl, Horse Mackerel, Small Pelagics, Patagonian Toothfish, South Coast Rock Lobster, KwaZulu-Natal Prawn Trawl, Hake Long Line, West Coast Rock Lobster (Off Shore), Squid, Tuna Handline, Seaweed, Shark Demersal, Handline Hake, West Coast Rock Lobster (Near Shore), Oysters, White Mussels, Netfishing (Trek- and Gillnets and Beach Seine) and Kwazulu-Natal Beach Seine.

The General policy does not apply to –

- ❑ Subsistence fishing. A separate policy will be adopted dealing specifically with subsistence fishing, including the subsistence fishing of East Coast Rock Lobster and Abalone in the Eastern Cape.
- ❑ Recreational fishing. A separate policy will be adopted dealing specifically with recreational fishing.
- ❑ Foreign fishing.
- ❑ Fish processing establishments. A separate policy will be adopted dealing specifically with fish processing establishments.
- ❑ Mariculture. A separate policy will be adopted dealing specifically with the regulation and management of mariculture in South Africa.
- ❑ Non-consumptive marine activities, including boat based whale watching, shark cage diving, sport diving and SCUBA diving. Separate policies will be adopted dealing specifically with these non-consumptive marine activities.
- ❑ Traditional Linefish. A separate policy will be adopted dealing specifically with Traditional Linefish.

Although this policy does apply to Hake Handline, West Coast Rock Lobster (near shore), Netfish (Trek- and Gillnets, Beach Seine), Kwazulu-Natal Beach Seine, Oysters and White Mussel sectors, applicants in those sectors are advised to focus on the Fishery specific policy for the considerations that will be applied to the allocation of rights. It will be essential for applicants in these sectors to study the fishery specific policies before they apply.

3. Purpose

The General policy, together with the Fishery specific policies, is intended to serve as a guide for the long term rights allocation process. It describes the core functions of the Department which support the rights allocation process. The Minister also considers it necessary, for the benefit of applicants, to set out some of the Department's management objectives for the immediate future. These may be reviewed from time to time by the Department if considered desirable.

4. What informs this policy?

The General and Fishery specific policies are informed by South Africa's international legal obligations, non-binding undertakings at international and regional level, and the legislative framework for the allocation of fishing rights.

4.1 International obligations pertaining to sustainable resource use

During the *World Summit on Sustainable Development* ("WSSD"), held in Johannesburg during September 2002, countries undertook to maintain or restore fish stocks to levels that can produce the maximum sustainable yield. The goal is to be achieved on an urgent basis for depleted stocks, and if possible, by not later than 2015. Countries also undertook to develop and implement national plans of action. The WSSD identified the need to maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, within and beyond national jurisdictions. The aim is to protect the ecosystem, using an approach that eliminates destructive fishing practices, establishes marine protected areas, imposes and supervises time and area closures for the protection of nursery grounds during spawning periods. In terms of the *Reykjavik Declaration* of 2001 and Johannesburg Plan of Implementation emanating from the WSSD, South Africa has committed itself to introducing such an Ecosystem Approach to Fisheries ("EAF") management by 2010.

The **Food and Agriculture Organisation's 1995 Code on Responsible Fisheries** is a voluntary instrument that recognises that fisheries, including aquaculture, provide a vital source of food, employment, recreation, trade and economic wellbeing for people throughout the world and should therefore be conducted in a responsible manner. The Code sets out principles and international standards of behaviour for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. The Code recognises the nutritional, economic, social, environmental and cultural importance of fisheries. The Code has led to four International Plans of Action ("*IPOAs*"). The *IPOAs* are the *IPOA* on Capacity; the *IPOA* to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ("*IUU Fishing*"); the *IPOA* for the Reduction of Shark By-catches; and the *IPOA* for the Reduction of the Incidental By-catch of Seabirds. As a state party, South Africa has undertaken and is committed to apply the Code, the four *IPOAs* and, if necessary, to give effect to them by way of National Plans of Action. In an endeavour to implement the *IPOA* to Prevent, Deter and Eliminate *IUU Fishing*, the monitoring and control of fishing vessels will be strengthened.

The United Nations Convention on the Law of the Sea, 1982 ("*UNCLOS*") seeks to establish a legal order for the world's seas and oceans in order to facilitate communication in international waters. It also promotes the peaceful use of the world's seas and oceans, the equitable and efficient utilisation of marine resources, the conservation of marine living resources and the study, protection and preservation of the marine environment.

The United Nations Fish Stocks Agreement, 1995 complements the Convention by specifying how straddling fish stocks (such as hake) and highly migratory fish stocks (such as tunas) should be exploited and managed.

South Africa is further a party to a number of **Regional Fishery Management Organisations** ("*RFMO's*") responsible for the management and conservation of shared fish stocks, including tuna, swordfish and Patagonian toothfish. These include the International Commission for the Conservation of Atlantic Tunas ("*ICCAT*"), the Commission for the Conservation of Southern Bluefin Tunas ("*CCSBT*"), the Indian Ocean Tuna Commission ("*IOTC*") and the Convention for the Conservation of Antarctic Marine Living Resources ("*CCAMLR*"), the South East Atlantic Fisheries Organisation ("*SEAFO*") and the Southwest Indian Ocean Fisheries Commission ("*SWIOFC*").

As a member of the Southern African Development Community ("*SADC*"), and in particular as a signatory to the **SADC Protocol on Fisheries**, South Africa is obligated to ensure the sustainable use of shared fish stocks with its *SADC* neighbours. These shared stocks include hake, pelagics, prawns, linefish and horse mackerel.

4.2 The legislative framework for the allocation of commercial fishing rights

The transformation of the fishing industry is a constitutional and legislative imperative. The primary vehicle for the promotion of the transformation of the South African fishing industry is the Marine Living Resources Act 18 of 1998 (the “MLRA”). Another important purpose of the MLRA is to provide for the orderly exploitation of marine living resources, and to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa. In terms of section 2 of the MLRA, the Minister and any organ of state shall have regard to a number of objectives and principles when exercising any power under the Act. These are:

- (a) *The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;*
- (b) *the need to conserve marine living resources for both present and future generations;*
- (c) *the need to apply precautionary approaches in respect of the management and development of marine living resources;*
- (d) *the need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;*
- (e) *the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;*
- (f) *the need to preserve marine biodiversity;*
- (g) *the need to minimise marine pollution;*
- (h) *the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act;*
- (i) *any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law; and*
- (j) *the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.*

In order to commercially exploit marine resources, a person or entity needs to apply and be granted a right under the MLRA. Section 18 provides as follows:

- (1) *No person shall undertake commercial fishing or subsistence fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.*

The allocation of rights has been the primary mechanism to further transformation and give effect to the other principles and objectives set out in section 2 of the MLRA. In order to exercise a right granted under section 18, a person needs to be issued with a permit under section 13 of the MLRA, which provides as follows:

(1) No person shall exercise any right granted in terms of section 18 or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity.

Apart the MLRA, the General Regulations, promulgated in GN 1111 in Government Gazette 19205 of 2 September 1998 (as amended) are relevant. These regulations contain certain procedures relating to appeals against decisions made under sections 13 and 18 of the Act, and the regulation of closed seasons and closed areas, the use of gear and species restrictions. The Regulations further deal with the landing, transportation, delivery, receipt, processing and marketing of fish and fish products, compliance control, the leaving of objects in the sea, fishing harbour regulations and offences and penalties.

The MLRA and its Regulations were interpreted in a number of court decisions concerning the medium term rights allocation process, some setting important legal precedents. These decisions were taken into consideration with the design of the long term allocation process.

The National Environmental Management Act 107 of 1998 (“NEMA”) provides the framework for the adoption of environmental management and policy. To the extent that an action of an organ of state significantly affects the environment the principles set out in section 2 of NEMA apply.

5. Departmental Functions and Delegations

5.1 Delegation of Powers

The MLRA confers powers on the Minister of Environmental Affairs and Tourism (“*the Minister*”) and the Director-General. In the past, the Minister and the Director-General have delegated many of their powers to officials in the Department, including the powers under section 13 (granting of permits), section 18 (granting of commercial fishing rights), section 28 (cancelling, revoking or suspending fishing rights / permits), section 81 (granting and cancelling of exemptions) and section 83 (permitting experiments and scientific investigations).

A complete set of all current delegations is available from the Department or may be viewed at www.mcm-deat.gov.za. The Minister intends to delegate his power to grant fishing rights and permits in the 19

commercial fishing sectors to officials in the Department. This General Policy and the Fishery Specific Policies are adopted by the Minister in order to guide the delegated authorities when allocating fishing rights and permits.

5.2 Core departmental functions supporting rights allocation

(a) Fisheries Research

The Chief Directorate: Research, Antarctica and Islands is responsible for managing the performance of this function. The principle purpose of scientific research is to ensure the ecologically sustainable utilisation of fish stocks and the conservation of marine ecosystems, including species which are not targeted for exploitation such as seals and seabirds.

The Department subscribes to Principle 15 of the Rio Declaration of the UN Conference on Environment and Development (Rio de Janeiro, 1992), which states that *“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall be not used as a reason for postponing cost-effective measures to prevent environmental degradation.”*

The Department supports a precautionary approach to all fisheries. Because uncertainty affects all elements of a fishery system, precaution is required at all levels of the system.

Scientific research is aimed at understanding the dynamics of fish stocks and informs the Total Allowable Catch (“TAC”) or the Total Applied Effort (“TAE”) determined in terms of section 14 of the MLRA. The scientific working groups are responsible for interpreting the stock analyses carried out on the different fish stocks and this interpretation ultimately informs the determination of the TAC/TAE. Scientific research further informs the designation of marine protected areas, the designation of fisheries management areas, the determination of closed areas, closed seasons, prohibited fishing times, minimum species size, vessel and gear restrictions and fishing methods, including by-catch prevention methods. Scientific research is also conducted in order to develop new fisheries, in line with the Department’s *New Fisheries Policy*.

Scientific working groups currently function in respect of each fishery sector. Each working group is made up of departmental scientists as well as external experts from other marine science institutions, such as institutions of higher learning. Most sectors are scientifically managed in terms of an Operational Management Procedure (“OMP”). Others are managed by means of annual assessments.

(b) Fisheries Management

The Chief Directorate: Fisheries and Coastal Management is primarily responsible for the performance of two functions. Firstly, to facilitate and regulate the sustainable and equitable development as well as the utilisation of marine living resources through the administration of fishing rights, permits, exemptions and licenses. Secondly, its function is to optimise the sustainable use of South Africa's coastal resources, by controlling human impacts on the environment (other than commercial fishing), such as coastal development, subsistence fishing, recreational fishing, marine pollution and marine eco-tourism. The Chief Directorate is supported by specialists in fisheries economics, fisheries management, oil and marine pollution management and coastal zone management.

(c) Fisheries and Coastal Compliance

The performance of this function is managed by the Chief Directorate: Fisheries and Coastal Compliance. In order to ensure compliance with fisheries laws, the Chief Directorate uses a number of measures aimed at encouraging and enforcing compliance. Those measures include:

- ❑ State of the art inshore and offshore environmental patrol vessels;
- ❑ Specialised environmental courts;
- ❑ Observer programmes;
- ❑ Marine protected areas;
- ❑ Vessel monitoring systems;
- ❑ Public education programmes;
- ❑ Co-management of fish stocks;
- ❑ Employment of fishery control officers responsible for ensuring that all fishing takes place in a regulated and lawful manner and that all landings are properly recorded;
- ❑ Honourary fishery control officers; and
- ❑ Strategic compliance partnerships with non-governmental organisations, local governments, conservation bodies and other applicable organs of state.

(d) Access to information

The Department's designated information officers for purposes of the Promotion of Access to Information Act, 2 of 2000 ("PAIA") are the Chief Director: Research, Antarctica and Islands, the Chief Director: Fisheries and Coastal Management and the Chief Director: Fisheries and Coastal Compliance.

A large body of information regarding previous rights allocations, such as policies, records of decisions, general published reasons, and other records such as compliance databases, TAC's and TAE's are available from the Department. Some records are also available at fishery control offices or at the Department's website (www.mcm-deat.gov.za). More information on how to access these records may be obtained in one of the following ways:

- Contact the Department's Client Care Line on 0861 123 626; or
- Visit the Department's Customer Services Centre at the Foretrust Building, 2nd Floor, Martin Hammerschlag Way, Foreshore, Cape Town.

As in the past, once the assessment of the applications is completed and the decisions are announced, most records held by the Department will be disclosed voluntarily and will be automatically available, as provided for in section 15 of PAIA. In other words, access to information forms do not have to be completed. Records may be inspected and copies will be furnished on informal request at the prescribed fee for reproduction. In general, the Department will only require access to information forms to be completed, and will only assess requests in terms of the provisions of PAIA, when access to the records created by third parties (such as completed application forms and their annexures) are sought. The approach to access to information is dealt with in greater detail below.

PART B: ALLOCATION METHODOLOGY AND PROCESS

6. The Allocation of Fishing Rights

6.1 The legal nature of the Fishing Right

Before the MLRA came into force in 1998, the Department granted fishing “*quotas*” under the Sea Fisheries Act, 12 of 1988. Section 18 of the MLRA now provides for the allocation of fishing “*rights*”. The legal nature of the “*right*” allocated under the MLRA is similar to the “*quota*” allocated under the Sea Fisheries. The “*rights*” allocated under the MLRA are not property rights and should be understood as statutory permission to harvest a marine resource for a specified period of time. Accordingly, cancellation or revocation does not constitute the expropriation of a property right within the meaning of section 25 of the Constitution or the Expropriation Act 63 of 1975. This is clear from section 18(6) of the MLRA, which provides that a fishing right is valid for the period determined by the Minister (or his delegate) whereafter it automatically reverts back to the State and may be re-allocated (to the previous right holder or another entity) in terms of the applicable provisions of the MLRA.

A fishing right is granted to a specific person or entity and, in terms of section 21 of the MLRA, the right may not be transferred without the approval of the Minister or his delegate. Upon the death, sequestration, or liquidation of the right holder, the right vests respectively in the executor, trustee or liquidator and the right may continue to be exploited for the period of time permitted by the applicable legal provisions. However, any transfer of the fishing right to a third party requires approval.

6.2 Core Allocation and Management Considerations

This General policy and the Fishery specific policies are based on five core principles that guide the allocation and the management of commercial fishing rights. The five principles complement and give effect to the objectives listed in Section 2 of the MLRA. They are:

- (a) **Transformation:** Transformation and the need to achieve equality within all branches of the fishing industry.

- (b) **Biological considerations:** The impact on the target species must be considered. This is primarily done through the setting of a Total Allowable Catch (“TAC”) or a Total Allowable Effort (“TAE”), or both.
- (c) **Ecological considerations:** The impact on the marine ecosystem in which the target species occurs must be considered.
- (d) **Industry and socio-economic and commercial considerations:** In so far as is practical and relevant, the socio-economic impact of allocations on right holders, workers and consumers are considered, in particular those individuals and communities dependent on the resource. Industry and commercial considerations include the nature and value of investments in fixed assets, marketing and processing and fishing capacity.
- (e) **Performance or potential to perform:** In so far as is practical and relevant, financial and fishing performance, value adding, enterprise development and job creation, as well as compliance with the MLRA, the Regulations, permit conditions and other legal requirements, are considered.

6.3 The Allocation Process

(a) **Public participation in policy formulation**

The Minister held 6 Imbizos in coastal communities during the latter half of 2004. These meetings were the informal start to a process of public consultation regarding the allocation of long term fishing rights.

The formal process of public consultation entailed a notice-and-comment process in respect of both the General policy and the Fishery specific policies. A full report concerning the public participation process and the adoption of the policies will be available at www.mcm-deat.gov.za. In brief, in the beginning of March 2005, the Department published a draft version of this General policy and a draft Fishery specific policy for each sector. Interested and affected parties were invited to comment on the policies. However, stakeholders in the various fisheries come from very different backgrounds and accordingly it was not appropriate to engage all of them in the same manner. Apart from the general notice-and-comment procedure, and in order to assist participants in the traditional sectors to comment, a series of public meetings were held where the proposed policies were explained, questions were answered and views from the audience were minuted. Interested and affected parties will also be given the opportunity to comment on proposed application forms.

(b) Allocation Process determined by Cluster

For purposes of the long term rights allocation process, the 19 fishing sectors are grouped together in four clusters for the assessment of applications for fishing rights. The purpose of clustering fisheries together is administrative, procedural and, to a lesser extent, substantive. However, different criteria and weighting may be applied to sectors falling within the same cluster. The clusters are:

Cluster A

- Hake Deep Sea Trawl
- Hake Inshore Trawl
- Horse Mackerel
- Small Pelagics
- Patagonian Toothfish
- South Coast Rock Lobster
- KwaZulu-Natal Prawn Trawl

Cluster B

- Hake Long Line
- West Coast Rock Lobster (off shore)
- Squid
- Seaweed
- Tuna Pole
- Demersal Shark

Cluster C

- Handline Hake
West Coast Rock Lobster (near shore)

Cluster D

- Net Fish (trek- and gillnets; beach seine)
- KZN Beach Seine
- Oysters
- White Mussels

(c) Communication

During the application period, officials of the Department, the delegated authority and the Minister, will not communicate with individual applicants regarding their applications, other than in the manner described in this General Policy. Similarly, applicants or their representatives may not communicate with the Minister, the delegated authority or officials of the Department regarding their applications other than in the manner described in this General policy. No reliance may be placed on any information given or obtained in any other manner. Attempts to influence a decision of the delegated or appellant authority on the allocation or a right or quantum or effort in any other manner will constitute an independent ground for refusing an application or an appeal.

Clusters A and B

Unless otherwise provided in this General policy, communication between the Minister, the delegated authority and officials of the Department Communication on the one hand, and applicants on the other, may only take place through three mechanisms in the **Clusters A and B** sectors:

- ❑ Electronic Media: Policies and other materials will be published on the website, www.mcm-deat.gov.za. Electronic-mail distribution lists will be established in order to communicate directly with applicants. During the application period, queries and questions of clarification will be answered by way of e-mail. There will be no communication on a private individual basis. All queries and questions received, and responses thereto, will be compiled and then distributed simultaneously to all registered applicants. The information will also be available on the website.
- ❑ Government Gazette: All policies, invitations to apply and general notices will be published in the Government Gazette.
- ❑ Recognised industrial bodies and interest groups: Policies and other materials will be circulated through recognised industrial bodies and interest groups.

Clusters C and D

Unless otherwise provided in this General policy, communication between the Minister, the delegated authority and officials of the Department Communication on the one hand, and applicants on the other, may only take place through six mechanisms in the **Clusters C and D** sectors:

- ❑ Electronic Media: Policies and other materials will be published on the website, www.mcm-deat.gov.za.
- ❑ Government Gazette: All policies, invitations to apply and general notices will be published in the Government Gazette.
- ❑ Recognised industrial bodies and interest groups: Policies and other materials will be circulated through recognised industrial bodies and interest groups.
- ❑ Call centre: The Department has established a call centre with assistants to answer rights allocations queries.
- ❑ Customer Services Centre: The Department has established a customer services centre in Cape Town.
- ❑ Departmental officials will render assistance to applicants at the distribution and receipting points and will hold meetings at several advertised venues along the coastline where the application process will be explained.

(d) Language

In **Cluster A**, the policies and explanatory notes to the application forms will be available in English and Afrikaans.

In **Clusters B, C and D**, the policies and explanatory notes to the application forms will be available in English, Afrikaans, isiXhosa and isiZulu.

In the case of conflict, the English text of a policy or explanatory note, will prevail.

(e) Invitation to apply for rights

Invitations to apply for commercial fishing rights will be published in the Government Gazette. The Department will also ensure that notices are placed on the Department's website and in regional newspapers.

Invitations gazetted in the Government Gazette will comprise the following parts:

- ❑ A short invitation to apply for the applicable commercial fishing right within a specified period.
- ❑ The fishery specific policy.
- ❑ A specimen applicable application form with a set of instructions, explanatory notes, and the notes to the schedules of documents to be submitted.

The invitation will not include this General policy as well. Applicants will however be provided with copies of the General policy on request. Invitations will be staggered on a cluster basis.

(f) Application Forms

Each fishery will have a separate application form designed to obtain the information considered relevant to effectively evaluate applications for the commercial fishing right in question. Application forms will be designed having regard to the fishery cluster and fishery in question.

Proposed application forms will be published for comment on website www.mcm-deat.gov.za, as part of the public participation process.

(g) Distribution of application forms and payment of fees

Cluster A

In **Cluster A**, applicants will be required to enter the Department's website and to submit a brief set of biographical details, such as name, company registration number, contact details and the like. On completion, the applicant will be informed how to make payment of the application fees.

Applicants will be required to pay the application fee prior to the issuance of the application form. Application fees must be paid directly into designated bank account of the Rights Verification Unit. On receipt of proof of payment, the applicant will be permitted to collect an application form in compact disc ("CD") format from the Right Verification Unit's head office, together with the applicable software to utilize the form.

Cluster B

Hard copy application forms will be distributed at a stipulated venue in Cape Town. Applicants will be required to deposit the application fee into the Rights Verification Unit's designated bank account, and to furnish proof of payment (an original deposit slip or an electronic payment confirmation) at the distribution point before collecting the form. Applicants will be required to submit a brief set of biographical details at the distribution point, such as the name, company registration number, contact details and the like. On completion, and on proof of deposit of application fee, applicants will be provided with a hard copy of a numbered application form.

Clusters C and D

In **Clusters C and D**, application forms will be distributed at various advertised regional venues along the coastline. Applicants will be required to deposit the application fee into the Rights Verification Unit's designated bank account, and to furnish proof of payment (an original deposit slip or an electronic payment confirmation) at the distribution point. Applicants will be required to submit a brief set of biographical details to the staff members at the distribution point, such as name, identification number, close corporation number (if applicable), contact details and the like. On completion, and on proof of deposit of the application fee, applicants will be provided with an application form.

(h) Application fees

The Minister, in consultation with the Minister of Finance, is responsible for setting application fees. The policy regarding application fees will be settled after a separate public consultation process.

(i) Verification by Auditors

Applicants in the **Cluster A** fisheries will be required to engage independent auditors to verify the information provided in certain components of their own application forms. The relevant professional body will determine procedures for the verification process. This does not apply to **Clusters B, C and D**.

*(j) **Receipting***

In **Cluster A**, applicants will be required to submit the completed CD and printed version of the application, annexures and copies by hand at a stipulated venue and during a specified period in Cape Town.

In **Cluster B**, applicants will be required to submit the completed application forms, annexures and copies by hand at a stipulated receipting venue and during a specified period in Cape Town.

In **Cluster C**, applicants will be required to submit the completed application forms, annexures and copies by hand at various pre-advertised regional receipting points along the coastline during a specified period.

In **Cluster D**, applicants will be required to submit the completed application forms, annexures and copies by hand at various pre-advertised regional receipting points along the coastline during a specified period. The receipting points will be the same as the distribution points and distribution and receipting will occur at the same venue and during the same period.

*(k) **Copies***

Cluster A

Cluster A applicants will be required to complete their application form electronically and save it on to the CD's provided for this purpose. Applicants will be required to print out a hard copy version of the completed application form. The printed version has to be signed and the declaration must be attested to before a commissioner of oaths. This version must then be photocopied. In total, applicants will be required to hand deliver at the stipulated venue and time period:

- ❑ One copy of the electronic version of the application saved on the CD provided for this purpose;
- ❑ A print-out of the electronic version, duly signed and commissioned, with the required schedules in the form of annexures; and
- ❑ A copy of the signed and commissioned printed version of the application and the annexures.

Clusters B, C and D

The applicant or authorised representative of a **Cluster B, C and D** applicant will be required, after the application form is completed, to sign the declaration and to attest to it before a commissioner of oaths. This application form, together with its annexures must be photocopied and both original and copy must be submitted.

(l) Design of criteria and weighting

Information submitted by applicants will be captured on a database. The policies, the database and information submitted by way of annexures, will be then be used for the development of detailed criteria and weighting for each sector for the purposes of assessing the applications and thereafter the allocation of quantum or effort.

(m) Information to be considered

The approach set out below will be adopted by the delegated authority and the appellate authority regarding information to be taken into account for assessing the applications.

(i) Parts of application form not completed

Unless otherwise indicated, if a part of the application form is not completed, it will be assumed that that part of the form does not apply to the applicant. If the section has positive points associated with the answer, no points will be awarded.

A specific icon (the “warning sign” icon) will be used to indicate where, if not completed, an answer adverse to the applicant will be assumed. For example, if left blank, it will be assumed that the applicant answered “yes” to a question such as: “Have you ever been convicted of an offence under the MLRA”? The warning sign icon may also be used to indicate that if the answer to a positively framed or an open-ended question is left blank, it will be assumed that the applicant answered the question negatively. For example, if left blank, it will be assumed that the applicant answered “no” to a question such as: “Have you participated as a crew member on a vessel that operated in a limited or full commercial fishery?”

(ii) Late information

Information submitted after closing day will not be considered, unless requested by the Rights Verification Unit, the delegated authority or the Minister as part of the rights allocation or the appeal process. The approach to

the submission of additional information on appeal is described below.

(iii) Information from external sources

Prejudicial information about an application received from external sources will not be taken into account by the Minister or the delegated authority unless the applicant is afforded the opportunity to make representations in respect of that information.

(iv) Use of Departmental databases

The Minister or the delegated authority may use information contained in the Department's own databases during the long term rights allocation process, but will do so only to the extent that applicants were afforded the opportunity to make representations concerning the correctness of the data.

(v) Submission of false information or documents and non-disclosure

Applicants or their authorised representatives are required to attest to a declaration before a commissioner of oaths stating, amongst other things, that they have not submitted false information or false documents and that they have not failed to disclose material information. The submission of false information or false documents or the failure to disclose material information will constitute a independent ground for refusing an application.

It will be assumed that an applicant has provided false information if there is a material discrepancy between the information provided by the applicant and the information contained in databases held by the Department and where both versions cannot be correct. It will further be assumed that an applicant has provided false information when there is a material discrepancy between the information provided by the applicant in the original application and information provided by the applicant on appeal, and where both versions cannot be correct.

In addition, the making of a false statement in an attested declaration, knowing it to be false, constitutes a criminal offence.

(vi) Copies of documents

Applicants will not be required to have any copy certified as a true copy but it will be assumed that any copy submitted is an exact replica of the original.

(n) Calls for further information, investigations and consultation

The Minister or the delegated authority may invite applicants to make oral submissions or to present further information in writing if there is uncertainty concerning a material issue in a substantial number of the applications. If oral hearings are held, legal representatives will be permitted to address the Minister or the delegated authority.

The Minister or the delegated authority may request the Rights Verification Unit to investigate any matter, including the correctness of information provided. Applicants must co-operate with investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with investigators, by answering questions satisfactorily at such meetings, and where necessary, by granting investigators access to premises, vessels and documents. The failure to co-operate will constitute an independent ground for refusing an application.

(o) Support for delegated authorities

The delegated authority responsible for the decisions on the applications in a sector may be supported by an “*Advisory Committee*”, and also by professional project managers, consultants and legal practitioners. The role of the Advisory Committees will be determined by the delegated authority. The Advisory Committee may be called upon to assist in the assessment of the applications under the supervision of, and in accordance with the criteria and weighting determined by, the delegated authority.

(p) Provisional lists

The delegated authority may issue provisional lists for comment on any aspect in any sector. So, for example, in **Clusters C and D** the delegated authority may request comment on whether the provisionally successful applicants are dependent on the resource and on the basis of the comments received make a final decision.

The delegated authorities for **Cluster A and B** fisheries may invite representations regarding the assessment of the applications before making final decisions. In these sectors, delegated authorities may consult with interested and affected parties on the method of allocating quantum or effort before taking these decisions.

(q) Notification of decisions and the reasons

After the delegated authority has made decisions on the allocation of rights and quantum or effort, the Department will notify an applicant in writing of the decision on the application. In addition, the Department will publish the results electronically and communicate the results through recognised industrial bodies and interest groups.

Unsuccessful applicants

Unsuccessful applicants will receive the following together with the letter informing them of the outcome of the application:

- ❑ The General Published Reasons which will record the criteria, the decision-making process and the methodology pertaining to decisions on quantum or effort;
- ❑ A specific reason why the application was unsuccessful;
- ❑ An appeal form, which applicants must submit together with the appeal;
- ❑ A notification of the closing date, details of the appellate authority and other formal requirements for the submission of appeals; and
- ❑ A copy of any final score sheet used to record the assessment of the application.

In addition, the following documents will be automatically available for inspection or purchase at the prescribed fee:

- ❑ The Spreadsheet of Decisions which contains a summary of the assessment of all the applications in a sector;
- ❑ Final Score sheets of other applicants; and
- ❑ The decision-making lists of the delegated authority or the Minister.

The specific reason contained in the notification letter to unsuccessful applications, together with the General Published Reasons, the final score sheet and the information that is automatically available, constitute the reasons for a decision to refuse an application.

Successful applicants

Successful applicants will receive the following together with the letter informing them on the decision on their application:

- ❑ The General Published Reasons which will record the criteria, the decision-making process and the methodology pertaining to decisions on quantum or effort;
- ❑ An Appeal Form, which applicants must submit together with an appeal on quantum or effort;

- ❑ A notification of the closing date, details of the appellate authority and other formal requirements for the submission of appeals;
- ❑ A copy of any final score sheets used to record the assessment of the application; and
- ❑ A set of generic permit conditions that are applicable to the specific fishery.

In addition, the following documents will be automatically available for inspection or purchase at the prescribed fee:

- ❑ The Spreadsheet of Decisions which contains a summary of the assessment of all the applications in a sector;
- ❑ Final Score sheets of other applicants; and
- ❑ The decision-making lists of the delegated authority or the Minister.

The General Published Reasons, the final score sheet and the information that is automatically available, constitute the reasons for decisions to grant an application for a commercial fishing right and to award quantum or effort.

(r) Appeals

Every applicant will have the right to appeal against the decisions of the delegated authority. The appeal may be lodged against a refusal to grant a right or against the decision on quantum or effort. Details about the submission of appeals will be contained in the notification letter.

The appellate authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing day for applications that fact will not be taken into account when considering the appeal.

Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.

(s) Access to information

The following records will be automatically available for inspection or purchase at the prescribed fee after the results are announced:

- ❑ Any score sheet, spreadsheet or other document used by the delegated authority, the Minister, or their assistants, to record the assessments of the applications; and

- At the request of the applicant or its authorised representative, the applicant's own application or appeal documentation.

Requests for access to the following records will be dealt with under the Promotion of Access to Information Act 2 of 2000:

- The application form of another applicant;
- The annexures submitted together with an application of another applicant; and
- Appeal documentation submitted by another applicant.

In respect of access to these records, the Department's information officer (the Chief Director: Resource and Coastal Management) will apply the procedures and provisions of PAIA. In order to assist with the administration of access to information applications, applicants will be required to submit certain documents in respect of which the information officer may refuse access, such as those relating the applicant's fishing plans, marketing plans and financial statements, in a separate folder.

6.4 Decision-making

All decisions will be based on the applicable laws and guided by the applicable policies. The policies and the database compiled after the applications are received, will be used to develop more refined criteria and weighting for purposes of the assessment of the applications. These criteria are developed with reference to data received after closing day and are accordingly not released before the allocation process.

(a) Criteria used for decision-making on the allocation of rights

The Department expects a large number of applications for long term rights and anticipates that, given the current limits on catch or effort in all the fisheries, not applicants will be granted rights. Some applicants will be rejected because they do not meet the basic requirements. The rest are ranked according to a set of objective criteria in order to identify the best applicants in terms of the policies and weighted criteria. The process is competitive and the aim is to identify the best applicants.

Four types of criteria will be used to assess the applications.

Applications will be screened in terms of a set of "*exclusionary criteria*", and thereafter ranked in terms of a set of "*weighted balancing criteria*". In addition, and in some sectors, the delegated authority may employ one or

more of a number of “*tie-breaking factors*” in order to make a decision if there are too many applicants with the same score. A proportion of the TAC or TAE will then be allocated to each successful applicant in terms of a set of “*quantum or effort criteria*”.

(i) Exclusionary criteria

Three types of exclusionary criteria will be employed.

Firstly, an application will be screened to determine whether it was properly lodged. An application is improperly lodged if it was received late; if the applicant made no payment or short payment or late payment of the application fee; or if it was lodged in a manner contrary to the instructions, such as by fax, or on a form other than the official prescribed application form. The delegated authority and the Minister has no discretion to condone non-compliance with the lodgement requirements.

Secondly, an application will be screened to determine whether it is materially defective. An application is materially defective if the declaration is not signed by the applicant, or if the applicant’s declaration was not attested to by a Commissioner of Oaths, or if more than one application was received from the applicant for a fishing right in the same sector, or if the applicant provided false information or false documents, or failed to disclose material information, or attempted to influence the Minister or the delegated other than in the manner provided for in this General policy during the application period. In Cluster A, independent auditors are required to verify certain responses by the applicant and to prepare and sign a report in this regard. If the applicant relies on information provided by holding companies or other members of a group of companies or joint venture partners, the authorised representatives of these entities are also required to sign and to attest to a declaration. The application will be also be materially defective if a report of the independent auditor is not provided and signed (if applicable) or if the declaration of the authorised representative of the holding company, member of a group of companies or joint venture partner is not signed and attested. The delegated authority and the Minister has no discretion to condone non-compliance with the requirements relating to materially defective applications.

Thirdly, an application will be screened to determine whether an applicant meets the minimum essential requirements for participating in the sector. The delegated authority and the Minister has no discretion to condone non-compliance with an essential requirement for participating in the sector. The essential requirements differ from sector to sector. For example, in the previous allocation process for abalone divers, applicants were required to demonstrate, amongst others, that the applicant was a qualified diver and certified

as a Class I (with surface supply), II or III Commercial Diver under regulation 14 of the Regulations promulgated under the Occupational Health and Safety Act, 1993 (GN Regulation 10 of 11 January 2002).

(ii) Balancing criteria: new entrants and medium term right holders

Applications that were properly lodged, not materially defective and that meet the essential requirements will be scored in terms of set of balancing criteria ("*the balancing criteria*"). The balancing criteria will be weighted for purposes of ranking the applicants. Some of the criteria, such as transformation, will apply across all sectors, while others will be sector specific.

The applications from medium right holders will not be scored in terms of the same criteria and weighting as potential new entrants and will be ranked separately. Cut-offs will then be determined separately for medium term right holders and potential new entrants. All applicants with a score equalling or more than the cut-off will be allocated rights.

(iii) Tie-breaking factors

If there are too many applicants with the same score, the delegated authority may use tie-breaking criteria, in order to choose between the applicants with the same score. The tie-breaking factors may comprise of criteria not scored or scored criteria differently weighted.

(b) Criteria used for awarding quantum or effort

There are two separate decisions. After the decisions identifying the successful applicants are taken, the delegated authority will decide on the allocation of quantum or effort to each successful applicant in line with the policy described in paragraph 7.2 below.

PART C: CROSS CUTTING POLICY CONSIDERATIONS FOR THE ALLOCATION OF RIGHTS

7. Policy Considerations

This General policy must be read with the fishery specific policy adopted for each fishing sector. The latter prevails over the former, if more specific in respect of a particular sector.

The policy considerations set out below, along with the database compiled after applications are received, will guide the delegated authority in developing detailed exclusionary criteria, the balancing criteria for medium term right holders and potential new entrants and the tie-breaking factors. The Fishery specific policies will provide further guidance in this regard.

This General policy and the fishery specific policies do not lay down hard and fast rules or cover every aspect and consideration that will be taken into account in determining and applying criteria for balancing, tie-breaking and determining quantum or effort. Delegated authorities will be empowered to develop and refine criteria as long as these may be inferred from, and are consistent with, the applicable laws, this General policy and the applicable fishery specific policy.

Unless otherwise specified in the application forms, only information pertaining to the applicant will be taken into account. In respect of transformation, job creation and investment and other specified aspects, applicants that form part of a group of companies or joint venture, may be required to submit data about the group or joint venture (and not the data of the applicant alone).

7.1 Duration of right

Long term fishing rights will be granted in all the commercial fisheries, for a period of up to 15 years, except in the Oysters and White Mussel fisheries, which are in an early stage of development.

The duration of rights will be determined by, amongst other things, the level of transformation in the fishery, the current knowledge of the biological status of the target species; the capital intensity of the fishery and the need to encourage further investment and economic growth, and the performance of participants in the fishery.

7.2 Form of right holder

Section 18 of the MLRA provides that only South African persons may hold fishing rights. Section 1 of the Act defines a South African person as a South African citizen or a company, close corporation or trust. Therefore, fishing rights may not be allocated to entities such as partnerships, associations, joint ventures, community associations or co-operatives.

In terms of this policy, commercial fishing rights in the Cluster C and D fisheries will be granted only to individuals (natural persons), except in the Hake Handline and KZN Beach Seine sectors, where close corporations will also qualify. Individuals who were members of close corporations, shareholders of companies and beneficiaries of trusts when these entities were allocated medium term rights in 2001 and 2002

in Cluster C and D fisheries (except Hake Handline and KZN Beach Seine) will be considered to be medium term right holders for the purpose of the long term rights allocation process. The delegated authority may regard other individuals as medium term right holders if, for example, they obtained control over a medium term right, by way of a transfer approved by the responsible authority.

In terms of this policy, commercial fishing rights in the Cluster A and B fisheries will be granted only to entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Medium term right holders that operated in the form of trusts or co-operatives or sole proprietorships, must take steps to convert to a close corporation or a company before the allocation process and nominate the new entity as the applicant. The nominated close corporation or company will be treated as an existing right holder, provided that such an applicant demonstrates that the close corporation or company will be the sole successor of the previous right holder. A right will be granted to the new entity and not to the individual or the trust. This policy does not mean that a trust is precluded from holding shares in an applicant or right holder.

In some fisheries, applicants will be encouraged to merge or to share resources after the allocation process. Further details are provided in fishery specific policies.

7.3 Transformation

The MLRA requires decision-makers to have regard to the need to restructure the fishing industry in order to address historical imbalances and to achieve equity within all the branches of the fishing industry. Transformation is also a constitutional imperative in South Africa. The Broad-Based Black Economic Empowerment Act 53 of 2003 is one of a number of statutory instruments giving effect to this constitutional imperative. This Act provides that the Minister of Trade and Industry may by notice in the Gazette issue codes of good practice on black economic empowerment. Draft codes on certain aspects have been published for comment. The codes provide for a "*balanced scorecard*" to measure progress and status within enterprises as well as the adoption of transformation charters for specific sectors of the economy by the major stakeholders in those sectors.

The Act and the draft codes were considered in the development of this policy and the fishery specific policies. However, owing to the nature of the rights allocation process, the Minister of Environmental Affairs and Tourism has thus far not encouraged the adoption of charters for fishing sectors and has not adopted the weighting and benchmarks set in the draft codes relating to ownership and management. When allocating fishing rights, the delegated authority is called upon to compare applicants with each other, rather than against an external benchmark. Transformation is an extremely important consideration in this comparative balancing

process. The process is competitive and no “*benchmark*” can be set in advance. In a sector that is not sufficiently transformed, applicants with higher transformation scores than others will always stand a better chance of being allocated a right or a larger proportion of the available TAC or TAE. The policy is that within such a competitive comparative process, the adoption of charters or benchmarks is not always the appropriate vehicle to further transformation.

The policy is to further transformation and to improve on the levels of transformation achieved during the medium-term rights allocations. In the long term rights allocation process, only quality transformation will be recognised, that is, transformation which results in real benefits to historically disadvantaged persons.

Persons were historically disadvantaged in the fishing industry on account of their race in respect of access to rights. It is accordingly necessary to promote the participation of such historically disadvantaged persons within all branches in the fishing industry. It is also necessary to address historical imbalances and achieve equity within the fishing industry insofar as the participation of women is concerned, as they too, were marginalised in the past. In the allocations process the race and gender of applicants, and in the case of juristic persons, the race and gender of the applicant’s shareholders or members, management, suppliers and workforce, may therefore be taken into account. This will be done in the manner described below. In addition, corporate social investment may be taken into account in the manner described below.

In **Cluster A**, applicants will be required to engage external auditors to verify the information submitted in terms of a set of prescribed procedures.

(a) Race

Persons historically classified as “*African*”, “*Coloured*” and “*Indian*” will be considered to be historically disadvantaged on account of race, provided that they are South African citizens by birth or obtained citizenship prior to 27 April 1994.

In **Clusters C and D**, a fixed number of points will be allocated to black applicants. Where close corporations qualify (hake handline and KZN Beach Seine), the close corporation applicant will be granted a percentage of the points allocated with reference to the percentage of the membership interest held by black persons in the close corporation. Black management, employment equity, affirmative procurement and corporate social investment may also be considered in **Clusters C and D**.

In **Clusters A and B**, points will be allocated for black ownership and management, in the manner described immediately below.

(i) Ownership

Beneficial ownership of the applicant by black people, in the form of unrestricted voting rights and economic interest associated with equity ownership, will be assessed and taken into consideration. In determining whether voting rights and economic interest is "*unrestricted*" the delegated authorities may have regard to draft Code 100, published for comment in terms of the Broad-based Black Economic Empowerment Act. The weighting set out in the Code will not be used.

The flow-through principle, proposed in Code 100, may also be used, if appropriate. For example, if company A holds 20% of the shares in company B and company A is 10% owned by the designated race groups, its share contributes 2% to the economic ownership of company B of such groups. If company A held 55% of company B's share and company A was 60% owned by blacks, it contributes 33% to B's economic ownership by black persons.

Additional points may be allocated to those applicants that have succeeded in empowering employees through share participation schemes, provided that the applicant can demonstrate that the employees derived real benefits (such as dividends) from the scheme.

In the case of applicants for medium term rights (successful or unsuccessful), points may be attached to both present status and progress made. The delegated authority may set a level of transformation for achieving the maximum number of points for black ownership. The maximum number of points for ownership by blacks will then be awarded to applicants that achieved that level.

(ii) Management

The senior or executive management of an applicant entity by black persons will be taken into account. Senior or executive management generally describes those persons responsible for guiding the strategic activities of the company and who report directly to either the managing director or the Board. For purposes of the long term rights allocations process, the management of the applicant will be assessed in three ways. First, the data submitted in employment equity reports will be considered, if available. If not available, applicants will be requested to submit similar data. Second, the composition of the board of directors will be taken into account. Third, applicants will be required to submit data concerning the top salary earners of the applicant.

(b) Gender

If practical, beneficial ownership and management by women will be taken into account in **Clusters A and B**. In **Clusters C and D**, gender may be taken into account, for example, as a tie-breaking factor.

(c) Employment Equity

Applicants who are required by law to comply with the Employment Equity Act 55 of 1998 must demonstrate that they comply. The number of black persons and women employed by the applicant may also be a balancing criterion. More points will be allocated to blacks and women employed at the higher end of the applicant's salary bands or in professional and skilled positions, than at the lower end and in unskilled positions. For example, applicants may be required to specify the percentage of persons of blacks and women in the top 10% of their salary earners, between the top 10% and the top 30%, between the top 30% and the top 50%, and below the top 50%, or to specify the number of blacks and women appointed in professional and other skilled positions. More points will be allocated for blacks and women in the top earning brackets than at the bottom earning brackets and more points will be allocated for blacks and women appointed in skilled positions than unskilled positions. Because of the racial structuring of the South African workplace, wage differentials may be taken into account.

(d) Skills Development

Applicants will be required to demonstrate that they comply with the Skills Development Act 97 of 1998 and the Skills Development Levies Act 9 of 1999. If an applicant participate in learnership programmes or spends proportionately more on the training of blacks, this factor may be taken into account.

(e) Affirmative Procurement

Affirmative procurement (procurement from black companies) may be considered as a factor.

(f) Corporate Social Investment

The percentage of net profit spent on corporate social investment during the previous rights period, may be taken into account. Tax-deductible donations will be considered to be corporated social investment but other donations may also be considered.

7.4 Multi-sector involvement

In general, it is not a policy objective to preclude or discourage the holding of rights in more than one fishery. This is subject to two exceptions.

Firstly, right holders in the **Cluster A and B** fisheries (including their controlling shareholders or members and members of their executive management teams) will not be allowed to hold commercial rights in the **Cluster C and D** fisheries, which are fisheries reserved for small and medium enterprises and individual fishers reliant on those fish stocks for their livelihood. Right holders in **Clusters C and D** who intend to obtain shares or interests in **Cluster A and B**, after allocations, may be permitted to transfer their **Cluster C and D** rights to other natural persons. The delegated authorities for the transfer of rights will consider applications for such transfers.

Secondly, right holders will not be permitted to hold rights in more than one **Cluster C or D** fishery, except that:

- Right holders may hold any combination of the following rights: white mussel, west coast rock lobster (near shore) and netfish (Gill and Treknet and Beach Seine);
- A KZN Beach Seine right may also be held with an oyster right.

7.5 Consolidation

Between 1994 and 2004, the number of right holders in the commercial fisheries increased dramatically. When allocating rights, there was a particular regard to the need to permit new entrants, particularly those from historically disadvantaged sectors of society. As a result, in many sectors there are numerically representative levels of historically disadvantaged right holders. But numeric representivity does not always translate into broad-based and effective participation of historical disadvantaged persons in the fishing industry. The consolidation, rather than the proliferation of right holders, has become necessary in order to advance effective participation.

Consolidation is also necessary to rationalise the industry, to improve compliance and to reduce the administrative burdens and costs to the Department and right holders. This means reducing the number of entities, particularly those that share the same or similar shareholders and executive management team and physical addresses in a particular fishery. In a number of sectors, window periods will be opened after the allocation process where the Minister will look favourably at forms of consolidation, which do not undermine transformation. In the long term right allocation process, medium term right holders will not be permitted to

proliferate within the same sector by applying for additional rights under a different guise and may not hold shares in potential new entrant applicants.

7.6 New entrants

The issue of new entrants is a fishery specific one and is dealt with in the fishery specific policies. A distinction is drawn, in the Fishery specific policies, between “*additional*” entrants and “*new entrants*”. In order to permit the participation of additional entrants the number of participants in a sector will have to be increased from the existing number. In general, there is very little room to accommodate additional entrants because most of the fisheries are already over-subscribed. However, new entrants may be accommodated through the replacement of unsuccessful right holder applicants. This will be done if current right holders have failed to transform meaningfully, or if current right holders have failed to perform or invest adequately, or if the current effort within a specific fishery is considered to be less than optimal. In some sectors, in order to consolidate the right holders in a sector, the number of participants will be reduced by not granting rights to low scoring existing right holders, and not replacing them with new entrants.

As a general rule, the Department will not allow right holders who sold or in any way alienated a fishing right to re-enter that commercial fishery. The same applies to shareholders or members of close corporations who sold a significant share of the right holder.

7.7 Performance

The performance of existing right holders may be assessed in the manner described below.

(a) Financial performance

Financial performance of the applicant may be assessed in terms of a set of financial ratios which lend themselves to benchmarking backed up by audited financial statements. The financial statements may also be used to determine who the real beneficiaries of the allocation are (“follow-the-buck” principle) and to determine whether the right holder has invested in the industry.

(b) Payment of levies

Applicants be required to provide proof that they are up to date on the payment of their levies on fish landed during the medium term right period. If levy payments have been outstanding for a period in excess of 60

days, the applicant may be penalised. Should the applicant nevertheless succeed in being granted a right, the Department will not issue a permit until the full amount outstanding is paid.

(c) Compliance

Applicants convicted for serious infringements of the MLRA, the Regulations, permit conditions and other fishing related offences, during the medium term right period, may be excluded. Minor infringements, including the payment of admission of guilt fines, may be taken into account as a balancing criterion.

Vessels listed on the negative lists of any Regional Fisheries Management Organisation (“*RFMO*”) will not be allowed to harvest fish stocks. Applicants who own (wholly or in part) or nominate vessels that are negatively listed will be rejected.

The Department’s records relating to infringements of the MLRA will be made available for inspection prior to the allocation process.

(d) Fishing performance

The fishing performance of medium term right holders may be examined to determine whether an existing right holder applicant has effectively harvested a medium-term allocation. Applicants that did not harvest any fish during a fishing season or who have not collected a permit for an entire season may be excluded. Undercatching and overcatching may be used as balancing criteria in certain sectors.

The Department’s records relating to catch returns will be made available for inspection prior to the allocation of rights, if they are to be used in the allocation process.

7.8 Investment

Investment in a vessel nominated to harvest the resource and other fixed assets will be recognised as long as that investment demonstrates a genuine intention to share the risk of participating in the sector. Shareholding in vessels obtained at minimum or no cost to the applicant, will not be recognised as investment. The level of investment will be assessed with reference to the quantum held during the medium term rights allocation process.

7.9 Paper Quotas

The delegated authority must endeavour to prevent paper quota applicants from entering the industry and to remove paper quotas that currently hold rights. Paper quotas undermine or circumvent the objectives of the rights allocation process.

(a) New entrants

In the long-term rights allocation process, the delegated authority will exclude new entrant applicants who appear to be paper quota risks. For this purpose, the delegated authority will consider an applicant to be a “*paper quota risk*” if that applicant appears to have no serious intention to share the risk of fully participating in the sector, especially if a danger exists that an applicant has not applied in order to enter the industry but to gain some financial benefit without direct involvement in the main activities associated with exploiting any right that may be granted. In determining whether a new entrant applicant poses such a paper quota risk, the applicant’s assets and access to capital and its financial and business planning and commitments should be considered.

The delegated authorities will also exclude as “*paper quota risk*” applicants considered to be “*fronts*” for other beneficiaries. Fronting occurs when, in order to circumvent a policy objective, an application is made through another entity. An example is an application made by an ostensibly transformed entity with the intention that the main benefits will flow to an untransformed entity or individuals that are not black persons.

(b) Medium term holders

Delegated authorities will also exclude medium-term right holders who are paper quotas. For this purpose, the delegated authorities will consider as paper quotas, medium-term right holders with weak or non-existent performance records combined with no investment or involvement.

Delegated authorities will also exclude “*fronts*” and will for this purpose employ the “*follow the buck*” principle to determine whether a policy objective has been circumvented. For example, delegated authorities will seek to determine whether ostensibly transformed right holders have in fact granted any financial or other benefit to black shareholders or members. This kind of front will not be re-allocated rights.

As a general rule, delegated authorities will not allow right holders who have sold or in any way alienated a fishing right to re-enter that commercial fishery under a different guise.

(c) Clusters C and D

In **Cluster C and D** sectors, large groups of identical or very similar applications sponsored by third parties, will be excluded as paper quota fronts. In general, no more than one right will be allocated per household. In these sectors, applicants will be required to disclose their relationship to other applicants in the sector. If more than one member of a household applies for a right, all the applications from that household may be excluded, unless the applicants clearly and convincingly demonstrate that they have established separate small commercial operations.

(d) Future right holders

After the long-term rights allocation process, the Department will endeavour to withdraw the rights of paper quota right holders by applying section 28 of the MLRA. As a rule, the Department will revoke fishing rights held by participants who fail to effectively utilise a right.

7.10 Value adding

Value-adding means those activities that add commercial value to fish, regardless of whether such value is attained on the South African or international market. Value-adding may be rewarded because, amongst other things, it stimulates the creation of jobs and wealth.

7.11 Enterprise development

Enterprise development constitutes measures to increase black ownership, management and skills in existing and new enterprises, including investment programmes and access to finance. These measures may be rewarded provided that they do not constitute attempts to circumvent the legislative protection of workers contained in the labour, health and safety laws.

7.12 Job creation

An important purpose of allocating long term rights is to create an environment conducive to job creation, in particular, the creation of more permanent and better quality jobs in the fishing industry.

Jobs created by medium right holders per ton allocated and increases in jobs as a result of the allocation of medium term rights, will be rewarded, at least in clusters A and B. The creation of permanent employment is favoured over seasonal employment and seasonal employment is favoured over contract employment.

7.13 Dependency and on-board participation

An important objective of the allocation of rights in **Cluster C and D** fisheries is to grant rights so that individuals can establish small commercial enterprises and create full-time occupations for themselves. Financial dependency on the income generated by fishing will therefore be a factor in most of the **Cluster C and D** fisheries. It will be a requirement that the applicant is personally involved in the fishing or harvesting of the resource. More particularly, "*on-board participation*" by the right holder will be a requirement in most of the

Cluster C and D fisheries. Only applicants incapable of participating due to a permanent physical disability will be exempt from this requirement. Women applicants will not be exempt from having to participate on board.

Current right holders will be required to provide proof of their dependency by way of financial statements and tax returns. Potential new entrants will be required to provide proof of dependency by demonstrating their historical involvement in the sector applied for or their involvement in the fishing industry.

7.14 Local economic development and geographic justice considerations

Delegated authorities may reward the landing of catches in fishing harbours outside the metropolitan areas to promote local economic development, although it may not be possible to achieve this objective in all sectors. In order to ensure that all fishing communities share in the resource, the delegated authorities may use landing site as a scoring or tie-breaking criteria. In addition, the Department may develop policies and a system of levy concessions that encourage rights holders to land or process fish in harbours that are economically depressed.

7.15 Vessels and fishing effort

(a) Vessels

If applicable to the sector, every applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of that particular fish stock or stocks. All vessels will have to be registered with the Department in order to be nominated as a catching vessel.

A suitable vessel will be described in the applicable fishery specific policy, but the minimum requirements for suitability will be:

- ❑ South African flagged (unless an exception is made in a Fishery policy);
- ❑ Unless exempted, fitted with an approved and functioning vessel monitoring system (“VMS”);
- ❑ Registered by the South African Maritime Safety Association as being suitable for fishing; and
- ❑ Not listed on any RFMO negative list.

The Department will require all applicants for commercial fishing rights to utilise the nominated vessel for harvesting the resource. Vessel changes will only be allowed in appropriate instances.

(b) Fishing effort

The Minister and the Department is obliged to conserve marine living resources in terms of the MLRA and to apply precautionary approaches in respect of the management and utilisation of these resources. A key element in the management and conservation of marine resources is the limitation of applied fishing effort to ensure the optimum utilisation of such resources.

The Department is generally opposed to any further increase in vessel effort. Vessel overcapacity is regarded as one of the primary threats to South African fish stocks. It also places additional burdens on the Department, both in respect of monitoring and enforcing compliance and managing the exploitation of the resource. Subject to fishery specific policies, joint and cross-sectoral use of vessels is encouraged, as this will result in more effective and efficient use of vessels throughout the season.

On the other hand, it is recognised that ageing vessels must be replaced, inter alia for safety reasons. Modernisation of the fleet will inevitably result in an increase in catch capacity. Where necessary, effort limitations will be introduced to limit effort.

7.16 Safety of staff and crew

Applicants will be required to demonstrate that they have complied with the regulatory requirements of the South African Maritime Safety Authority Act 5 of 1998 and the regulations promulgated in terms of the Merchant Shipping Act, 57 of 1951.

In addition, applicants will be required to show that they comply with the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993. Applicants are further reminded of the Department's directive that companies are required to adopt HIV/AIDS policies and may be required to attach these to the 2005 applications.

7.17 By-catch management and reduction measures and dumping

The reduction of and mitigation against unutilised and undersize by-catches is an important consideration. Delegated authorities may accordingly take into account measures taken and planned to mitigate against these types of by-catch. In some fisheries by-catch is unavoidable and constitutes an accepted part of a catch that requires appropriate management procedures. The Department will continue to develop policies that ensure improved assessment and management of by-catch species.

The Department is in the process of developing a comprehensive management plan regarding by-catch. In determining the appropriateness of by-catch mitigation and reduction devices the Department will consider its suitability to a fishery having regard to the nature of the fishery itself; the cost implications of mandating any particular device or mitigation strategy; the local and foreign comparative learnings; and inputs of local fishers and their role in developing such strategies (if applicable).

The Department encourages measures to minimize incidental bycatch of seabirds, sharks, marine mammals, juvenile fish and various vulnerable or threatened marine species. South Africa has developed a National Plan of Action (NPOA) for reducing incidental bycatch of seabirds as well as a draft NPOA for reducing incidental bycatch of certain species of shark. In this regard, the Department would strongly urge various fishing sectors to employ the use of mitigation devices such as, the tori-line (bird by-catch mitigation for longliners), escapement or exclusion devices for trawl sectors (escapement of juvenile fish and possibly marine mammals) as well as specific mesh sizes to curtail retention of juvenile fish in trawl nets. In addition, the Department strongly condemns the practice of high grading and dumping fish as well as deliberate targeting of by-catch species. The Department would further consider temporal and spatial closures for fishing, where it is deemed necessary for the protection of spawning stocks as well as protection of nursery grounds.

7.18 Environmentally sustainable practices

The delegated authorities may reward fishing operations that have embarked upon, and invested in or supported research into, environmentally sustainable best practices. In particular, the Department has identified the following issues as requiring attention:

- ❑ Introducing energy and fuel reduction mechanisms in factories and vessels;
- ❑ Reducing by-catches and bird mortality;
- ❑ Reducing light pollution; and
- ❑ Minimising the adverse affects of marine pollution.

7.19 Bait Fisheries

The delegated authorities will not allocate commercial rights for the purposes of bait collection. The only exception to this policy will be in the white mussel sector, which is still developing a commercially viable market for human consumption.

PART D: CROSS CUTTING POLICY CONSIDERATIONS FOR THE ALLOCATION OF QUANTUM OR EFFORT

8. Policy Considerations

In general, the decision to allocate quantum or effort is taken separately from the decision, although inter-linked, of identifying successful applicants. The considerations that apply to rights allocation apply in general to quantum decisions. In this part of the policy, additional considerations that apply to quantum decisions are set out. The policy considerations for the allocation of effort are dealt with in the sector specific policies.

8.1 Clusters A and B

The allocation of quantum in the Cluster A and B sectors is dealt with in the sector specific policies. In some sectors, the mechanism for allocating quantum will form the subject of further consultation, once the applications in a sector have been assessed and the successful applicants have been identified. Subject to the outcome of these consultations, the following principles will be applied in the allocation of quantum:

Firstly, quantum will be allocated with reference to the applicant's 2005 allocation. The delegated authority will determine a minimum amount to be allocated to new entrants, which as a general principle will not be less than the lowest amount allocated to a successful medium term right holder applicant.

Secondly, because it is government policy to support small business and broad based black economic empowerment, the Minister directs the delegated authorities to consider re-distributing at least 10% of the TAC to small businesses, which will include new entrant and medium term right holders. In considering whether to re-distribute to small businesses, the delegated authorities must have regard to the nature of the fishery and the level of transformation. In fisheries that are sufficiently transformed and representative of small businesses, re-distribution may be unnecessary. In fisheries that are capital intensive in nature and are accordingly not ideally suitable for small business development, the delegated authorities must endeavour to re-distribute at least 10% of the TAC to those right holders that have historically received smaller allocations but who have transformed and performed well.

Thirdly, and in addition to the above two principles, the delegated authority may allocate quantum based on criteria intended to achieve the objectives set out in the respective sector policies, such as transformation and performance. These criteria must be designed in a manner which should ensure that all successful applicants, regardless of size, will be able to benefit if they meet the criteria.

8.2 Clusters C and D

Successful applicants in **Cluster C and D** sectors will be allocated a fixed amount of the available TAC or TAE. This amount will not necessarily be the same for each zone or TURF.

8.3 Excess quantum left after appeals

Excess quantum left after appeals will be distributed proportionately.

8.4 Increases in the TAC/TAE

Increases in the TAC or TAE will be allocated in terms of the applicable provisions of the MLRA.

PART E: POST ALLOCATION MANAGEMENT CONSIDERATIONS

In this part, a number of post-allocation policy considerations are addressed in general terms. Although these policies will not be directly applied in the long-term rights allocation process, it is necessary to include them in this General policy in order to inform potential applicants of the Department's management objectives after the rights allocation process is completed.

9. Co-Managing the Commercial Fisheries

The Department is gradually introducing a change in the management and regulation of South Africa's commercial fisheries, by moving towards a system of co-managing the fisheries with right holders, fishing communities and other relevant stakeholders.

In terms of this approach, management of the commercial fisheries will not rest solely with the Department. The responsibility will be shared with right holders and, where applicable, with the coastal communities who rely on marine resources for their livelihood. A TURF (Territorial User Rights Fishery) system was introduced in the abalone fishery, and the Department is considering introducing a similar approach in some of the other fisheries, such as Hake Handline, West Coast Rock Lobster (Near Shore), Oysters, White Mussels and Netfishing.

As far as the larger commercial fisheries are concerned, the Department will seek closer working relations with recognised industrial bodies and interest groups to promote investment in fisheries research, management and compliance.

In order to facilitate co-management, Fishery specific **Management Working Groups** have been established in most of the fishing sectors. Right holders are represented on these Working Groups by industrial bodies and interest groups. The main purpose of a Management Working Group is to make recommendations regarding the management of the fishery, including permit conditions, closed seasons, restricted areas, the adoption and variation of sectoral management plans, compliance and vessel restrictions. As far as the larger commercial fisheries are concerned, the Department envisages sharing its biological and scientific research obligations of fish stocks and the impact of fishing on ecosystems with right holders through the Working Groups or other appropriate mechanisms.

Section 8 (1) of the MLRA provides that the Minister may, by notice in the *Gazette*, recognize any industrial body or interest group in a branch of the fishing industry which, in the opinion of the Minister, is representative of the specific body or group. A draft Policy on Recognised Industrial Bodies (*RIB's*) containing proposed recognition criteria will be made available for public comment, before the policy will be adopted. Where recognised industrial bodies exist, the Department may elect to communicate via the recognised industrial body only.

10. Levies and costs recovery

Levies are a fixed amount payable by right holders of commercial fishing rights per unit of fish landed and are therefore linked to the value of the landings. Levies are currently imposed in terms of section 29 of the Sea Fishery Act 12 of 1988.

Currently the income from levies is used to recover some of the costs that the Department incurs in managing the fisheries (including compliance and research costs). After the allocation process, the Department will investigate the feasibility of introducing a system of up-front levy payments or payment by monthly instalments on the basis of the proportion of Total Allowable Catch allocated (and not landed). The Department has also invited proposals for the introduction of a complete costs recovery system for the management of commercial fisheries.

11. Observer programme

The Department's current observer programme focuses on vessel and shore-based scientific monitoring and reporting. The Department intends to expand the role of observers in respect of compliance monitoring and reporting and to progressively increase observer coverage to as many commercial fisheries as is practically possible. The Department also intends to introduce new methods of ensuring compliance such as on-board cameras. Right holders will be expected to cover the costs associated with managing and implementing observer programmes.

12. Transfer of rights

Applications for the transfer of fishing rights are dealt with in terms of section 21(2) of the MLRA which provides that fishing rights may be transferred if approved by the Minister or his delegate.

If the members of a close corporation or shareholders of a company alienate some or all of their interests or shares, the fishing right remains with the same legal entity, and approval for the transfer of that right does not generally have to be obtained. However, any transfer of shares or of membership interest that results in a change of control over the juristic person holding a fishing right, requires approval. This is to prevent the circumvention of section 21(2) of the MLRA. In the case of a listed public company, a sale of more than 35% of the shareholding requires approval. If the right holder is an individual, an application for transfer must not only be made when the intention is to sell the right, but also when the right holder dies and the executor wishes to transfer the right to another person.

The current policy regarding the transfer of fishing rights is set out in Government Notice 1771 of 27 July 2001. This policy will be applied until replaced or amended after the allocation of long term rights. The following factors have been taken into account when considering an application for the transfer of a commercial fishing right:

- ❑ The death, dissolution, liquidation or sequestration of the right holder.
- ❑ Transformation.
- ❑ The promotion of consolidation of the number of right holders and effort in a fishery.

After the allocation of long term rights, “window” periods for the transfer of rights may be created where, in order to further transformation and consolidation, new entrants may be allowed to enter and existing rights holders may be allowed to merge.

13. Vehicle use in the coastal zone

Right holders that require the use of a vehicle in the coastal zone in order to operate effectively must apply for a permit in terms of the applicable Regulations. Right holders are advised to consider the Guidelines on the Implementation of Regulations Pertaining to the Control of Vehicles in the Coastal Zone: 2004. Both the Regulations and Guidelines are available from the Department (Chief Directorate: Fisheries Compliance) or from www.mcm-deat.gov.za. A permit fee of R500 is applicable and the permit issued will be valid for the duration of the commercial fishing right.

14. Marine protected areas and Fisheries management areas

14.1 Marine Protected Areas

The Department recognises marine protected areas as an important refuge for fish stocks under fishing pressure. At present these fish stocks include over 50 species of linefish and abalone. Marine protected areas are also recognised as an important tool to reduce illegal, unreported and unregulated fishing.

The Minister has designated a number of marine protected areas, protecting approximately 20% of South Africa’s coastline. It remains the intention of the Minister and the Department to increase the extent of marine areas protected from fishing from the current 1% to the internationally determined 20% by 2015.

14.2 Fisheries Management Areas

Section 15 of the MLRA makes provision for the declaration of fisheries management areas for the management of a specified species and for the approval of a plan for the conservation, management and development of a fishery. The declaration of fisheries management areas is a further tool that may be used, in addition to the emergency measures provided in section 16 and priority fishing areas provided for in section 17, to better manage fisheries and to reduce user conflict.

15. Compliance and section 28 notices

The Department has invested in monitoring, control and surveillance (“MCS”) equipment, including vessel monitoring and positioning systems, and has procured state of the art patrol vessels. The Department has further obtained the services of dedicated forensic auditing experts and specialised fisheries prosecutors.

The Department will increasingly focus on the prevention of transgressions and on self-regulation. This will be coupled with strict performance monitoring, forensic auditing, co-operation with other regulatory agencies such as the South African Revenue Service and the South African Bureau of Standards, and the application of stricter sanctions, including the revocation or suspension of rights in accordance with the provisions of section 28 of the MLRA. The Department has already concluded various memoranda of understanding with key regulatory enforcement agencies both nationally and internationally, to share information and monitor the export and import of fish products.

The Department will issue notices under section 28(1) and pursue the cancelling, revoking or suspending of fishing rights in terms of section 28(4) of the Act in all circumstances where the Department considers a breach of any provision of the MLRA, its regulations or permit conditions, to be significant. If a fishing right has been allocated and the right holder subsequently fails to pay any fee or levy imposed in terms of the applicable legislation, the Department will not hesitate to issue a notice under section 28 of the MLRA. In addition to revoking rights under section 28 of the MLRA, the Department is investigating methods of reducing quotas in cases of transgressions of the MLRA.

GLOSSARY OF TERMS

Application period	means the period commencing with the publication of the invitation to apply for a commercial right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
Black persons	means Africans, Coloureds and Indians, provided the person is a South African citizen by birth or obtained citizenship prior to 27 April 1994.
Codes of Good Practice	means the Draft BEE Codes of Good Practice published by the Minister of Trade and Industry in 2004 in terms of the Broad-Based Black Economic Empowerment Act 53 of 2003.
Department	means the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management.
Medium Term Right Holder	means a right holder that was granted a medium term commercial fishing right during the period 2001/2002 – 2005 in the specific sector, or became a right holder in the sector by way of an approved transfer of the fishing right.
Minister	means the Minister of Environmental Affairs and Tourism.
New Entrant	means an applicant that is not a medium term right holder in the particular sector applied for.



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE HAKE DEEP-SEA TRAWL
FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at www.mcm-deat.gov.za)**

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the hake deep-sea trawl fishery is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). This policy must be read with the General Policy on the Allocation and Management of Long-Term Commercial Fishing Rights: 2005 ("the General Fisheries Policy" or the "General Policy").

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial hake deep-sea trawl fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this policy. A Hake Deep-sea Trawl Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate hake deep-sea trawl commercial fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Sector profile

Commencing in the 1890's, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa's most important fishery and, for the last decade, it has accounted for approximately one half of the wealth generated from commercial fisheries. In the 1960's foreign distant water fleets moved into the Southeast Atlantic, leading to substantial over-exploitation of demersal fish stocks off South Africa and Namibia. The International Commission for the Southeast Atlantic Fisheries ("ICSEAF") was established in 1972 in an attempt to control the rapidly escalating fishery. But it was only the declaration of the 200nm Exclusive Economic Zone in

1978 and subsequent exclusion of foreign fleets that enabled South Africa to reclaim its fish resources and begin to rebuild the demersal resources.

Until 1978 the demersal fishery was largely unregulated and participants were not restricted by fishing limits. An annual total allowable catch ("TAC") was introduced in 1978 and individual quotas were introduced the following year. The fishery was also formally separated into deep-sea and inshore sectors. The Deep-sea Trawl allocation of the global hake TAC has remained remarkably stable, and between 1978 and 2004 it fluctuated between the levels of 140 000 tons (1979) and 133 000 tons (2004). The two species of Cape hakes contribute 80-90% to trawl catches made on the West Coast (mainly deep-water hake) and 60-80% to trawl catches made on the South Coast (mainly shallow-water hake). The balance is made up of various by-catch species many of which are utilised, and on average just over 90% of the catch is retained. The hake deep-sea trawling grounds are widespread on the Cape west coast in waters deeper than 200 metres. On the Cape south coast hake deep-sea trawlers may not fish in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast, and trawling is focused primarily on two fishing grounds.

The Department manages the hake deep-sea trawl fishery as part of a "hake collective". In terms of the MLRA a "global" TAC for hakes (both species combined) is set annually by the Minister of Environmental Affairs and Tourism. Of the global hake TAC a reserve to cover bycatch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing is set aside prior to distribution among the hake fishing sectors. Currently the global hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake lone line and hake handline fishery sectors without regard to the hake species split in the respective fishery sectors. In terms of that arrangement, 83% is allocated to deep-sea trawl, 6% to inshore trawl and 10% is shared between hake long line and hake handline. However, a sectoral allocation procedure that takes cognisance of the species taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species.

The hake deep-sea trawl fishery sustains about 8 800 direct jobs along South Africa's west and south east Cape coasts. Of these jobs, 90% are held by persons from historically disadvantaged communities, while 40% are held by women. Working conditions in the hake deep-sea trawl industry are considered to be better than those that prevail in most other

fisheries. The majority of employees are employed on a full-time, year-round basis, with fixed salaries and employment benefits. The average annual income of crew (including skippers) is R63 000 per annum. Certain of the larger deep-sea trawl fishing companies are registered with the “Proudly South African” campaign.

The hake deep-sea trawl fishery is an extremely capital intensive fishery. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure. The total value of assets in the fishery is estimated to be approximately R2,2 billion. The market value of the landed catch is worth approximately R2 billion annually at current market prices. Although vessels as small as 30 metres in length operate in the fishery, 66 percent of deep-sea trawlers are between 45 metres and 50 metres in length. Fishing trips vary from less than a week to more than 30 days.

3. The medium-term rights allocation process

In 1992, the five largest companies in the fishery held 92 percent of the TAC. In 2004, the five largest companies shared less than 75 percent of the hake resource. In 1992 the smallest quota was 50 tons and the largest was 53 000 tons. Ten years later, the smallest quota was 336 tons and the largest was 45 000 tons. The gap between the smallest and the largest allocations has been closing.

The “internal” transformation of the traditional companies, and the entry of black-owned and managed companies since 1992 has resulted in a significantly improved transformation profile in this fishery. The medium-term rights allocation records show that:

- 74 percent of the current participants are black-owned and managed;
- 42 percent of right-holders are small- and medium-sized enterprises;
- 25 percent of the TAC is held by black-owned companies (in 1992, this was zero percent).

4. Over-arching sectoral objectives

The South African hake deep-sea trawl fishery is the only hake fishery in the world to have been awarded the prestigious *Marine Stewardship Council* certificate (www.msc.org). The

MSC certification is a stamp of approval that indicates that the fish products originate from a sustainable and responsibly managed fishery.

In order to maintain and develop the global image of the South African hake deep-sea trawl fishery, the allocation of commercial fishing rights will be informed by South Africa's domestic, regional and international obligations. Among these obligations is the need to ensure the long-term sustainable utilisation of hake stocks and to manage all known impacts of trawling on the marine ecosystem. This includes measures to manage, prevent and reduce by-catch.

Other, equally important, over-arching objectives for allocating long-term fishing rights in this fishery are to:

- Notably improve the transformation profile of the hake deep-sea trawl fishery by increasing black ownership of the TAC and to redistribute the TAC so as to affirm right holders with smaller allocations in this fishery that are transformed and have performed well;
- Create an environment that attracts investment and stimulates job creation; and
- Support the economic viability and environmental sustainability of the fishery.

5. Duration

Having regard to –

- the transformation profile of the fishery;
- the capital intensity of the fishery;
- the fact that part of the deep-sea trawl fleet is ageing and requires replacement;
- the need to maintain the economic stability and increase the international competitiveness of the fishery;
- the fact that this fishery is MSC certified; and
- the fact that the deep-water hake resource is well managed in terms of reliable and current data,

commercial rights will be allocated for a period of 15 years (01 January 2006 to 31 December 2020). The Department will regularly evaluate right holders against predetermined performance criteria (see further paragraph 12 below).

6. New Entrants

The hake deep-sea trawl fishery is presently over-subscribed with 53 right-holders. The current levels of catch have been reviewed and a conservative management plan has been implemented over the past three years. The TAC has been reduced and further reductions may be required in the near future. New entrants may be admitted but the total number of participants in this fishery will not be increased.

7. Evaluation Criteria

All applications will be screened in terms of a set of “exclusionary criteria”. New entrant applicants and previous right-holder applicants will thereafter be separately assessed in terms of a set of weighted “comparative balancing criteria”. A cut-off score or rank will then be determined in order to select the successful applicants. A proportion of the TAC will then be allocated to each successful applicant in terms of a set of “quantum criteria”.

7.1 Exclusionary Criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) Form of the Applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.

- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated a hake deep-sea trawl right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Decisions may be reserved on applications if a right holder applicant (or its members, directors or controlling shareholders) that are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

- (c) **Paper Quotas:** Paper quotas, as defined in the General Policy, will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see further paragraph 8 below for the description of a suitable vessel).

7.2 Comparative Balancing Criteria

Right-holder applicants and potential new entrants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in

the General Policy for further detail. This applies in particular to the “*transformation*” criterion.

(a) Transformation

One of the objectives with the process of allocating long-term fishing rights in this fishery is to improve on the present level of transformation. As set out in the General Fisheries Policy, applicants will be assessed on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the Fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered. Right-holder applicants will not be rewarded for having concluded conditional vessel purchase agreements.

- Investments in processing and marketing. In this regard, the delegated authority may reward right-holder applicants that have invested in hake processing factories and marketing activities.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to participate in the hake deep-sea trawl fishery.

(c) Performance

Applicants that without good reason over- or under-caught by more than 10 percent over the medium-term period will be penalised. Financial performance will be measured as indicated in the General Fisheries policy.

(d) Value-Adding and Enterprise Development

The delegated authority may have regard to enterprise development and to the ability of applicants to add value to hake through processing.

(e) Jobs

The hake deep-sea trawl fishery provides about 8 800 jobs. Salaries average R63 000 annually for sea-going employees.

Job creation and increases in jobs as a result of the allocation of medium term fishing rights may be taken into account, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per tonnage fish allocated during the medium-term rights allocation process will be assessed.

(f) By-catch

The volume of by-catch landed by participants in the hake deep-sea trawl fishery remains of concern to the Department. The targeting of high value by-catch species such as kingklip (*Genypterus capensis*) and monkfish (*Lophius vomerinus*), is of particular concern as assessments indicate that present catch levels for both species are not sustainable. Kingklip abundance on the south coast is particularly low.

The Department has determined the maximum annual by-catch allowances for kingklip to be 3 000 tons and for monk to be 7 000 tons. These by-catch allowances shall apply to the hake fishery as a whole. Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or, if new entrant applicants, would invest in to ensure adherence with the above by-catch limitations. The delegated authority may also have regard to what measures have been put in place or will be invested in to reduce snoek (*Thyrsites atun*) by-catches.

(g) Environmentally sustainable practices

The practice of trawling is known to cause damage to sea beds. To date there is no conclusive data indicating the extent of the damage caused. The delegated authority, in applying the precautionary management principle, will take into account whether an applicant has or intends to –

- reduce damage to sea beds; and
- be more energy and fuel efficient (also applicable to processing factories).

(h) Local Economic Development

The delegated authority may take into account whether the applicants, particularly right-holders with smaller allocations and new entrant applicants, have elected to land their catches and have them processed in centres outside of the large metropolitan

areas such as Port Elizabeth and Cape Town. If the delegated positively scores these applicants, this must not result in penalising the larger hake deep-sea trawl right-holders that have made substantial investments in processing and marketing facilities in Cape Town and Port Elizabeth.

(i) Non-payment of fish levies

Right-holder applicants will be penalised if their levies payable to the Department are outstanding for a period longer than 60 days at the date of application.

(j) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its regulations or permit conditions, the applicant will be penalised.

7.3 Quantum criteria

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in the fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum.

Firstly, the allocation of quantum to successful medium term right holder applicants will be determined with reference to the quantum held by right holders in 2005.

Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation and performance. These criteria must be designed in a

manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

8. Suitable Vessels

A suitable hake deep-sea trawl fishing vessel is a vessel that is –

- Registered by SAMSA as having a minimum registered length of approximately 30m;
- Is geared to fish using the trawling method; and
- Is fitted with a functioning vessel monitoring system.

9. Multi-Sector Involvement

Right-holders in the hake deep-sea trawl fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the hake deep-sea trawl fishery (including their members, controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries. The same applies to traditional line fish.

10. Application fees and levies

The fees for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 January 2006 will be determined after consultation with right holders. The levies paid will be utilised by the Department for mitigating the annual costs of management, compliance and research.

11. Management measures

The management measures discussed below reflect a number of the Department's principal post-right allocation management intentions for this fishery.

11.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated approach which recognises that fishing and associated land-based activities impact on the broader marine environment. This part of the hake deep-sea trawl fishing policy does not attempt to provide a policy statement on EAF in the hake deep-sea trawl fishery. The EAF in the hake deep-sea trawl fishery will be detailed further in the Fishery Management Manual for the hake deep-sea trawl fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

11.2 Consolidation of participants

After the allocation of 15 year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;
or
- Smaller right-holders opt to consolidate their business operations.

Consolidation of right-holders is however subject to the Department's approach to monopolies (see paragraph 11.5 below).

11.3 Fisheries management areas and marine protected areas

The hake deep-sea trawl fishery targets two types of hakes along the west, south and south east coasts of the Cape. Should the proposed Namaqualand Marine Protected

Area be designated, the harvesting of hake would then effectively be separated into three distinct areas as trawling activities along the west coast would be split north and south of the MPA.

The Department also intends to reduce the sharing of fishing grounds by hake trawlers and hake longliners. Section 15 of the MLRA makes provision for the declaration of fisheries management areas. The Department will consider declaring such management areas in an attempt to address the potential user conflict between longliners and trawlers.

11.4 Vessels and fishing effort

There are presently 100 hake deep-sea trawl fishing vessels that operate in South African waters. The majority are older vessels requiring replacement. The upgrading of the fleet may result in an increase in the fishing effort. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 Monopolies

While the Department will encourage the consolidation of right-holders in this fishery, the Department is opposed to monopolies which may operate to the detriment of smaller right-holders. The Department is concerned, in particular, that the smaller right-holders in the fishery are not able to fully realise the value of their allocations due to their size. The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control but will monitor whether any large right-holders act in a manner contrary to fair competition practices.

11.6 TAC ratios – trawl : line

The current TAC ratio of trawl : line will by and large be maintained. The ratio will however be reviewed once further data become available on the relative impacts of trawling and long lining.

12. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every three years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels, factories and gear;
- sustainable utilisation, and in particular by-catch mitigation and reduction and the biological and ecological impacts of trawling;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

13. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY ON THE ALLOCATION AND MANAGEMENT OF LONG-
TERM COMMERCIAL FISHING RIGHTS IN THE HORSE
MACKEREL FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at www.mcm-deat.gov.za)**

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the Horse Mackerel fishery is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). Interested and affected parties are advised that this policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 ("the General Fisheries Policy").

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial horse mackerel fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this policy. A Horse Mackerel Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate commercial horse mackerel fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Biological status of the fishery

The southern African subspecies of horse mackerel (*Trachurus trachurus capensis*) is found along the entire South African coast, but the largest concentrations of adult fish are found on the Agulhas Bank, near the continental shelf break. Juveniles occur inshore, mainly on the west coast, where they are caught by the purse-seine fishery during the first quarter of the year.

The South African horse mackerel stock is comparatively small by world standards. The status of the South African stock is still being assessed. For this reason, the horse mackerel fishery is

managed in terms of a precautionary maximum catch limit ("PMCL"). The PMCL has fluctuated between 22 000 and 54 000 tons since 1990.

It is important to note that the Cape horse mackerel is highly nomadic. Local availability is variable and dependent on environmental conditions.

3. Profile of the Fishery

The horse mackerel resource is harvested mainly by targeted mid-water trawling but there are substantial targeted and incidental catches in the hake-directed bottom trawl fishery. In addition, juvenile horse mackerel is taken as a by-catch in the purse-seine fishery on the west coast. While generally low, the catch of juveniles by the purse-seine fishery has on occasion been substantial and is currently subject to a strict limit of 5 000 tons per annum.

Management of the horse mackerel resource in South African waters is hampered by a lack of data, particularly the lack of suitable time-series of abundance indices. The most reliable current abundance index is derived from the demersal trawl surveys using bottom trawl gear. However, as the Horse Mackerel resource is semi-pelagic, this index most likely underestimates the size of the resource. Consequently, the status and productivity of the resource is less well known relative to other South African resources such as hake, sardine and anchovy. The data on horse mackerel is inadequate because the primary research focus of monitoring surveys has been the assessment of established fisheries such as hake and sardine.

The majority of horse mackerel is caught by a single midwater directed trawler. The majority of horse mackerel is transhipped and exported without landing or processing in South Africa. The fish are exported to West Africa, earning approximately R2.50 per kilogram. The value of the catch is worth approximately R55 million annually.

4. The medium-term rights allocation process

In 2001, medium-term rights for targeted mid-water trawling were allocated to 17 successful applicants, of which five were new entrants. The new entrants were allocated 500 tons (currently 542 tons) each and the rest of the PMCL was divided among existing right-holders.

The allocation considered previous allocations and scores achieved in a comparative balancing assessment.

The medium-term allocation records show that:

- 41 percent of the current participants are black owned;
- 29 percent of the current participants are black managed;
- 37 percent of the PMCL is held by black owned companies.

5. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Notably improve the transformation profile of the horse mackerel fishery;
- Create an environment that attracts investment and stimulates job creation;
- Support the economic viability and environmental sustainability of the fishery; and
- Encourage the landing and processing of horse mackerel for human consumption in South Africa.

The Department will recognise two types of horse mackerel directed effort. Firstly, there will be those right holders that target horse mackerel using a dedicated mid-water trawler. These right-holders may only use a mid-water trawl net and all hake harvested will be regarded as a by-catch. The hake by-catch limitations will apply in this regard.

Secondly, those right-holders that hold a hake deep-sea trawl right in addition to a horse mackerel right may carry both deep water and mid-water trawl nets. All hake caught in this instance will be deducted from the right-holder's hake allocation and all horse mackerel from the right holder's horse mackerel allocation. The right-holder will have to specify the trawl net (midwater or demersal) used for taking each catch.

Right-holders will be required to specify which option they intend exercising.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery
- the capital intensity of the fishery;
- the need to encourage landing of horse mackerel in South Africa and increase the number of South African jobs in this fishery;
- the need to increase the economic stability and competitiveness of the fishery; and
- the fact that the horse mackerel resource requires further research,

commercial rights will be allocated for a period of 10 years (1 January 2006 to 31 December 2015). The Department will regularly evaluate right holders against predetermined performance criteria (see paragraph 13 below).

7. New Entrants

The Department considers this fishery to be optimally exploited and the total number of participants in this fishery will not be increased. However, the poor transformation profile of the sector, coupled with the fact that horse mackerel is harvested and mostly exported without processing occurring in South Africa, means that the delegated authority will consider new entrant applicants to replace existing right holders.

8. Exclusionary criteria

Applications will be screened in terms of a set of “exclusionary criteria”, and thereafter evaluated in terms of a set of weighted “comparative balancing criteria”. A cut-off score will then be determined in order to identify the successful applicant. A proportion of the PMCL will then be allocated to each successful applicant in terms of a set of “quantum criteria”.

8.1 Exclusionary criteria

Apart from the criteria described in the General Policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.

- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated a horse mackerel right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Decisions may be reserved on applications from if a right holder applicant (or its members, directors or controlling shareholders) that are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies or will be penalised in the comparative balancing process as set out below.

Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

- (c) **Paper quotas:** Paper quotas, as defined in the General Policy, will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see paragraph 9 below).

8.2 Comparative balancing criteria

Right-holder applicants and new entrant applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation

One of the objectives during the process of allocating long-term fishing rights in this fishery is to improve on the present levels of transformation. As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may

also have regard to the wage differentials between the highest and lowest paid employees;

- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered. Applicants may also be rewarded for having concluded agreements in terms of which operating or other costs are shared;
- Investments in processing and marketing infrastructure. The delegated authority will specifically seek to reward those applicants that undertake to land and process horse mackerel in South Africa.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to fish for horse mackerel.

(c) Jobs

Job creation and increases in jobs as a result of the allocation of medium term fishing rights may be rewarded, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per tonnage fish allocated during the medium-term rights allocation process will be assessed.

(d) Value-adding, local marketing and enterprise development

The delegated authority may have regard to enterprise development and the ability of applicants to add or who intend to add value to horse mackerel by processing fish products for local and international markets. The delegated authority will reward the landing and selling of horse mackerel in South Africa.

(e) Performance

Applicants that without good reason over- or under-caught by more than 10 percent of its allocation will be penalised. Financial performance will be measured, as indicated in the General Policy.

(f) Payment of fish levies

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days at the date of application.

(g) By-catch

The impact of trawling for horse mackerel on dolphins, pelagic sharks and sunfish is a concern. Applicants able to demonstrate steps taken to reduce the impact of mid-water trawling on these species will be positively scored.

The hake by-catch in the horse mackerel targeted mid-water trawl fishery is expected to be just under two percent of the horse mackerel catch. Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or - if new entrant applicants - would invest in to ensure adherence to the above by-catch limitations.

(h) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

8.3 Quantum criteria

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in this fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum.

Firstly, the allocation of quantum to successful medium term right holder applicants will be determined having with reference the quantum held by right holders in 2005.

Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation, value-adding and local marketing of horse mackerel for human consumption. These criteria must be designed in a manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

9. Suitable vessels

A suitable horse mackerel fishing vessel is a vessel that is –

- Either a mid-water directed vessel geared for mid-water trawling or a suitable hake deep-sea trawl vessel that is capable of carrying a mid-water trawl net;
- Is SAMSA certified; and
- Is fitted with a functioning vessel monitoring system.

It is important to note that the Department does not intend to allow a further mid-water directed trawler into this fishery based on current resource data.

10. Multi-sector involvement

Right-holders in the horse mackerel fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the horse mackerel fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, including traditional line fish.

11. Landing sites

Unless specified otherwise in individual permit conditions, only the South African ports of Saldanha, Cape Town, Hout Bay, Mossel Bay and Port Elizabeth may be used to land catches.

12. Management measures

The management measures discussed below reflect a number of the Department's principal post right allocation management intentions for this fishery.

12.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and associated land-based activities impact on the broader marine environment. This part of the horse mackerel fishing policy does not attempt to provide a policy statement on EAF in the horse mackerel fishery. The EAF

in the horse mackerel fishery will be detailed further in the Fishery Management Manual for the horse mackerel fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

12.2 Consolidation of participants

After the allocation of 10-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;
or
- Smaller right-holders opt to consolidate their business operations.

12.3 Precautionary maximum catch limit

The resource will be managed using a PMCL and gear restrictions. The PMCL will be determined annually and will be based primarily on an age-structured surplus production model that uses catch data and survey biomass estimates. In addition, the PMCL may be adjusted in terms of the perturbation experiment with the purpose of eliciting responses from the resource, thereby improving the information content of the data available for stock assessments. The method of annual PMCL determination may be modified during the rights period, based on available data and improved assessment procedures.

Part of the PMCL will be allocated among right-holders for targeted fishing using bottom and mid-water trawl gears, and part will be held in reserve to cover by-catch in the hake-directed demersal fishery. In addition, the pelagic purse-seine fleet will not be permitted to catch more than 5 000 t of horse mackerel.

13. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every three years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels, factories and gear;
- sustainable utilisation, and in particular by-catch mitigation and reduction of the ecological impacts of trawling;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

14. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 January 2006 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

15. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

16. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE INSHORE TRAWL
FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at www.mcm-deat.gov.za)**

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the inshore trawl fishery is issued by the Minister of Environmental Affairs and Tourism (“the Minister”) This policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 (“the General Fisheries Policy”).

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial inshore trawl fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this policy. An Inshore Trawl Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate inshore trawl commercial fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Sector profile

Commencing in the 1890s, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa’s most important fishery and, for the last decade, it has accounted for more than one half of the wealth generated from commercial fisheries. Although the inshore trawl fishery was pioneered at the start of the twentieth century, it was only in the 1950’s that the fishery took on a commercial face when smaller trawlers entered the fishery to target hakes and the more valuable Agulhas sole (*Austroglossus pectoralis*). The inshore trawl fishery continues as a “dual quota” fishery targeting both shallow-water hake (*Merluccius capensis*) and Agulhas sole.

As was the case with the deep-sea trawl fishery, prior to 1978, the inshore trawl fishery was largely unregulated and participants were not restricted to a maximum catch limit. In 1978, the demersal fishery was formally separated into inshore and offshore sectors, a global annual total allowable catch (“TAC”) was introduced and was divided between the sectors. An annual sole TAC was also set. Individual quotas were introduced in 1982. Since then, an annual TAC has been set for both the Cape hakes and for Agulhas sole. The inshore trawl fishery has been managed in terms of a sole TAC and a portion of the hake TAC. The sectoral allocation of the global hake TAC has remained remarkably stable at around 6 percent.

The Department manages the inshore trawl fishery as part of a “hake collective”. In terms of the MLRA, a “global” TAC for all hakes (both species combined) is set annually by the Minister of Environmental Affairs and Tourism. Of the global hake TAC a reserve to cover bycatch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing was set aside prior to distribution among the hake fishing sectors. Currently the global hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake long line and hake handline sectors without regard to the hake species split in the respective sectors. In terms of that arrangement, 83% is allocated to deep-sea trawl, 6% to inshore trawl and 10% is shared between hake long line and hake handline. However, a sectoral allocation procedure that takes cognisance of the species taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species. In terms of such a procedure, the sectoral allocation of hake to the Inshore Trawl Fishery would be determined only by the status of the shallow-water hake resource.

Inshore trawl grounds are located between Cape Agulhas in the west and the Great Kei River in the east. To protect the inshore areas, vessels operating in the inshore fishery may not exceed 30m and may not use heavy trawl gear. In addition, vessels fishing on deep-sea trawl permits may not operate in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast. However, inshore vessels are not restricted from fishing deeper than 110m. Trawling for hake occurs throughout the traditional “inshore” area i.e. in waters shallower than the 110m isobath and on the two offshore fishing grounds. Trawling for Agulhas sole is in water depths of 50-80m, mainly between Mossel Bay

and Struisbaai, in areas where the substrate consists of mud/shale. Most of the bays on the South coast are closed to trawling.

The inshore trawl fishery sustains some 1 100 direct jobs. Black people occupy more than 90 percent of these jobs, while women hold 42 percent. Working conditions in the inshore trawl fishery are generally considered to be better than those that prevail in other fisheries. The majority of employees are employed on a full-time, year round basis, with fixed salaries and employment benefits. The average annual income of sea-going crew is R35 000. Sea-going workers are registered with the Bargaining Council for the South African Fishing Industry which has two chambers: one for the deep-sea trawl fishery and one for the inshore trawl fishery. The Bargaining Council sets out basic conditions of employment in these fisheries.

The inshore trawl fishery is not as capital intensive as the deep-sea trawl fishery, but significant investments in the form of vessels, processing and marketing infrastructure have nevertheless been made by the existing participants. The total value of the assets in the fishery is estimated to be more than R100 million. The market value of catch landed is worth approximately R60 million annually.

Hake stocks are currently managed according to a conservative strategy. The TAC for hake has been reduced each year since 2003 and further reductions may be necessary.

3. The medium-term rights allocation process

As with all other commercial fisheries in South Africa, the inshore trawl fishery has historically been dominated by a handful of large white-owned companies. The introduction of the TAC in 1978 resulted in the smaller companies being forced out of the fishery. In 1992, eleven large companies operated 35 trawlers in the fishery. By 2004 however, 16 companies were participating. As importantly, in 1992 the ratio between smallest quota and the largest quota was 1:45. Ten years later, the ratio was reduced to 1:26. The gap between the smallest and the largest allocations has been closing.

The “internal” transformation of the traditional companies, and the entry of black-owned and managed companies since 1992, has resulted in a significantly improved transformation profile

in this fishery. The transformation profile of this fishery however remains below the industry average of 66%. Medium-term rights allocation records show that:

- The inshore trawl fishery is currently 50 percent black-owned;
- 69 percent of right-holders are small- and medium-sized enterprises;
- 37 percent of the hake TAC and 46 percent of the sole TAC is held by black-owned companies (in 1992 this was one percent).

4. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Notably improve the transformation profile of the inshore trawl fishery, particularly by increasing black ownership of the TAC and to redistribute the TAC so as to affirm right holders with smaller allocations in this fishery that are transformed and have performed well;
- Create an environment that attracts investment and stimulates job creation;
- Reduce the adverse impacts of trawling, such as damage to seabeds, and to reduce by-catch; and
- Support the economic viability and environmental sustainability of the fishery.

5. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the fact that the current inshore trawl fleet is old and requires replacement;
- the need to maintain the current economic stability in the fishery; and
- the fact that the inshore hake and sole resources are well managed with reliable and current data,

commercial rights will be allocated for a period of 10 years (1 January 2006 to 31 December 2015). The Department will regularly evaluate right holders against predetermined performance criteria (see paragraph 12 below).

6. New Entrants

Hake and sole stocks are presently managed in terms of a recovery plan as there are indications that these stocks are declining. Furthermore, the accommodation of new entrant applicants in the fishery between 1992 and 2002 had resulted in the hake allocation decreasing from an average of 900 tons to an average of 600 tons per right-holder. Sole allocations were similarly reduced from an average of 80 tons to an average of 50 tons per right-holder. New entrants may be admitted but the total number of participants will not be increased.

7. Evaluation criteria

Applications will be screened in terms of a set of “exclusionary criteria”. New entrant applicants and previous right-holder applicants will thereafter be separately assessed in terms of a set of weighted “comparative balancing criteria”. A cut-off score will then be determined in order to select the successful applicants. A proportion of the TAC will then be allocated to each successful applicant in terms of a set of “quantum criteria”.

7.1 Exclusionary criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.

- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated an inshore trawl right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders, that have had any fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 1 of 1998 or the MLRA.

Decisions may be reserved on applications if a right holder applicant (or its members, directors or controlling shareholders) are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of such an investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

- (c) **Paper quotas:** Paper quotas as defined in the General Policy will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see paragraph 8 below).

7.2 Comparative balancing criteria

Right-holder applicants and potential new entrants will be evaluated in terms of the following balancing criteria, which will be weighted in order to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation

One of the objectives during the process of allocating long-term fishing rights in this fishery is to improve on the present levels of transformation. As set out in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered. Right-holder applicants will not be rewarded for having concluded conditional vessel purchase agreements;
- Investments in processing and marketing infrastructure. The delegated authority may reward right-holder applicants that have invested in hake and sole processing factories and marketing initiatives.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to participate in the hake inshore trawl fishery.

(c) Performance

Applicants that without good reason over- or under-caught hake or sole by more than 10 percent of its allocations over the medium-term period will be penalised. Financial performance will be measured as indicated in the General Fisheries policy.

(d) Value-Adding and Enterprise Development

The delegated authority may have regard to enterprise development and to the ability of applicants to add to the value of hake and sole through processing.

(e) Jobs

The inshore trawl fishery provides approximately 1 100 jobs. Salaries average R35 000 annually for sea-going employees. The majority of employees are employed on a full-time basis with benefits such as medical aid and pension. Fair labour practices generally prevail.

Job creation and increases in jobs as a result of the allocation of medium term fishing rights may be rewarded, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and may be taken into account.

(f) By-catch

The volume of by-catch in the inshore trawl fishery remains of concern to the Department. The targeting of high value by-catch species such as kingklip (*Genypterus capensis*) and monk fish (*Lophius vomerinus*), is of particular concern. Present catch rates indicate that catches for both species are above sustainable levels. Kingklip abundance on the South Coast is particularly depressed.

The Department has determined the maximum annual by-catch allowances for kingklip to be 3000 tons and for monk fish to be 7000 tons. These by-catch allowances shall apply to the hake fishery as a whole. Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or, if new entrant applicants, would invest in to ensure adherence with the above by-catch limitations.

(g) Local Economic Development

The delegated authority may take into account whether the applicants, particularly smaller right-holders and new entrant applicants, have elected to land their catches and have them processed in centres outside of the large metropolitan areas such as Port Elizabeth and Cape Town. If the delegated authority positively scores these applicants, this must not result in penalising the larger hake inshore trawl right-holders that have made substantial investments in processing and marketing facilities in Cape Town and Port Elizabeth.

(h) Non-payment of Fish Levies

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days at the date of application.

(i) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

(j) Environmentally sustainable practices

The practice of trawling is known to cause damage to sea beds. To date there is no conclusive data indicating the extent of the damage caused. The delegated authority, in applying the precautionary management principle, will take into account whether an applicant has or intends to –

- reduce damage to sea beds; and
- be more energy and fuel efficient (also applicable to processing factories).

7.3 Quantum criteria

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in this fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum.

Firstly, the allocation of quantum to successful medium term right holder applicants will be determined with reference to the quantum held by right holders in 2005.

Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to small businesses and right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation and performance. These criteria must be designed in a manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

8. Suitable vessels

A suitable vessel in the inshore trawl fishery is a vessel that:

- has a maximum SAMSA registered length of approximately 30 metres;
- is fitted with a functioning vessel monitoring system;
- has a maximum horsepower of 750; and
- is geared to target sole and hake at depths of not more than 110m.

9. Multi-sector involvement

Right-holders in the inshore trawl fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the inshore trawl fishery (including their members, controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, including traditional line fish.

10. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 January 2006 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

11. Management measures

The management measures discussed below reflect a number of the Department's principal post right allocation management intentions for this fishery.

11.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries (“EAF”). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and various landbased activities impact on the broader marine environment. This part of the inshore trawl fishing policy does not attempt to provide a policy statement on EAF in the inshore trawl fishery. The EAF in the inshore trawl fishery will be detailed further in the Fishery Management Manual for the inshore trawl fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

11.2 Fisheries management areas

The hake inshore trawl fishery targets two hake species and Agulhas sole within a relatively small marine area. The Department is concerned that the intensive targeting of hake in this area is placing unsustainable pressure on linefish stocks such as kob and kingklip. The Department also intends to reduce the sharing of fishing grounds by trawlers and longliners.

Section 15 of the Marine Living Resources Act makes provision for the declaration of fisheries management areas. The Department will consider declaring such management areas in an attempt to reduce the by-catch of kob and kingklip in particular, and to address the potential user conflict between longliners and trawlers.

11.3 Consolidation of participants

After the allocation of 10-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;
or
- Smaller right-holders opt to consolidate their business operations.

Consolidation of right-holders is however subject to the Department's approach to monopolies (see paragraph 11.5 below).

11.4 Vessels and fishing effort

There are presently 35 inshore trawl fishing vessels that operate in South African waters. The majority are old vessels that require replacement. The upgrading of the fleet may result in an increase in the fishing efficiency. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 Monopolies

While the Department will encourage the consolidation of right-holders in this fishery, the Department is opposed to monopolies which may operate to the detriment of smaller right-holders.

The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control but will monitor whether any larger right-holder acts in a manner contrary to fair competition practices.

11.6 TAC ratios– Trawl:line

The current TAC ratio of trawl:line will by and large be maintained. The ratio, however, will be reviewed once further data become available on the relative impacts of trawling and longlining.

12. Performance measuring

The Department will institute a number of performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every three years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels, factories and gear;
- sustainable utilisation and in particular the reduction of by-catch and the ecological impacts of trawling;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

13. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE KWAZULU-NATAL
PRAWN TRAWL FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
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1. Introduction

This policy on the allocation and management of commercial fishing rights in the KwaZulu-Natal prawn trawl fishery (hereafter also the “KZN prawn trawl fishery”) is issued by the Minister of Environmental Affairs and Tourism (“the Minister”). This policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 (“the General Fisheries Policy”).

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial KZN prawn trawl fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this policy. A KZN Prawn Trawl Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate commercial KZN prawn trawl fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Biology and resource dynamics

White prawns (*Penaeus indicus*), brown prawns (*Metapenaeus monoceros*) and tiger prawns (*Penaeus monodon*) occur on the shallow water mud banks along the north east coast of KwaZulu-Natal. Bamboo prawns (*Penaeus japonicus*) are also occasionally trawled on the St Lucia grounds. These prawn species grow fast and have a life-span of approximately one year. Eggs are carried on the abdomen of females. Larvae hatch during the second half of the year, and are transported by currents into estuaries along the KZN coast, where they remain up to

the first quarter of the following year and grow into juveniles. Juvenile prawns move out of estuaries and recruit onto the mud banks, where they grow to maturity and reproduce, thus completing the life cycle.

Deep water species include pink (knife) and red prawns (*Haliporoides triarthrus*) and (*Aristaeomorpha foliacea*), langoustines (*Metanephrops mozambicus*) and (*Nephropsis stewartii*), red crab (*Chaceon macphersoni*), and deep-water rock lobster (*Palinurus delagoae*). The life cycles of these species are diverse, but some (such as rock lobster) are slow-growing and long-lived, making them more vulnerable to fishing. Little is known about the biology of the deep-water prawns and langoustines.

3. Sector profile

The KZN prawn trawl fishery is based in Kwazulu-Natal (“KZN”) and consists of two components: an inshore fishery (5m to 40m depth) on the Tugela Bank and at St Lucia in an area of roughly 500 square kilometres; and an offshore fishery (100m to 600m depth) extending from Cape Vidal in the north to Amanzimtoti in the south, covering approximately 1 700 square kilometres along the edge of the continental shelf.

Up to the 1960s, trawling was sporadic, but thereafter the sector comprised up to 12 companies and 21 vessels, many of which also fished in Mozambique. Regular statistics were collected from 1988 onwards.

Catches and catch rates of individual species or groups of species fluctuate widely, sometimes as a result of fishing strategy (targeting of specific species) rather than fluctuations in abundance. The abundance of shallow-water prawns depends on rainfall patterns and their effects on the flushing of estuaries where larval and juvenile prawns develop. In general, the last two decades have seen declines in the landings of white prawns, pink prawns, langoustines, rock lobster and red crab.

The fishery is managed using a Total Applied Effort (“TAE”) strategy, which limits the number of vessels permitted to fish on the inshore and offshore fishing grounds. A TAE of eight fishing permits has been maintained for the past decade.

The sector is capital-intensive and its infrastructure, marketing and product distribution are dominated by established companies. The fishery requires specialised trawling vessels and equipment and is suitable for commercial fishing only. Fishing grounds are on the South African continental shelf and no foreign fishing vessels are allowed. Vessels are *ex side* trawl vessels trawling over the stern with a *single net boom vessels* trawling with a single or with twin nets per boom, and *stern* trawlers operating with single, twin or triple nets over the stern. Trawl net sizes range from 25- to 72-metre footrope length, with a minimum of 60mm mesh size measured from knot to knot. Trawling takes place on a 24-hour basis, at speeds of two to three knots and an average drag duration of four hours. Trawlers carry about 15 crew and remain at sea for two to three weeks at a time.

Catches (by mass) of the KZN prawn trawl fisheries consist of roughly 20 percent target species, 10 percent retained by-catch, and 70 percent discarded by-catch. The retained by-catch includes cephalopods (octopus, squid and cuttlefish), molluscs, and substantial quantities of several fish species. The discarded by-catch (juvenile or small fish, low-value crustaceans, elasmobranchs and molluscs) amounts to about 1 000 to 2 000 tons per annum.

Inshore trawling is seasonal, with good catches made between January and March off St Lucia, and from March to September on the Tugela Bank. Offshore trawling takes place year-round. The boundary between the inshore and offshore fisheries is situated seven nautical miles from the shore between the St Lucia lighthouse and Zinkwazi.

Catches are size-sorted, graded, packed and blast-frozen at sea. Little value is added on land. Modest shore-based infrastructure, including berthing, re-packing, storage and marketing facilities, is situated in Durban. Frozen products are sold on local markets. The landed catch in the KZN prawn fishery is worth approximately R21 million per annum.

4. The Medium-term rights allocation process

Fishing rights were allocated in 2001 for a medium-term period of four years. Rights are currently held by five fishing companies (with a total of eight vessels), of which three right-

holders (with five vessels) may fish in both the inshore and offshore fisheries, and the other two right-holders (with three vessels) are restricted to the offshore fishery only.

The allocation records show that:

- An estimated 22 percent of right-holders are majority-owned by blacks;
- 30 percent of right-holders are managed by blacks; and
- the sector employs about 150 individuals, 88 percent of whom are black.

5. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Notably improve the transformation profile of the KZN prawn trawl fishery;
- Ensure that steps are taken to mitigate against avoidable by-catch, particularly catches of linefish species that are listed on recreational and prohibited species lists;
- Ensure that, where possible, by-catches are landed and resources are not wasted;
- Create an environment that attracts investment and stimulates job creation;
- Support the economic viability of the fishery; and
- Ensure the environmental sustainability of the fishery.

Transformation will be a particularly important consideration for the allocation of long term commercial fishing rights in this fishery. Although it is probable that the current number of vessels in the fishery (eight) will be maintained, the need for transformation will mean that it may not necessarily be existing right-holders that will be granted rights. Existing right holders may be replaced with new entrant applications.

The rate of by-catch and the effect of prawn trawling on the benthic habitat are issues of great concern and the delegated authority will reward applicants in this fishery who are able to indicate their intentions to introduce mitigating measures in this regard. The Department will

increasingly insist that by-catch is landed, that resources are not wasted, and that right-holders seek markets for by-catch. However, the sale of by-catch that comprises linefish species that are listed on recreational and prohibited species lists will not be permitted.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the capital intensity of the fishery;
- the need to maintain the economic stability and increase the competitiveness of the fishery; and
- the lack of scientifically reliable resource assessments due to the high number of species involved in this fishery, together with a very high by-catch percentage,

commercial rights will be allocated for a period of eight years (1 January 2006 to 31 December 2013). The Department will regularly evaluate right holders against predetermined performance criteria (see paragraph 14 below).

7. New entrants

The number of participants will not be increased in this fishery. New entrant applicants may be preferred over existing right-holders, particularly if their inclusion will assist in the transformation of the KZN prawn trawl fishery.

8. Evaluation criteria

Applications will be screened in terms of a set of “exclusionary criteria”, and thereafter assessed in terms of a set of weighted “comparative balancing criteria”. A cut-off score or rank will then be determined in order to select the successful applicants. A proportion of the effort will be allocated to each successful applicant.

8.1 Exclusionary criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of the applicant:** Rights will only be granted to entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Rights will not be granted to natural persons (i.e. individuals or sole proprietors) and trusts.

- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated a KZN Prawn trawl right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Decisions may be reserved on applications if a right holder applicant (or its members, directors or controlling shareholders) are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies or will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

(c) **Paper quotas:** Paper quotas as defined in the General Policy will be excluded.

(d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see paragraph 9 below).

8.2 Comparative balancing criteria

Right-holder applicants and new entrant applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation:

As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered;
- Investments in processing and marketing infrastructure.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to participate in the KZN Prawn Trawl fishery.

(c) Jobs

Job creation and increases in jobs as a result of the allocation of medium term fishing rights will be rewarded, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

(d) Performance

Financial performance will be measured, as indicated in the General Policy. In addition, the delegated authority will have regard to the applicant's fishing performance, where possible, particularly with respect to the number of days

spent fishing in South African waters as opposed to fishing in Mozambique or Tanzania.

(e) Payment of fish levies

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days at the date of application.

(f) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

(g) By-catch

The delegated authority will seek to reward those right-holder applicants that have invested in and implemented measures to reduce the landing of by-catch species. The delegated authority will also positively score applicants that land by-catch and have found markets for by-catch species (other than linefish species on recreational and prohibited species lists.)

8.3 Quantum allocation

The TAE is split between inshore and offshore areas of operation. Applicants will be permitted to apply for both inshore and offshore rights on the same vessel or on two different vessels. It must be noted that offshore vessels will not be permitted to fish inshore. Inshore vessels may, however, fish offshore.

9. Suitable vessels

The KZN prawn trawl fishery is a specialised fishery and applicants must have access to large ocean-going fishing vessels that are rigged to trawl for prawns. Fishing should be by bottom trawling with single net stern, or boom-operated twin or triple nets. Trawl nets shall have a

maximum footrope length of 72 metres with a minimum of 60mm mesh size measured from knot to knot. Vessels must be fitted with functioning vessel monitoring systems.

10. Multi-sector involvement

Right-holders in the KZN prawn trawl fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the KZN prawn trawl fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, and in traditional line fish.

Vessels employed in the KZN prawn trawl fishery may not be used in other sectors.

11. Landing sites

The South African ports of Durban and Richards Bay must be used to land catches. No other ports may be used.

12. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 01 January 2006 will be determined after consultation with right holders. The levies payable will be utilised by the Department to mitigate the annual costs of management, compliance and research.

13. Management measures

The management measures discussed below reflect a number of the Department's principal post right allocation management intentions for this fishery.

13.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and associated land based activities impact on the broader marine environment. This part of the KZN prawn trawl fishery fishing policy does not attempt to provide a policy statement on EAF in the KZN prawn trawl fishery. The EAF in the KZN prawn trawl fishery will be detailed further in the Fishery Management Manual for the KZN prawn trawl fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

13.2 By-catch

Bycatch in the KZN prawn trawl fishery is the subject of several research projects which have focused on the quantification of by-catch species; the impacts on linefish species and ecosystems; the effects of excluder devices on by-catch rates; and the impact of a closed fishing season in the inshore fishery. All retained (but not discarded) by-catch species and quantities must be declared by skippers. No spotted grunter (*Pomadasys commersonii*) that is caught by the KZN prawn trawl fishery may be sold. Sector specific regulations regarding discarded by-catch will follow the completion of the research projects.

13.3 Vessels

Eight vessels are presently authorised to fish in this sector. The current TAE (in terms of vessels and participants) has been maintained for a decade. However, only 50 to 60 percent of the available effort is applied in KZN; the remainder is latent. Some of the

vessels fish in Mozambique for most of the year. No more than eight vessels will be permitted to participate in this sector.

13.4 Nationality of catch

Fish caught in Mozambique may be landed in Durban or Richards Bay, but must be accompanied by documentation stating the origin of the catch, i.e. the co-ordinates of the positions where fishing was undertaken, the fishing effort expended and the quantities landed and a Mozambique fishing permit.

13.5 Precautionary principle and sustainability

This is a specialised fishery open to local commercial fishing only. The fishery is comparatively small and no reliable stock assessments of the target species have been conducted. The KZN trawling grounds are small and unlikely to expand. A precautionary approach towards managing effort in the fishery will be taken until satisfactory assessments of the stocks and the ecological impacts of fishing have been assessed.

The Department is not in favour of increasing fishing effort in the inshore area because of large by-catches of juvenile fish. For this reason, the Department does not intend merging the inshore and offshore components of this fishery.

The Department recognises that the variability and unpredictability of the resource limits the profitability of the fishery. The performance of the fishery will be closely monitored and the objective is to manage it effectively and sustainably.

14. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every four years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the ecological impacts of trawl fishing;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

15. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

16. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

BRANCH MARINE AND COASTAL MANAGEMENT

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF LONG-
TERM COMMERCIAL FISHING RIGHTS IN THE PATAGONIAN
TOOTHFISH FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at www.mcm-deat.gov.za)**

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the Patagonian toothfish (*Dissostichus eleginoides*) fishery is issued by the Minister of Environmental Affairs and Tourism (“the Minister”). Interested and affected parties are advised that this policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 (“the General Fisheries Policy”).

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial Patagonian toothfish fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) when allocating rights in the past. This policy documents these considerations, but includes a few changes and additions.

Certain post-rights allocation management policies are also presented in this policy. A Patagonian Toothfish Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate commercial Patagonian toothfish fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Biology and resource dynamics

Patagonian toothfish, also known as Chilean sea bass, is a deep-water, demersal species which is found on sub-Antarctic continental shelves down to 3 000 metres. Several countries can lay claim to Patagonian toothfish which occur within the exclusive economic zones (“EEZ’s”) of Chile, Argentina and other countries with sovereignty over the southern Ocean islands. South Africa’s

EEZ around the Prince Edward Islands (“PEI”) is a prime fishing ground for Patagonian toothfish. Much of the range of Patagonian toothfish, however, falls within the high seas.

Patagonian toothfish live for over 50 years and reach a length of over two metres. Maturity is attained between six and nine years of age, equivalent to a length range of 70 to 95 centimetres. Spawning occurs on continental shelves in winter, but eggs only hatch in spring.

3. Sector profile

Global catches of Patagonian toothfish have declined sharply since the origins of the fishery in the late 1980s. A combination of its high value, late maturity and occurrence in the high seas has caused the near-collapse of the fishery, which has seen unprecedented levels of illegal, unregulated and unreported (“IUU”) fishing. South Africa’s waters around the Prince Edward Islands were extensively targeted and the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”) estimates that as much as 32 000 tons of toothfish, with a value of US\$100 million was illegally fished from the PEI-EEZ between 1996 and 1998. Patagonian toothfish are caught by trawl and by longline. The latter method has had a disastrous impact on seabirds, particularly albatross and petrels.

The harvesting of Patagonian toothfish has been authorised by South Africa since 1996. Following the promulgation of the Marine Living Resources Act in 1998, the fishery has been regulated as an experimental fishery under section 83.

In 1996, five experimental permits were issued (under the Sea Fisheries Act of 1988) for the harvesting of Patagonian toothfish within the EEZ of the Prince Edward Islands (“the PEI-EEZ”). Since then, the Minister of Environmental Affairs and Tourism has set annual total allowable catches (“TAC”) for this fishery. The TAC for the 1996/1997 fishing season was set at 3000 tons. However, the TAC for the experimental toothfish fishery has declined steadily and was set at 500 tons for the 2003/2004 fishing season.

The Prince Edward Islands are situated within the jurisdiction of the CCAMLR Convention Area. South Africa is a founding member of CCAMLR, the regional fishery management organisation

tasked with primarily monitoring and allocating catching rights for Patagonian toothfish in Antarctic waters. Patagonian toothfish has been targeted by poachers. Toothfish is a sought after fish on Asian and North American markets. Patagonian toothfish is a high value white fish that fetches prices as high as US\$13 000 per ton. It is the fish's high value that has led to the high levels of IUU fishing in the fishery.

Poaching in the PEI-EEZ has largely been brought under control. The fishery remains commercially sustainable provided that it is effectively regulated with participants in terms of the Guidelines determined by CCAMLR. The Minister has decided to allocate long-term commercial fishing rights in this fishery.

The fishery is a high-risk, extremely capital-intensive fishery that requires right-holders to make substantial investments in vessels, gear, research and marketing. Start-up costs would require a capital investment of several million rand and operational costs are substantial.

4. The experimental permit allocation

Commercial fishing rights have never previously been allocated in this fishery. In 1996, five experimental permits were issued for the fishing of Patagonian toothfish. With the continuous decline in the TAC, the five experimental permit-holders consolidated costs and effort by reducing the number of vessels in the fishery from three to two. Four of the operators concluded a joint venture agreement to operate one vessel and have effectively pooled their resources. All permit holders operate in both the PEI-EEZ and on the high seas within the CCAMLR Convention area.

5. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in the Patagonian toothfish fishery are to:

- Ensure the continued presence of South African Patagonian toothfish vessels in the PEI-EEZ and on the high seas within the CCAMLR Convention area as an important means to deter IUU fishing;

- Maintain or improve the transformation profile of the fishery;
- Encourage investment in South African vessels, infrastructure and jobs;
- Reduce the avoidable by-catch and catch losses associated with longlining by seeking improved fishing methods;
- Support the economic viability of the fishery; and
- Support the environmental sustainability of the fishery.

Certain post rights allocation management policy considerations are broadly elaborated on below.

6. Duration of rights and limitation of effort

Having regard to –

- the precarious biological state of the resource;
- the fact that the fishery requires substantial capital investment;
- the fact that substantially more data on the biology of Patagonian toothfish is required;
- the need to sustain the number of jobs in this fishery; and
- the objectives of CCAMLR,

commercial rights will be allocated for a period of 10 years (1 December 2005 to 30 November 2015). Every right-holder will be tested at regular intervals against predetermined performance criteria. With regard to the effort to which this fishery will be subjected, the Department's current strategy is to limit the number of vessels in this fishery to two. This strategy may change should poaching levels decrease and the TAC increase.

7. New entrants

Rights under section 18 of the Marine Living Resources Act have never before been granted for Patagonian toothfish. Accordingly, there are no previous right-holders. The delegated authority will consider applications from entities regardless of whether or not they held an experimental permit for this fishery. Due to the precarious state of the resource, it is unlikely that more than five right-

holders can be accommodated.

8. Evaluation criteria

Applications for commercial Patagonian toothfish fishing rights will be evaluated against a number of exclusionary and balancing criteria.

8.1 Exclusionary criteria

Apart from the criteria described in the general policy pertaining to the lodgement of applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) Form of the applicant:** Rights will only be granted to entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Rights will not be granted to natural persons (i.e. individuals or sole proprietors) or trusts.
- (b) Compliance:** If a permit holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant breached the provisions of the Law of the Sea Convention, any applicable convention, declaration or treaty of CCAMLR, or the provisions of any other country's marine and/or fisheries laws, will not be allocated a Patagonian toothfish fishing right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a permit holder applicant if the applicant, or its members, directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Permit holders, including their members, directors or controlling shareholders, who are currently being investigated for breaches of any of the laws or legal instruments listed above, whether criminal or administrative, may not be allocated

a Patagonian toothfish fishing right until the conclusion of the investigation.

(c) **Paper quotas:** Paper quotas as defined in the General Policy will be excluded.

(d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see paragraph 9 below).

8.2 Comparative balancing criteria

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation

One objective during the process of allocating long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and

- Corporate social investment.

(b) Investment in the fishery

Applicants will be evaluated on:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered. Applicants may also be rewarded for having concluded agreements in terms of which operating or other costs are shared; and
- Investment in and access to markets for Patagonian toothfish.

(c) Knowledge of the fishery

Applicants will be required to demonstrate that they have the appropriate knowledge to fish for Patagonian toothfish.

(d) Participation in the experimental fishery

Applicants that successfully participated in the Patagonian toothfish experimental fishery will be preferred. In this regard, the delegated authority will consider, *inter alia*, catch performance, reporting and adherence to permit conditions and CCAMLR conservation measures.

(e) By-catch and dumping

Applicants will be required to demonstrate what by-catch mitigation and reduction measures they have invested in, or would invest in, to ensure that seabird mortality is avoided and by-catch management procedures and controls are implemented.

The dumping of fish is prohibited and may lead to the revocation of a right in terms of section 28 of the MLRA.

(f) Ability to commence with fishing operations

Preference will be given to applicants who demonstrate that they are able to commence with fishing operations soon after a right is allocated.

(g) Jobs

Job creation and increases in jobs as a result of the allocation of experimental permits will be rewarded, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per ton of fish allocated during the experimental phase or in other sectors may be assessed and taken into account.

(h) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

8.3 Quantum criteria

Quantum will be allocated with reference to the catching ability and, where applicable, the past performance of an applicant. The methodology in terms of which quantum will be allocated will be the subject of consultation between successful applicants and the delegated authority before permits are issued.

9. Suitable vessels

A suitable vessel in the Patagonian toothfish fishery is a vessel that:

- has a minimum SAMSA registered length of approximately 40 metres;
- is fitted with a functioning vessel monitoring system;
- is geared for long lining and is capable of carrying fishing pots;
- is ice strengthened (if the applicant intends to fish south of 60° South);
- if to be used in the PEI-EEZ, is certified by SAMSA to fish south of 40° South;
- is not negatively listed by any international or regional fishery organisation;
- and
- is South African flagged. The delegated authority will consider a foreign flagged vessel to be suitable if the vessel complies with all of the above and the owner of the vessel gives a written undertaking to have the vessel re-flagged as South African within 12 months of the allocation of the fishing right.

10. Multi-sector involvement

Right-holders in the Patagonian toothfish fishery are not precluded from holding rights in any fishery in the other Cluster A and Cluster B fisheries. Right-holders in the Patagonian toothfish fishery (including their members, controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, including traditional line fish.

11. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 December 2005 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

12. Management measures

The management measures discussed below reflect a number of the Department's principal post right allocation management intentions for this fishery.

12.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is an holistic and integrated policy which recognises that fishing and associated land based activities impact on the broader marine environment. This part of the Patagonian toothfish fishing policy does not attempt to provide a policy statement on EAF in the Patagonian toothfish fishery. The EAF in the Patagonian toothfish fishery will be detailed further in the Fishery Management Manual for the Patagonian toothfish fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

12.2 Marine protected areas

The Minister of Environmental Affairs and Tourism has indicated his intention to declare a Marine Protected Area in the area around the Prince Edward Islands. In so doing, the Department hopes to conserve the unique biodiversity of the sub-Antarctic Islands and their surrounding waters. The intention at this stage is to prohibit all fishing in the territorial waters (i.e. within the 12 nautical mile marine area) but permit controlled fishing in the waters beyond the 12 nautical mile limit. The Minister will, however, consult with all interested and affected parties about this matter in due course.

12.3 Consolidation of participants

As noted above, five participants were allocated an experimental permit for Patagonian toothfish. Four of these permit holders have consolidated operations. Currently, two vessels operate in the experimental fishery. Consolidation is accordingly not of any particular relevance in this fishery.

12.4 Vessels and fishing effort

As stated in paragraph 6 above, the delegated authority will authorise two vessels to operate in this fishery. The vessels must be rigged to fish with long lines, using suitable bird by-catch mitigation gear. In addition, vessels will be allowed to carry fishing pots.

12.5 Reporting

All right-holders in this fishery will have to adhere to strict reporting measures to ensure that they and South Africa comply with international requirements for this fishery. In particular, right-holders will have to adhere to the requirements of the *Dissostichus* Catch Document (“DCD”) issued by CCAMLR, and report by way of Vessel Monitoring Systems (“VMS”). Each landing of Patagonian toothfish must be accompanied by a DCD and the Port State must verify the position of the catches by examining the VMS plot supplied by the vessel.

12.5 Experimental crab fishery

Crabs are currently a high value by-catch in the Patagonian toothfishery. The Department is accordingly considering the appropriateness of introducing an experimental fishery for crabs. Should the Department decide to introduce such an experimental fishery, experimental permits will be issued in terms of section 83 of the MLRA but subsequent to an open invitation to apply for such experimental permits.

13. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every three years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders,

the following broad performance-related criteria may be used:

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the biological and ecological impacts of longline and pot fishing;
- compliance with applicable laws and regulations (both national and international).

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

14. Observer programme

The Department's current observer programme will be expanded to include compliance observation. Right-holders will be required to carry an observer during every voyage. Right-holders will be required to bear the costs of the observer programme.

15. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders but subject to CCAMLR requirements for this fishery and will be subject to revision as and when it may be necessary.



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE SOUTH COAST ROCK
LOBSTER FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at www.mcm-deat.gov.za)**

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the south coast rock lobster fishery (hereafter also “SCRL”) is issued by the Minister of Environmental Affairs and Tourism (“the Minister”). This policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 (“the General Fisheries Policy”).

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial south coast rock lobster fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this policy. A South Coast Rock Lobster Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate commercial south coast rock lobster fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Biological and resource dynamics

South coast rock lobster (*Palinurus gilchristi*) is endemic to the continental shelf of southern South Africa, occurring on rocky substrata at depths of 50 to 200 metres. The species is found in commercial quantities at two locations: offshore on the Agulhas Bank in an area roughly 200 kilometres from the coast, and closer inshore (two to 50 kilometres from the coast) between Mossel Bay and East London. South coast rock lobster is a cold-water species that grows slowly and is long-lived. The inshore area between Danger Point and Cape Agulhas is an

important settlement area for juveniles, which migrate to adult habitats on the Agulhas Bank and in the inshore area between Mossel Bay and Port Elizabeth. Rock lobsters that occur between Port Alfred and East London are generally smaller, slower-growing and do not migrate.

3. Sector profile

The South Coast rock lobster fishery is a deep water long line trap fishery that began in 1974. At that stage, both South African and foreign vessels exploited the deep water resource. However, in 1976 South Africa declared its 200 mile Exclusive Economic Zone and effectively halted foreign participation in the fishery. A total of 26 South African vessels remained in the fishery. This number dropped to 15 in 1981 after years of unsustainable and unregulated fishing led to the resource's collapse. In 1975, 2 092 tons of south coast rock lobster were harvested; by 1981 this had dropped to a mere 176 tons.

The fishery was first regulated by a total allowable catch ("TAC") in 1984. The TAC was set at 450 tons (tail mass). Ten years later, research indicated that the resource was still in decline. The management strategy for this fishery was fundamentally changed in 2000. A combined TAC and total applied effort ("TAE") strategy was introduced, which limited the number of days that a SCRL vessel may stay at sea. The "sea days" limit is calculated according to the portion of the TAC that is caught by a specific vessel, taking into account that vessel's fishing capacity.

The Department's management plan for the SCRL fishery has borne fruit. In the 2001/2002 fishing season, the SCRL TAC was set at 340 tons, combined with a TAE of 1 922 sea days. Three years later, the TAC increased to 382 tons, combined with a TAE of 2 089 sea days.

South coast rock lobster catches are off-loaded at Cape Town and Port Elizabeth harbours. The catch is generally frozen at sea and graded and repacked at shore-based facilities. Almost the entire catch is exported, predominantly to the USA.

The SCRL industry employs about 400 people. Of these, 285 are sea-going personnel who are employed on nine vessels. Ninety seven percent of employees are historically disadvantaged persons. On average, workers earn R50 000 per annum in salaries, making this industry one of

the best paying in the fishing industry. The value of the catch is approximately R100 million per annum. The market value of vessels operating in the fishery is approximately R70 million.

Vessels are rigged for long-line trap-fishing. Barrel-shaped plastic traps are set for periods varying from 24 hours to several days. Each vessel typically hauls and resets approximately 2 000 traps per day in sets of 100 to 200 traps. Long-line trap-fishing is a labour-intensive fishing method. Crews consist of up to 35 persons. The vessels in this fishery are large, offshore vessels ranging in length between 30 and 60 metres. They fish for between 180 to 300 days per year.

The south coast rock lobster fishery is capital intensive, requiring large vessels with insured values of between R4 million and R10 million, a substantial number of crew, access to foreign markets and funds for overhead costs such as fuel, vessel maintenance and salaries.

4. The medium-term rights allocation process

Medium-term commercial fishing rights were allocated to 18 right-holders. Right-holders typically hold between two and 10 percent of the TAC, with the exception of one company that holds 41.1 percent. Nine vessels are used to fish the entire TAC.

Of the 18 right-holders:

- 72 percent are black owned entities;
- 47 percent are black managed;
- 65 percent are small- and medium-sized enterprises (“SMEs”).

5. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Maintain or improve the transformation profile of the SCRL fishery;
- Create an environment that attracts investment and stimulates job creation;
- Support the economic viability of the fishery; and

- Ensure the environmental sustainability of the fishery.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the number of full time jobs provided (and to encourage the conversion of part-time employment into permanent jobs);
- the need to maintain the stability in the fishery; and
- the fact that, according to scientific data, the SCRL resource is recovering,

commercial rights will be allocated for a period of 15 years (1 October 2005 to 30 September 2020). The Department will regularly evaluate right holders against predetermined performance criteria (see paragraph 13 below).

7. New entrants

SCRL stocks are currently managed in terms of a conservative recovery strategy. By 1981, the stock had collapsed and it was subjected to years of over fishing between the late 1980's and 2001. In 1992 the average allocation was 75 tons; 14 tons being the smallest individual allocation. By 2002, the average allocation dropped to 17 tons; with seven tons the smallest individual allocation. It is surmised that, between 1989 and 2001, the SCRL resource had declined by 65 percent, largely due to overfishing by Hout Bay Fishing Industries (Pty) Ltd.

The current 18 right-holders and nine vessels are the maximum that the fishery can sustain at this point. The fishery also has acceptable levels of transformation and substantial numbers of small- and medium-sized enterprises. Although the possibility of replacing existing right-holders cannot be excluded, it is unlikely that any new entrants will be admitted.

8. Evaluation criteria

Applications will be screened in terms of a set of “exclusionary criteria”, and thereafter assessed in terms of a set of weighted “comparative balancing criteria”. A cut-off score or rank will then be determined in order to select the successful applicants. A proportion of the TAC will be allocated to each successful applicant in terms of a set of “quantum criteria”.

8.1 Exclusionary criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.
- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated a SCRL right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Decisions may be reserved on applications if a right holder applicant (or its members, directors or controlling shareholders) are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies or will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

- (c) **Paper quotas:** Paper quotas as defined in the General Policy will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see paragraph 9 below).

8.2 Comparative balancing criteria

Right-holder applicants and potential new entrants will be evaluated in terms of the following balancing criteria, which will be weighted in order to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation:

Currently, 72 percent of right-holders in the SCRL fishery are black owned. These right-holders collectively control 77 percent of the TAC. Furthermore, SMEs make up 65 percent of right-holders and 78 percent of the vessels used in this fishery are black owned.

One the objectives during the process of allocating long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Policy, applicants will be assessed and scored on

–

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered;
- Investments in marketing infrastructure and land-based processing facilities.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to participate in the South Coast Rock Lobster fishery.

(c) Jobs

The SCRL fishery provides about 400 jobs. Average salaries are R50 000 per year for sea-going employees.

Job creation and increases in jobs as a result of the allocation of medium term fishing rights will be rewarded, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account.

(d) Performance

Right-holder applicants that without good reason over or under-caught by more than 10 percent of their allocations will be penalised. Financial performance will be measured, as indicated in the General Policy.

(e) Payment of Fish levies

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days at the date of application.

(f) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

8.3 Quantum criteria

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in this fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum.

Firstly, the allocation of quantum to successful medium term right holder applicants will be determined with reference to the quantum held by right holders in 2005.

Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation and performance. These criteria must be designed in a manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

9. Suitable vessels

A suitable vessel in the SCRL fishery is a vessel that:

- has a minimum SAMSA registered length of approximately 25 metres;
- is fitted with a functioning vessel monitoring system;
- is capable of deploying lines of approximately one mile long and 100 traps;
- is capable of storing at least 1 000 traps;
- is capable of carrying the necessary winches; and
- is capable of carrying approximately 30 or more crew members.

10. Multi-sector involvement

Right-holders in the SCRL fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the SCRL fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, including traditional line fish.

11. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 October 2005 will be determined after consultation with right holders. The levies payable will be utilised by the Department to mitigate the annual costs of management, compliance and research.

12. Management measures

The management measures discussed below reflect a number of the Department's principal post right allocation management intentions for this fishery.

12.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and associated landbased activities impact on the broader marine environment. This part of the SCRL fishing policy does not attempt to provide a policy statement on EAF in the SCRL fishery. The EAF in the SCRL fishery will be detailed further in the Fishery Management Manual for the SCRL fishery. South

Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

12.2 Consolidation of participants

After the allocation of the 15-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;
or
- Smaller right-holders opt to consolidate their business operations.

Consolidation of right-holders is, however, subject to the Department's approach to monopolies (see paragraph 12.4 below).

12.3 Vessels and Fishing Effort

There are presently eight SCRL fishing vessels that operate in South African waters. As some right-holders do not wholly own the vessels they use and because vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation of long-term fishing rights. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort that is in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

12.4 Monopolies

While the Department will encourage the consolidation of right-holders in this fishery, it is opposed to monopolies which may operate to the detriment of smaller right-holders.

The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control, but will monitor whether any larger right-holder acts in a manner contrary to fair competition practices.

13. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every four years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the ecological impacts of longline trap fishing;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

14. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

15. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE SMALL PELAGICS
(ANCHOVY AND SARDINE PURSE-SEINE) FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at www.mcm-deat.gov.za)**

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the small pelagic fishery for anchovy and sardine is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). This policy must be read with the General Policy on the Allocation and Management of Long-Term Commercial Fishing Rights: 2005 ("the General Fisheries Policy").

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial small pelagic fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are presented. A Small Pelagic Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate commercial small pelagic fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Sector profile

The small pelagic fishery dates back to the late 1940's when a fleet of privately owned purse-seine vessels began targeting sardine and horse mackerel. In 1953 an annual maximum catch limit of 270 000 tons was set but was never enforced. As a result, catches regularly exceeded this figure. By 1961, the maximum limit was repealed. In 1962, more than 410 000 tons of sardine were landed, but by 1966, the catch had dropped to 100 000 tons. The fleet then started targeting anchovy, using nets with a smaller mesh size. In 1987 anchovy catches peaked at 600 000 tons, but catches declined thereafter and in 1996 only 40 000 tons of anchovy were landed. Anchovy and sardine catches have subsequently increased, with

landings of both species averaging around 250 000t each over the past five years. The fishery is currently managed in terms of an Operational Management Procedure (“OMP”) that sets annual Total Allowable Catches (“TAC”) for anchovy and sardine.

In terms of catch volumes, the small pelagic fishery remains the largest in South Africa. It is the second most important in terms of value. This fishery’s management procedure is the most complex of the commercial fisheries. Two species are the main targets, namely sardine (*Sardinops sagax*) and anchovy (*Engraulus encrasicolus*), with associated by-catch species being red-eye round herring (*Etrumeus whiteheadii*) and Cape horse-mackerel (*Trachurus trachurus capensis*). Sardines are canned for human consumption while anchovy and most of the by-catch species are reduced to fishmeal, fish oil and fish paste.

Small pelagic targeting occurs inshore, primarily along the Western Cape’s west and south coasts (anchovy and sardine) and the Eastern Cape coast (sardine).

The pelagic fleet consists of wooden, GRP and steel hulled purse-seine vessels, ranging in length from 15 metres to 30 metres. The industry employs approximately 7 800 people. Of these, 5 300 are employed on a permanent basis and 2 500 on a seasonal basis. The average annual income of sea-going workers is R94 000 – the highest in the fishing industry. Ninety-five percent of workers in this fishery are historically disadvantaged persons. The value of fish landed is presently worth approximately R800 million per annum. The market value of the 106 vessels operating in this fishery is more than R600 million (the average vessel is worth R 7 million). The fishery is capital intensive, with right-holders having to invest in vessels and processing and marketing infrastructure, or gain access to such through catching and processing agreements.

3. The medium term rights allocation process

In 1992, historically disadvantaged persons controlled some approximately seven percent of the small pelagic fishery. The accommodation of new entrants since 1992 has resulted in a narrowing of the gap between the largest and smallest allocations. Over the same period there has been a ten-fold increase in black involvement and ownership in the fishery (from seven

percent to 73 percent). In 2001 and 2002, the 113 medium-term (four-year) commercial small pelagic fishing rights were allocated. Of these:

- 73 percent were allocated to black-owned entities;
- 75 percent of the TAC is controlled by black-owned entities;
- 85 percent of right-holders are small and medium enterprises (SMEs); and
- 50 percent of all vessels in this fishery belong to black-owned entities.

4. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Maintain or improve the transformation profile;
- Create an environment that attracts investment and stimulates job creation;
- Encourage investment in vessels (particularly the replacement of old vessels) and processing and marketing infrastructure;
- Encourage value-adding by supporting the development of new products, particularly products for human consumption;
- Reduce by-catches of horse mackerel; and
- Promote the economic viability and environmental sustainability of the fishery.

Commercial rights will not be allocated for the sole purpose of utilising fish for bait.

5. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the fact that the current purse-seine fleet is old and requires replacement;
- the high number of quality permanent jobs provided; and

- the need to maintain the economic stability that currently prevails in the fishery,

commercial rights will be allocated for a period not exceeding 15 years (1 January 2006 to 31 December 2020). The Department will regularly evaluate right holders against predetermined performance criteria (see further paragraph 12 below).

6. New entrants

Given the current abundance of anchovy and sardine, together with the inherent variability of stocks of small pelagic fish, it is very likely that the abundance of either or both species will fall substantially in the near future. A substantial decline in the TAC and effort in this fishery is predicted. In addition, this is a high volume, low margin fishery. This means that financially viable long-term allocations need to be substantial.

The Department therefore considers that there is no room for the introduction of additional effort and the number of participants will not be increased. Existing participants may, however, be replaced in the rights allocation process with new entrants.

7. Evaluation criteria

Applications will be screened in terms of a set of “exclusionary criteria”, and thereafter assessed in terms of a weighted set of “comparative balancing criteria”. A cut-off score will then be determined to select the successful applicants. Rights will be allocated separately for the anchovy and sardine fisheries and applicants may apply for a right in each of these fisheries. A percentage of the TAC will then be allocated to each successful applicant in terms of a set of “quantum criteria”.

7.1 Exclusionary criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.

- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated a small pelagic fishing right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Decisions may be reserved on applications if a right holder (or its members, directors or controlling shareholders) are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

- (c) **Paper Quotas:** Paper quotas as defined in the General Policy will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see paragraph 8 below).

7.2 Comparative balancing criteria

Right-holder applicants and new entrant applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation:

Currently, 73 percent of right-holders in this fishery are black-owned. These right-holders collectively control 75 percent of the TAC. Small- and medium-sized enterprises make up 85 percent of right-holders.

One of the objectives with the allocation of long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;

- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered;
- Investments in processing and marketing infrastructure.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to fish for small pelagics.

(c) Performance

Right-holder applicants that without good reason over- or under-caught by more than 10 percent of their allocation will be penalised. Financial performance will be measured, as indicated in the General Fisheries policy.

(d) By-catch and dumping

The Department is concerned about illegal, directed purse-seining of linefish (yellowtail, white steenbras and kob), and also the exceeding of the precautionary upper catch limit for juvenile horse-mackerel. Fishery interactions with seals are another concern. The unintentional catching of dolphins in nets must be avoided.

The delegated authority will seek to reward those right-holder applicants that have invested in and implemented measures to reduce the capture of by-catch species and to limit interference with marine mammals.

The dumping of fish is prohibited and may lead to the revocation of a right in terms of section 28 of the MLRA.

(e) Value-adding and enterprise development

The delegated authority may have regard to enterprise development and the ability of applicants to add value to small pelagic fish for local and international markets. The delegated authority will consider, in particular, whether applicants have invested in or facilitated, directly or indirectly, the development of products for the human consumption of anchovy and sardine.

(e) Local economic development

There is a need for investment and job creation in many of South Africa's smaller coastal towns. The delegated authority may take into account whether the applicants have elected to land their catches and have them processed in harbour facilities other than Cape Town and Saldanha. If the delegated authority positively scores these applicants, this must not result in penalising right holders that have invested in facilities in Cape Town and Saldanha.

(f) Jobs

The small pelagic fishery provides approximately 7 800 jobs. Salaries of sea-going personnel average R94 000 annually – the highest in the fishing industry. The majority of workers are employed on a full-time basis, some with benefits such as medical aid and pension.

Job creation and increases in jobs as a result of the allocation of medium term fishing rights will be rewarded, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account.

(g) Non-payment of fish levies

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days at the date of application.

(h) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

7.3. Quantum criteria

The fishery is regulated in terms of a Total Allowable Catch (“TAC”). In a recent judgment, the Supreme Court of Appeal held that the methodology used to allocate quantum for sardine and anchovy to right-holders must be revised. This quantum formula was revised for the 2005 fishing season. The Department will allocate long-term small pelagic rights separately for each species and applicants may apply for a right in each fishery. This means that a right-holder applicant for small pelagic fish will be required to specify the quantum of sardine and/or anchovy applied for. The amount allocated will be expressed separately for anchovy and sardine, as a percentage of the TAC for each species.

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in this fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum. Firstly, the allocation of quantum to successful medium term right holder applicants will be determined with reference to the quantum held by right holders in 2005. Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to small businesses and right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation, value-adding and performance. These criteria must be designed in a manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

Any successful new entrant applicant may be allocated an amount equivalent to the lowest of the successful medium term right-holder applicant. Where the lowest amount allocated was zero (for either sardine or anchovy), the delegated authority will then allocate the second lowest amount, provided that the successful new entrant applicant applied for that specie.

8. Suitable vessels

A suitable vessel in the small pelagic fishery is a vessel that:

- has a maximum SAMSA registered length of approximately 30 m;
- has a functioning vessel monitoring system;
- is geared for purse-seining; and
- is not being detained or has not been confiscated under the MLRA.

9. Multi-sector involvement

Right-holders in the small pelagic fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the small pelagic fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, including traditional line fish.

10. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 January 2006 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

11. Management measures

The management measures set out below are a number of the Department's principal post-right allocation management intentions for the small pelagic fishery.

11.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and various land-based activities impact on the broader marine environment. This part of the small pelagic fishery policy does not attempt to provide a policy statement on EAF in the fishery. The EAF in the small pelagic fishery will be detailed further in the Fishery Management Manual for this fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

11.2 Consolidation of participants

Following the allocation of 15-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;
or
- Smaller right-holders opt to consolidate their business operations.

11.3 Red-eye round herring directed fishery

Although the small pelagic fishery is focused on anchovy and sardine utilisation, red-eye round herring is also targeted, particularly early in the year. There is evidence that round herring is substantially under-utilised. The Department wishes to generate further revenue and create more jobs by encouraging better utilisation of this species. To this end the Department is investigating the possibility of creating a managed

fishery for this species. The Department reserves the right to introduce such a fishery at any time in the future after consultation with right-holders and other interested parties.

11.4 Vessels and fishing effort

There are presently in excess of 100 small pelagic fishing vessels that operate in South African waters. As many right-holders do not own the vessels they use and as vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation of long-term fishing rights. The Department considers the current effort levels in the fishery to be optimal. Right-holders will not be permitted to introduce vessels capable of expending effort that is far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 Monopolies

While the Department will encourage the consolidation of right-holders in this fishery, it is opposed to monopolies that may operate to the detriment of smaller right-holders.

11.6 Introduction of a TAE

Under-reporting of catches has resulted in significant administrative and financial burdens for the Department and constitutes a risk to the proper management of the resource. The Department may consider including a TAE limitation as a management tool for this fishery, and will consult right-holders at a later date on the introduction of this management procedure.

12. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after two years and thereafter every four years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights - and after consulting with right-holders - the following broad performance-related criteria may be used:

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular by-catch mitigation and the reduction of the ecological impacts of purse seining;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

13. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage in this fishery. Right-holders will be required to bear the costs of the observer programme.

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.