



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

QUERIES AND RESPONSES

CLUSTER A

24 JUNE 2005

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PLEASE NOTE:

The responses are those of the Minister of Environmental Affairs and Tourism.

When considering the responses, applicants should keep in mind that the policies will be flexibly applied to specific factual scenarios by delegated authorities in order to achieve the aims and objectives of the allocation process.

1. GENERAL (NOT RELATED TO SPECIFIC SECTIONS OF THE APPLICATION FORM)

Q: There seems to be a problem accessing certain databases on the website, please advise when these would be accessible?

R: All databases should be accessible. Information technology support personnel have been asked to address this concern.

Q: The application form often calls for copies of documents and certificates, must these be certified copies?

R: See paragraph 6.3 of the General policy in respect of copies. No copies need to be certified but copies will be assumed to be exact replicas of the originals.

Q: Please provide a reference or copy of the IPOA for the reduction of shark by-catches referred to at page 7 of the General policy

R: All the IPOAs are available on the website. Please click on following link:
http://mcm-demographics.deat.gov.za/rights_process/acts/index.html

Q: The time allowed should be extended for a period of 60 days or at least until the end of July.

R: The Minister of Environmental Affairs and Tourism has, after considering several requests for extending the time period applicable to the registration and lodgment of Cluster A applications (Hake Deep Sea Trawl, Inshore Trawl, Horse Mackerel, KwaZulu-Natal Prawn Trawl, Patagonian Toothfish, South Coast Rock Lobster and Small Pelagics) decided as follows:

1. Applicants must register by no later than 17h00 on Friday, 8 July 2005 (i.e. the registration period has been extended by one week).
2. Applicants must lodge their applications on Monday, 1 August 2005, between 08h00 and 19h00 or on Tuesday, 2 August 2005 between 08h00 and 17h00 at the Good Hope Centre in Cape Town (i.e. applicants now have two more weeks to complete the application forms, compile the annexures and to lodge their applications).

Q: After electronic registration, how and were do we get hold of the CDs?

R: The CDs will be available for collection from the Right Verification Unit's head office (Deloitte, 11 Lansdowne Rd, Claremont) once an applicant have registered and paid the application fees and have been contacted by the RVU. This is all explained to applicants that register.

Q: Registration must take place by 1 July 2005, does this mean that payment must be made before then as well?

R: Yes.

Q: The electronic registration process requires applicants to submit Vat, Income tax and skills development registration numbers. Some applicants have changed structures in order to be in line with the final fishing policies. As a result the newly formed entities are still awaiting the mentioned registration numbers from SARS. Can the registration numbers of the old structures be used in order to register for the necessary electronic application?

R: Yes.

Q: Where should the tonnage applied for be filled in?

R: Quantum allocations will be done in terms of the principles identified in the General policy and the Sector policies, if indicated, after further consultations. There is no need to specify tonnages applied for.

Q: The inshore trawl application doesn't appear to cater for dual quota allocations for both sole and inshore hake allocation. What quantum does one utilise in the various tables?

R: Combine the tonnages for both hake and sole.

Q: Operators in the tuna pole fishery carry live bait held in tanks on-board vessels. Must they apply for small pelagic rights or will "exemptions" be granted, as in the past?

R: The general policy objective expressed in paragraph 7.19 of General Policy will be applied by the delegated authorities and no rights will be allocated for purposes of bait collection. Applications for exemptions will be considered by the responsible delegated authority on a case by case basis.

2. AUDIT PROCEDURES

Q: Where can one obtain the Procedures of Independent Auditors?

R: All auditors registered with PAAB have access to the procedures and the procedures are also available at <http://www.paab.co.za>

Q: Is an “independent auditor” an auditor registered in terms of PAAB or SAICA and does this include the Accounting Officer of a CC?

R: Information must be verified and the audit report must be signed by an independent auditor who is registered with PAAB. An accounting officer of a CC is not independent and is usually not registered with PAAB.

3. APPLICANT DETAILS (SECTION 1 OF THE APPLICATION FORM)

Q: If the applicant only earns a dividend from its wholly owned subsidiary, should it reflect the skills levy number and vat registration number of its operating company?

R: The details of the applicant itself must be provided in this part of the application form. The relationship between the applicant and the subsidiary / operating company must be set out in Annexure 1A to the form. If the Applicant and its subsidiary operates in the form of a joint venture and wishes to present the economic unit in this form, then see further below the responses to queries dealing with JVs. The Explanatory Notes specifies where information of other entities may be submitted (see, the Explanatory Notes dealing with sections 6, 8, 9 and 12 of the Application Form).

Q: If the applicant does not have a Skills Development Levy Number, what should be filled into the blank space?

R: Payment of the skills development levy is a legal requirement for all businesses except: The skills development levy is not payable by-

- (a) any public service employer in the national or provincial sphere of government;
- (b) any employer where section 3 (1) (a) or (b) [in other words, any employer as defined in the fourth schedule to the Income Tax Act 58 1962 applies] and-
 - (i) during any month, there are reasonable grounds for believing that the total amount of remuneration, as determined in accordance with section 3 (4), paid or payable by that employer to all its employees during the following 12 month period will not exceed R250 000, or such other amount as the Minister may determine by notice in the Gazette; and
 - (ii) that employer is not required to apply for registration as an employer in terms of paragraph 15 (1) of the Fourth Schedule to the Income Tax Act;
- (c) any public benefit organisation contemplated in section 10 (1) (cN) of the Income Tax Act, which-
 - (i) solely carries on any public benefit activity contemplated in paragraphs 1, 2 (a), (b), (c) and (d) and 5 of Part I of the Ninth Schedule to that Act; or
 - (ii) solely provides funds to public benefit organisations contemplated in subparagraph (i); or
- (d) any national or provincial public entity, if 80 per cent or more of its expenditure is defrayed directly or indirectly from funds voted by Parliament;
- (e) any municipality in respect of which a certificate of exemption has been granted on such conditions and for such period as the Minister may prescribe by regulation, in

consultation with the Minister of Finance and the Minister for Provincial and Local Government.

Q: Reference is made to an authorised Contact Person as well as an authorised representative. Are these referring to the same person?

R: They could be the same person but they do not have to be the same person. The contact person is the person designated to be contacted by the delegated authority, if necessary. The authorised representative, on the other hand, is the person authorised by the applicant to sign and attest to the declaration in section 16.

Q: Does a new entrant have to submit a Vat No, PAYE No, Skills Development Levies No and UIF No even if it has never traded? SARS has informed us that we should only register for these levies once the company has been awarded rights and is trading.

R: These details do not have to be provided if the new entrant has never traded or does not have any of the required numbers. This may be explained in an annexure (instead of submitting the relevant annexure).

Q: In respect of Question 1.8.6-7, authorised contact person: When we registered we were not allowed to use the name of the same person for two applications (holding company and subsidiary) in the same sector (Small Pelagics). Does this rule apply when completing the application form, as we would like to use the same contact person on all applications (in Cluster A)

R: This has been changed. The same person may be used as contact person / authorised person for more than one company.

4. JOINT VENTURES (SECTIONS 6, 8, 9 AND 12)

Q: Please provide clarity on the JV partner scenario. What definition is to be applied?

R: The purpose of the requesting information about entities other than the applicant is to permit economic units to present themselves via individual applications, and in this way to enable the delegated authorities to better compare applicants with one another. It is for the applicants to determine whether they operate in such a joint venture or “economic unit” in a particular sector and whether they wish to present themselves as such. All the parties to the joint venture must obviously agree to apply and submit information in this manner. No applicant may rely on the information of another entity, be it its transformation data, jobs, investments or financial performance, without the other entity’s consent and co-operation (as indicated by the declaration signed by the authorized representative of the JV partner). No participant in the fishing industry will be compelled, against the participant's wishes, to submit information to another or to share the jobs it created, investments it made etc with other applicants. JVs are however permitted to present themselves in an application or applications as an economic unit where all the parties in the JV wish to do so.

Q: Which entity is seen as the JV partner, the actual JV company/operation formed or the other shareholders/company involved in the JV?

R: There may be more than one JV partner. In other words, if two or more entities operate their JV through an operating company, then the information of all the entities may be submitted where this is permitted in the application form (see the Explanatory Notes to sections 6, 8, 9 and 12), provided, of course, that the information in respect of transformation is properly merged and the jobs created, investments made and turnover generated is properly divided if more than one JV partner apply.

Q: What if an applicant has more than one JV partner, where do the others sign?

R: Applicants that choose to present themselves with more than one JV partner must photocopy the page on which the JV declaration appears and the photocopied page(s) must be completed and signed by the authorised representative of the relevant (further) JV partners and attested to before a Commissioner of Oaths and annexed to the hard copy of the application form.

Q: What if the applicant is part of a JV that does not operate in the sector being applied for or if the applicant does not want to rely on the JV's underlying data?

R: Please see above. This seems to be a situation where the applicant does not want to present itself with the JV partners as an economic unit in the sector applied for. It is free to refuse to do so. It may then present itself as part of a JV in another sector, provided that the information related to transformation is properly merged and jobs, investments made and turnover is properly apportioned by the applicant on a per sector basis.

Q: If an applicant is involved in a joint venture, but the applicant does not rely on any information or assets of the joint venture for purposes of the application and the joint venture partners and employees of the JV are not involved in the management or ownership of the applicant does the applicant have to supply the information requested in section 6 and subsequent regarding the joint venture and the joint venture partners?

R: No. As explained above, the Applicant has a choice not to present itself in the form of a JV.

Q: Does one include all JV's or only JV's specific to the sector for which is being applied for?

R: See above. The Applicant may choose.

Q: In the case of a JV, if the other party (say party B) whom is party to the JV had its pelagic permits PLUS squid permits in the name of party B's personal names - i.e the permits were in the name of the individual. Of late the individual has established a CC in which the rights have been transferred. How do companies combine their own information (ie applicant A) with that of party B? (Refer to note 6.3.1 in the explanatory notes. The practical implications regarding extraction of the other parties info which they possibly could have completed purely for tax purposes and therefore record keeping was not as "diligent" as in a CC or Company. It is not the duty of the JV party A to ensure that the other business keeps proper books of account for whatever business they are in.)

R: See above. Parties may choose to present themselves in JV form if all agree to do so.

Q: How is confidentiality practically protected, with special reference to 6.3.2, if the highest earners salaries from each entity being involved in a JV have to be combined by "merging details of all JV partners". This is serious as no company would like to divulge private and confidential information especially individuals salaries to other parties.

R: Parties may choose to present themselves in JV form if all agree to do so. If parties choose to present themselves in a JV form then it is for them to decide how to protect confidentially, if necessary.

5. GROUPS OF COMPANIES, HOLDING COMPANY AND SISTER COMPANIES (SECTIONS 6, 8, 9 AND 12)

Q: Please provide a detailed explanation of what is meant by a sister company

R: As stated in the Explanatory Notes, a sister company is a company that is more than 50% owned by a holding company that also owns more than 50% of the Applicant's shares. Throughout the application form, details of sister companies not involved in the fishing industry may be ignored, unless the details of the employees of such a sister company was submitted by the group in its employment equity report to the Department of Labour. In the latter instance, the details of the whole group must be submitted in response to sections 6.5 and 6.6.1 and 6.6.2.

Q: Is the definition of a sister company limited to South African companies only?

R: If the sister company is involved in the South African fishing industry details must be provided regardless of whether the sister company is South African.

6. FORM OF APPLICANT (SECTION 2)

Q: When was a letter granting a right issued and how can a copy be obtained?

R: These letters were sent to successful applicants after the medium term rights allocation process. Copies may be obtained from the Department.

Q: Will a medium term right holder be affected if one of its minority shareholders applies as a new entrant in the same sector?

R: Paragraph 7.5 of the General policy provides that 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. If a minority shareholder applies, the question will be whether this amounts to the existing right holder applying in a different guise.

Q: If company A, a right holder, bought fishing rights from company B and subsequently company A applied for the transfer of these rights successfully, do we disclose both right holders names in section 2.2 and in 2.3 only the current right holder (owner of both rights)?

R: The details of A and B must be completed in section 2.2 (photocopy page and submit completed page and explanation in annexure). Only A's details must be completed in 2.3.

7. VESSELS (SECTION 4)

Q. Is the SAMSA Safety Certificate in annexure 4A not the same as the Local General Safety Certificate in annexure 4D?

R. Yes, in order to avoid confusion please attach the safety certificate issued by SAMSA as Annexure 4A do not submit a separate annexure 4D.

Q: Does the "manufacturer" of the VMS system refer to the manufacturer of the inner components or the local company that assembles and distributes them?

R: Please provide the official make and specific model, for example Sailor, Thrane & Thrane or CAPSAT and the model number if known.

Q: In Hake Inshore Trawl what if the applicant wants to nominate more than 5 vessels?

R: Photocopy the relevant page(s) and submit the completed page(s) with the hard copy application.

8. CATCH UTILISATION (SECTION 5)

Q: Do applicants have to lump pilchard and anchovy together for the purposes of section 5.2?

R: Yes.

9. TRANSFORMATION (SECTION 6)

Q: What about shareholdings by foreign registered companies not active in SA?

R: The flow-through principle must be applied, if applicable, also to foreign entities. However, foreign citizens cannot be regarded as black persons for purposes of flow-through.

Q: If the assets and liabilities of a medium term right holding company (A) was sold to a new company (B) in April 2004 and the latter increased its BEE shareholding to more than 50%, should company B submit information on the previous years when A held the right when its only B applying for the right?

R: Yes.

Q: Section 6.3.1 requires information regarding the applicant's board of directors "as at 28 February 2005". How do new entrants deal with this question if they only formed their companies after that date?

R: Submit information at earliest date after 28 February 2005. If a new company was formed, this will be the date of incorporation.

Q: Does section 6.3.1 refer to years as a director or employee?

R: Years as director.

Q: In section 6.4.1 of the explanatory notes referring to JV partners, is this meant to read JV employees?

R: This refers to the income levels of permanent employees of all the JV partners, if they choose and agree to apply in this form.

Q: Does sections 6.4.2 and 6.4.3 refer to 1 year or MTR years, and then over which period?

R: Over the MTR period.

Q: Is section 6.14 sector specific?

R: Yes.

Q: In section 6.22, what are operational expenses defined as?

R: These are non-capital expenditure incurred in the generation of income.

Q: How must the applicant explain how it determined its affirmative procurement spent?

R: This question is in relation to section 6.22 and the applicant is required to explain the calculation.

10. SAFETY (SECTION 7)

Q: Does question 7 refer to the applicant in general or to the particular fishery being applied for?

R: As in section 4, medium term right holders must answer the questions relating to contraventions in sections 7.1, 7.2, 7.3, 7.4 and 7.13 with reference to the sector in which the right was held and new entrants must answer with reference to any other sector(s) in which a right was held (if applicable). This issue is not relevant in respect of sections 7.5 through 7.12 and section 7.14 where information relating to nominated vessels etc are requested.

Q: In section 7.4, how much detail must be included and what time scales apply here, only for the MTR period or further back?

R: MTR period and details must deal with the seriousness of the accident.

Q: Section 7.8 has an annexure icon but there is no instruction in the schedule

R: No annexure needs to be provided.

Q: Section 7.12 asks if any limit has been imposed on the nominated vessel by its Local General Safety Certificate and then gives an example of “ no more than 200 nautical miles off the SA Coast” Surely all vessels would have a limit of some distance. What is the purpose of this question?

R: The purpose of this question is to determine the certified safe operating range of the vessel nominated.

10. JOB CREATION (SECTION 8)

Q: With reference to paragraph 8.1.1 in relation to 8.1.2, if the salary bill in financials is not "cleared" what information must be provided in 8.1.2?

R: It is not clear what is meant with the financials not being "cleared". If the 2004 financial statements have not been audited, then the salary bill amount must be extracted from the unaudited figures.

Q: In section 8.1.1, if the financial year end was at say 31 December, would it be in order to use data which is readily available as at 28 February of each year instead?

R: No. Please submit information as requested, ie as in 2001 application form, at financial year ends 2002, 2003, 2004 and at 28 February 2005.

Q: Sections 8.1.2 and 8.1.3, it must be kept in mind that there are 8 large pelagic processing plants from Gansbaai to Lamberts Bay and from the more or less 115 rights holders at least 90% deliver pelagic fish to these plants. The salary and employment ratios delivered where one applicant's annual catch application is used will be distorted. Your comments?

R: The question is not understood. Jobs created by another entity may only be relied upon in circumstances set out in the Explanatory Notes.

Q: I would like to query what should happen if there is a timing difference between your financial year-end and the quota year. The application form requires for example that one must state in column 1 the quota received for 2004, then in column 2 the salary bill for the 2004 financial year-end and the 3rd column to state how much was spent on salaries per ton. Our financial year-end is February so when you ask for 2004 financial year end figures should we use our Feb 2004 figures or our Feb 2005 figures? (The Feb 2004 financial year-end would relate more to the 2003 quota year.)

R: The difference between financial year end and quota year end should not be taken into account. Please complete as requested.

Q: If a skipper is paid a commission for fish caught and the skipper in turn pays the crew, the skipper is treated as a contractor and no IRP5 is issued. Does one include these payments made to skippers under section 8.1?

R: The skipper and crew are then not employees. The question of whether payments should be included as part of the applicant's salary bill must be answered with reference to financial statements.

Q: With reference to section 8.1.3; in the medium term rights holder explanatory notes an example is provided which does not tie up to the table in medium term rights holder application form. Please provide explanation on how to do the calculation.

R: The method must be applied in respect of total employees less seasonal employees even though this is not done in the example.

11. INVESTMENT (SECTION 9)

Q: In respect of section 9.1.1, how must the question be answered if a fixed asset is in mutual use, ie the asset is used in more than one sector?

R: As explained in the explanatory notes to this section, if an asset is used in more than one sector, that asset must be "apportioned" to the sectors. This means that an amount of the value of the asset must be allocated to each sector applied for. A rough estimate / apportionment will suffice, provided that the exact same division is used when applying in the other sector.

For example, if a building is owned by the Applicant and used as administrative head office for both a SCRL and a small pelagic allocation, the Applicant must divide the value of the building. A very rough estimate, say 80 : 20 between the two allocations (SCRL and small pelagic) will suffice. If the book value of the building was R 1 000 000 at financial year end 2004, then the same breakdown of 800 000 : 200 000 must be provided in annexure 9A in both the SCRL and the Small Pelagic application (an apportionment of assets must be done for the year ends 2002 and 2003). If R 800 000 is allocated to the SCRL sector then this amount must be used when completing section 9.1.1.

Q: Does section 9 include land and if so what about leased premises?

R: Book value should be determined with reference to financial statements. Land would be included but leased premises not (also not in respect of insured value).

Q: What is the difference between harbour based and land based assets in section 9.1.1 to 9.1.4. Does harbour based refer to offloading facilities?

R: Offloading facilities would certainly fall under harbour based assets. Applicants must classify the assets themselves. There are no hard and fast rules here.

Q: Does actual tons of fish processed and landed in section 9.1.8 only refer to pilchard and anchovy allocations or should by-catch and non-quota species be included? What about section 10?

R: Nominal tons in section 9.1.8 excludes by-catch, but by-catch should be included in section 10.

12. LOCAL ECONOMIC DEVELOPMENT (SECTION 10 OF THE APPLICATION FORM0

Q: Does section 10.1 refer to own quota or catching agreements as well?

R: All landings controlled by the Applicant in 2004 in the sector applied for (and not only own allocation) may be taken into account.

Q : What is the time scale in section 10.3?

R: During the MTR (medium term rights) period.

13. FINANCIAL PERFORMANCE (SECTION 12)

Q: Section 12.1 refers to turnover in 2004, but 12.2 refers to turnover generated by the 2005 allocation. We are still in the process of landing 2005 catches; must the figures not be provided for 2004?

R: The final version of the application form (as opposed to the draft) does require 2004 figures to be submitted for both sections 12.1 and 12.2.

Q: Must section 15.1 be answered for the calendar year or quota year?

R: Quota year.