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DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

BRANCH MARINE AND COASTAL MANAGEMENT

POLICY FOR THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE OYSTER FISHERY: 2005

THIS DRAFT POLICY MUST BE READ WITH THE DRAFT 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 fishing rights in the Oyster Commercial Fishery is issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("*the Department*") for public comment. This policy must be read with the Draft General Policy on the Allocation and Management of Long Term Commercial Fishing Rights: 2005 ("*the General Fisheries Policy*").

As stated in the General Policy, the Department will hold public hearings and roadshows as widely as possible in order to consult with the public in general, and interested and affected parties in particular, concerning this policy. Written or verbal comments will be invited at these meetings and assistance will be provided, if necessary. Written comments must be given to the Department by 11 April 2005. Comments submitted after this date will not be considered. Comments shall be submitted as follows:

By Fax: (021) 402-3362

Attention: The Deputy Director-General
Oyster Policy Comments

By Mail

The Department of Environmental Affairs and Tourism
Private Bag X2, Roggebaai, 8012
Attention: The Deputy Director-General
Oyster Policy Comments

The purpose of this policy is to set out the considerations that will apply to the allocation of commercial oyster harvesting rights. Many of these considerations are not new. They have been applied by the Department in the past when allocating rights and managing this fishery and to an extent this policy represents a codification of those considerations.

Certain post rights allocation management policy considerations are broadly elaborated on in this policy. An Oyster 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 of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial Oyster fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 ("*the MLRA*") to a senior official of the Department.

2. Biological Status of Oysters

The Cape Rock oyster, which is targeted in this fishery, has an extensive geographic distribution occurring on rocky reefs from Cape Agulhas to Mozambique. These oysters are found in the intertidal zone and up to about 6m water depths. The Cape Rock oyster is found naturally and is sold as "wild oysters" in South Africa restaurants. A cheaper oyster is the Pacific oyster which is imported and widely used in mariculture.

Oysters along the KwaZulu-Natal coast have been found to take 33 months (almost 3 years) to reach marketable size (60 mm Right Valve Length). Oysters are broadcast spawners. Oysters along the KwaZulu-Natal coast spawn throughout the year with peaks during spring and summer. Harvesting takes place during spring low tides and traditionally was restricted to the intertidal zone, however in recent years there has been a gradual expansion of harvesting depth towards the fringes of the subtidal zone. This is due to a decline in oyster density in the intertidal zone and a gradual increase in gear efficiency ("*creeping effort*"). Oysters are dislodged from rocks by means of a pointed steel crowbar.

3. Sector Profile

The oyster fishery was previously managed as two separate fisheries related to their areas of operation, namely the KwaZulu-Natal coast and the Southern Cape coast. Since 2002 the oyster fishery has been managed as a single national fishery. Under the new management system, four commercial oyster-harvesting areas were officially recognised, namely KZN North, KZN South, Port Elizabeth and the Southern Cape. Differences between the regulations and harvesting patterns in the regions continue to exist.

In KwaZulu-Natal (North and South coasts), the management approach previously adopted by the KwaZulu-Natal Provincial Government was retained. This entailed maintaining a system of

effort limitations whereby the numbers of pickers are restricted and a daily bag limit of 190 oysters per picker per day is enforced. Moreover, the KZN North and South coasts are further sub-divided into five zones each, which are harvested on a rotational basis. This requires that zones remain fallow for at least three years at a time (the optimal length of time required for oyster recruits to reach marketable size) thereby allowing for recovery of the oyster stock. This system applies to both the commercial and recreational sectors.

The oyster fishery along the Southern Cape coast is not managed by means of rotational harvesting, but by means of limiting the number of pickers, with no daily bag limit. Furthermore, effort has been split across areas according to the extent of accessible oyster reef. The southern Cape fishery is controlled by a closed season from 15 December – 05 January. The closed season has been imposed to limit conflict between holidaymakers and the commercial oyster sector. In Port Elizabeth, no harvesting of the oyster beds is practised, and only washed-up oysters are being collected.

The Total Applied Effort ("*TAE*") for the oyster fishery is currently not informed by scientific considerations or even the status of the resource, but is based on pre-2002 effort levels. Advancements in research and stock assessments for the oyster resource are required in order to properly determine sustainable harvesting levels. The current TAE (2005 season) is set at 145 pickers and is apportioned as follows:

- KZN North (25 pickers);
- KZN South (15 pickers);
- Southern Cape (102 pickers); and
- Port Elizabeth (3) pickers.

The TAE along the southern Cape coast is further divided across zones, based on the extent of accessible oyster reef, and as follows:

- Heidelberg ("Witsand"): 10 pickers;
- Riversdale/Mossel Bay: 58 pickers; and
- George/Knysna: 34 pickers.

Limited commercial oyster rights were allocated in 2002 to empower a number of former subsistence fishers who were previously prevented from selling the subsistence harvests.

4. The Medium Term Rights Allocation Process

In 2002 commercial rights to harvest oysters were awarded to 34 applicants employing a total of 114 pickers. Of these, 88% were allocated limited commercial rights. Rights have been awarded mainly to individuals. Individuals hold 91%, close corporations 3% and companies 6% of the rights.

Black persons hold only 25,8% of the individual rights, which is extremely poor for a fishery that is easily accessible, and requires minimal gear and capital outlay. Moreover, only 25,8% of the individual right holders are women.

Although the TAE was set at 145 pickers, only 114 pickers currently harvest oysters.

5. Over-all Sectoral Objectives

Read with the General Fisheries Policy, the purpose of this policy is to determine the criteria in terms of which oyster fishing rights will be allocated. The objectives of allocating commercial fishing rights in this fishery are to:

- Significantly improve the transformation profile of this fishery;
- Allocate oyster rights to those who depend on oyster harvesting for their livelihood;
- Empower oyster pickers;
- Ensure that rights are allocated in all the areas where oysters can be harvested; and
- Support the economic viability and environmental sustainability of the fishery.

The Department is aware and concerned about certain monopolistic tendencies in this sector (***see further paragraph 9 below***).

6. Duration of Rights

Commercial fishing rights will be allocated for a period not exceeding three (3) years. Long-term rights will only be considered once there is sufficient information on the status of the resource and the transformation profile of the sector has improved significantly. The Department will institute a socio-economic study in this fishery during the three year period in an attempt to correct present imbalances in the sector.

7. New Entrants

Although the fishery as a whole is currently overexploited, a number of oyster harvesting areas are currently not exploited at all. The Department requires that these areas be exploited in order to gain valuable information about the oysters in those areas. In addition, the sector is untransformed and dominated by a few persons to the detriment of others operating in the sector.

The Department will therefore endeavour to allocate rights to new entrants in the areas where no medium term commercial oyster right were allocated (and a TAE was set for these areas) and where the introduction of new entrants will improve the transformation profile of the sector.

8. Evaluation criteria

Applications for commercial oyster rights will be evaluated in terms of a number of exclusionary and balancing criteria.

8.1 Exclusionary Criteria

In addition to the exclusionary criteria stated in the General Fisheries Policy relating to improper lodgments and material defects, the following exclusionary criteria will be applied to both right holder applicants and new entrant applicants:

(a) **Form of the Applicant:** Only natural persons (ie. individuals) may apply for rights.

(b) **Applications from families:** In general, only one right will be allocated per family. Where more than one application is received from family members who live at the same address, then all the applications may be excluded. More than one right may be allocated per family where applicants clearly and convincingly demonstrate that they have established separate small commercial operations.

(c) **Compliance:** Applicants that have been convicted of a serious transgression of the MLRA (leading, for example, to a sentence of imprisonment without the option of the payment of a fine) will not be allocated a right. Applicants that have had any fishing right cancelled or revoked in terms of the Marine Living Resources Act will also not be allocated a right. Other breaches of the Marine Living Resources Act will adversely affect the evaluation of applications, will be negatively scored, as set out below.

(d) **Paper Quotas:** A paper quota as defined in the General Policy will be excluded.

(e) **Non – utilisation:** Those right holders that have failed to utilise their medium term commercial oyster right between 2002 and 2004 will not be re-allocated a right.

(f) **Non – dependants:** Persons (such as lawyers, teachers, police officers, undertakers and so forth) that derive any of their income from sources outside of the fishing industry will be excluded.

(g) **Personal Involvement:** Applicants will have to involved on a full-time basis in the harvesting of oysters.

8.2 Balancing Criteria

Although the following criteria will generally be applied to both right holder applicants and new entrant applicants, the weighting that will be applied to each category will differ.

(a) Transformation

The Department will affirm black applicants as the transformation profile of this sector is particularly poor. In addition, the Department will also seek to affirm women by applying gender as a tie-breaking factor, if necessary.

(b) Investment in the Fishery

The Department will consider what investments, if any, applicants have made in this sector, whether in the form of processing or in the form of marketing, locally and internationally.

(c) Harvesting Performance

Right holder applicants will be assessed having regard to their oyster harvesting performance and record during the medium term rights allocation process.

New entrant applicants will be assessed having regard to their ability, knowledge and skills to harvest oysters.

(d) Reliance on Oysters

The Department will prefer applicants who rely on oyster harvesting for 75% and more of their gross annual income. As stated above, applicants who earn any income from sources outside of the fishing industry will be excluded.

(e) Local Economic Development

The Department will prefer to allocate rights to those applicants who live near the area where the oysters are harvested. In this regard, the Department will require the applicant to have lived in that area for a minimum period of four years.

(f) Compliance

Right holders, who are currently being investigated for breaches of the Marine Living Resources Act will not be allocated an oyster right until the outcome of the investigation is known.

Minor infringements of the Marine Living Resources Act, including its Regulations, by the applicant will be negatively scored.

9. Monopolies and the Registration of Buyers

The Department is of the view that the potential of this sector has not been fully achieved due to the monopolisation of this sector by one or two groupings.

Not only has the growth of this sector been detrimentally affected as a result of the existing of monopolies, but pickers have been exploited. The existence of monopolies in this sector is unacceptable and will not be allowed to continue.

Accordingly, all persons intending to purchase oysters from right holders (pickers) will be required to register with the Department. The Department will not register buyers who have had a right or permit cancelled or revoked under the Marine Living Resources Act or been convicted of an offence under the Marine Living Resources Act. Should the Department determine that registered buyers are colluding in the setting of prices for oysters, the Department shall intervene and act as the sole purchaser of oysters from oyster pickers.

10. Harvesting Oysters

Right holders and pickers will be allowed to harvest oysters using:

- wetsuits;
- weight-belts;
- masks; and
- snorkels.

Right holders and pickers may not use:

- fins;
- artificial breathing apparatus; and
- floating devices.

11. Application Fees

Application fees for this sector will not be more than R500. The Department is currently assessing the cost of the allocations process for this sector. The Department will inform right holders and interested parties once it has determined an application fee.

12. Provisional Lists

Before the Department makes a final decision on who will be allocated oyster rights, it will issue a provisional list of successful applicants on an area basis to each area. People in these areas may then inform the Department if any persons who historically harvested oysters have not been included on the provisional list.

13. Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. These may be amended annually after consulting with right holders in the fishery. Right holders and interested parties are invited to comment on these permit conditions.