



4 August 2006

GENERAL REASONS FOR THE DECISIONS ON THE ALLOCATION OF RIGHTS IN THE BEACH-SEINE (TREKNET) AND GILLNET (DRIFT-NET, SET-NET) FISHERY

1. Introduction

After the allocation of medium-term rights in 2001/2002 and the finalisation of the appeals processes in 2002/2003 the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (*the Department*) commenced with preparations for the allocation of long-term commercial fishing rights.

In January 2004, the Minister of Environmental Affairs and Tourism (*the Minister*) announced the commencement of the planning phase. The Minister called on the fishing industry and all other interested and affected parties to submit comments to the Department. A comment box was opened at MCM in which comments could be placed. In order to facilitate communication with the public and fishing communities, the Department developed a dedicated fisheries website (www.mcm-deat.gov.za); it established a customer services centre (0861 123 626) at its Cape Town head office and it further resourced each of the 29 fishery control offices along the coast.

In 2004, the Department also procured the services of project management specialists, specialist legal advisers, IT specialists, and a forensic auditing consortium to advise it on the long-term commercial fishing rights process. A Rights Allocation Unit was established in 2005 to co-ordinate and manage the long-term rights allocation process.

Earlier, during the latter half of 2003, rights were allocated to abalone divers for a period of ten years. In December 2004, another set of *long-term* commercial fishing rights were allocated in the large pelagic (tunas and swordfish) fishing industry. Long-term fishing rights for the remaining 20 commercial sectors were scheduled for the last quarter of 2005. The Beach-Seine (Treknet) and Gillnet (Drift-Net, Set-Net), hereafter collectively referred to as the *Netfish* sector, is one of these sectors.

This document is titled the *General Reasons for the Decisions on the Allocation of Rights in the Beach-Seine (Treknet) and Gillnet (Drift-Net, Set-Net) Fishery* and will be referred to as the *GPR*. The GPR sets

out the criteria, the process and methodology and the policy reasons for the decisions on the allocation of rights and quantum in a sector. Applicants are therefore advised to carefully study the GPR before considering the assessment of their applications and the specific reasons for decisions taken.

Every applicant for a Netfish right will receive the following documentation by mail:

- A notification letter, informing the applicant of the delegated authority's decision, together with the reason for that decision; and
- A copy of the GPR.

The specific reason contained in the notification letter to unsuccessful applicants, together with the GPR, constitute the reasons for the decisions on the allocation of rights and effort in the fishery.

2. Policy and Application Form Development for Long-Term Rights Allocation

A detailed report entitled "*Public Participation in the Development of Policy and Application Forms for the Allocation of Long-term Commercial Fishing Rights*" will be made available on the Department's website (www.mcm-deat.gov.za).

A Committee was established to co-ordinate and manage the drafting of a general fisheries policy and sector specific fishing policies. Draft policies were finalised after the Minister held a series of Ministerial *Izimbizo* with coastal communities along the west, south east and east coasts between June and November 2004 and after all registered industrial bodies and interest groups were consulted on sector management issues. On 1 March 2005, the Minister issued for public comment 19 draft fishery specific policies and a draft general policy on the allocation and management of long-term fishing rights.

A key feature of the draft policies was to divide the different commercial fisheries into four clusters. The clusters were determined having regard to the level of formal organisation within the various fisheries, the capital required for participation and the make-up of the participants in a fishery. A different allocation process (method of consultation, registration, distribution, receipting, communication and evaluation) was proposed for each cluster. The Netfish sector was included in "*Cluster D*", along with other similar fisheries such as oysters, white mussels and Kwazulu-Natal Beach Seine.

The draft policies were published in isiXhosa, Afrikaans, isiZulu and English in the Government Gazette and on the Department's website and copies were distributed along the coastline. For purposes of public consultation, the notice and comment process set out in the Promotion of Administrative Justice Act 3 of 2000 and its regulations were adopted. In order to assist members of affected communities to comment, the Department consulted with fishing communities along the coast during March 2005. A total of 53 villages, towns and cities were visited and more than 6000 fishers were consulted. In April 2005, further consultations with communities took place in 16 venues along the coast about the draft traditional line fish policy.

At each consultation, every comment was recorded and documented by the Rights Verification Unit (“RVU”), an independent team of auditors. At the end of the consultation process, more than 9000 fishers between Port Nolloth and Durban had been heard orally. Apart from the thousands of oral comments which were recorded, the Department also received more than 900 written comments on the policies. Significant changes were made to the policies after the comments were considered.

In May 2005, Cabinet approved the 19 “*sector specific policies*” and the “*General policy*”. In July 2005, Cabinet also approved the traditional line fish sector policy. All the final policies were then published in the Government Gazette.

3. Appointing the Delegated Authority

In December 2005, and acting in terms of section 79 of the MLRA, the Minister appointed Ms Abeeda Mugjenkar, the Chief Director: Monitoring, Control and Surveillance, as the Delegated Authority responsible for the allocation of long term fishing rights in the Netfish sector.

4. Distributing and Receipting of Applications

A detailed report entitled “*Registration, Distribution and Receipting in the Long-Term Rights Allocation Process*” will be made available on the Department’s website (www.mcm-deat.gov.za).

In Cluster D, teams of multilingual departmental officials established mobile application centres along the coastline between Monday 28 November 2005 and Friday 2 December 2005. The process was overseen by the Rights Verification Unit. The officials were trained on the Cluster D policies and application forms and they were available to assist those applicants who required help to complete the application forms, which could be completed in English, Afrikaans, isiXhosa or isiZulu.

Interested parties were invited in the Government Gazette and, more importantly, by way of announcements made on community radio stations, by posters at Fisheries Compliance Offices and harbours, by illustrated hardcopy newsletters, and from vehicles with Marine and Coastal Management logos, to visit one of these application centres during this period.

The following towns and surrounding communities were visited during the application period:

- Ebenhaeser
- Veldrift
- Langebaan
- Kalk Bay
- Arniston
- Mossel Bay

- ❑ Groot Brak
- ❑ Knysna
- ❑ Port Nolloth
- ❑ Hondeklipbaai
- ❑ Port Elizabeth
- ❑ Durban

Once an applicant or his/her representative would arrive at one of the various distribution and receiving centres, he or she was directed to the representatives of the Rights Verification Unit based at the specific venue. The Rights Verification Unit had control over the application forms and only released an application form on presentation of an original identification document and receipt of payment of the relevant application fee by means of either a cheque, a postal order or cash. In instances where the applicant could not personally collect the form, a letter authorizing the representative to collect the form was required, as well as a copy of the applicant's identification document. The Rights Verification Unit representative would then issue to the applicant or the applicant's representative a blank application form, as well as a receipt.

The Rights Verification Unit representative would then direct the applicant to the departmental officials for further assistance. The departmental officials assisted the applicant with completion of the application form and the annexures. Once the application form was completed and the annexures done, the applicant was directed to a Commissioner of Oaths present at the venue for signature and the attestation of the declaration. The departmental officials then took possession of the completed and signed application form and the annexures, issued the applicant with a receipt, and handed the application over to the Rights Verification Unit for safekeeping.

A total of 451 applicants registered for Cluster D commercial fishing rights. All 451 lodged their applications timeously.

The RVU received a total of 221 applications for long-term commercial fishing rights in the Netfish fishery. Of the 221 applications received, 82 were from medium-term right holder applicants and 139 were from new entrant applicants and 38 were for Beach Seine rights and 171 were for Gillnet rights. 2 applicants applied for both a Gillnet and Beach-seine right and 10 applicants did not specify which right they were applying for.

5. An Interactive Application Process

A report entitled "*The Interactive Application Process for the Allocation of Long-Term Rights Allocation Process*" will be made available on the Department's website (www.mcm-deat.gov.za).

As stated above, the trained multilingual departmental teams communicated with and assisted applicants at the application centres. The Delegated Authority further communicated in Cluster D through website notices and updates and by way of “FishRights” – a fortnightly E-Newsletter that is placed on the Department’s website every second Monday. This newsletter is also e-mailed to over 300 fishing companies, journalists and circulated through interest groups and industrial bodies recognised by the Minister in terms of section 8 of the MLRA.

A hardcopy illustrated newsletter was also developed for communicating with Cluster C and D applicants. The hardcopy version differed from the electronic newsletter. It was specifically designed for the Cluster C and D applicants. The hardcopy newsletter was written in English, isiXhosa, isiZulu and Afrikaans and distributed along the entire coastline via the fishery control officers. In total, 6 editions were published between July 2005 and December 2005 and 20 000 copies of each newsletter (120 000 in total) were distributed between July 2005 and December 2005 (when the last period for applying for long term rights expired).

6. Decision-Making Process

The delegated authority was assisted by an Advisory Committee; legal advisors; the RVU and auditors; IT specialists; communication consultants; and administrative and project management specialists.

A report entitled “*The Decision-making Processes for the Allocation of Long-Term Rights*” will be made available on the Department’s website (www.mcm-deat.gov.za). In short, the process of allocating commercial fishing rights in the Netfish sector involved the following steps:

☞ Database Development: After the applications were receipted by the RVU, the delegated authority instructed the IT advisers to design a database to facilitate the analysis of applicant data across a range of fields, including, transformation, compliance, historical involvement and reliance.

☞ Constitution of the Advisory Committees: The delegated authority constituted an advisory committee, which was chaired by members of the Rights Allocation Unit. The advisory committee for the Netfish sector consisted of –

- ☞ Mr Shaheen Moolla (Chair);
- ☞ Ms Micha-Rose Emmett; and
- ☞ Mr Cheslyn Liebenberg

☞ Instructing the Advisory Committee: Each advisory committee was briefed and instructed by the Department’s Netfish expert, members of the Rights Allocation Unit and legal advisors on, *inter alia*, the following:

- The applicable statutory provisions and case law;
- The general policy and the sector specific policy adopted by the Minister and Cabinet for the Netfish sector;
- The current biological, economic and transformation profiles of the fishery;
- The criteria to be applied; and
- The purpose of each question asked in the application form applicable to the Netfish sector.

☞ Assessments by the Advisory Committee: In the Netfish sector, the Advisory Committee only assessed whether the applications were properly lodged, not materially defective and whether the applications met the essential requirements (except compliance, non-utilisation and multi-sector involvement) of the fishery. The Advisory Committee captured their assessment of each application in an assessment sheet designed for this purpose.

☞ Capturing the Information in spreadsheet form: After all applications were evaluated, the project management team used the database compiled by the IT specialists and the assessments of the Advisory Committee to compile a spreadsheet.

☞ Further assessment and decision-making: After all applications were evaluated, the results were presented to the delegated authority. The delegated authority and the Department's Netfish expert then considered the compliance record of each applicant, and the catch records provided to the Department by each medium term right holder applicant. Relevant information was captured in the spreadsheet. Some applications were refused on the basis of non-compliance or non-utilisation. The approach adopted by the delegated authority to non-compliance and non-utilisation is explained further below.

☞ Publication of provisional lists, investigation and consideration of comments: The delegated authority consulted broadly with applicants and interested and affected parties before making his final decision.

The delegated authority published a list containing the details of all provisionally successful applicants and the key claims made by these applicants. The list contained details regarding historical involvement, personal involvement and reliance on netfishing. Applicants and other interested and affected parties were invited to comment on the contents of the list. A total of 235 comments were received. In order not to delay the finalisation of the rest of the applications, the delegated authority reserved his decisions if the comments needed to be investigated or if a hearing had to be held in respect of the comments, and announced her decisions in respect of the rest of the applications.

☞ Decision making: The delegated authority considered the spreadsheet and, if applicable, the comments received on the lists and the outcome of investigations or hearings held in respect of the comments. The delegated authority then made a decision in respect of each application.

7. Sector Profile Prior to Long Term Rights Allocations

The beach-seine and gillnet fisheries are South Africa's oldest commercial fisheries, having been established in the early 1700's and mid 1800's respectively. Besides a minimum mesh size and an area restriction that was originally designed to reduce conflict between beach-seine and gillnet fishers, there were no controls in the fishery until the early 1970's. Since then, both fisheries have been restricted to catching harders (*Liza richardsonii*) and St Joseph sharks (*Callorhynchus capensis*), with a limited by-catch allowance of linefish species. In False Bay, however, right-holders in the beach-seine fishery are entitled to target certain linefish species.

The gillnet fishery is restricted to Yzerfontein northwards whereas the beach-seine fishery is restricted to the west of Gordon's Bay. The estuarine gillnet fishery (namely the Olifants Estuary) will be phased out over a 5- to 10-year period.

As part of the management strategy, the coast and Total Applied Effort ("TAE") is subdivided into "beach-seine and gillnet" areas, effort is limited by gear restrictions, and fishing by means of nets is prohibited in Marine Protected Areas. In essence, the beach-seine and gillnet fishery is set a TAE (number of nets that may be used in each area along the west and south east coasts) on an area basis by the Minister each year.

Prior to the 2001 medium-term right allocation process, the fishery landed approximately 6 000 tons of fish per annum, of which only 1 400 tons were reported on compulsory monthly catch return forms.

A survey of more than 50 percent of permit-holders revealed that less than 10 percent regarded themselves as beach-seine or gillnet fishers while only eight percent were *bona fide*, full-time netfishers who acquired more than 50 percent of their income from the fishery. Permit holders in most areas operated at a loss of between R1 900 and R5 500 per annum, the exceptions being the gillnet fishery in Saldanha-Langebaan, where 50 percent of operators were full time net fishers and the beach-seine fishery in False Bay, where 70 percent of operators were full time netfishers.

The main target species, the harder, is currently over-exploited. There is a direct negative correlation between the degree of effort and stock status. The export market for the secondary target species, St Joseph shark has collapsed, but there is potential for a local market. There is a substantial linefish by-catch comprising mostly over-exploited or collapsed species. Consequently, the management of the netfishery cannot be considered separately from the traditional linefish sector.

There exists a substantial illegal gillnet fishery directed at high value species throughout the west, south and east coasts. Illegal gillnetting on the west coast is mostly directed at galjoen (*Dichistius capensis*)

and smooth-hound shark (*Mustelus mustelus*) in the sea and harders, springer / flathead mullet (*Mugil cephalus*) and elf (*Pomatomus saltatrix*) in estuaries. Illegal gillnetting on the south and east coasts is largely confined to estuaries and directed at, amongst others, dusky kob (*Argyrosomus japonicus*), spotted grunter (*Pomadasys commersonii*) and a range of mullet species.

8. Profile of Medium Term Right Holders

Prior to the revision of the TAE and allocation of rights in 2001, the fishery was completely over-subscribed with 147 beach-seine and 293 gillnet permits issued between Port Nolloth on the West Coast and Nature's Valley on the South Coast. There were a further 120 and 100 gillnet permit- holders in the Olifants and Berg River estuaries respectively. Consequently, effort had to be reduced to levels that would facilitate the recovery of the harder stock and ensure economically viable ventures for the remaining *bona fide* full-time fishers. The TAE was accordingly set at 58 beach-seine rights and 162 gillnets. In the 2001 medium-term rights allocation process, 12 beach- seine net rights and 55 small net (gillnet) rights were allocated. A further 58 netfishers were granted exemptions to fish.

9. Applicants for Long Term Rights

The Rights Verification Unit received a total of 221 applications for long term commercial fishing rights in this fishery. Of the 221 applications received, 82 were from medium-term right holder applicants and 139 were from new entrant applicants and 38 were for Beach Seine rights and 171 were for Gillnet rights. 2 applicants applied for both a Gillnet and Beach-seine right and 10 applicants did not specify which right they were applying for.

10. Criteria

All the applications were initially scrutinised to determine whether they were properly lodged, whether they were not materially defective and whether they fulfilled the essential requirements of the sector, including whether they presented a paper quota risk.

An application was **improperly lodged** if:

- ☞ the application was not lodged at the prescribed place within the prescribed time;
- ☞ the correct application fee was not paid within the required timeframes; or
- ☞ the application was not lodged on the official prescribed application form.

An application was **materially defective** if:

- ☞ the declaration was not signed and attested by the applicant or its authorised representative;
- ☞ more than one application was received from the same applicant;
- ☞ the applicant provided false information or false documents or the applicant failed to disclose material information;
- ☞ the applicant attempted to influence the Minister or the delegated authority other than in the manner provided for in the General policy during the application period.

An applicant failed to meet the **essential requirements** of the Netfish sector if the applicant:

- ☞ pose a paper quota risk as defined in the General policy;
- ☞ is not a natural person ;
- ☞ was convicted of a serious transgression of the MLRA the regulations, permit conditions or any other serious fishery related offence or had a right cancelled or revoked (applicants charged with such transgressions and offences were reserved pending the outcome of the criminal proceedings);
- ☞ is not a South African citizen;
- ☞ failed to demonstrate a right of access to appropriate nets and a suitable vessel;
- ☞ holds a right in a Cluster A or Cluster B fishery, or is a shareholder or director or a member of a Cluster A or Cluster B fishery right holder;
- ☞ holds rights in a Cluster C and D fisheries, other than white mussels and west coast rock lobster;
- ☞ indicated that he or she will not be personally involved in the harvesting of the resource during the fishing season and participate in the operation of the business; or
- ☞ did not live adjacent to the fishing zone where he or she has applied for rights.

The applications were not scored in terms of the comparative balancing criteria set out in the Netfish sector policy. Instead applicants were not granted rights if they had no historical involvement or did not demonstrate the necessary skill, knowledge or ability or they were not likely to be reliant on netfish for a living. In addition, if a medium term right holder applicant, failed to regularly utilise the medium term right between 2002 and 2004 in that the applicant failed to submit 50 % of the compulsory catch returns each year or failed to fished for more than 24 days per year or failed to catch more than 2500 kg each year.

11. The Allocation of Rights and policy reasons for decisions

The delegated authority allocated rights as follows:

- Area 3 (Port Nolloth): 1 Beach-seine rights & 3 Gillnet rights
- Area 5/6 (Doornbaai – Lambertsbaai/Olifantsriviermond- Wadrifsoutpansmond): 2 Gillnet rights
- Area 7 (Elandsbaai) : 2 Beach seine & 3 Gillnet
- Area 8/9/10 (Draaihoek – Cape Columbine) : 2 Beach-seine rights & 60 Gillnet rights (20 applicants were reserved in this area)
- Area 11 (Saldahna Bay): 2 Gillnet rights
- Area 12 (Langebaan Lagoon): 10 Gillnet rights (2 applicants were reserved in this area)
- Area 14/15 (Melkbosstrand / Bokpunt – Milnerton) : 2 applicants (Beach-seine rights) were reserved in this area
- Area 18 (Smitswinkel, Simonstown & Fishhoek): 1 Beach-seine right (1 applicant has been reserved in this area)
- Area 19 (Muizenberg – Strandfontein): 2 Beach-seine right
- Area 21 (Macassar) : 1 Beach-seine right

A breakdown of the Total Applied Effort in each area (Beach Seine and Gillnets) and the number of successful for Beach Seine and Gillnets per area are annexed, marked annexure “A”.

The reasons for the decisions are as follows:

- 11.1 Applications were firstly assessed to ensure that they were properly lodged, not materially defective and met the essential requirements for participating in the netfish sector. However, the Delegated Authority decided not to require proof from the applicants that they had lived adjacent to the fishing zone for at least four years. The reason for this was that applicants for netfish rights found it too difficult to obtain evidence of them being resident for this period of time in the area. The Delegated Authority also decided not to exclude applicants who are not traditional linefishers in the sense that they have not being fishing for a living for at least a period of ten years. After assessing the application, the Delegated Authority decided this requirement was too onerous and that too few applicants met this requirement.

- 11.2 The applications were not scored in terms of the comparative balancing criteria set out in the Netfish sector policy. Instead applicants were not granted rights if they had no historical involvement or did not demonstrate the necessary skill, knowledge or ability or they were not likely to be reliant on netfish for a living. In addition, if a medium term right holder applicant, failed to regularly utilise the medium term right between 2002 and 2004 in that the applicant failed to submit 50 % of the compulsory catch returns each year or failed to fished for more than 24 days per year or failed to catch more than 2500 kg each year.

The following lists are attached as annexure “B” to this GPR:

- “B.1”, a spreadsheet containing the assessments and decisions in respect of the medium term right holder applicants, with their application numbers and;
- “B.2”, a spreadsheet containing the assessments and decisions in respect of the new entrant applicants, with their application numbers.

12. Permit Conditions for this Fishery

The Netfish policy stipulates that prior to the finalisation of permit conditions for this fishery, the Department will consult with right holders. The Chief Director: Resource Management (“*the Chief Director*”) will design permit conditions to ensure that this fishery is sustainably managed and that vehicle use in the coastal zone only takes place under a permit issued under the applicable Regulations.

Ms Abeeda Mugjenkar

Delegated Authority: Netfish Sector

4 August 2006

Annexure A

List of Total Applied Effort in each area (Beach Seine and Gillnets)

Area	Locality	Beach-seine TAE available	Beach seine rights granted	Gill/drift TAE available	Gill/drift net rights granted
3	Port Nolloth	3	1	4	3
4	Hondeklipbaai	0		2	0
5	Doornbaai-Lambertsbaai	2	0	8	2
6	Olifantsriviermond-Wadrifsoutpansmond				
7	Elandsbaai-Draaihoek	3	2	6	3
8					
9	Draaihoek, (Rochepan)-Cape Columbine,	4	2	80	60
10					
11	Saldhana Bay	1	0	5	2
12	Langebaan Lagoon	0		10	10
13	Yzerfontein	2		2	1
14	Melkbostrand	3		0	
15	Bokpunt (Melkbos)-Milnerton				
16	Houtbay beach	2		0	
17	Longbeach-Scarborough	3		0	
18	Smitswinkel Bay, Simonstown, Fishoek	2	1	0	
19	Muizenberg-Strandfontein	2	2	0	
20	Strandfontein-Monwabisi	0		0	
21	Macassar	1	1	0	
22	Strand-Gordons Bay	0		0	
23	Gordons Bay-Kogelbaai-Palmiet	0		0	
24	Palmiet River-Shell Lime Point	0		0	
25	Die Plaat-Die Kelders	0		0	
26	Uilenkraalmond-Die Kelders	0		0	
27	Buffeljagsbaai-Pietie se Huis	0		0	
28	Pietie se Huis-Heuningnesriviermond	0		0	
29	Heuningnesriviermond-Arniston	0		0	
30	De Hoop Marine Reserve	0		0	
31	Witsand-Puntjie	0		0	
32	Stilbaai (Puntjie)-Gouritzriviermond	0		0	
33	Gouritzriviermond-Grootbrakriviermond	0		0	
34	Buffels Bay-Kaaimans-Natures Valley	0		0	
	Berg River	0		0	
	Olifants River	0		0	
Total		28	9	107	81