



24 May 2006

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## GENERAL REASONS FOR THE DECISIONS ON THE ALLOCATION OF RIGHTS IN THE OYSTER FISHERY

### 1. Introduction

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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](http://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 oyster sector is one of these sectors.

This document is titled the *General Reasons for the Decisions on the Allocation of Rights in the Oyster 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 in a fishery. 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 an Oyster harvesting 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;
- A copy of the GPR; and
- A copy of the decision-making lists of the delegated authority.

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

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

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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](http://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 Oyster was included in "*Cluster D*", along with other similar fisheries such as the White Mussel sector.

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. The final policies were then published in the Government Gazette.

### **3. Appointing the Delegated Authority**

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In December 2005, and acting in terms of section 79 of the Marine Living Resources Act 18 of 1998 (the “*MLRA*”) the Minister appointed Ms Theresa Akkers, the acting Director of Research and Development in the Department, as the Delegated Authority responsible for the allocation of fishing rights in the oyster sector.

### **4. Distributing and Receipting of Applications**

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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](http://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 application centres were at following towns during the application period:

- Ebenhaeser
- Veldrift
- Langebaan
- Kalk Bay
- Arniston

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

Upon arrival at one of these distribution and receipting centres, the applicant or his/her representative would be 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. If the applicant could not personally collect the form, a letter authorizing a representative to collect or complete the form was required, as well as a copy of the applicant's identification document. The Rights Verification Unit representative then issued the applicant or applicant representative with a blank application form, as well as a receipt.

The Rights Verification Unit representative would then direct the applicant to the departmental officials for assistance with the completion of the forms. If required to do so, 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 receipted a total of 125 applications for long-term commercial fishing rights in the oyster fishery. Of the 125, 31 were medium term right holder applicants and 94 were new entrant applicants.

## **5. An Interactive Application Process**

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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](http://www.mcm-deat.gov.za)).

As stated above, 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, including members of Ezemvelo KwaZulu-Natal. 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.

## 6. Decision-Making Process

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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](http://www.mcm-deat.gov.za)). In short, the process of allocating commercial fishing rights in the white mussel 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 oyster fishery consisted of –
  - ☞ Mr Shaheen Moolla (Chair);
  - ☞ Ms Micha-Rose Emmett; and
  - ☞ Mr Cheslyn Liebenberg
- ☞ The role of the Advisory Committee in the white mussel fishery was to assess whether the applications were properly lodged, not materially defective and met the essential requirements of the fishery on the basis of information provided in each application. In the Oyster sector, the Advisory Committee only assessed whether the applications were properly lodged, materially defective and met the essential requirements.

- ☞ Instructing the Advisory Committees: Each advisory committee was briefed and instructed by the delegated authority, 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 oyster sector.
  - The current biological, economic and transformation profiles of the fishery.
  - The criteria to be applied.
  - The purpose of each question asked in the application form applicable to the oyster fishery.
- ☞ Guiding the Advisory Committees: During the verification and evaluation process, the delegated authority met with the advisory committee and, if necessary, instructed them on the manner in which to verify information or assess a particular aspect of the application.
- ☞ Decision-making: After all applications were evaluated, the chairperson of the advisory committee presented the results to the delegated authority. The delegated authority then considered each application, having regard to the assessments of the advisory committee. As Advisory Committee only dealt with the requirements relating to lodgement, material defects and essential requirements, it was necessary to assess the applications on additional grounds in oversubscribed areas, in order to select the best applicants in each area. This further assessment was done by the chairperson of the Advisory Committee and the delegated authority. The basis for this assessment is set out further below in this document.

## **7. Sector Profile Prior to Long Term Rights Allocations**

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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 African 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.

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 are 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 their subsistence harvests.

## 8. Profile of Medium Term Right Holders

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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. Most of the rights were granted to individuals. Individuals held 91%, close corporations 3% and companies 6% of the rights.

Black persons held 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 were women. Although the TAE was set at 145 pickers, only 114 pickers harvested oysters over the medium-term period.

## 9. Applicants for Long Term Rights

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The Rights Verification Unit receipted a total of 125 applications for commercial fishing rights in this fishery. Of the 125 applications, 32 were from medium term right holder applicants and 93 were from new entrant applicants.

## 10. Criteria

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All the applications were 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 oyster sector if the applicant:

- ☞ poses a paper quota risk as defined in the General policy;
- ☞ is not an individual;
- ☞ breached a provision of the MLRA resulting in the sanctions provided for paragraph 8.1(c) of the oyster policy;
- ☞ is not a South African citizen;
- ☞ is part of the same household as another applicant and did not clearly and convincingly demonstrate that he or she has established a separate small commercial operation; as a medium term right holder;
- ☞ failed to utilise its right between 2002 and 2004;
- ☞ 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; or
- ☞ if the applicant will not be personally involved in the harvesting of the resource.

In Area F6 (Port Elizabeth) the delegated authority also considered reliance, transformation, investment, and past performance.

## 11. The Allocation of Rights and policy reasons for decisions

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The current TAE (2005 season) was 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 more specifically as follows:

- ☞ Heidelberg (“Witsand”): 10 pickers;

- ☛ Riversdale/Mossel Bay: 58 pickers; and
- ☛ George/Knysna: 34 pickers.

The delegated authority allocated rights to a total of 94 applicants. The rights were allocated as follows:

- ☛ KZN South: 7 rights (8 rights available for appeals)
- ☛ KZN North Coast: 24 rights (1 right available for appeals)
- ☛ Southern Cape (Knysna, Plettenberg Bay & George) – Areas D4 and E5: 12 rights (22 rights available for appeals)
- ☛ Southern Cape (Stilbaai, Riversdale & Mossel Bay) - Areas B2 and C3: 50 rights (8 rights available for appeals)
- ☛ Southern Cape (Heidelberg and Witsands) – Area A1: 9 rights (1 right available for appeals)
- ☛ Southern Cape (Port Elizabeth) – Area F6: 3 rights (no rights available for appeals)

The reasons for the decisions are as follows:

- 11.1 The applicants that met the essential criteria for participation in the sector, did not present a paper quota risk and whose applications were not improperly lodged or materially defective, could be accommodated in all zones – except Area F6 (Port Elizabeth zone).
- 11.2 In respect of Area F6, the delegated authority considered reliance, transformation, investment, and past performance and allocated the rights to three black applicants that were historically most reliant on the resource.
- 11.3 The delegated authority considered each applicant's compliance record. One applicant was excluded on the basis that he had contravened provisions of the Marine Living Resources Act 18 of 1998.
- 11.4 A number of applications were refused on the basis that the applicants nominated areas for which the Minister has not determined a TAE.
- 11.5 Decisions on the applications of eight applicants were reserved pending investigations by the RVU. After the investigations were completed, rights were allocated to six out of the eight. The other two applicants were refused as they presented paper quota risks as they formed part of the same household of another applicant and historically sold their oysters to this applicant.

A summary of the assessments in spreadsheet form is attached marked **Annexure A1 and A2**.

Lists of the successful applicants in each of the oyster harvesting areas are attached marked as follows **Annexure B**,

- ☛ **Annexure B1** - KZN South
- ☛ **Annexure B2** - KZN North Coast
- ☛ **Annexure B3** - Southern Cape (Knysna, Plettenberg Bay & George) – Areas D4 and E5
- ☛ **Annexure B4** - Southern Cape (Stilbaai, Riversdale & Mossel Bay) - Areas B2 and C3
- ☛ **Annexure B5** - Southern Cape (Heidelberg and Witsands) – Area A1
- ☛ **Annexure B6** - Southern Cape (Port Elizabeth) – Area F6

## **12. The Allocation of Effort**

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Each right holder is allocated a right to pick oysters him- or herself. Permit conditions for this fishery will stipulate the maximum number of oysters that each right holder may harvest during each oyster season. Right holders will be furnished with these permit conditions when they apply for their annual oyster picking permit.

## **13. Permit Conditions for this Fishery**

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The Oyster fishery policy stipulates that prior to the finalisation of permit conditions for this fishery, the Department will consult with right holders. There was not sufficient time to consult with right holders regarding the permit conditions for the 2005/2006 season. Consultations will however take place during the course of the 2005/2006 fishing season. The Chief Director: Resource Management (*“the Chief Director”*) will design permit conditions to ensure that this fishery is sustainably managed.

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**Ms Theresa Akkers**

**Delegated Authority: Oyster Fishery**

**24 May 2006**