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GENERAL REASONS FOR THE DECISIONS ON THE ALLOCATION OF RIGHTS IN THE WHITE MUSSEL 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 comment 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) sector. Long-term fishing rights for the remaining 20 commercial sectors were scheduled for the last quarter of 2005. The white mussel sector is one of these sectors.

This document is entitled the *"General Reasons for the Decisions on the Allocation of Rights in the White Mussel 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 a White Mussel 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, 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 White Mussels fishery was included in "*Cluster D*", along with other similar fisheries such as the oysters fishery.

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

In December 2005, and acting in terms of section 79 of the MLRA, the Minister appointed Ms Gloria Sikiti, the Deputy-Director: Resource Management (Marine), as the Delegated Authority responsible for the allocation of fishing rights in the white mussel 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 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 80 applications for long-term commercial fishing rights in the white mussel fishery.

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, 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

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 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 white mussel fishery consisted of –
 - ☞ Mr Horst Kleinschmidt (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 White Mussel 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 white mussel fishery.
- 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 white mussel 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 other grounds as well, in order to select the best applicant in respect of each of the seven harvesting areas. 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

White mussels (*Donax serra*) occur between northern Namibia and the Wild Coast. They inhabit sandy beaches of the west and south coasts of South Africa. The zonal distribution of the mussel changes with the tidal cycle. On the west coast, juveniles are found high up on the beach, whereas adults are distributed around and below the mean spring low tide mark. On the east and south coasts, adults are found in the mid-tide region.

White mussels are dominant burrowers on sandy beaches, favouring temperate shores. They are bivalve molluscs that filter-feed and grow to a shell length of 60 millimetres in about five years. The mussels migrate up and down the beach in response to tidal cycles, with juveniles migrating more frequently than the adults.

Commercial exploitation is limited to the west coast where white mussels are particularly abundant owing to the nutrient rich Benguela Current that washes these shores. Commercial harvesting of white mussels is limited to seven areas along the west coast. The fishery started in the late 1960's but in 1966 it was negatively affected by a red tide that caused massive mortalities of white mussels. The recovery of the population took more than 10 years and led to a dramatic reduction in catch per unit effort ("CPUE"). The total

number of white mussels harvested per year has declined steadily since the 1980's. This has largely been as a result of the fishery's lack of economic viability. Ad hoc surveys conducted between 1988 and 1989 showed that the annual landings amounted to less than one percent of the standing biomass in some of the areas on the West Coast. Preliminary results from surveys undertaken in 2003 and 2004 support these findings. However, a complete stock assessment is required to assess the full potential of the resource.

Currently, commercial right-holders are permitted to collect 2 000 white mussels per month. White mussels are harvested as bait and not for human consumption. A market for human consumption needs to be investigated. The white mussel fishery is catch- and effort-controlled. A Total Applied Effort ("TAE") of seven right-holders, with bag limits of 2 000 per month and a minimum legal size of 35 millimetres, is enforced. The right-holders either own retail outlets or sell their catch to retail outlets where white mussels realise a price of between R1.00 and R1.50 each.

8. Profile of Medium Term Right Holders

There were seven commercial right-holders located in seven areas along the west coast during the medium-term period. Each right-holder was permitted to harvest 2 000 mussels per month. Each right-holder employed between six to eight harvesters who were paid between R0.15 and R0.80 per mussel, depending on the number of mussels harvested.

9. Applicants for Long Term Rights

The Rights Verification Unit receipted a total of 80 applications for commercial fishing rights in this fishery.

10. Criteria

All the applications were initially scrutinised by the Advisory Committee 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 white mussel sector if the applicant:

- ☞ poses a paper quota risk as defined in the General policy;
- ☞ is not an individual;
- ☞ is not a historically disadvantaged individual
- ☞ breached a provision of the MLRA resulting in the sanctions provided for paragraph 8.1(c) of the white mussel policy;
- ☞ is not a South African citizen;
- ☞ has a family member that all applied for a white mussel right but does not demonstrate that he/she has a separate white mussel harvesting business from the family member;
- ☞ was 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;
- ☞ indicated that he or she will not be personally involved in the harvesting of the resource during the harvesting season.

The delegated authority then had regard to the balancing criteria stipulated in the White Mussel sector policy, namely transformation, investment, harvesting performance, reliance, local economic development and compliance. These criteria were interpreted to require the delegated authority to have regard to the following, more specific factors:

- ☞ the race and gender of the applicant;
- ☞ ability to reach the harvesting area;
- ☞ likelihood of personal involvement, having regard amongst other things, to the age of the applicant;
- ☞ knowledge and skill to harvest the resource and any form of historical involvement;

- ☞ distance from applicant's place of residence to harvesting area;
- ☞ compliance;
- ☞ investment; and
- ☞ likelihood that applicant will be reliant on the harvesting of white mussels for a significant portion of his or her income.

No specific number of "points" or "weightings" was assigned to the criteria, as was done in other sectors. Instead, the delegated authority selected the best applicant for each zone by taking into account the balancing criteria, as interpreted above. The reasons why each successful applicant was selected and each unsuccessful application was not selected, are set out in the spreadsheets annexed and marked "A" and "B". The spreadsheets are also the decisionmaking list of the delegated authority.

11. The Allocation of Rights and policy reasons for decisions

The delegated authority allocated rights to 7 of the 80 applicants. The right holders may employ up to 7 harvesters in addition to themselves. The reasons for the decisions:

- ☞ the white mussel fishery was significantly oversubscribed as many more people applied for rights than were available for allocation;
- ☞ no more than 7 rights could be allocated as insufficient information is available regarding the status of the resource;
- ☞ it accordingly became necessary to select the best applicant for each zone, in the manner described above and in the attached spreadsheet.

12. Permit Conditions for this Fishery

The White Mussel fishery 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 (Marine), (*the Chief Director*) will design permit conditions to ensure that this fishery is sustainably managed.

Ms Gloria Sikiti

Delegated Authority: White Mussel Fishery

13 May 2006

