



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT

POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE HAKE DEEP-SEA TRAWL
FISHERY: 2005

THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the hake deep-sea trawl fishery is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). This policy must be read with the General Policy on the Allocation and Management of Long-Term Commercial Fishing Rights: 2005 ("the General Fisheries Policy" or the "General Policy").

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial hake deep-sea trawl fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this policy. A Hake Deep-sea Trawl 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 intends to delegate the section 18 power to allocate hake deep-sea trawl commercial fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Sector profile

Commencing in the 1890's, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa's most important fishery and, for the last decade, it has accounted for approximately one half of the wealth generated from commercial fisheries. In the 1960's foreign distant water fleets moved into the Southeast Atlantic, leading to substantial over-exploitation of demersal fish stocks off South Africa and Namibia. The International Commission for the Southeast Atlantic Fisheries ("ICSEAF") was established in 1972 in an attempt to control the rapidly escalating fishery. But it was only the declaration of the 200nm Exclusive Economic Zone in

1978 and subsequent exclusion of foreign fleets that enabled South Africa to reclaim its fish resources and begin to rebuild the demersal resources.

Until 1978 the demersal fishery was largely unregulated and participants were not restricted by fishing limits. An annual total allowable catch ("TAC") was introduced in 1978 and individual quotas were introduced the following year. The fishery was also formally separated into deep-sea and inshore sectors. The Deep-sea Trawl allocation of the global hake TAC has remained remarkably stable, and between 1978 and 2004 it fluctuated between the levels of 140 000 tons (1979) and 133 000 tons (2004). The two species of Cape hakes contribute 80-90% to trawl catches made on the West Coast (mainly deep-water hake) and 60-80% to trawl catches made on the South Coast (mainly shallow-water hake). The balance is made up of various by-catch species many of which are utilised, and on average just over 90% of the catch is retained. The hake deep-sea trawling grounds are widespread on the Cape west coast in waters deeper than 200 metres. On the Cape south coast hake deep-sea trawlers may not fish in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast, and trawling is focused primarily on two fishing grounds.

The Department manages the hake deep-sea trawl fishery as part of a "hake collective". In terms of the MLRA a "global" TAC for hakes (both species combined) is set annually by the Minister of Environmental Affairs and Tourism. Of the global hake TAC a reserve to cover bycatch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing is set aside prior to distribution among the hake fishing sectors. Currently the global hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake lone line and hake handline fishery sectors without regard to the hake species split in the respective fishery sectors. In terms of that arrangement, 83% is allocated to deep-sea trawl, 6% to inshore trawl and 10% is shared between hake long line and hake handline. However, a sectoral allocation procedure that takes cognisance of the species taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species.

The hake deep-sea trawl fishery sustains about 8 800 direct jobs along South Africa's west and south east Cape coasts. Of these jobs, 90% are held by persons from historically disadvantaged communities, while 40% are held by women. Working conditions in the hake deep-sea trawl industry are considered to be better than those that prevail in most other

fisheries. The majority of employees are employed on a full-time, year-round basis, with fixed salaries and employment benefits. The average annual income of crew (including skippers) is R63 000 per annum. Certain of the larger deep-sea trawl fishing companies are registered with the "Proudly South African" campaign.

The hake deep-sea trawl fishery is an extremely capital intensive fishery. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure. The total value of assets in the fishery is estimated to be approximately R2,2 billion. The market value of the landed catch is worth approximately R2 billion annually at current market prices. Although vessels as small as 30 metres in length operate in the fishery, 66 percent of deep-sea trawlers are between 45 metres and 50 metres in length. Fishing trips vary from less than a week to more than 30 days.

3. The medium-term rights allocation process

In 1992, the five largest companies in the fishery held 92 percent of the TAC. In 2004, the five largest companies shared less than 75 percent of the hake resource. In 1992 the smallest quota was 50 tons and the largest was 53 000 tons. Ten years later, the smallest quota was 336 tons and the largest was 45 000 tons. The gap between the smallest and the largest allocations has been closing.

The "internal" transformation of the traditional companies, and the entry of black-owned and managed companies since 1992 has resulted in a significantly improved transformation profile in this fishery. The medium-term rights allocation records show that:

- 74 percent of the current participants are black-owned and managed;
- 42 percent of right-holders are small- and medium-sized enterprises;
- 25 percent of the TAC is held by black-owned companies (in 1992, this was zero percent).

4. Over-arching sectoral objectives

The South African hake deep-sea trawl fishery is the only hake fishery in the world to have been awarded the prestigious *Marine Stewardship Council* certificate (www.msc.org). The

MSC certification is a stamp of approval that indicates that the fish products originate from a sustainable and responsibly managed fishery.

In order to maintain and develop the global image of the South African hake deep-sea trawl fishery, the allocation of commercial fishing rights will be informed by South Africa's domestic, regional and international obligations. Among these obligations is the need to ensure the long-term sustainable utilisation of hake stocks and to manage all known impacts of trawling on the marine ecosystem. This includes measures to manage, prevent and reduce by-catch.

Other, equally important, over-arching objectives for allocating long-term fishing rights in this fishery are to:

- Notably improve the transformation profile of the hake deep-sea trawl fishery by increasing black ownership of the TAC and to redistribute the TAC so as to affirm right holders with smaller allocations in this fishery that are transformed and have performed well;
- Create an environment that attracts investment and stimulates job creation; and
- Support the economic viability and environmental sustainability of the fishery.

5. Duration

Having regard to –

- the transformation profile of the fishery;
- the capital intensity of the fishery;
- the fact that part of the deep-sea trawl fleet is ageing and requires replacement;
- the need to maintain the economic stability and increase the international competitiveness of the fishery;
- the fact that this fishery is MSC certified; and
- the fact that the deep-water hake resource is well managed in terms of reliable and current data,

commercial rights will be allocated for a period of 15 years (01 January 2006 to 31 December 2020). The Department will regularly evaluate right holders against predetermined performance criteria (see further paragraph 12 below).

6. New Entrants

The hake deep-sea trawl fishery is presently over-subscribed with 53 right-holders. The current levels of catch have been reviewed and a conservative management plan has been implemented over the past three years. The TAC has been reduced and further reductions may be required in the near future. New entrants may be admitted but the total number of participants in this fishery will not be increased.

7. Evaluation Criteria

All applications will be screened in terms of a set of "exclusionary criteria". New entrant applicants and previous right-holder applicants will thereafter be separately assessed in terms of a set of weighted "comparative balancing criteria". A cut-off score or rank will then be determined in order to select the successful applicants. A proportion of the TAC will then be allocated to each successful applicant in terms of a set of "quantum criteria".

7.1 Exclusionary Criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of the Applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.

- (b) **Compliance:** Right-holders, including their members, directors or controlling shareholders that have been convicted of an offence in terms of the MLRA will not be allocated a hake deep-sea trawl right. This does not include the payment of an admission of guilt fine. Right-holder applicants, including their members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 21 of 1998 or the MLRA, will also not be allocated a hake deep-sea trawl fishing right.

Decisions may be reserved on applications from right-holders that are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies or will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

- (c) **Paper Quotas:** Paper quotas, as defined in the General Policy, will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (see further paragraph 8 below for the description of a suitable vessel).

7.2 Comparative Balancing Criteria

Right-holder applicants and potential new entrants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in

the General Policy for further detail. This applies in particular to the *“transformation”* criterion.

(a) Transformation

One of the objectives during the process of allocating long-term fishing rights in this fishery is to improve on the present level of transformation. As set out in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the Fishery

As far as right-holder applicants are concerned, the delegated authority will specifically consider:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered. Right-holder applicants will not be rewarded for having concluded conditional vessel purchase agreements.

- Investments in processing and marketing. In this regard, the delegated authority may reward right-holder applicants that have invested in hake processing factories and marketing activities.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to participate in the hake deep-sea trawl fishery.

(c) Performance

Applicants that without good reason over- or under-caught (by more than 10 percent) over the medium-term period will be penalised. Financial performance will be measured as indicated in the General Fisheries policy.

(d) Value-Adding and Enterprise Development

The delegated authority may have regard to enterprise development and to the ability of applicants to add value to hake through processing.

(e) Jobs

The hake deep-sea trawl fishery provides about 8 800 jobs. Salaries average R63 000 annually for sea-going employees.

Job creation and increases in jobs as a result of the allocation of medium term fishing rights will be taken into account, and in particular, applicants that have provided their employees with –

- Full time employment;
- Medical aid and pension; and
- Safe working conditions.

Jobs created per tonnage fish allocated during the medium-term rights allocation process will be assessed.

(f) By-catch

The volume of by-catch landed by participants in the hake deep-sea trawl fishery remains of concern to the Department. The targeting of high value by-catch species such as kingklip (*Genypterus capensis*) and monkfish (*Lophius vomerinus*), is of particular concern as assessments indicate that present catch levels for both species are not sustainable. Kingklip abundance on the south coast is particularly low.

The Department has determined the maximum annual by-catch allowances for kingklip to be 3 000 tons and for monk to be 7 000 tons. These by-catch allowances shall apply to the hake fishery as a whole. Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or, if new entrant applicants, would invest in to ensure adherence with the above by-catch limitations. The delegated authority may also have regard to what measures have been put in place or will be invested in to reduce snoek (*Thyrsites atun*) by-catches.

(g) Environmentally sustainable practices

The practice of trawling is known to cause damage to sea beds. To date there is no conclusive data indicating the extent of the damage caused. The delegated authority, in applying the precautionary management principle, will take into account whether an applicant has or intends to –

- reduce damage to sea beds; and
- be more energy and fuel efficient (also applicable to processing factories).

(h) Local Economic Development

The delegated authority may take into account whether the applicants, particularly smaller right-holders and new entrant applicants, have elected to land their catches and have them processed in centres outside of the large metropolitan areas such as

Port Elizabeth and Cape Town. If the delegated positively scores these applicants, this must not result in penalising the larger hake deep-sea trawl right-holders that have made substantial investments in processing and marketing facilities in Cape Town and Port Elizabeth.

(i) Non-payment of fish levies

Right-holder applicants will be penalised if their levies payable to the Department are outstanding for a period longer than 60 days at the date of application.

(j) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

7.3 Quantum criteria

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in this fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum.

Firstly, the allocation of quantum to successful medium term right holder applicants will be determined with reference to the quantum held by right holders in 2005.

Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation and performance. These criteria must be designed in a

manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

8. Suitable Vessels

A suitable hake deep-sea trawl fishing vessel is a vessel that is –

- Registered by SAMSA as having a minimum registered length of approximately 30m;
- Is geared to fish using the trawling method; and
- Is fitted with a functioning vessel monitoring system.

9. Multi-Sector Involvement

Right-holders in the hake deep-sea trawl fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the hake deep-sea trawl fishery (including their members, controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, including traditional line fish.

10. Application fees and levies

The fees for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 January 2006 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

11. Management measures

The management measures discussed below reflect a number of the Department's principal post-right allocation management intentions for this fishery.

11.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and associated land-based activities impact on the broader marine environment. This part of the hake deep-sea trawl fishing policy does not attempt to provide a policy statement on EAF in the hake deep-sea trawl fishery. The EAF in the hake deep-sea trawl fishery will be detailed further in the Fishery Management Manual for the hake deep-sea trawl fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

11.2 Consolidation of participants

After the allocation of 15 year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;
or
- Smaller right-holders opt to consolidate their business operations.

Consolidation of right-holders is however subject to the Department's approach to monopolies (see paragraph 11.5 below).

11.3 Fisheries management areas and marine protected areas

The hake deep-sea trawl fishery targets two types of hakes along the west, south and south east coasts of the Cape. Should the proposed Namaqualand Marine Protected

Area be designated, the harvesting of hake would then effectively be separated into three distinct areas as trawling activities along the west coast would be split north and south of the MPA.

The Department also intends to reduce the sharing of fishing grounds by hake trawlers and hake longliners. Section 15 of the MLRA makes provision for the declaration of fisheries management areas. The Department will consider declaring such management areas in an attempt to address the potential user conflict between longliners and trawlers.

11.4 Vessels and fishing effort

There are presently 100 hake deep-sea trawl fishing vessels that operate in South African waters. The majority are older vessels requiring replacement. The upgrading of the fleet may result in an increase in the fishing effort. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 Monopolies

While the Department will encourage the consolidation of right-holders in this fishery, the Department is opposed to monopolies which may operate to the detriment of smaller right-holders. The Department is concerned, in particular, that the smaller right-holders in the fishery are not able to fully realise the value of their allocations due to their size. The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control but will monitor whether any large right-holders act in a manner contrary to fair competition practices.

11.6 TAC ratios – trawl : line

The current TAC ratio of trawl : line will by and large be maintained. The ratio will however be reviewed once further data become available on the relative impacts of trawling and long lining.

12. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every three years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels, factories and gear;
- sustainable utilisation, and in particular by-catch mitigation and reduction and the biological and ecological impacts of trawling;
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

13. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.