

DRAFT



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 DRAFT POLICY MUST BE READ WITH THE DRAFT**  
**GENERAL POLICY ON THE ALLOCATION AND MANAGEMENT OF**  
**LONG-TERM COMMERCIAL FISHING RIGHTS: 2005 (available at**  
**[www.mcm-deat.gov.za](http://www.mcm-deat.gov.za))**

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## 1. Introduction

This is a draft policy on the allocation and management of commercial fishing rights in the hake deep-sea trawl fishery issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“*the Department*”) for public comment. This draft policy must be read with the Draft General Policy on the Allocation and Management of Long-Term Commercial Fishing Rights: 2005 (“*the General Fisheries Policy*”). Interested and affected parties may submit written comment to the Department by 4 April 2005. Comments submitted after this date will not be considered. Comments shall be submitted as follows:

<b>By Fax:</b> Fax Number: (021) 670-1782 Attention: The Deputy Director-General Hake Deep Sea Trawl Policy Comments	<b>By Mail:</b> Attention: Mr Horst Kleinschmidt The Deputy Director-General The Department of Environmental Affairs and Tourism P.O Box 44963 Claremont 7735 Hake Deep Sea Trawl Policy Comments	<b>By E-mail:</b> <a href="mailto:RVU@deloitte.co.za">RVU@deloitte.co.za</a> Attention: The Deputy Director-General Hake Deep Sea Trawl Policy Comments
		<b>By Hand</b> Attention: The Deputy Director-General The Rights Verification Unit 11 Landsdown Road Claremont Hake Deep Sea Trawl Policy Comments

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 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 draft 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 of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate hake deep-sea trawl commercial fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

## 2. Sector Profile

Commencing in 1890, the deep-sea trawl fishery is South Africa's most important and financially lucrative fishery. Until 1978 this fishery was largely unregulated and participants were not restricted to any maximum fishing limits. Since 1978 the hake trawl fishery has been managed in terms of an annual total allowable catch ("TAC") that has remained remarkably stable. Between 1978 and 2004 the TAC fluctuated between the levels of 140 000 tons (1979) and 133 000 tons (2004). Ninety percent of all hake trawl catches are made up of deep-water hake. The remaining ten percent are shallow-water hake and by-catch of kingklip, monk and other species. The hake deep-sea trawling grounds are located on the Cape west and south coasts. Trawling is focused primarily on three fishing grounds located at depths in excess of 110 metres (at least 20 miles offshore).

The Department manages the hake deep-sea trawl fishery as part of a "*hake collective*". In terms of the MLRA a "*global*" TAC for all hakes is set annually by the Minister of Environmental Affairs and Tourism. Of the global TAC, the hake deep-sea trawl fishery is allocated 83 percent. The balance is shared between the long-line, handline and inshore trawl fisheries. Until 2004, 1 000 tons was set aside for foreign fishing. This allocation will be discontinued.

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 percent are held by persons from historically disadvantaged communities, while 40 percent are held by women. Working conditions in the hake deep-sea trawl are considered to be better than those that prevail in 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. Many of the larger deep-sea trawl fishing companies are registered with the "**Proudly South African**" campaign, which confirms their commitment to nation building initiatives and , fair labour practices.

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 exceed R700 million. The

market value of the landed catch is worth approximately R1,4 billion annually. 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 controlled 92 percent of the TAC. In 2004, the five largest companies shared less than 75 percent of the hake resource. As importantly, 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 is 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-all 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](http://www.msc.org)). The MSC certification is a stamp of approval that indicates 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. Principal among these obligations is the need to ensure

the long-term sustainable utilisation of hake stocks and to manage all known impacts on the marine ecosystem that is affected by trawling. This includes measures to prevent and reduce by-catch.

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

- Improve the transformation profile of the hake deep-sea trawl fishery;
- Redistribute the TAC among the right-holders in terms of transformation criteria and criteria aimed at rewarding small- and medium-sized enterprises (“SME’s”) that performed in accordance with their permit conditions;
- Exclude medium-term right-holders with weak or non-existent performance records or with no investment or involvement in the fishery;
- 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 number of quality full-time jobs provided;
- the need to maintain the economic stability and increase the international competitiveness of the fishery; and
- the fact that the deep-water hake resource is well managed in terms of reliable and current data,

the Department intends to allocate commercial rights for a period of 15 years (01 January 2006 to 31 December 2020), and subject to review at regular intervals against predetermined performance criteria, including the attainment of agreed transformation goals. (***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.

Although no additional participants would be allowed to enter the hake deep-sea trawl fishery, new entrant applicants will be considered where appropriate. Current right-holders that have not effected the transformation objectives to which they committed themselves in their respective medium-term right applications and that have not invested or become involved in the fishery over the medium-term period may be replaced with a suitable new entrant. New entrant applicants will be granted rights if they –

- are significantly transformed in respect of both ownership and management;
- are not fronts for other companies;
- have immediate access to a suitable vessel(s) and to the capital required to finance a hake deep-sea trawl operation.

## **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 Department 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. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.
  
- (b) **Compliance:** Right-holders, including the directors or controlling shareholders that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine), will not be allocated a hake deep-sea trawl right. Right-holder applicants, including the directors or controlling shareholders, that have had a fishing right cancelled, suspended or revoked in terms of the MLRA will also not be allocated a hake deep-sea trawl fishing right.

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

The Department requires every right-holder to pay a levy on targeted fish landed. A number of right-holders have either not paid levies or have under-reported catches to, *inter alia*, avoid the payment of levies. The former will be penalised in the comparative balancing process as set out below. The latter will be excluded. However, should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding levies (plus interest) 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 definition 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:

### (a) Transformation

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

- The percentage black and women representation at ownership and executive management levels;
- Whether employees are shareholders in the applicant and the extent of their benefits;
- Affirmative procurement;
- The representivity of blacks and women at the various levels of employment below executive management;
- Compliance with the Employment Equity Act 55 of 1998; and
- Corporate social investment.

### (b) Investment in the Fishery

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

- Investments in suitable vessels. In this regard, investment in the form of shareholding will be considered. Right-holder applicants will not be

rewarded for having concluded charter agreements, catching agreements or vessel purchase agreements;

- Investments in processing and marketing infrastructure. In this regard, the Department will reward right-holder applicants that have invested in hake processing factories and marketing initiatives.

As far as new entrant applicants are concerned, the Department will consider what investments have been made in the form of vessels, processing and marketing infrastructure. In addition, new entrant applicants will have to demonstrate whether they have the knowledge, skill and ability to participate in the hake deep-sea trawl fishery.

**(c) Performance**

Right-holder applicants that significantly over- and under-caught (more than 10 percent of their allocations) over the medium-term period will be penalised. Financial performance will be measured as indicated in the General Fisheries policy.

**(d) Value-Adding**

The Department may have regard to the ability of right-holder applicants to add value to hake through processing. New entrant applicants will be required to indicate how they intend to add maximum value to hake through processing.

**(e) Jobs**

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

Applicants that have provided or undertake to provide their employees with –

- Full time employment;
- Medical aid and pension;
- Any other employment benefits; and
- Safe working conditions,

will be positively scored. In the case of right-holder applicants, jobs created per tonnage fish allocated during the medium-term rights allocation process will be assessed and taken into account.

The Department will also have regard to the wage differentials between the highest and lowest paid employees.

**(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 monk (*Lophius vomerinus*), is of particular concern. Present catch rates indicate that catches 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 Department will 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 Department, in applying the precautionary management principle, will positively score those applicants that have been practising or who indicate how their trawling operations will –

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

**(h) Local Economic Development**

The Department will positively score those applicants, particularly smaller right-holders and new entrant applicants that elect to land their catches and have them processed in centres outside of the large metropolitan areas such as Port Elizabeth and Cape Town, but this will 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**

Applicants that failed to comply with their obligations under the Skills Development Act, 97 of 1998, and the Skills Development Levies Act, 9 of 1999, and those that committed minor infringements of the MLRA (i.e. infringements that do not justify their exclusion) will be penalised.

**7.3 Quantum criteria**

In respect of right-holders, the Department will use as a basis the 2005 allocations, add proportionately the TAC of right-holders that were excluded and then apply the following re-distribution mechanisms:

- (a) Transformation pool:** 10 percent of the hake deep-sea trawl TAC will be re-distributed in accordance with transformation scores;
- (b) Performance:** 20 percent of the hake deep-sea trawl TAC will be re-distributed in accordance with the over-all comparative balancing scores achieved by each successful applicant (other than transformation);
- (c) Small and Medium sized enterprises:** 10 percent of the hake deep-sea trawl TAC will be set aside for affirming all those successful applicants that are small- or medium-sized enterprises. Small- and medium-sized entities

applicants are, *inter alia*, entities with an annual turnover that did not exceed R5 million for medium-sized operations and R3 million for small operations.

Any successful new entrant applicant will be allocated the smallest amount allocated to a successful right-holder applicant.

## **8. Suitable Vessels**

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

- Certified 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 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, which are fisheries reserved for fishers reliant on those fish stocks for their income or the majority of their income.

## **10. Application fees and levies**

The application fee for the hake deep-sea trawl fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and

reviews. In this regard the costs incurred during the medium-term process will be considered; and

- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 01 January 2006 will be revised, after consultation with affected and interested parties.

## **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 Monopolisation**

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 : Longline**

The current TAC ratio of trawl : longline will by and large be maintained. The ratio will however be reviewed once further data becomes 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.

### **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 applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.