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**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE SMALL PELAGICS
(ANCHOVY AND SARDINE PURSE-SEINE) 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)**

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1. Introduction

This draft policy on the allocation and management of commercial fishing rights in the small pelagic fishery for anchovy and sardine is issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) for public comment. Interested and affected parties are advised that this 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:

| | | |
|--|--|--|
| By Fax: Fax Number: (021) 670-1782 Attention: The Deputy Director-General Small Pelagics Policy Comments | By Mail: Attention: Mr Horst Kleinschmidt The Deputy Director-General The Department of Environmental Affairs and Tourism P.O Box 44963 Claremont 7735 Small Pelagics Policy Comments | By E-mail: RVU@deloitte.co.za Attention: The Deputy Director-General Small Pelagics Policy Comments |
| | | By Hand Attention: The Deputy Director-General The Rights Verification Unit 11 Landsdown Road Claremont Small Pelagics Policy Comments |

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial small pelagic fishing rights. Many of these considerations are not new. They have been applied by the Department when allocating rights in the past. This policy documents these considerations, but includes a few changes and additions.

Certain post-rights allocation management policies are presented. A small pelagic 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 commercial small pelagic 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.

2. Sector profile

The small pelagic fishery dates back to the late 1940's when a fleet of privately owned purse-seine vessels began targeting sardine and horse mackerel. In 1953 an annual maximum catch limit of 270 000 tons was set but was never enforced. As a result, catches regularly exceeded this figure. By 1961, the maximum limit was repealed. In 1962, more than 410 000 tons of sardine were landed, but by 1966, the catch had dropped to 100 000 tons. The fleet then started targeting anchovy, using nets with a smaller mesh size. In 1987 anchovy catches peaked at 600 000 tons, but catches declined thereafter and in 1996 only 40 000 tons of anchovy were landed. Anchovy and sardine catches have subsequently increased, with landings of both species averaging around 250 000t each over the past five years. The fishery is currently managed in terms of an Operational Management Procedure ("OMP") that sets annual Total Allowable Catches ("TAC") for anchovy and sardine.

In terms of catch volumes, the small pelagic fishery remains the largest in South Africa. It is the second most important in terms of value. This fishery's management procedure is the most complex of the commercial fisheries. Two species are the main targets, namely sardine (*Sardinops sagax*) and anchovy (*Engraulus encrasicolus*), with associated by-catch species being red-eye round herring (*Etrumeus whiteheadii*) and Cape horse-mackerel (*Trachurus trachurus capensis*). Sardine are canned for human consumption while anchovy and most of the by-catch species are reduced to fishmeal, fish oil and fish paste.

Small pelagic targeting occurs inshore, primarily along the Western Cape's west and south coasts (anchovy and sardine) and the Eastern Cape coast (sardine).

The pelagic fleet consists of wooden, GRP and steel hulled purse-seine vessels, ranging in length from 15 metres to 30 metres. The industry employs approximately 7 800 people. Of these, 5 300 are employed on a permanent basis and 2 500 on a seasonal basis. The average

annual income of sea-going workers is R94 000 – the highest in the fishing industry. Ninety-five percent of workers in this fishery are historically disadvantaged persons. The value of fish landed is presently worth approximately R800 million per annum. The market value of the 106 vessels operating in this fishery is more than R600 million (the average vessel is worth R 7 million). The fishery is capital intensive, with right-holders having to invest in vessels and processing and marketing infrastructure, or gain access to such through catching and processing agreements.

3. The medium term rights allocation process

In 1992, historically disadvantaged persons controlled some approximately seven percent of the small pelagic fishery. The accommodation of new entrants since 1992, has resulted in a narrowing of the gap between the largest and smallest allocations. Over the same period there has been a ten-fold increase in black involvement and ownership in the fishery (from seven percent to 73 percent). In 2001 and 2002, the Department allocated 113 medium-term (four-year) commercial small pelagic fishing rights. Of these:

- 73 percent were allocated to black-owned entities;
- 75 percent of the TAC is controlled by black-owned entities;
- 85 percent of right-holders are small and medium enterprises (SMEs); and
- 50 percent of all vessels in this fishery belong to black-owned entities.

4. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Maintain or improve the transformation profile;
- Create an environment that attracts investment and stimulates job creation;

- Encourage investment in vessels (particularly the replacement of old vessels) and processing and marketing infrastructure;
- Encourage value-adding by development of new products, particularly products for human consumption;
- Reduce avoidable by-catch; and
- Promote the economic viability and environmental sustainability of the fishery.

The Department will not allocate commercial rights for the sole purpose of utilising fish for bait.

5. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the fact that the current purse-seine fleet is old and requires replacement;
- the high number of quality permanent jobs provided; and
- the need to maintain the economic stability that currently prevails in the fishery,

The Department will allocate commercial rights for a period not exceeding 12 years (01 January 2006 to 31 December 2018). Every right-holder will, however, be tested at regular intervals against predetermined performance criteria.

The Department has decided not to allocate rights for the maximum period of 15 years due to concerns about over-fishing and under-reporting of catches by right-holders. These concerns are currently the subject of an investigation.

6. New entrants

Given the current abundance of anchovy and sardine, together with the inherent variability of stocks of small pelagic fish, it is very likely that the abundance of either or both species will fall substantially in the near future. A substantial decline in the TAC and effort in this fishery is predicted. In addition, this is a high volume, low margin fishery. This means that financially viable long-term allocations need to be substantial.

The Department therefore considers that there is no room for the introduction of additional effort (more than the current 113 right-holders utilising 106 vessels). Existing participants may, however, be replaced in the rights allocation process. New entrant applicants will be granted rights if they –

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

7. Evaluation criteria

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter assessed in terms of a weighted set of “*comparative balancing criteria*”. A cut-off score will then be determined to select the successful applicants. Rights will be allocated separately for the anchovy and sardine fisheries and applicants may apply for a right in each of these fisheries. A percentage 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) 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 small pelagic fishing right. Right-holder applicants, including the directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA will also not be allocated a small pelagic fishing right.

Right-holders, including their directors or controlling shareholders, who are currently being investigated for breaches of the MLRA whether criminal or administrative, will be not allocated a small pelagic fishing right before the conclusion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. A number of right-holders have either not paid their levies or have under-reported catches to, *inter alia*, avoid the payment of levies. The former (non-payment of levies owed to the Department) will be penalised in the comparative balancing process as set out below. The latter will be excluded. However, should such an applicant still qualify for a right, a fishing permit will not be issued until the total amount of outstanding levies (plus interest) has 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 paragraph 8 below for the definition of a suitable vessel*).

7.2 **Comparative balancing criteria**

Right-holder applicants and new entrant applicants will be evaluated in terms of the following balancing criteria, which will be weighted, to assess the strength of each application:

(a) **Transformation:**

Currently, 73 percent of right-holders in this fishery are black-owned. These right-holders collectively control 75 percent of the TAC. Small- and medium-sized enterprises make up 85 percent of right-holders.

The Department's objective during the allocation of long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage of 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 vessels suitable for the harvesting of small pelagic fish. In this regard, investment in the form of a shareholding will be considered;
- Investments in processing and marketing infrastructure.

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 fish for small pelagics.

(c) Performance

Right-holder applicants that significantly over- or under-caught (by more than 10 percent) will be penalised. Financial performance will be measured, as indicated in the General Fisheries policy.

(d) By-catch and dumping

The Department is concerned about illegal, directed purse-seining of linefish (yellowtail, white steenbras and kob), and also the exceeding of the precautionary upper catch limit for juvenile horse-mackerel. Fishery

interactions with seals are another concern. The unintentional catching of dolphins in nets must be avoided.

The Department will seek to reward those right-holder applicants that have invested in and implemented measures to reduce the capture of by-catch species and to limit interference with marine mammals.

The dumping of fish is prohibited and right-holders that are found to be dumping fish may not have a right allocated. Alternatively, if they are allocated a right, the right may be revoked in terms of section 28 of the MLRA.

(e) Value-adding

The Department may consider the ability of applicants to add value to small pelagic fish for local and international markets. The Department will consider, in particular, whether applicants have invested in or facilitated, directly or indirectly, the development of products for the human consumption of anchovy and sardine.

(e) Local economic development

There is a need for investment and job creation in many of South Africa's smaller coastal towns. The Department will prefer those applicants that elect to land their catches and have them processed in harbour facilities other than Cape Town and Saldanha. However, larger right-holders in the small pelagic fishery that have invested in facilities in Cape Town and Saldanha will not be penalised.

(f) Jobs

The small pelagic fishery provides approximately 7 800 jobs. Salaries of sea-going personnel average R94 000 annually – the highest in the fishing industry. The majority of workers are employed on a full-time basis, some with benefits such as medical aid and pension.

The Department will prefer those applicants that have provided their employees with –

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

In the case of right-holder applicants, jobs created per ton of 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.

(g) Non-payment of fish levies

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days.

(h) 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 (ie infringements which do not justify their exclusion) will be penalised.

7.3. *Quantum criteria*

The fishery is regulated in terms of a Total Allowable Catch (“TAC”). In a recent judgment, the Supreme Court of Appeal held that the methodology used to allocate quantum for sardine and anchovy to right-holders must be revised. This quantum formula was revised for the 2005 fishing season. The Department will allocate long-term small pelagic rights separately for each species and applicants may apply for a right in each fishery. This means that a right-holder applicant for small pelagic fish will be required to specify the quantum of sardine and/or anchovy applied for. The amount allocated will be expressed separately for anchovy and sardine, as a percentage of the TAC for that species.

In respect of right-holders, the Department will use as a base the 2005 allocations, add to that the proportion of TAC of existing right-holders that were unsuccessful or that did not apply, and then apply the following redistribution mechanisms:

- (a) **Transformation pool:** Ten percent of the small pelagic TAC for each species will be redistributed in accordance with transformation scores;
- (b) **Small- and medium-sized enterprises:** Ten percent of the small pelagic TAC for each species will be set aside for redistribution to those successful applicants that are small- or medium-sized enterprises. Small- and medium-sized applicants are considered to be those entities whose annual turnover does not exceed R5 million for medium-size operations and R3 million for small operations;
- (c) **Vessel owners:** Fifteen percent of the small pelagic TAC for each species will be set aside for redistribution to those small and medium-sized enterprises that invested (100 percent) and paid up more than 50 percent of their own small pelagic fishing vessels prior to 30 January 2005;
- (d) **Value-adding:** Fifteen percent of the small pelagic TAC for each species will be set aside for redistribution to those successful applicants that have invested in or facilitated, directly or indirectly, the development of products for the human

consumption of TAC. The scores of successful applicants for value-adding will be used to re-distribute the TAC.

Any new entrant applicant will be allocated an amount equivalent to the lowest of the successful previous right-holder applicants. Where the lowest amount allocated was zero (for either sardine or anchovy), the Department will then allocate the second lowest amount.

8. Suitable vessels

A suitable vessel in the small pelagic fishery is a vessel that:

- has a maximum SAMSA certified length of approximately 30 m;
- has a functioning vessel monitoring system;
- is geared for purse-seining; and
- is not detained or has not been confiscated under the MLRA.

9. Multi-sector involvement

Right-holders in the small pelagic fishery are not precluded from holding rights in any fishery in the Cluster D and Cluster C fisheries. Right-holders in the small pelagic 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.

10. Application fees and levies

The application fee for the small pelagic fishery will be set having regard to:

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

incurred during the medium-term process will be considered as a guide 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 set out below are a number of the Department's principal post-right allocation management intentions for the small pelagic 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 various land-based activities impact on the broader marine environment. This part of the small pelagic fishery policy does not attempt to provide a policy statement on EAF in the fishery. The EAF in the small pelagic fishery will be detailed further in the Fishery Management Manual for this 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*

Following the allocation of 12-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.

11.3 *Red-eye round herring directed fishery*

Although the small pelagic fishery is focused on anchovy and sardine utilisation, red-eye round herring is also targeted, particularly early in the year. There is evidence that round herring is substantially under-utilised. The Department wishes to generate further revenue and create more jobs by encouraging the better utilisation of this species. To this end the Department is investigating the possibility of creating a managed fishery for this species. The Department reserves the right to introduce such a fishery at any time in the future after consultation with right-holders and other interested parties.

11.4 *Vessels and fishing effort*

There are presently 106 small pelagic fishing vessels that operate in South African waters. As many right-holders do not own the vessels they use and as vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation long-term fishing rights. The Department considers the current effort levels in the fishery to be optimal. Right-holders will not be permitted to introduce vessels capable of expending effort that is 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, it is opposed to monopolies that may operate to the detriment of smaller right-holders.

11.6 Introduction of a TAE

Under-reporting of catches has resulted in significant administrative and financial burdens for the Department and constitutes a risk to the proper management of the resource. The Department may consider including a TAE limitation as a management tool for this fishery, and will consult right-holders at a later date on the introduction of this management procedure.

12. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the 12 year period. It is envisaged that the first set of performance measuring exercises will take place after two years and thereafter every two 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 and gear;
- sustainable utilisation, and in particular by-catch mitigation and measuring the ecological impacts of purse seining;
- 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 in 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.