
GENERAL NOTICE

NOTICE 103 OF 2009

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

MARINE LIVING RESOURCES ACT, 1998 (Act No. 18 of 1998)

INVITATION TO APPLY FOR RIGHTS TO UNDERTAKE COMMERCIAL FISHING OF LARGE PELAGIC (TUNA AND SWORDFISH LONGLINE) IN TERMS SECTION 18 OF THE MARINE LIVING RESOURCES ACT, 1998 (ACT NO. 18 OF 1998)

The Minister of Environmental Affairs and Tourism hereby invites applications for rights to undertake commercial fishing of Large Pelagic (Tuna and Swordfish) by Longline.

The fishing rights will be allocated in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998). The following schedule is also published herewith:

1. Schedule A: The Policy for the Management and Allocation of Commercial Fishing Rights in the Large Pelagic (Tuna and Swordfish Longline) fishery;

The registration and application form distribution process will commence on Monday 9 February 2009 at the Customer Service Centre of the offices of the Department of Environmental Affairs and Tourism; Branch Marine and Coastal Management, Martin Hammerschlag Way, Foretrust Building, Foreshore, Cape Town. The registration and application distribution process will be open between **8h30 and 16h00 from Monday 9 February 2009 to Wednesday 11 February 2009**.

Applications for rights must be submitted on **Monday 9 March 2009 (between 8h30 and 16h00)** or **Tuesday 10 March 2009 (between 8h30 and 16h00)** at the Department's Customer Service Centre.

Applicants will be required to pay an application fee of R7000.00 as determined by the Minister in consultation with the Minister of Finance in terms of section 25(2) of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).

IN THE CASE OF INCONSISTENCY BETWEEN THE ENGLISH, AFRIKAANS, ISIXHOSA AND ISIZULU TEXTS OF ANY POLICY, FORM OR OTHER DOCUMENT, THE ENGLISH TEXT PREVAILS.



environment
& tourism

Department:
Environmental Affairs and Tourism
REPUBLIC OF SOUTH AFRICA

**POLICY FOR THE MANAGEMENT AND ALLOCATION OF
COMMERCIAL FISHING RIGHTS IN THE LARGE PELAGIC (TUNA
AND SWORDFISH LONGLINE) FISHERY: 2008**

Website address: www.deat.gov.za

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the large pelagic longline fishery ("the fishery") is issued by the Minister of Environmental Affairs and Tourism ("the Minister").

Large pelagic refers to pelagic sharks and all fish stocks that fall within the management jurisdiction of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the Indian Ocean Tuna Commission (IOTC) and the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).

The purpose of this policy is to set out the considerations that will apply to the allocation of rights in respect of any Total Allowable Effort (TAE) which remains after the 2005 allocation process in this fishery. Furthermore, it is to provide for the consolidation of the tuna, swordfish and pelagic shark longline fisheries.

The Minister intends to delegate the power granted to him under section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA") to allocate the remaining long-term commercial large pelagic fishing rights to an official of the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") in terms of section 79 of the MLRA. This policy document will guide the delegated authority in taking decisions on applications for rights in this fishery.

2. Profile of the Fishery

The participation of South African operators in large pelagic longlining is fairly new. Historically, the harvesting of tuna and swordfish by longline was conducted by Japanese and Taiwanese fleets fishing in South African waters under bilateral licensing agreements. These agreements terminated at the end of January 2003 and the Minister then decided not to renew the international fishing licences.

At that stage there existed only an experimental tuna longline fishery. The objectives for the experimental fishery were to –

- develop a performance history in tuna fishing in order to motivate for country allocations to South Africa by the relevant Regional Fisheries Management Organisations (RFMOs);

- develop local technological and fishing expertise in tuna longlining; and
- collect biological and fisheries data in order to establish a scientific basis for the management of a South African commercial large pelagic fishery.

The experimental fishery demonstrated that South African operators are capable of adequately performing in catching swordfish. However, it also showed that there is a need to develop fishing expertise and a performance history in respect of the harvesting of tunas.

Large pelagic species were also caught in the commercial shark longline fishery, tuna pole fishery, traditional linefish fishery and the recreational sector. The tunas caught by these sectors are mostly longfin (albacore) and yellowfin tuna. The shark longline fishery was restricted in terms of permit conditions to a tuna bycatch of 10% of their total catch (by weight) of the target species. Commercial traditional linefish vessels and recreational fishers are restricted by bag limits.

In 2005 the Department allocated, for the first time, long-term rights (duration 10 years) in the large pelagic (tuna and swordfish) longline fishery. The objectives of the *Policy for the Management of and Allocation of Commercial Fishing Rights in the Large Pelagic (Tuna and Swordfish Longline) Fishery: 2004* were as follows:

- the consolidation of fisheries targeting large pelagic species;
- creating a South African large pelagic longline fishery; and
- establishing a catch performance record and catch database in respect of the fishery.

Consolidation of the tuna, swordfish and pelagic shark longline fisheries was not achieved in the 2005 allocation process. The pelagic shark longline fishery was terminated on 31 December 2005, but nine (9) exemptions were subsequently granted under the MLRA for pelagic shark longline fishing. Of the nine, two (2) exemptions were not renewed, leaving seven (7) current exemption holders in the shark longline fishery.

The total allowable effort for the large pelagic longline fishery allowed the allocation of 20 swordfish rights and 30 tuna rights in 2005. Seventeen (17) rights were allocated in swordfish, with one additional right allocated after a court review. Twenty-six (26) tuna rights were allocated. This leaves two swordfish and four tuna rights unallocated.

3. International Fisheries Management

As a coastal state that has ratified the UN Fish Stocks Agreement, South Africa is obliged to develop and manage a fishery for large pelagic species in co-operation with the relevant RFMOs and in accordance with their existing management and conservation measures. The large pelagic fishery is thus dependent on fishing opportunities from the RFMOs (such as ICCAT, IOTC and CCSBT). In 2007 South Africa's country allocation of swordfish by ICCAT was increased from 1 165 tonnes to 1 200 tonnes, while the southern bluefin tuna country allocation by the CCSBT was decreased from 45 tonnes to 40 tonnes.

4. Purpose and Objectives of this Policy

Of the seven (7) current exemption holders in the shark longline fishery, two were awarded rights in the large pelagics longline fishery in 2005. This leaves five (5) shark longline exemption holders not currently accommodated in the large pelagics longline fishery. If these exemption holders apply and they are not rejected for failing to meet the exclusionary criteria, they will be allocated rights in the new allocation process. The exemption holders will not be required to "compete" with other applicants. Furthermore, exemption holders and all other applicants will be allowed to apply for tuna and swordfish rights on the same application form, indicating their preference. After the applications are received, the delegated authority will endeavour to accommodate as many first choices of the exemption holders as possible, if necessary by motivating for the conversion of available tuna rights into swordfish rights or vice versa.

Pelagic shark catches will be permitted within a prescribed upper precautionary catch limit (UPCL), which shall be incorporated into permit conditions that will include, but will not be limited to, the management of pelagic shark as a bycatch of the large pelagic longline fishery. The targeting of pelagic sharks by exemption holders will be terminated when rights have been allocated in terms of this policy. The targeting of demersal sharks using longlines will be unaffected by this policy and will continue as a separate commercial fishery.

The main purpose of this policy is to achieve the consolidation of the shark longline fishery with the large pelagics fishery and to issue the unallocated rights. As stated, provided that the five (5) exemption holders without large pelagic longline rights qualify in terms of the exclusionary criteria laid down in this policy, they are to be integrated into the fishery. Any remaining rights will be allocated in terms of a competitive process, similar to the one applied

by the Department in the past in respect of the allocation of rights. However, unsuccessful applicants meeting the minimum criteria will not be rejected. They will be ranked and placed on a "reserve" list and will be granted rights as and when rights become available, thereby enabling South Africa to develop a catch performance.

In addition, the purpose of allocating commercial fishing rights in the fishery is to establish an economically and environmentally sustainable South African commercial large pelagic longline fishery, including pelagic sharks caught by longline and to achieve the objectives set out below.

4.1 Improve the quality of transformation in the fishery

Transformation and restructuring of the fishing industry is an overall government objective and it is the intention of this policy to provide the framework for addressing this important imperative.

4.2 A South African Large Pelagic Longline Fishery

A further objective of this policy and the allocation of commercial large pelagic longline fishing rights is the allocation of rights to South African persons. The term "South African person" is defined in section 1 of the MLRA. This policy objective does not preclude South Africans from entering into joint ventures with non-South Africans, provided that if a legal entity is created for purposes of applying for rights, the South African shareholding in the joint venture entity must be at least 51%.

4.3 Catch Performance

Highly migratory species, such as swordfish and tunas are managed by RFMOs. Country allocations are based on various criteria, the most important being the catch history of the country. A key policy objective is to establish a South African catch performance record, particularly for tuna, that would enable South Africa to motivate for a larger share of the country allocations made by RFMOs.

5. Duration of Rights

The rights allocated in terms of this policy will terminate together with rights allocated in the fishery in 2005. In other words, all large pelagic longline-fishing rights will terminate at the end of February 2015. The reasons for selecting this period are:

- (a) the need to further develop a South African catch performance history for large pelagic, particularly for tunas; and
- (b) the high capital investment required for entry into the large pelagic fishery.

6. Evaluation criteria

All applications will be screened in terms of a set of "exclusionary criteria". The current shark longline exemption holders without rights will be allocated rights unless they are rejected in terms of the exclusionary criteria. The other applicants that are not excluded will then be separately assessed in terms of a set of weighted "comparative balancing criteria". A cut-off score or rank will be determined in order to select the successful applicants in respect of this group of applicants.

As stated above, the Department will further not conduct a rights allocation process until the current rights expire. If rights become available before then through revocation or renunciation of rights, the ranking determined in this allocation process will be used to allocate future rights, as and when they become available. A "reserve" list will be drawn up for this purpose.

6.1 Exclusionary criteria

The following exclusionary essential requirements criteria will be applied:

- (a) **Improper lodgement:** An application is improperly lodged if it was received late; if the applicant made no payment or short payment or late payment of the application fee; or if it was lodged in a manner contrary to the instructions, such as by fax, or on a form other than the prescribed application form. The delegated authority and the Minister have no discretion to condone non-compliance with the lodgement requirements.
- (b) **Material defects:** An application is materially defective if the declaration is not signed by the applicant, or if the applicant's declaration was not attested to by a Commissioner of Oaths, or if more than one application was received from the applicant for a fishing right for the same species, or if the applicant provided false information or false documents, or failed to disclose material information, or attempted to influence the Minister or the delegated authority other than in the manner provided for in the General policy during the

application period. The delegated authority and the Minister have no discretion to condone non-compliance with the requirements relating to materially defective applications.

- (c) **Form of the Applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984) and the Companies Act, 1973 (Act No. 61 of 1973). Natural persons (i.e. individuals or sole proprietors) will not be granted rights, but current shark longline exemption holders who hold rights as a natural person, will be entitled to rely on their performance in that capacity, in support of an application by a newly created juristic entity.
- (d) **Compliance:** If an applicant, or its members, directors or controlling shareholders were convicted of a serious infringement of the MLRA, the regulations, permit conditions or other serious fishery related offences, the applicant will not be allocated a large pelagic fishing right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to an applicant if the applicant, or its members, directors or controlling shareholders, had any fishing right cancelled or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act, 1998 (Act No. 21 of 1998) or the MLRA. Decisions may be reserved on applications from applicants that are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.
- (e) **Paper Quotas:** The delegated authority will exclude new entrant applicants who appear to be paper quota risks. For this purpose, the delegated authority will consider an applicant to be a "paper quota risk" if that applicant appears to have no serious intention to share the risk of fully participating in the sector, especially if a danger exists that an applicant has not applied in order to enter the industry but to gain some financial benefit without direct involvement in the main activities associated with exploiting any right that may be granted. In determining whether an applicant poses such a paper quota risk, the applicant's assets and access to capital and its financial and business planning and commitments should be considered. The delegated authority will also exclude as "paper quota risk" applicants considered to be "fronts" for other beneficiaries.

Fronting occurs when, in order to circumvent a policy objective, an application is made through another entity. An example is an application made by an ostensibly transformed entity with the intention that the main benefits will flow to an untransformed entity or individuals that are not black persons.

- (f) **Access to a suitable vessel:** Applicants that do not demonstrate a right of access to a suitable vessel will be excluded (see further paragraph 6.3 below for the description of a suitable vessel).
- (g) **Joint venture applications between South Africans and non-South African operators may be excluded if a foreign-flagged vessel is nominated for the catching of tunas and no letter is submitted from the relevant flag State Fisheries Authority, stating that:**
- all catches of large pelagic species, whether on the high seas or in South Africa's EEZ, should accrue to South Africa for the duration of the charter or joint venture agreement;
 - the vessel has not been engaged in any Illegal, Unreported and Unregulated (IUU) fishing activities, including supporting IUU activities;
 - they have no objection to the management of the vessel being subject to the laws and regulations of South Africa for the duration of the charter or joint venture agreement; and
 - they have no objection to future reflagging of the vessel to be reflected on the South African Ships Register.

6.2 Comparative balancing criteria

Applicants for commercial large pelagic fishing rights will be evaluated in terms of the following comparative balancing criteria, which will be weighted to assess the strength of each application.

(a) Transformation

One of the objectives in this fishery is to improve on the quality of transformation in this sector. Applicants will be assessed on:

- Broad-Based Black Economic Empowerment codes of good practice under the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003). Applicants are required to submit a Broad-Based Black Economic Empowerment verification certificate; or provide the Department with their BEE contributor level as well as a detailed substantiation thereof. Applicants are reminded that a qualifying micro-enterprise (turnover less than R 5 million per annum) is deemed to be a Level 4 contributor unless the enterprise chooses to submit information that indicates that it is higher level

contributor. Applicants wishing to claim the deemed Level 4 contributor status should submit a letter from their auditors or accounting officers demonstrating that their turnover is less than R 5 million in the last financial year.

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior management levels;
- Affirmative procurement;
- Compliance with the Employment Equity Act, 1998 (Act No. 55 of 1998) and the representivity of blacks and women at the various levels and categories of employment;
- Compliance with legislation in respect of skills development and the amounts spent on the training of blacks and participation in learnership programmes;

(b) Prior involvement in, and knowledge of, the large pelagic longline fishery

Applicants will be assessed on their knowledge of and prior involvement in large pelagic longline fishing. This will be done with reference to the information provided in the fishing plans and any experience or prior performance record of large pelagic longlining fishing of natural persons to be employed by or to be associated with the applicant.

(c) Ability to commence with the harvesting of large pelagic

Applicants will be assessed on their ability to commence with the harvesting of large pelagic using longline gear. Preference will be given to applicants who are able to demonstrate that they have a vessel fitted with the requisite equipment and gear and have the skills and financial capacity required to commence with the harvesting of large pelagic immediately upon the allocation of a right.

(d) Investment

Applicants will be assessed in terms of:

- Investments in suitable vessels and gear and relevant equipment. In respect of vessels, investment in the form of shareholding will also be considered. Applicants will not be rewarded for having concluded conditional vessel purchase agreements.

- Investments in fish processing and marketing activities.

6.3 Suitable Vessels

All applicants will have to demonstrate ownership of or a right of access to a vessel with a minimum overall length (LOA) of approximately 24m, preferably with onboard freezing facilities for tuna rights; and a length of approximately 18m for swordfish rights.

Vessels used by the current shark longline exemption holders which do not meet the minimum length (LOA) for tuna will be deemed to be suitable for swordfish targeting only.

Further, regardless of the fish stock being targeted, the nominated vessel must:

- (a) have a functioning INMARSAT C-based vessel monitoring system (VMS) installed; and
- (b) not be a vessel that is listed on any of the RFMO official negative vessel lists.

It is recognised that there is a limited number of suitable South African flagged vessels for the catching of tunas. Experience subsequent to the long-term rights allocation process of 2005 has shown that the reflagging process could be both lengthy and costly. The reflagging process is also dependent on the economic profitability of the tuna fishery, including access to international markets, especially the Japanese sashimi market.

Therefore, foreign-flagged vessels will be considered for tuna longline fishing on the following conditions:

- (a) The vessel may be utilised for a one-year trial period to determine the feasibility of the joint venture and the reflagging process;
- (b) Prior to commencing the second year the right holder must present the Department with a reflagging and skills transfer schedule indicating targets and timelines. The Department will monitor this process very closely and require quarterly reporting on progress made by the right holder;
- (c) The vessel will be required to carry, at the cost of the right holder, observers nominated by the Department on all fishing trips;

- (d) In terms of section 39 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), the right holder must submit a letter from the flag State in terms of paragraph 6.1 (g) above, in support of the application for a foreign vessel licence to be issued by South Africa; and
- (e) Owners and operators must agree and acknowledge in writing that the vessel shall be subject to laws that govern the territory of the Republic of South Africa for the duration of the charter or joint venture agreement.

7. Landing sites

South African-flagged vessels will be permitted to land catches at any of the following harbours:

- Saldanha Bay
- Hout Bay
- Cape Town
- Port Elizabeth
- East London
- Durban; and
- Richards Bay

Right holders that use foreign-flagged vessels will only be allowed to land their catches at the following ports:

- Cape Town
- Port Elizabeth
- Durban; and
- Richards Bay

8. Limitations on Applications

Applicants may apply for both a tuna-directed right and a swordfish-directed right on the same application form and against one application fee, provided that such applicants nominate separate suitable vessels for each fishery.

Applicants will be required to submit one application form for tuna and swordfish on which they will be required to indicate whether they are applying for both tuna and swordfish and their preference (first choice).

9. Application Fee and Levies

The application fee of R 7 000.00 (Seven Thousand Rand) will apply. In addition, the Department will charge levies on all fish landed by right holders. These levies will be published in the Government Gazette and may be reviewed and adjusted from time to time. Levies payable on fish landed by foreign-flagged vessels shall be at a higher rate than for South African-flagged vessels.

10. Performance

Right holders will be required to have fully commenced with the harvesting of both tuna and swordfish within one year after the allocation of a right. The fishing performance of right holders will be monitored periodically and rights allocated may be revoked under section 28 of the MLRA if rights are not adequately utilised. The "reserve" list will then be considered in allocating rights that subsequently become available as a result of revocation of rights.

11. Performance Measuring

The Department will undertake 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 (2) years and thereafter every three (3) 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;

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- sustainable utilisation, and in particular by-catch mitigation and the reduction of the biological and ecological impacts of longlining;
- tuna and swordfish catch performance;
- 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.

12. Management Measures

The regulation of the commercial large pelagic longline fishery will be in terms of permit conditions designed to ensure the fulfilment of the purpose and objectives of this policy and South Africa's obligations in terms of the various management measures of the applicable RFMOs. This includes, but is not limited to the management of pelagic sharks as a bycatch in the large pelagic longline fishery. The following principal regulatory measures will apply to the harvesting of tuna and swordfish in the Atlantic and Indian Oceans.

Atlantic Ocean	Indian Ocean
Swordfish Directed (Tuna bycatch)	Swordfish Directed (Tuna bycatch)
ICCAT swordfish country allocation of 1200t.	No catch limit for swordfish.
No catch limit on tunas, except for southern bluefin where a catch limit will be implemented.	No catch limit on tunas, except for southern bluefin where a catch limit will be implemented. IOTC fleet capacity limitation applies for bigeye.
Olympic system until 50% of swordfish country allocation is reached. Thereafter, industry together with the Department is to manage the remaining allocation.	An Olympic system will be adopted for swordfish as no country allocation applies.
Swordfish directed harvesting will be halted once the ICCAT determined country allocation has been harvested. No further landing of southern bluefin will be permitted once the catch limit has been reached.	No further landing of southern bluefin will be permitted once the catch limit has been reached.
12 nautical mile exclusion limit, up to 20° E, as well as the area known as the "Cape Canyon".	12 nautical mile exclusion limit, from 20° E to the southern KwaZulu-Natal (KZN) / Eastern Cape provincial border. A 20 nautical mile exclusion limit with an additional 4 nautical mile seaward buffer area for the entire KZN province.
Atlantic Ocean	Indian Ocean
Tuna Directed (Swordfish bycatch)	Tuna Directed (Swordfish bycatch)
No country allocations for tuna apply, except 40 t for southern bluefin tuna, which would apply irrespective in which ocean the fish is caught.	No country allocations for tuna apply, except 40 t for southern bluefin tuna, which would apply irrespective in which ocean the fish is caught. IOTC fleet capacity limitation applies for bigeye.
A 15% swordfish bycatch (<i>vis a vis</i> the number of tuna	<ul style="list-style-type: none"> ▪ High Seas: No swordfish bycatch limitation.

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<p>caught) will be permitted for all foreign vessels under joint venture.</p> <p>Swordfish may be targeted on an Olympic system by South African-flagged tuna longline vessels until 50% of the country allocation has been reached. Thereafter, South African-flagged vessels will revert to a 15% swordfish bycatch (<i>vis a vis</i> the number of tuna caught).</p>	<ul style="list-style-type: none"> SA EEZ: A 15% swordfish bycatch (<i>vis a vis</i> the number of tuna caught) will be permitted.
<p>Southern bluefin tuna will be managed through individual apportionment to right holders.</p> <p>No further landing of southern bluefin will be permitted once country allocation has been reached.</p>	<p>Southern bluefin tuna will be managed through individual apportionment to right holders.</p> <p>No further landing of southern bluefin will be permitted once the country allocation has been reached..</p>
<p>12 nautical mile exclusion limit, up to 20° E, as well as the area known as the "Cape Canyon".</p>	<p>12 nautical mile exclusion limit, from 20° E to the southern KwaZulu-Natal (KZN) / Eastern Cape provincial border. A 20 nautical mile exclusion limit with an additional 4 nautical mile seaward buffer area for the entire KZN province.</p>

The above regulatory regime is subject to change should the applicable RFMO set further catch limitations or restrictions on either tuna or swordfish in either ocean.

In addition to the above regulatory controls:

- Right holders will not be allowed to fish in the Atlantic and Indian Ocean on the same trip unless an observer is present;
- Tuna directed right holders using South African-flagged vessels fishing in the Atlantic Ocean will have unrestricted access to swordfish until 50 % of the country allocation has been caught and thereafter the swordfish will be managed as a bycatch with a 15 % bycatch trip limit (*vis a vis* the number of tuna caught) if tuna harvesting is undertaken on the high seas.
- Tuna directed right holders fishing in the Indian Ocean will have unrestricted access to swordfish on the high seas. If the vessel undertakes fishing within the EEZ and on the high seas during the same fishing trip, then the 15 % swordfish bycatch limit will apply.
- Right holders will not be permitted to tranship while at sea. Transhipments in port will only be allowed in the presence of a Fishery Control Officer or monitor subject to a permit being issued for the transhipment.

13. Observers

All foreign-flagged vessels shall be required to carry, at the cost of the right holder, Departmentally approved observers during all fishing trips. South African vessels will be required to carry observers on a percentage of their fishing trips.

14. Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined in consultation with right holders in this fishery and will be subject to revision as and when it may be necessary. Management and conservation measures of RFMO's responsible for tuna and tuna-like species management and conservation, like but not limited to, CCSBT, ICCAT and IOTC will be taken into consideration.
