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**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

## GENERAL NOTICE

### NOTICE 396 OF 2005

## DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

### INVITATION TO COMMENT ON THE DRAFT GENERAL FISHERIES POLICY CONCERNING THE ALLOCATION AND MANAGEMENT OF LONG TERM COMMERCIAL FISHING RIGHTS: 2005

The Minister of Environmental Affairs and Tourism hereby issues for notice and comment a draft fisheries policy on the allocation and management of long term commercial fishing rights. Interested and affected parties are invited to submit written comment on this draft General Fisheries Policy in the manner provided for in this Notice.

The Draft General Fisheries Policy applies to the following fisheries:

- |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>▪ Hake Deep Sea Trawl</li> <li>▪ Hake Inshore Trawl</li> <li>▪ Horse Mackerel</li> <li>▪ Small Pelagics</li> <li>▪ Patagonian Toothfish</li> <li>▪ South Coast Rock Lobster,</li> <li>▪ KwaZulu-Natal Prawn Trawl,</li> <li>▪ Hake Long Line,</li> <li>▪ West Coast Rock Lobster (Off Shore),</li> </ul> | <ul style="list-style-type: none"> <li>▪ Squid,</li> <li>▪ Tuna Handline,</li> <li>▪ Seaweed,</li> <li>▪ Shark Demersal,</li> <li>▪ Handline Hake,</li> <li>▪ West Coast Rock Lobster (Near Shore),</li> <li>▪ Oysters,</li> <li>▪ White Mussels</li> <li>▪ Neffishing.</li> </ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

In addition to this General Fisheries Policy, the Department has published for notice and comment and public discussion, 19 separate fishery policies. The Draft General Policy should be read with the applicable fishery specific policy.

Interested parties may submit written comments to the Department by 17h00 on Monday 4 April 2005 in the following manner:

<p><b>By Fax:</b>          Fax Number: (021) 670-1782          Attention: The Deputy Director-General          General Policy Comments</p>	<p><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          General Policy Comments</p>
<p><b>By E-mail:</b>  <a href="mailto:RVU@deloitte.co.za">RVU@deloitte.co.za</a>          Attention: The Deputy Director-General          General Policy Comments</p>	<p><b>By Hand</b>          Attention: The Deputy Director-General          The Rights Verification Unit          11 Landsdown Road          Claremont          General Policy Comments</p>

Copies of all of the draft policies are also available on the Department's official website [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za). Hard copies may also be collected from the Department's fishery control offices along the coast. More information regarding the Long Term Rights Allocation Process can be obtained from the following helpline: **0861 123 626**

Please note that comments received after the closing date may be disregarded.

Telephonic queries regarding the submission of comments may directed to the Rights Verification Unit at **(021) 670-3669**.



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

**DRAFT GENERAL POLICY ON THE ALLOCATION AND MANAGEMENT OF  
LONG TERM COMMERCIAL FISHING RIGHTS: 2004**

**THIS DRAFT POLICY MUST BE READ WITH THE APPLICABLE FISHERY  
SPECIFIC POLICY (available at [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za))**

This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie document is ook in Afrikaans, isiXhosa en isiZulu beskikbaar  
Qaphela ukuba lencwadi iyafumeneka nangolwimi lwesixhosa

**Important Note:** Cluster C and Cluster D applicants are advised that although it is important to read this General Policy on the Allocation and Management of Long Term Commercial Fishing Rights: 2004, it is not necessary that they read every page of this General Policy. The Department does however encourage Cluster C and Cluster D applicants to read Part B of this General Policy.

Note further, that this policy does not directly apply to Linefish Traditional. Also, applicants for rights in the Handline Hake; West Coast Rock Lobster (near shore); Netfish; Oysters and White Mussel sectors are advised to focus on the Fishery specific policy for the policy considerations that will be applied to the allocation of rights in those sectors. It will be essential for Applicants to study the fishery specific policies before they apply.

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# PART A: INTRODUCTION AND BACKGROUND

## 1. Introduction

This draft ***General Policy on the Allocation and Management of Long Term Commercial Fishing Rights*** is issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department").

This policy will be referred to as the "***General policy***" and it must be read in conjunction with policies that will be referred to as the "***Fishery specific policies, or Sector specific policies***" that will be adopted for each commercial and experimental fishing sector. In the General policy a number of issues are dealt with that are relevant to all the listed fishing sectors. These cross-cutting policies also inform the contents of the Fishery specific policies, which will set out the Department's specific intentions with regard to the allocation of rights in each fishery. Potential applicants and interested parties are urged to read this General policy in conjunction with the applicable Fishery specific policy.

The Department is responsible for managing and allocating commercial fishing rights across a spectrum of commercial fisheries ranging from highly capital-intensive commercial fisheries such as Hake Deep Sea Trawl and South Coast Rock Lobster to more traditional sectors of the industry such as netfishing. Stakeholders in the various fisheries come from very different backgrounds and the Department appreciates that it is not appropriate to engage all of them in the same manner. More particularly, participants in the traditional sectors may find it more useful and easier to comment on the policy only applicable to their sector. The public participation process and the applicable Fishery specific policies have been designed to accommodate this concern. In the more traditional sectors, the Department will seek comments from stakeholders primarily by way of public hearings, where the focus will be on a discussion of the applicable Fishery specific policy. Special effort has been made to ensure that the Department's intentions are clearly explained in these policies, and in an accessible, plain language style.

In addition, the Department endeavours to make available to the public, "***Fishery management manuals***" that will comprise the "***Sector management plans***" that will explain the management procedure and detailed operational management plans for each fishery.

Members of the public and stakeholders are invited to comment on this General policy and the Fishery specific policies. These policies may be changed after the Departmental officials have considered the comments. Final policies will be adopted only after the completion of the public consultation process.

## **2. Application**

This document contains general policy considerations which apply to the allocation of long terms rights in the following fisheries: Hake Deep Sea Trawl, Hake Inshore Trawl, Horse Mackerel, Small Pelagics, Patagonian Toothfish, South Coast Rock Lobster, KwaZulu-Natal Prawn Trawl, Hake Long Line, West Coast Rock Lobster (Off Shore), Squid, Tuna Handline, Seaweed, Shark Demersal, Handline Hake, West Coast Rock Lobster (Near Shore), Oysters, White Mussels and Netfishing. In all this covers 18 commercial fishing sectors (“fisheries”).

The General policy does not apply to –

- ❑ Linefish Traditional. A separate policy will be adopted dealing specifically with linefish traditional
- ❑ Subsistence fishing. A separate policy will be adopted dealing specifically with subsistence fishing, including the subsistence fishing of East Coast Rock Lobster and Abalone in the Eastern Cape;
- ❑ Recreational fishing. A separate policy will be adopted dealing specifically with recreational fishing;
- ❑ Foreign fishing;
- ❑ Fish processing establishments. A separate policy will be adopted dealing specifically with fish processing establishments;
- ❑ Mariculture. A separate policy will be adopted dealing specifically with the regulation and management of mariculture in South Africa; and
- ❑ Non-consumptive marine activities, including boat based cetacean watching, shark cage diving, sport diving and SCUBA diving. Separate policies will be adopted dealing specifically with these non-consumptive marine activities.

## **3. Purpose and Objectives**

The General policy, together with the Fishery specific policies, is intended to serve as a guide for the long-term rights allocation process. The General policy further describes the core functions of the Department which directly support the rights allocation process. The Department also considers it necessary, for the benefit of applicants, to spell out its management objectives for the immediate future, but these may obviously be changed later by the Department if considered necessary or desirable.

## 4. What informs this policy?

The General and Fishery specific policies are informed by South Africa's international legal obligations, non-binding undertakings at international and regional level, and the legislative framework for the allocation of fishing rights.

### 4.1 International obligations pertaining to sustainable resource use

During the **World Summit on Sustainable Development** ("WSSD"), held in Johannesburg during September 2002, countries undertook to maintain or restore fish stocks to levels that can produce the maximum sustainable yield. The goal is to be achieved on an urgent basis for depleted stocks, and if possible, by not later than 2015. Countries also undertook to develop and implement national plans of action. The WSSD identified the need to maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, within and beyond national jurisdictions. The aim is to protect the ecosystem, using an approach that eliminates destructive fishing practices, establishes marine protected areas, and the imposition of and supervision of time and area closures for the protection of nursery grounds during spawning periods. In terms of the *Reykjavik Declaration* of 2001 and Johannesburg Plan of Implementation emanating from the WSSD, South Africa has indeed committed itself to introducing an Ecosystem Approach to Fisheries ("EAF") management by 2010.

The **Food and Agriculture Organisation's 1995 Code on Responsible Fisheries** is a voluntary instrument that recognises that fisheries, including aquaculture, provide a vital source of food, employment, recreation, trade and economic wellbeing for people throughout the world and should therefore be conducted in a responsible manner. The Code sets out principles and international standards of behaviour for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. The Code recognises the nutritional, economic, social, environmental and cultural importance of fisheries. The Code has also led to four International Plans of Action ("IPOAs"). The IPOAs are the IPOA on Capacity; the IPOA to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ("*IUU fishing*"); The IPOA for the reduction of shark by-catches; and the IPOA for the Reduction of the Incidental By-catch of Seabirds. As a state party, South Africa has undertaken and is committed to apply the Code, the four IPOAs and give effect to it if necessary by way of a National Plan of Action, as was done with the adoption of NPOA for reducing incidental by-catch of seabirds and certain species of shark. In an endeavour to implement the IPOA to Prevent, Deter and Eliminate IUU Fishing, monitoring and control of fishing vessels will be strengthened.

***The United Nations Convention on the Law of the Sea, 1982 (“UNCLOS”)*** seeks to establish a legal order for the world's seas and oceans in order to facilitate communication in international waters. It also promotes the peaceful use of the world's seas and oceans, the equitable and efficient utilisation of marine resources, the conservation of marine living resources and the study, protection and preservation of the marine environment.

***The United Nations Fish Stocks Agreement, 1995*** complements UNCLOS by specifying how straddling fish stocks (such as hake) and highly migratory fish stocks (such as tunas) should be exploited and managed.

South Africa is further a party to a number of ***Regional Fishery Management Organisations (“RFMO’s”)*** responsible for the management and conservation of shared fish stocks, including tuna, swordfish and Patagonian toothfish. These include the International Commission for the Conservation of Atlantic Tunas (“*ICCAT*”), the Commission for the Conservation of Southern Bluefin Tunas (“*CCSBT*”), the Indian Ocean Tuna Commission (“*IOTC*”) and the Convention for the Conservation of Antarctic Marine Living Resources (“*CCAMLR*”), the South East Atlantic Fisheries Organisation (“*SEAFO*”) and the Southwest Indian Ocean Fisheries Commission (“*SWIOFC*”).

As a member of the Southern African Development Community (“SADC”), and in particular as a signatory to the ***SADC Protocol on Fisheries***, South Africa is obliged to ensure the sustainable use of shared fish stocks with its SADC neighbours. These shared stocks include hake, pelagics, prawns, linefish and horse mackerel.

#### **4.2 The legislative framework for the allocation of commercial fishing rights**

The transformation of the fishing industry is a constitutional and legal imperative. Transformation is therefore not a matter of political choice or a policy choice. The primary vehicle for the promotion of the transformation of the South African fishing industry is the Marine Living Resources Act 18 of 1998 (the “*MLRA*”). The purpose of the MLRA is, *inter alia*, to provide for the orderly exploitation of marine living resources, and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa. In terms of section 2 of the MLRA, the Minister and any organ of state shall have regard to a number of objectives and principles when exercising any power under the Act.

These are:

- (a) *The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;*
- (b) *the need to conserve marine living resources for both present and future generations;*
- (c) *the need to apply precautionary approaches in respect of the management and development of marine living resources;*
- (d) *the need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;*
- (e) *the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;*
- (f) *the need to preserve marine biodiversity;*
- (g) *the need to minimise marine pollution;*
- (h) *the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act;*
- (i) *any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law; and*
- (j) *the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.*

The rights allocation process has been the primary mechanism used by the government to further the transformation process, and has also been used to give effect to the other principles and objectives set out in section 2 of the MLRA. In order to commercially exploit the resource, a person or entity needs to apply and be granted a right under the MLRA. Section 18 provides as follows:

- (1) *No person shall undertake commercial fishing or subsistence fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.*

In order to exercise a right granted under section 18, a person must be granted a permit under section 13 of the MLRA, which provides:

- (1) *No person shall exercise any right granted in terms of section 18 or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity.*

Apart from the Constitution and the MLRA, the General Regulations, as promulgated in GN 1111 in Government Gazette 19205 of 2 September 1998 (as amended) are relevant, *inter alia* for setting the procedure adopted for appeals, and by regulating closed seasons and closed areas, the use of gear and species restrictions. The Regulations further deal with the landing, transportation, delivery, receipt, processing and marketing of fish and fish products, compliance control, the leaving of objects in the sea, fishing harbour regulations and offences and penalties.

The MLRA and its Regulations were interpreted in a number of court decisions concerning the medium term rights allocation process, some setting important legal precedents. These decisions were taken into consideration with the design of the long term allocation process.

The National Environmental Management Act 107 of 1998 (“NEMA”) provides the framework for the adoption of environmental management and policy. To the extent that an action of an organ of state significantly affects the environment the principles set out in section 2 of NEMA apply.

## **5. Departmental Functions and Delegations**

### **5.1 Delegation of Powers**

The MLRA confers powers on the Minister of Environmental Affairs and Tourism (“*the Minister*”) and the Director-General (“*the DG*”). However, the Minister and the DG have delegated many of their powers to officials in the Department, including the powers under section 13 (granting of permits), section 18 (granting of commercial fishing rights), section 28 (cancelling, revoking or suspending fishing rights / permits), section 81 (granting and cancelling of exemptions) and section 83 (permitting experiments and scientific investigations).

A complete set of all current delegations is available from the Department or may be viewed at [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za).

### **5.2 Core departmental functions supporting rights allocation**

#### **5.2.1 Fisheries Research**

This function is carried out by the Chief Directorate: Research, Antarctica and Islands. The principle purpose of scientific research is to ensure the ecologically sustainable utilisation of fish stocks and the conservation of marine ecosystems, including species which are not targeted for exploitation such as seals and seabirds.

In carrying out scientific research the Chief Directorate subscribes to Principle 15 of the Rio Declaration of the UN Conference on Environment and Development (Rio de Janeiro, 1992), which states that *“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall be not used as a reason for postponing cost-effective measures to prevent environmental degradation.”*

A precautionary approach to all fisheries, regardless of their jurisdictional nature is supported. Most problems result from a lack of caution in management regimes when faced with high levels of uncertainty. Because uncertainty affects all elements of the fishery system in varying degrees, some degree of precaution is required at all levels of the system, including in research.

Scientific research is aimed at understanding the dynamics of fish stocks and informs the Total Allowable Catch (“TAC”) or the Total Applied Effort (“TAE”) or a combination thereof, which is determined in terms of section 14 of the MLRA. The scientific working groups are responsible for interpreting the stock analyses carried out on the different fish stocks and this interpretation ultimately informs the determination of the TAC/TAE. Scientific research further informs the designation of marine protected areas, the designation of fisheries management areas, the determination of closed areas, closed seasons, prohibited fishing times, minimum species size, vessel and gear restrictions and fishing methods, including by-catch prevention methods. Scientific research is also conducted in order to develop new fisheries, in line with the Department’s *New Fisheries Policy*.

Scientific working groups currently function in respect of each fishery sector. Each working group is made up of departmental scientists as well as external experts from other marine science institutions, such as institutions of higher learning. Most sectors are scientifically managed in terms of an Operational Management Procedure (“OMP”). Others are managed by means of annual assessments.

### **5.2.2 Fisheries Management**

The Chief Directorate: Fisheries and Coastal Management has two primary functions. Firstly, its function is to facilitate and regulate the sustainable and equitable development as well as the utilisation of marine living resources through the administration of fishing rights, permits, exemptions and licenses. Secondly, its function is to optimise the sustainable use of South Africa’s coastal resources, by controlling human impacts on the environment (other than commercial fishing), such as coastal development, subsistence fishing, recreational fishing marine pollution and marine eco-tourism. In order to perform these functions, the Chief Directorate is

supported by specialists in fisheries economics, fisheries management, oil and marine pollution management and coastal zone management.

### **5.2.3 Fisheries and Coastal Compliance**

This function is performed by the Chief Directorate: Fisheries and Coastal Compliance. The Department currently employs fishery control officers responsible for ensuring that all fishing takes place in a regulated and lawful manner and that all landings are properly recorded.

In order to ensure compliance with fisheries laws, the Chief Directorate uses a number of compliance tools aimed not only at enforcing compliance but also to encourage compliance. Compliance tools include:

- ❑ State of the art inshore and offshore environmental patrol vessels;
- ❑ Specialised environmental courts;
- ❑ Observer programmes;
- ❑ Marine protected areas;
- ❑ Vessel monitoring systems;
- ❑ Public education programmes;
- ❑ Co-management of fish stocks;
- ❑ Honourary fishery control officers;
- ❑ Strategic compliance partnerships with non-governmental organisations, local governments, conservation bodies and other applicable organs of state.

### **5.2.4 Access to information**

The Department's designated information officers are the Chief Director: Research, Antarctica and Islands, the Chief Director: Fisheries and Coastal Management and the Chief Director: Fisheries and Coastal Compliance.

A large body of information regarding previous rights allocations, such as policies, records of decisions, general published reasons, and other records such as compliance databases, TAC's and TAE's are available from the Department, its fishery control offices or at the Department's website ([www.mcm-deat.gov.za](http://www.mcm-deat.gov.za)). Members of the public are encouraged to:

- Contact the Department's Client Care Line on 0861 123 626;
- Visit the Department's Customer Services Centre at the Foretrust Building, 2nd Floor, Martin Hammerschlag Way, Foreshore, Cape Town; or
- Visit a Fisheries Officer at one of our fishery control offices along the coast (for details of your nearest office please phone the Client Care Line).

Most records will be released informally. This means that, in general, access to information forms do not have to be completed. Copies will be provided at the stipulated fee.

The Department will only require the forms prescribed under the Promotion of Access to Information Act, 2 of 2000 ("PAIA") to be completed, and will only assess requests under this Act, when access to the records of third parties (such as their completed application forms) are sought. Applicants will be afforded access to their own applications, and all records relating to its assessment, without having to make a formal request under the Act.

## **PART B: ALLOCATION METHODOLOGY AND PROCESS**

### **6. The Allocation of Fishing Rights**

#### **6.1 The legal nature of the Fishing Right**

Before the MLRA came into force in 1998, the Department granted fishing "*quotas*" under the Sea Fisheries Act, 12 of 1988. Section 18 of the MLRA now provides for the allocation of fishing "*rights*". The legal nature of the "*right*" allocated under the MLRA is similar to the "*quota*" allocated under the Sea Fisheries. The "*rights*" allocated under the MLRA are not property rights and should only be understood as statutory permission to fish for a specified period of time. Accordingly, cancellation or revocation does not constitute expropriation within the meaning of section 25 of the Constitution or the Expropriation Act 63 of 1975.

This is also stipulated by section 18(6) of the MLRA, which provides that a fishing right is valid for the period determined by the Minister (or his delegate) whereafter it automatically reverts back to the state and may be re-allocated in terms of the applicable provisions of the MLRA.

A fishing right belongs to the right holder in his or her personal capacity and it may not be transferred without the approval of the responsible officials. The Department accepts that, upon the death, sequestration, or liquidation of the right holder, the right vests respectively in the executor, trustee or liquidator and that the right

may continue to be exploited for the period of time permitted by the applicable legal provisions. However, any transfer of the fishing right to a third party requires approval from the Department.

## 6.2 Core Allocation and Management Considerations

This General policy as well as the Fishery specific policies are based on five core principles that guide the allocation and the management of commercial fishing rights. These five principles complement and give effect to the objectives listed in Section 2 of the MLRA. They are:

- (a) **Transformation:** The level of transformation of the fishery and the need to address historical imbalances and to achieve equity within all sectors of the fishing industry.
- (b) **Biological considerations:** The impact on the target species must be considered. This is primarily done through the setting of a Total Allowable Catch (“TAC”) or a Total Allowable Effort (“TAE”), or both.
- (c) **Ecological considerations:** The impact on the marine ecosystem in which the target species occurs must be considered.
- (d) **Industry and socio-economic and commercial considerations:** In so far as is practically possible, the socio-economic impact of allocations on those individuals and communities dependant on the target species are considered, including, right holders, workers, processors, marketers and consumers. These considerations include fishing capacity, the capital intensity of the fishery, and the ability of participants in the fishery to compete on local and international markets.
- (e) **Performance or potential to perform of Applicant:** Where possible, financial and fishing performance as well as compliance with the MLRA, the Regulations and permit conditions, is considered. The nature and value of the investments made in the fishery by current participants are assessed. Where possible, the ability or potential to perform is considered.

## **6.3 The Allocation Process**

### ***6.3.1 Public participation in policy formulation***

The Minister of Environmental Affairs and Tourism held 6 Izimbizo in coastal communities during the latter half of 2004. These meetings were the informal start to a process of public consultation regarding the allocation of long-term fishing rights.

The formal process of public consultation will entail the following. In addition to this General policy, the Department will publish a draft Fishery specific policy for each sector. The public in general and stakeholders in particular will be invited to comment on these policies before they are finally adopted. Consultation processes will be designed to ensure that fishers and fisher communities in particular are able to comment on the policies which may affect them. In all instances, the draft policy will be published on the official Departmental website and written and electronically submitted comments will be invited. In addition, the Department will publish the policy in the Government Gazette and invite written comments, and the Department may hold public hearings where oral submissions and written comments will be invited.

The Department will consider all comments received and where necessary revise policies in the light of the comments. The final policies will be published in the Government Gazette and on the Departmental website. These policies will set out the basis on which long terms rights will be allocated in each sector. The relevant policies will also be distributed along with the application forms used in the rights allocation process. When allocating rights, it will be assumed that applicants are aware of the General policy and the applicable Fishery specific policy.

### ***6.3.2 Allocation Process determined by Cluster***

In the long-term rights allocation process, the 18 fishing sectors will be divided into four groups with four different sets of procedures that will be applied for the consideration of applications for fishing rights. The purpose of clustering fisheries together is purely procedural. Different criteria may be applied during the allocation process to sectors falling within the same cluster. The clusters are:

#### **Cluster A**

- Hake Deep Sea Trawl;
- Hake Inshore Trawl;
- Horse Mackerel;
- Small Pelagics;
- Patagonian Toothfish;
- South Coast Rock Lobster;
- KwaZulu-Natal Prawn Trawl.

#### **Cluster B**

- Hake Long Line;
- West Coast Rock Lobster (off shore);
- Squid;
- Seaweed
- Tuna Pole
- Demersal Shark

#### **Cluster C**

- Handline Hake;
- West Coast Rock Lobster (near shore);

#### **Cluster D**

- Net Fish (gillnets; beach seine and KZN beach seining);
- Oysters;
- White Mussels.

Each process, other than the following three issues, will be addressed per cluster.

#### 6.3.2.1 Communication processes

Officials of the Department will not consult individually with potential applicants, their representatives or advisors. The consultation process is set out in this policy document. The Department will consult with the public and stakeholders in respect of the formulation of the General policy and the Fishery specific policies in the manner described above and in respect of the application forms and procedure in the manner described below. The Department will further assist applicants in the manner described below. The Department will not communicate with applicants in any other manner. Applicants for fishing rights will be required to apply in writing to the Department by completing and submitting a stipulated application form, together with prescribed information, fees and related documentation on or before a certain date ("*closing day*"). Appeals must also be submitted in writing before a closing date. No oral applications or appeals will be entertained.

#### 6.3.2.2 Information to be considered

The following approach will be adopted by the Advisory Committee and the decision-maker and the appellate authority (where applicable) regarding information to be taken into account for assessing the applications:

- (i) **Parts of application form not completed:** Where parts or a particular section of the application form is not completed, it will be assumed that those parts of the form or that section of the form does not apply to the applicant. If the part or section of the application form not completed has positive points associated with the answer no score can be achieved without completing it. More

particularly, and unless otherwise indicated on the application form itself, if the answer to a positively framed or an open-ended question is left blank it will be assumed that the applicant answered the question negatively. For example, if left blank, it will be assumed that the applicant answered “no” to a question such as: “Have you participated as a crew member on a vessel that operated in a limited or full commercial fishery?”. If the part or section of the application form not completed has negative points associated with the answer, the failure to complete might result in the applicant being awarded negative points. More particularly and unless otherwise indicated on the application form itself, if neither of the two available options to a “yes or no” question are completed it will be assumed that the applicant answered the question positively. For example, if left blank, it will be assumed that the applicant answered “yes” to a question such as: “Have you ever been convicted of an offence under the MLRA”?

- (ii) **Late information**: Information submitted after closing day will not be considered, unless such information is requested from the applicant by the Department as part of the rights allocation or the appeal process.
- (iii) **Information from external sources**: Adverse (prejudicial) information about an applicant received from external third party sources will not be considered by the Department before such applicant is afforded the opportunity to make representations in respect of the information.
- (iv) **Use of Departmental database**: The Department will use information contained in its own databases during the long term rights allocation process only to the extent that the data was accessible, and applicants were afforded the opportunity to correct the data, before closing day.
- (v) **Submission of false information or documents and non-disclosure**: Applicants will be required to declare in the presence of a commissioner of oaths that they have not submitted false information or false documents and that they have not failed to disclose material information, unless the MLRA is amended to provide that the submission of such information or documents or non-disclosure is a criminal offence. Apart from constituting a criminal offence, the provision of false information or documents or the non-disclosure of material information will constitute an independent ground of refusing an application. It will be assumed that an applicant has provided false information if there is a material discrepancy between the information provided by the applicant and the information contained in databases held by the Department or other state entities, and where both versions cannot be correct. It will further be assumed that an applicant has provided false information when there is a material discrepancy between the information provided by the applicant in the original application and information provided by the applicant on appeal, and where both versions cannot be correct.
- (vi) **Copies of documents**: All documents which form part of an application must be either original documents or documents certified to be true copies of the original by a commissioner of oaths.

This does not apply to the submission of a “copy” of the application itself referred to above. Where the Department requires the submission of an electronic copy of the application, it will be assumed that the information contained in the electronic copy is the same as the information forming part of the original application. Where the Department requires a hard copy of the entire original application, it will be assumed that the copy is an exact replica of the original application.

### 6.3.2.3 Access to information

Applicants will be entitled to obtain, at a prescribed fee, the score sheet completed by the Advisory Committee concerning their application. It should be noted that this score sheet will not necessarily reflect the final score awarded to an applicant by the decision-maker. The score sheet contains the assessment of the Advisory Committee, which is checked and may be changed by the decision-maker. Another “corrected” score sheet may be compiled by the decision-maker. In addition to the score sheets, applicants will be entitled to inspect the Spreadsheet of Decisions, which contains the assessment of the decision-maker of all applications in summary form or, at the prescribed fee, purchase a copy of the Spreadsheet of Decisions or pages thereof.

As far as access to the application forms and annexures are concerned, the Department will not consider individual applications under PAIA for the release of information contained in the application forms and the annexures. Instead, the Department will require applicants to submit confidential information relating to the applicant’s fishing plans, marketing plans and financial status in a separate folder. This information will not be released by the Department to other applicants, unless the Department is ordered to do so by a court. The rest of the information in the application form and the annexures will be released by the Department to an applicant on request under PAIA and against payment of the prescribed fee.

## **6.3.3 Cluster A specific processes**

### 6.3.3.1 Communication Processes:

Communication in **Cluster A** will occur through a number of formal channels. It is intended that in **Cluster A**, communication of policy intentions and broader right allocation matters will occur through three primary mechanisms. These include:

- Electronic Media (policies and other right allocation material will be published on the Department’s official website, [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za), and where possible, electronic-mail distribution lists will be established in order to communicate directly with applicants);

- Government Gazette (all policies, invitations to apply and general notices will be published in the Government Gazette)
- Recognised industrial bodies (policies and other right allocation material will be communicated through recognised industrial bodies).

In terms of dealing with queries on the part of applicants, questions of clarification will be entertained by way of e-mail. The Department intends to establish a system whereby queries are received within a certain pre-advertised period, compiled and a set of responses is drafted. All queries and the responses will then be distributed electronically to all registered applicants, and will be available on the Department's official website.

#### 6.3.3.2 Language

In **Cluster A**, policies and explanatory notes to the application forms will be available in English, Afrikaans, isiXhosa and isiZulu.

#### 6.3.3.3 *Invitation to apply for rights*

Invitations to apply for rights will be published in the Government Gazette. The Department will also ensure that notices are placed on the Department's website, in regional newspapers and at the Department's fishery control offices.

Invitations gazetted in the Government Gazette will comprise the following parts:

- ❑ The invitation with clear instructions.
- ❑ The Fishery Specific Policy (or policies where the invitation applies to more than one fishery); and
- ❑ A specimen applicable application form (or forms where the invitation applies to more than one fishery).

**The invitation will not include this General policy as well. Applicants will however be provided with copies of this General policy on request.**

Invitations will be staggered on a fisheries cluster basis. The Department will issue invitations for the **Cluster A** fisheries by May / June 2005.

#### 6.3.3.4 Application Forms

Each fisheries cluster and where considered necessary, fishery, will have a separate application form designed to obtain only the information considered relevant to effectively evaluate applications for commercial

fishing rights. Application forms will be designed having regard at all times to the fishery cluster and fishery in question.

Proposed draft application forms will be published on the Departmental website as part of the public participation process for comment. Comments will be received during a pre-advertised period, and application forms may be revised accordingly.

#### 6.3.3.5 Distribution of application forms and manner of payment of application fees:

In **Cluster A**, electronic application forms will be distributed in CD format from the Department's head office. Applicants will be required to enter the Department's official website and submit a brief set of biographical details, such as name, company registration number, contact details and the like. On completion of the biographical details form, the applicant will be provided with information pertaining to how payment of application fees can be made. Applicants will be required to pay the application fee prior to receiving the application form. Application fees will be paid directly into the Rights Verification Unit's designated bank account, and on receipt of proof of payment by the Rights Verification Unit, the applicant will be permitted to collect an application form in CD format from the Department's head office, together with the applicable software to utilize the form.

#### 6.3.3.6 Application fees and levies

The Minister, in consultation with the Minister of Finance, is responsible for setting application fees and levies for fish landed. The Department will set application fees and levies at levels determined to recover the costs of allocating fishing rights, and having regard to the value of fish allocated.

#### 6.3.3.7 Departmental support and the use of consultants:

Although the Department is not opposed to the use of consultants or lawyers, the Department will design its application forms, policies and all other documents in ways to reduce the need to rely on third party assistance.

#### 6.3.3.8 Self Verification and Score Sheets

The Department may require applicants in the **Cluster A** fisheries to self-audit and score certain components of their own application forms (especially pertaining to transformation). Applicants will have to confirm that the

facts as stated will be valid for a certain period of time. A standard verification form will be provided in these instances.

#### 6.3.3.9 Receipting of Application Forms

**Cluster A** applicants will be required to physically submit their application forms in hard copy and electronic form, at a centralized venue in Cape Town. All **Cluster A** fisheries will submit their application forms over a pre-advertised two day period. Receipting rules and times will be strictly enforced.

#### 6.3.3.10 Copies

The Department will require **Cluster A** applicants to complete their application form electronically and save it on to a compact disc or flash disk. Applicants will be required to print out a hard copy version of their application form and this has to be signed and commissioned including the annexures. In addition, **Cluster A** applicants will be required to make a photocopy of the hard copy version of their application including the annexures and submit this together with the original hard copy and electronic copy.

#### 6.3.3.11 Design of criteria and weighting:

Information submitted by applicants will be captured on a database. The policies and the database will be used for the development of detailed criteria and weighting for each sector for the purposes of assessing the applications.

#### 6.3.3.12 Oral Hearings, Calls for Further Information and Investigations

The Department may invite applicants in **Cluster A** to make oral submissions and/or to present further evidence where there is uncertainty concerning a material issue in a substantial number of the applications. Where oral hearings are held, legal representatives will be permitted to address the decision-maker at the hearings.

As stated above, applications may be refused if an applicant has provided false information or documents or have failed to disclose material information or have misrepresented information. Where there is doubt, the Rights Verification Unit may investigate a matter before a decision is made. Applicants will be expected to cooperate with investigators by timeously submitting responses to written requests for explanations, by attending

meetings with investigators and by answering questions satisfactorily at such meetings, and where possible, by granting investigators access to premises, vessels and documents referred to in the application.

#### 6.3.3.13 Support for decision-makers and the information that will be considered:

The delegated authority responsible for the decisions on the application in a sector (*“the decision-maker”*) will be supported in each sector by an *“Advisory Committee”*, and also by professional project managers, consultants and legal practitioners. The role of the Advisory Committees will be limited to a mechanical assessment of the applications under the supervision of the decision-maker and in accordance with the criteria and weighting developed by the decision-maker. The assessments of the Advisory Committee will be recorded on a template form, which will be referred to as the *“score sheet”* and captured electronically and on a *“spreadsheet”*. Where a matter is not capable of mechanical assessment but calls for the exercise of discretion, it will not be dealt with by the Advisory Committee.

#### 6.3.3.14 Notification of decisions and the reasons therefore:

Once rights have been allocated in a **Cluster A** fishery, the Department will publicise its decisions through electronic media and recognised industrial bodies. In addition all applicants will be informed in writing of the decision on their applications, together with reasons for the decision.

Unsuccessful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals; and
- ❑ A copy of the score sheet used to evaluate their application form.

Successful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals;
- ❑ A copy of the score sheet used to evaluate their application form;

- ❑ A set of generic permit conditions that are applicable to the specific fishery; and
- ❑ A draft code of conduct for operating within that fishery.

In addition, all applicants will have access to the following:

- ❑ The Summary of Decisions which provides detailed reasons, together with the criteria and weighting and the record of the decisions, which is available for inspection or for purchase;
- ❑ Score sheets of other applicants; and
- ❑ The actual decision-making lists of the decision-maker.

#### 6.3.3.15 Appeals

Every applicant will have the right to appeal the decision of the decision-maker. The appeal will be to the Minister directly. The General Published Reasons will explain to each applicant how and by when the appeal is to be lodged.

The Minister will only consider information submitted in or with the appeal application form. Once a decision is taken, the appellant will be informed of the Minister's decision in writing. Reasons will only be provided on request in terms of section 5 of the Promotion of Administrative Justice Act, 03 of 2000.

### **6.3.4 Cluster B specific processes**

#### 6.3.4.1 Communication Processes

Communication in **Cluster B** will occur through a number of formal channels. It is intended that in **Cluster B**, communication of policy intentions and broader rights allocation matters will occur through three primary mechanisms. These include:

- ❑ Electronic Media (policies and other right allocation material will be published on the Department's official website, [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za) , and where possible, electronic-mail distribution lists will be established in order to communicate directly to applicants);
- ❑ Government Gazette (all policies, invitations to apply and general notices will be published in the Government Gazette)
- ❑ Recognised industrial bodies (policies and other right allocation material will be communicated through recognised industrial bodies).

In terms of dealing with queries on the part of applicants, questions of clarification will be entertained by way of e-mail. The Department intends to establish a system whereby queries are received within a certain pre-

advertised period, compiled and a set of responses is drafted. All queries and the responses will then be distributed electronically to all registered applicants, and will be available on the Department's official website, as well as in the Government Gazette.

#### 6.3.4.2 Language

In **Cluster B**, policies and explanatory notes to the application forms will be available in English, Afrikaans, isiXhosa and isiZulu.

#### 6.3.4.3 Invitation to apply for rights

Invitations to apply for rights will be published in the Government Gazette. The Department will also ensure that notices are placed on the Department's website, in regional newspapers and at the Department's fishery control offices.

Invitations gazetted in the Government Gazette will comprise the following parts:

- The invitation with clear instructions for the completion and lodgment of applications;
- The Fishery Specific Policy (or policies where the invitation applies to more than one fishery); and
- The applicable application form (or forms where the invitation applies to more than one fishery).

**The invitation will not include this General policy as well. Applicants will however be provided with copies of this General policy on request.**

Invitations will be staggered on a fisheries cluster basis. The Department will issue invitations for the **Cluster B** fisheries by July 2005.

#### 6.3.4.4 Application Forms

Each fisheries cluster and where considered necessary, fishery, will have a separate application form designed to obtain only the information considered relevant to effectively evaluate applications for commercial fishing rights. Application forms will be designed having regard at all times to the fishery cluster and fishery in question.

Draft Application forms will be published on the Departmental website as part of the public participation process for comment. Comments will be receipted during a pre-advertised period, and application forms may be revised accordingly.

#### 6.3.4.5 Distribution of application forms and manner of payment of application fees:

Hard copy application forms will be distributed at a centralised venue in Cape Town. Applicants will be required to deposit the application fee into the Rights Verification Unit's designated bank account, and bring proof of payment (an original deposit slip / electronic payment confirmation) to the Cape Town distribution point. Applicants will be required to submit a brief set of biographical details to the staff members at the distribution point, such as name, company registration number, contact details and the like. On completion of the biographical details form, and on proof of deposit of application fee, applicants will be provided with an application form in hard copy

#### 6.3.4.5 Application fees and levies:

The Minister, in consultation with the Minister of Finance, is responsible for setting application fees and levies for fish landed. The Department will set application fees and levies at levels determined to recover the costs of allocating fishing rights and having regard to the value of fish allocated.

#### 6.3.4.7 Departmental support and the use of Consultants:

Although the Department is not opposed to the use of consultants or lawyers, the Department will design its application forms, policies and all other documents in ways to reduce the need to rely on third party assistance.

#### 6.3.4.8 Receipting of Application Forms

**Cluster B** applicants will be required to physically submit their application forms, at a centralized receipting venue in Cape Town. All **Cluster B** fisheries will submit their application forms simultaneously over a pre-advertised two-day period.

#### 6.3.4.9 Copies

The Department will require **Cluster B** applicants to complete the application form and sign it before a commissioner of oaths. This application form, together with its annexures must be photocopied and both original and copy must be submitted together.

#### 6.3.4.10 Design of criteria and weighting:

Information submitted by applicants will be captured on a database. The policies and the database will be used for the development of detailed criteria and weighting for each sector for the purposes of assessing the applications.

#### 6.3.4.11 Oral Hearings, Calls for Further Information and Investigations

The Department may invite applicants in **Cluster B** to make oral submissions and/or to present further evidence where there is uncertainty concerning a material issue in a substantial number of the applications. Where oral hearings are held, legal representatives will be permitted to address the decision-maker at the hearings. The Rights Verification Unit will investigate a matter where it appears that an applicant may have provided false information or documents or have failed to disclose material information or have misrepresented information.

#### 6.3.4.12 Support for decision-makers and the information that will be considered:

The delegated authority responsible for the decisions on the applications in a sector (*“the decision-maker”*) will be supported in each sector by an *“Advisory Committee”*, and also by professional project managers, consultants and legal practitioners. The role of the Advisory Committees will be limited to a mechanical assessment of the applications under the supervision of the decision-maker and in accordance with the criteria and weighting developed by the decision-maker. The assessments of the Advisory Committee will be recorded on a template form, which will be referred to as the *“score sheet”* and captured electronically and on a *“spreadsheet”*. Where a matter is not capable of mechanical assessment but calls for the exercise of discretion, it will not be dealt with by the Advisory Committee.

#### 6.3.4.13 Notification of decisions and the reasons therefore:

Once rights have been allocated in a **Cluster B** fishery, the Department will publicise its decisions through electronic media and recognised industrial bodies. In addition all applicants will be informed in writing of the decision on their applications, together with reasons for the decision.

Unsuccessful applicants will receive the following together with their letter informing it of the decision on its application:

- A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;

- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals; and
- ❑ A copy of the score sheet used to evaluate their application form.

Successful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals;
- ❑ A copy of the score sheet used to evaluate their application form;
- ❑ A set of generic permit conditions that are applicable to the specific fishery; and
- ❑ A draft code of conduct for operating within that fishery.

In addition, all applicants will have access to the following:

- ❑ The Summary of Decisions which provides detailed reasons, together with the criteria and weighting and the record of the decisions, which is available for inspection of for purchase;
- ❑ Score sheets of other applicants; and
- ❑ The actual decision-making lists of the decision-maker.

#### 6.3.4.14 Appeals

Every applicant will have the right to appeal the decision of the decision-maker. The appeal will be to the Minister directly. The General Published Reasons will explain to each applicant how and by when the appeal is to be lodged.

The Minister will only consider information submitted in or with the appeal application form. Once a decision is taken, the appellant will be informed of the Minister's decision in writing. Reasons will only be provided on request in terms of section 5 of the Promotion of Administrative Justice Act, 03 of 2000.

### **6.3.5 Cluster C specific processes**

#### 6.3.5.1 Communication

As indicated in the General policy, communication in **Cluster C** will occur through a number of formal channels. It is intended that in **Cluster C**, communication of policy intentions and broader right allocation matters will occur through five primary mechanisms. These include:

- ❑ Public hearings and roadshows (the Department will conduct roadshows providing applicants information regarding the policies and other rights allocation issues. These roadshows will be held as widely as possible, and will cover all fishing coastal communities);
- ❑ Call Centre (the Department will establish a call centre that will have assistants available to answer rights allocation queries);
- ❑ Customer Services Centre (the Department will establish a Customer Services Centre in Cape Town and will make local fisheries advisers available at the designated fishery control office to answer queries and make information and documents available);
- ❑ Recognised industrial bodies (policies and other right allocation material will be communicated through recognised industrial bodies);
- ❑ Government Gazette (all policies, invitations to apply and general notices will be published in the Government Gazette);
- ❑ Electronic Media (policies and other right allocation material will be published on the Department's official website, [www.environment.gov.za](http://www.environment.gov.za)).

#### 6.3.5.2 Language

In **Cluster C**, policies and explanatory notes to the application forms will be available in English, Afrikaans, isiXhosa and isiZulu.

#### 6.3.5.3 Invitation to apply for rights

Invitations to apply for rights will be published in the Government Gazette. The Department will also ensure that notices are placed on the Department's website, in regional newspapers and at the Department's fishery control offices.

Invitations gazetted in the Government Gazette will comprise the following parts:

- ❑ The invitation with clear instructions for the completion and lodgment of applications;
- ❑ The Fishery Specific Policy (or policies where the invitation applies to more than one fishery); and
- ❑ The applicable application form (or forms where the invitation applies to more than one fishery).

**The invitation will not include this General policy as well. Applicants will however be provided with copies of this General policy on request.**

Invitations will be staggered on a fisheries cluster basis. The Department will issue invitations for the **Cluster C** fisheries by July / August 2005.

#### 6.3.5.4 Application Forms

Each fisheries cluster and where considered necessary, fishery, will have a separate application form designed to obtain only the information considered relevant to effectively evaluate applications for commercial fishing rights. Application forms will be designed having regard at all times to the fishery cluster and fishery in question.

Draft Application forms will be published on the Departmental website as part of the public participation process for comment. Comments will be received during a pre-advertised period, and application forms may be revised accordingly.

#### 6.3.5.5 Distribution of application forms and manner of payment of application fees:

In **Cluster C**, application forms will be distributed at various pre-advertised regional venues along the coastline. Applicants collecting application forms from the regional venues will be required to deposit the application fee into the Rights Verification Unit's designated bank account, and bring proof of payment (an original deposit slip / electronic payment confirmation) to the application form distribution point. Applicants will be required to submit a brief set of biographical details to the staff members at the distribution point, such as name, identification number, company registration number, contact details and the like. On completion of the biographical details form, and on proof of deposit of application fee, applicants will be provided with an application form.

#### 6.3.5.6 Application fees and levies:

The Minister, in consultation with the Minister of Finance, is responsible for setting application fees and levies for fish landed. The Department will set application fees and levies at levels determined to recover the costs of allocating fishing rights and having regard to the value of fish allocated.

#### 6.3.5.7 Departmental support and the use of Consultants:

Although the Department is not opposed to the use of consultants or lawyers, the Department will design its application forms, policies and all other documents in ways to reduce the need to rely on third party assistance. The Department would prefer that applicants utilise the various Departmental assistance mechanisms available, prior to engaging the services of a consultant.

#### 6.3.5.8 Receipting of Application Forms

**Cluster C** applicants will be required to physically submit their application forms at various pre-advertised regional receiving points along the coastline. All **Cluster C** fisheries will submit their application forms simultaneously over a pre-advertised two-day period.

#### 6.3.5.9 Copies

The Department will require **Cluster C** applicants to complete the application form and sign it before a commissioner of oaths. This application form, together with its annexures must be photocopied and both original and copy must be submitted together.

#### 6.3.5.10 Design of criteria and weighting:

Information submitted by applicants will be captured on a database. The policies and the database will be used for the development of detailed criteria and weighting for each sector for the purposes of assessing the applications.

#### 6.3.5.11 Oral Hearings, Calls for Further Information and Investigations

The Department may invite applicants in **Cluster C** to provide written information where there is uncertainty concerning a material issue in a substantial number of the applications. The Rights Verification Unit will investigate a matter where it appears that an applicant may have provided false information or documents or have failed to disclose material information or have misrepresented information.

#### 6.3.5.12 Support for decision-makers and the information that will be considered:

The delegated authority responsible for the decisions on the application in a sector (*“the decision-maker”*) will be supported in each sector by an *“Advisory Committee”*, and also by professional project managers, consultants and legal practitioners. The role of the Advisory Committees will be limited to a mechanical assessment of the applications under the supervision of the decision-maker and in accordance with the criteria and weighting developed by the decision-maker. The assessments of the Advisory Committee will be recorded on a template form, which will be referred to as the *“score sheet”* and captured electronically and on a *“spreadsheet”*. Where a matter is not capable of mechanical assessment but calls for the exercise of discretion, it will not be dealt with by the Advisory Committee.

#### 6.3.5.13 Notification of decisions and the reasons therefore:

Once rights have been allocated in a **Cluster C** fishery, the Department will publicise its decisions through electronic media and recognised industrial bodies. In addition all applicants will be informed in writing of the decision on their applications, together with reasons for the decision.

Unsuccessful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals; and
- ❑ A copy of the score sheet used to evaluate their application form.

Successful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals;
- ❑ A copy of the score sheet used to evaluate their application form;
- ❑ A set of generic permit conditions that are applicable to the specific fishery; and
- ❑ A draft code of conduct for operating within that fishery.

In addition, all applicants will have access to the following:

- ❑ The Summary of Decisions which provides detailed reasons, together with the criteria and weighting and the record of the decisions, which is available for inspection of for purchase;
- ❑ Score sheets of other applicants; and

The actual decision-making lists of the decision-maker.

#### 6.3.5.14 Provisional lists and commenting:

The Department will only issue for comment “provisional lists” of successful applicants in certain fisheries. These fisheries will be the West Coast Rock Lobster (Near Shore) sector in **Cluster C**, and the **Cluster D** fisheries. The reason for this is that it would not be logistically possible to allow provisional lists in all sectors as each applicant is entitled to comment on the proposed successful applicants, and each comment will require investigation and consideration. This could effectively prevent any allocation of fishing rights.

### 6.3.5.15 Appeals

Every applicant will have the right to appeal the decision of the decision-maker. The appeal will be to the Minister directly. The General Published Reasons will explain to each applicant how and by when the appeal is to be lodged.

The Minister will only consider information submitted in or with the appeal application form. Once a decision is taken, the appellant will be informed of the Minister's decision in writing. Reasons will only be provided on request in terms of section 5 of the Promotion of Administrative Justice Act, 03 of 2000.

### **6.3.6 Cluster D specific processes**

#### 6.3.6.1 Communication

Communication in **Cluster D** will occur through a number of formal channels. It is intended that in **Cluster D**, communication of policy intentions and broader right allocation matters will occur through five primary mechanisms. These include:

- ❑ Public hearings and roadshows (the Department will conduct roadshows providing applicants information regarding the policies and other rights allocation issues. These roadshows will be held as widely as possible, and will cover all fishing coastal communities);
- ❑ Call Centre (the Department will establish a call centre that will have assistants available to answer rights allocation queries);
- ❑ Customer Services Centre (the Department will establish a Customer Services Centre in Cape Town and will make local fisheries advisers available at each fishery control office to answer queries and make information and documents available);
- ❑ Recognised industrial bodies (policies and other right allocation material will be communicated through recognised industrial bodies).
- ❑ Government Gazette (all policies, invitations to apply and general notices will be published in the Government Gazette)
- ❑ Electronic Media (policies and other right allocation material will be published on the Department's official website, [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za)).

#### 6.3.6.2 Language

In **Cluster D**, policies and explanatory notes to the application forms will be available in English, Afrikaans, isiXhosa and isiZulu.

### 6.3.6.3 Invitation to apply for rights

Invitations to apply for rights will be published in the Government Gazette. The Department will also ensure that notices are placed on the Department's website, in regional newspapers and at the Department's fishery control offices.

Invitations gazetted in the Government Gazette will comprise the following parts:

- The invitation with clear instructions for the completion and lodgment of applications;
- The Fishery Specific Policy (or policies where the invitation applies to more than one fishery); and
- The applicable application form (or forms where the invitation applies to more than one fishery).

**The invitation will not include this General policy as well. Applicants will however be provided with copies of this General policy on request.**

Invitations will be staggered on a fisheries cluster basis. The Department will issue invitations for the **Cluster D** fisheries by August 2004.

### 6.3.6.4 Application Forms

Each fisheries cluster and where considered necessary, fishery, will have a separate application form designed to obtain only the information considered relevant to effectively evaluate applications for commercial fishing rights. Application forms will be designed having regard at all times to the fishery cluster and fishery in question.

Draft Application forms will be published on the Departmental website as part of the public participation process for comment. Comments will be received during a pre-advertised period, and application forms may be revised accordingly.

### 6.3.6.5 Distribution of application forms and manner of payment of application fees:

In **Cluster D**, application forms will be distributed at various pre-advertised regional venues across the coastline. Applicants collecting application forms from the regional venues will be required to deposit the application fee into the RVUs designated bank account, and bring proof of payment (an original deposit slip / electronic payment confirmation) to the application form distribution point. Applicants will be required to submit a brief set of biographical details to the staff members at the distribution point, such as name, identification

number, company registration number, contact details and the like. On completion of the biographical details form, and on proof of deposit of application fee, applicants will be provided with an application form.

#### 6.3.6.6 Application fees and levies:

The Minister, in consultation with the Minister of Finance, is responsible for setting application fees and levies for fish landed. The Department will set application fees and levies at levels determined to recover the costs of allocating fishing rights.

#### 6.3.6.7 Departmental support and the use of Consultants:

Although the Department is not opposed to the use of consultants or lawyers, the Department will design its application forms, policies and all other documents in ways to reduce the need to rely on third party assistance. The Department would prefer that applicants utilise the various Departmental assistance mechanisms available, prior to engaging the services of a consultant.

#### 6.3.6.8 Receipting of Application Forms

**Cluster D** applicants will be required to physically submit their application forms at various pre-advertised regional receipting points along the coastline. The receipting points will be the same as the distribution points, and distribution and receipting will occur simultaneously.

#### 6.3.6.9 Copies

The Department will require **Cluster D** applicants to complete the application form and sign it before a commissioner of oaths. This application form, together with its annexures must be photocopied and both original and copy must be submitted together.

#### 6.3.6.10 Design of criteria and weighting:

Information submitted by applicants will be captured on a database. The policies and the database will be used for the development of detailed criteria and weighting for each sector for the purposes of assessing the applications.

#### 6.3.6.11 Oral Hearings, Calls for Further Information and Investigations

The Department may invite applicants in **Cluster D** to provide written information where there is uncertainty concerning a material issue in a substantial number of the applications. The Rights Verification Unit will investigate a matter where it appears that an applicant may have provided false information or documents or have failed to disclose material information or have misrepresented information.

#### 6.3.6.12 Support for decision-makers and the information that will be considered:

The delegated authority responsible for the decisions on the application in a sector (*“the decision-maker”*) will be supported in each sector by an *“Advisory Committee”*, and also by professional project managers, consultants and legal practitioners. The role of the Advisory Committees will be limited to a mechanical assessment of the applications under the supervision of the decision-maker and in accordance with the criteria and weighting developed by the decision-maker. The assessments of the Advisory Committee will be recorded on a template form, which will be referred to as the *“score sheet”* and captured electronically on a *“spreadsheet”*. Where a matter is not capable of mechanical assessment but calls for the exercise of discretion, it will not be dealt with by the Advisory Committee.

#### 6.3.6.13 Notification of decisions and the reasons therefore:

Once rights have been allocated in a **Cluster D** fishery, the Department will publicise its decisions through electronic media and recognised industrial bodies. In addition all applicants will be informed in writing of the decision on their application, together with reasons for the decision.

Unsuccessful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals; and
- ❑ A copy of the score sheet used to evaluate their application form.

Successful applicants will receive the following together with their letter informing it of the decision on its application:

- ❑ A set of General Published Reasons which record the criteria, the decision-making process and the methodology pertaining to decision on quantum or effort;
- ❑ An Appeal Form, which is a form which applicants may utilise to submit an appeal;
- ❑ A notification of the closing date for the submission of appeals;
- ❑ A copy of the score sheet used to evaluate their application form;
- ❑ A set of generic permit conditions that are applicable to the specific fishery; and
- ❑ A draft code of conduct for operating within that fishery.

In addition, all applicants will have access to the following:

- ❑ The Summary of Decisions which provides detailed reasons, together with the criteria and weighting and the record of the decisions, which is available for inspection of for purchase;
- ❑ Score sheets of other applicants; and
- ❑ The actual decision-making lists of the decision-maker.

#### 6.3.6.14 Provisional lists and commenting:

The Department will only issue for comment “provisional lists” of successful applicants in certain fisheries. These fisheries will include those in the **Cluster D** sectors. The reason for this is that it would not be logistically possible to allow provisional lists in all sectors as each applicant is entitled to comment on the proposed successful applicants, and each comment will require investigation and consideration. This could effectively prevent any allocation of fishing rights.

## 6.4 Decision-Making

All decisions will be based on the applicable laws and policies. The policies and the database compiled after the applications are received will be used to develop more detailed criteria for the assessment of the applications. These criteria are developed after the receipting and will accordingly not be released before the allocation process.

### 6.4.1 *Criteria used for decision-making*

The Department expects a large number of applications for long-term rights and anticipates that, given the limits on catch or effort in all the fisheries, some applicants will have to be rejected in almost every sector. The only way to choose between applicants is to develop a set of objective criteria, in terms of which some applicants may be excluded and the rest ranked in order to identify the applicants with the highest scores in

terms of the policies and criteria. This does not necessarily mean that applicants that are rejected are not deserving. The process is competitive and the aim is to identify the applicants with the highest scores.

Four types of criteria will be used to assess the applications.

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter weighted in terms of a set of “*balancing criteria*”. In addition, and in some sectors, the decision-maker may employ one or more of a number of “*tie-breaking factors*” if there are too many applicants with the same score. A proportion of the TAC/TAE will then be allocated to each successful applicant in terms of a set of “*quantum criteria*”.

#### 6.4.1.1 Exclusionary criteria

Three types of exclusionary criteria will be employed.

Firstly, an application will be screened to determine whether it was properly lodged. 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 not provided for, such as by fax, or on a form other than the official prescribed application form. The decision-maker will not be afforded the discretion to condone non-compliance with the lodgement requirements.

Secondly, an application will be screened to determine whether it is materially defective. An application is materially defective if the application form 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 in the same sector; or if the applicant is not a South African person; including, for example a partnership or another body not recognized as a juristic person in terms of our law; or if the applicant provided false information or false documents, failed to disclose material information, or attempted to communicate with the Department in an improper manner. The decision-maker will not be afforded the discretion to consider a materially defective application.

Thirdly, an application will be screened to determine whether an applicant meets the minimum essential requirements for participating in the sector. The essential requirements differ from sector to sector. For example, in the abalone sector for divers, applicants were required to demonstrate, amongst others, that he or she is a qualified diver and is certified as a Class I (with surface supply), II or III Commercial Diver under regulation 14 of the Regulations promulgated under the Occupational Health and Safety Act, 1993 (GN

Regulation 10 of 11 January 2002). The decision-maker will not be afforded the discretion to consider an application which fails to meet the essential requirements for participating in the sector.

#### 6.4.1.2 Balancing criteria: new entrants and existing right holders

Applications which were properly lodged, not materially defective and that meet the essential requirements will be scored in terms of set of balancing criteria (*“the balancing criteria”*). The balancing criteria will be weighted for scoring purposes. Some of the criteria, such as transformation, will apply across all sectors, while others will be sector specific.

The applications from existing right holders will not be compared directly to those from potential new entrants. Existing right holders applications will be scored in terms of similar, but not necessarily the same criteria as potential new entrants. Cut-offs will then be determined separately for existing right holder applicants and potential new entrants. All applicants with a score equalling or more than the cut-off will be allocated rights.

#### 6.4.1.3 Tie-breaking factors

If there are too many applicants with the same score, the decision-maker may employ an additional set of non-scoring criteria, namely tie-breaking criteria, in order to choose between the applicants with the same score.

#### 6.4.1.4 Quantum criteria

The decision-maker will then award quantum to each successful applicant in terms of the approach described in section 7.2 below.

# **PART C: CROSS CUTTING POLICY CONSIDERATIONS FOR THE ALLOCATION OF RIGHTS AND QUANTUM**

## **7. Policy Considerations**

This General policy must be read in conjunction with the Fishery specific policies adopted for each fishery. Should any conflict arise between the content of this General policy and the fishery specific policy, then the fishery specific policy will prevail.

### **7.1 Policy considerations for the allocation of rights**

#### **7.1.1 *Duration of right and conditional allocations of rights***

Long-term fishing rights will be introduced to all the commercial fisheries, except in the Oysters and White Mussel fisheries, which are still in an early commercial stage of development.

In the other commercial fisheries, rights will be allocated for a period of up to 15 years, depending amongst other things, on the level of transformation in the fishery, the current knowledge of the biological status of the target species; the capital intensity of the fishery and the need to encourage further investment and economic growth; and the performance of the fishery, particularly with regard to compliance.

In some sectors, applicants may be subjected to a review process after the allocations process. The rights of applicants that failed to pass the review will lapse. Further details about the duration of the right and the review process are contained in the fishery specific policies.

#### **7.1.2 *Form of right holder***

Section 18 of the MLRA provides that only South African persons may hold fishing rights. This provision does not merely exclude foreigners. In terms of the MLRA commercial fishing rights may not be allocated to entities without juristic personality, such as partnerships or community associations. The Department further discourages the use of co-operatives and trusts. Past experience has shown that rights allocated to co-operatives and trusts do not benefit the many hundreds of members or the beneficiaries of the trust.

Only natural (individuals) persons will be permitted to apply in Cluster C and D fisheries. Only juristic persons, incorporated in terms of the Close Corporations Act, 69 of 1984, and the Companies Act, 61 of 1973, will be

permitted to apply for Cluster A and B rights. Existing rights holders operating in the form of trusts, are expected to convert to a close corporation or a company before the allocation process. The converted close corporation or company will be treated as an existing right holder.

Natural persons who currently hold a right in these sectors will be required to apply in the form of a private company or close corporation. The company or close corporation will be considered a previous right holder, as long as the natural person who previously held the right is a majority shareholder or member of the applicant company or close corporation and not a shareholder or member of another applicant company or close corporation.

In some fisheries applicants will be encouraged to merge and to share resources after the allocation process. Further details are provided in Fishery specific policies.

### **7.1.3 Transformation**

The MLRA requires decision-makers to have regard to the need to restructure the fishing industry in order to address historical imbalances and to achieve equity within all the branches of the fishing industry. As stated above, transformation is also a constitutional imperative in South Africa. The Broad-Based Black Economic Empowerment Act 53 of 2003 is one of a number of statutory instruments giving effect to this constitutional imperative. This Act provides for a “balanced scorecard” to measure progress and status within enterprises as well as the adoption of transformation charters, where necessary, for specific sectors of the economy by the major stakeholders in those sectors. Owing to the nature of the rights allocation process, the Department has thus far not encouraged the adoption of charters for fishing sectors. When allocating fishing rights, a decision-maker is called upon to compare applicants to each other, rather than to compare them to some external benchmark. Transformation is an extremely important consideration in this comparative balancing process. The process is competitive and no “benchmark” can be set in advance. All things being equal, applicants with higher transformation scores than others will always stand a better chance of being allocated a right or a larger proportion of the available TAC or TAE. The Department’s approach is that within such a competitive comparative process, the adoption of charters is not the correct vehicle to further transformation. It may discourage participants from transforming, especially in sectors generally regarded to be “sufficiently transformed” or impossible to transform.

The Department will continue to further transformation, and intends to achieve results beyond that which was achieved during the medium-term rights allocations. Existing participants that have not transformed may be excluded, regardless of the sector in which they operate. In the long-term rights allocation process, the

Department further intends to recognise only quality transformation, that is, transformation which results in real benefits to historically disadvantaged persons.

Persons were historically disadvantaged in the fishing industry on account of their race in respect to accessing rights. Some racial groups were further disadvantaged vicariously by means of the Group Areas Act preventing them from living in coastal areas. It is accordingly necessary to promote the participation of such historically disadvantaged persons within all branches in the fishing industry. It is also necessary to address historical imbalances and achieve equity within the fishing industry insofar as the participation of women is concerned, as they too, were marginalised in the past. In the allocations process the race and gender of applicants, and in the case of juristic persons, the race and gender of the applicant's shareholders, executive management team, suppliers and workforce, will be taken into account, in the manner described below. In addition, corporate social investment may be taken into account in the manner described below.

Decision-makers will only consider data pertaining to the applicant company. Information concerning the holding company or subsidiary companies will generally not be taken into account.

In cluster A, the self-verification method by way of score-card described above will be used, which means that Applicants will be required to score themselves but that the information and the results will have to be verified by the applicants' auditors.

#### 7.1.3.1 Race

Persons historically classified as "*African*", "*Coloured*" and "*Indian*" ("*the designated race groups*") before 1994 will be considered to be historically disadvantaged on account of race.

In Clusters C and D, a fixed number of points will be allocated to the applicants from designated race groups, and management, employment equity, affirmative procurement and corporate social investment may also be considered.

In Clusters A and B, points will be allocated for the race of the applicant's ownership and management, in the following manner:

(a) Ownership

Beneficial ownership of the applicant by the designated race groups will be rewarded. Additional points will be allocated to those applicants that have succeeded in empowering employees from these race groups through share participation schemes, provided that the applicant can demonstrate that the employees derived real benefits (such as dividends) from the scheme. No points will be awarded for shares held by nominees or where the benefits and rights attached to shares are diluted or where the burdens attached to the shares are significantly increased.

Where shares are held by a company, the racial status of that company will be considered. For example, if company A holds 20% of the shares in company B and company A is 10% owned by the designated race groups, its share contributes 2% to the ownership of company B of such groups. If company A held 55% of company B's share and company A was 60% owned by the designated race groups, it contributes 33% to B's ownership by designated racial groups.

In the case of existing right holders, weighting may be attached to both present status and transformation progress made from medium term rights closing day to long-term rights closing day. Applicants that achieve a sector-specific threshold, determined after analysing that specific sector, will receive the maximum number of points for ownership by designated racial groups even if they have made no progress or even if they have become less transformed. Other applicants will be rewarded for progress or penalised for regress.

(b) Executive Management

The senior or executive management of an applicant entity by designated racial groups will be rewarded. Senior or executive management generally describes those persons responsible for guiding the strategic activities of the company and who report directly to either the managing director or the Board. This type of management is often conducted by "*the executive team*", which reports to the board of directors of a company. For purposes of the long-term rights allocations process, the top 1.7% of salary earners in an entity will be deemed to constitute its executive management.

#### 7.1.3.2 Gender

In Clusters A and B, beneficial ownership and management by women will be rewarded in the same way as race, but less weighting will be according to gender than race.

Gender will be employed as a tie-breaking factor in Clusters C and D.

#### 7.1.3.3 Employment Equity

Applicants who are required by law to comply with the Employment Equity Act 55 of 1998 will be required to demonstrate that they do comply.

The number of persons of the designated race groups and women employed by the applicant may also be a balancing criterion. More points will be allocated to persons of the designated race groups and women employed at the higher end of the applicant's salary scales than at the lower end. For example, applicants may be required to specify the percentage of persons of the designated race groups and women in the top 10% of their salary earners, between the top 10% and the top 30%, between the top 30% and the top 50%, and below the top 50%. More points will be allocated for person of the designated race groups and women in the top earning brackets than at the bottom earning brackets.

#### 7.1.3.4 Skills Development

Applicants that fail to comply with the Skills Development Act 97 of 1998 and the Skills Development Levies Act 9 of 1999 may be negatively scored. Applicants will be required to demonstrate that they comply with these statutes. If an applicant spends proportionately more on the training of persons of the designated race groups and women employees, this factor may be taken into account.

#### 7.1.3.5 Affirmative Procurement

The percentage spent on affirmative procurement (procurement from black companies) may be considered as a factor.

#### 7.1.3.6 Corporate Social Investment

Applicants who have spent more than 1% of pre-tax profit per year on corporate social investment during the previous rights allocation process, will be rewarded. Corporate social investment does not include sponsorship of sports events or bursaries to employees or their family members.

### 7.1.3.7 Wage Differentials

The percentage difference between the highest remunerated employees and the lowest remunerated employees will be taken into account.

### **7.1.4 Multi-sector involvement**

In general, it is not a policy objective of the Department to preclude or discourage the holding of rights in more than one fishery. However, in the case of the traditional linefish stocks, which are close to collapse due to over-exploitation, right holders will not be permitted to hold rights in any other commercial fishery.

Right holders in the Cluster A and B fisheries (including their controlling shareholders or members and members of their executive management teams) will not be allowed to hold commercial rights in the cluster C and D fisheries, which are fisheries reserved for small and medium enterprises and individual fishers reliant on those fish stocks for their livelihood. Right holders in Clusters C and D who intend to obtain shares or interests in Cluster A and B after allocations will be permitted to transfer their Cluster C and D rights to other natural persons, if approved by the Department.

### **7.1.5 Consolidation**

Between 1994 and 2004, the number of participants in the commercial fisheries increased dramatically. This increase was necessary to allow new entrants to participate in order to transform the industry. However, the Department is aware that in some cases, the proliferation of right holders has undermined transformation by right holders applying under different guises. The intention with the allocation of long-term rights is to transform and stabilise the industry further and the Department favours the consolidation of right holders in most sectors.

Consolidation means reducing the number of entities, particularly those that share the same or similar shareholders and executive management team and/or physical addresses in a particular fishery. Fewer entities will reduce the administrative burdens and costs to the Department and reduce the administrative costs for "similar" applicants. Right holders will not be permitted to proliferate within the same sector by applying for additional rights under a different guise. Existing right holders may not hold a share in potential new entrant applicants.

Unless specified otherwise in the Fishery specific policy, the current approach to transfers of rights will not be changed before the allocation process. This means that the approach to consolidation will primarily be implemented after the allocation process. In a number of sectors, window periods will be opened after the allocation process where the Minister will look favourably at forms of consolidation, which do not undermine transformation.

#### **7.1.6 *New entrants***

The issue of new entrants is a Fishery specific one and is dealt with in the fishery specific policies. The Department endeavours to accommodate as many new entrants as possible.

In most sectors, new entrants will be permitted to replace unsuccessful right holder applicants. This will be done where current right holders have failed to transform meaningfully, or when current right holders have failed to perform adequately; or when the current effort within a specific fishery is considered to be less than optimal.

In some sectors, the number of participants will be reduced by not granting rights to low scoring existing right holders, while in a few sectors, the numbers may be increased by the granting of rights to new entrants.

As a general rule, the Department will not allow right holders who sold or in any way alienated a fishing right to re-enter that commercial fishery under a different guise. The same applies to shareholders or members of close corporations who sold more than 10% of an enterprise.

#### **7.1.7 *Monopolies***

The Department is opposed to the existence of or the creation of monopolies. Large right holders have in the past abused their dominant position in a number of ways. The Department is also opposed to right holders signing agreements with other rights holders (smaller and / or limited rights holders) in arrangements that either perpetuate the system of advances (“voorskot”) or that have the effect of the smaller rights holder forfeiting their right to sell their catch for the best price. A maximum percentage of the TAC/TAE that may be held by any one right holder may be set in some fishery specific policies.

## **7.1.8 Performance**

If relevant and practical, the performance of existing right holders will be assessed under the following headings:

### **7.1.8.1 Financial performance and investment**

Financial performance of the applicant may be assessed in terms of a set of financial ratios which lend themselves to benchmarking backed up by audited financial statements. Technically bankrupt applicants will not be allocated any points for financial performance. The financial performance of existing right holders are also relevant to determine who the real beneficiaries of the allocation are ("follow-the-buck principle) and to determine whether the right holder has invested in the industry.

Investment in a vessel nominated to harvest the resource will be recognised as long as that investment demonstrates a genuine intention to share the risk of participating in the sector. Small shares in vessels obtained at minimum or no cost to the applicant, will not be recognised as investment.

### **7.1.8.2 Payment of levies**

Applicants will be required to provide proof that they are up to date on the payment of their levies on fish landed (and will therefore have to provide catch returns) during the medium term right period. Where levy payments have been outstanding for a period in excess of 60 days, the applicant will be penalised. Should the applicant nevertheless succeed in being granted a right, the Department will not issue a permit until the full amount outstanding is paid.

In addition, the Department will in 2006 and subsequently, require all right holders to pay their levies, which will be calculated on the *quantum allocated*, at the beginning of fishing season and prior to the issue of the fishing permit.

### **7.1.8.3 Compliance**

Applicants convicted for serious infringements of the MLRA and the Regulations during the medium term right period may be excluded. This means that persons convicted of an offence and sentenced to prison may not

be eligible for a commercial fishing right. Persons who have elected to instead pay an admission of guilt fine may also be penalised.

Minor infringements of the MLRA and the Regulations and permit conditions will be used as a (negative) scoring criteria.

Whenever possible to do so in law, right holders will be held responsible for transgressions committed by skippers and crew. Right holders who own or who are negatively listed by a Regional Fisheries Management Organisation will be excluded from applying. Vessels listed on the negative lists of any regional fisheries management organisation will not be allowed to harvest fish stocks. Persons that own (whether wholly or in part) such vessels will not be eligible for commercial fishing rights. Persons that nominate such vessels to be used for commercial fishing will also be ineligible for a commercial fishing right.

In addition to revoking rights under section 28 of the MLRA, the Department is investigating methods of reducing quotas in cases of transgressions of the MLRA.

The Department's records relating to infringements of the MLRA will be made available for inspection prior to the allocation process. All participants and prospective applicants are advised to familiarise themselves with the Department's monitoring, control and surveillance strategy and business plan.

#### 7.1.8.4 Fishing performance

The fishing performance of existing right holders may be examined in order to determine whether an existing right holder application has effectively harvested a medium-term allocation.

Applicants that did not harvest any fish during a fishing season or who have not collected a permit for an entire season may be automatically excluded. Undercatching and overcatching may be used as (negative) scoring criteria in certain sectors.

The Department's records relating to catch returns will be made available for inspection prior to the allocation process.

### 7.1.9 Paper Quotas

The Department will endeavour to prevent new paper quotas from entering the industry and to remove paper quotas that currently hold rights. Paper quotas undermine or circumvent the objectives of the rights allocation process. Rights will be repealed post-2005 where it becomes evident that a new right holder is nothing more than a paper quota.

#### 7.1.9.1 New entrants

In the long-term rights allocation process, the Department will exclude new entrant applicants who appear to be paper quota risks. For this purpose, the Department 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 when a danger exists that an applicant has not applied in order to enter the industry but to gain some financial benefit without involving him / herself with the main activities associated with exploiting any right that may be granted to him or her. In order to determine whether a new entrant applicant poses such a paper quota risk, the applicant’s assets and access to capital and its financial and business planning may be considered.

The Department will also exclude as “paper quota risk” applicants considered to be “fronts” for other real beneficiaries. Fronting occurs when application is made through an ostensibly transformed entity, but the intention is to ensure that the main benefits will flow to an untransformed entity or non-HDP person or persons.

#### 7.1.9.2 Previous right holders

The Department will also exclude medium-term right holders who have shown themselves to be paper quotas. For this purpose, the Department will consider as paper quotas, medium-term right holders with weak or non-existent performance records combined with no investment or involvement.

The Department will also exclude “fronts” and will for this purpose employ the “follow the buck” principle to determine whether ostensibly transformed right holders have granted any financial or other benefit to HDP components or persons. Such right holders will not be re-allocated rights.

As a general rule, the Department will not allow right holders who have sold or in any way alienated a fishing right to re-enter that commercial fishery under a different guise.

### 7.1.9.3 Clusters C and D

In Clusters C and D sectors, large groups of identical or very similar applications sponsored by consultants or commercial fishing companies and other entities, will be excluded as paper quota fronts. In general, no more than one right will be allocated per nuclear family. Applicants may be required to disclose their relationship to applicants in other commercial sectors. If more than one member of a household applies for a right, all the applications from the family may be excluded, unless the applicants clearly and convincingly demonstrate that they have established separate small commercial operations.

### 7.1.9.4 Future right holders

After the long-term rights allocation process, the Department will endeavour to withdraw the rights of paper quota right holders by applying section 28 of the Act or after a review process. As a rule, the Department will revoke fishing rights held by participants who do not utilise it.

### **7.1.10 Value adding and enterprise development**

The Department is in favour of value adding fish harvested as it stimulates the creation of jobs. Value adding may be taken into account where opportunities exist. The Department understands *value-adding* to refer to those initiatives that add the maximum commercial value to the fish landed, regardless of whether such value is attained on the South African or international market. Investment in such value-adding initiatives will be rewarded particularly in the Cluster A and Cluster B fisheries.

Applicants may further be required to demonstrate that they are part of a value chain located in South Africa where it exists.

In addition, a percentage of the TAC may be set aside in some sectors to promote industry diversification and enterprise development. This will be dealt with in sector specific policies.

### **7.1.11 Job creation**

An important purpose of allocating long term rights is to stabilise the industry in order to create an environment conducive to job creation. It is the Department's intention to encourage the creation of more quality jobs in the fishing industry.

Jobs provided by existing right holders, and particularly increases in jobs as a result of the allocation of medium term rights, will be rewarded, at least in clusters A and B. The Department favours the creation of permanent employment over seasonal employment and seasonal employment over contract employment. Regard may also be had to working conditions in land-based factories and on vessels.

Where it can be proven within Clusters C and D that seasonal or part-time employment is created in these sectors, points may be awarded to an applicant. However, sector C and D fisheries are principally intended to support fishers operating in the second economy with the potential to move into the first economy.

#### ***7.1.12 Dependency and on-board participation***

The principal objective with the allocation of rights in Cluster C and D fisheries is to enable individuals to establish small commercial enterprises and full-time occupations for themselves. It will therefore be requirement in most of the Cluster C and Cluster D fisheries that the applicant is financially dependent on the income generated by the fishing activity and that the right holder actively participates, in a personal capacity, in the fishing or harvesting of the resource. More particularly, “on-board participation” by the right holder will be a requirement in most of the Cluster C and Cluster D fisheries. Only applicants incapable of participating due to a permanent physical disability will be exempt from this requirement. Women applicants will not be exempt from having to participate on board.

Existing right holder will be required to provide proof of their dependency by way of financial statements. Potential new entrants will be required to provide proof of dependency by demonstrating their historical involvement in the sector.

#### ***7.1.13 Local economic development and geographic justice considerations***

The Department will endeavour, when allocating fishing rights in some sectors, to encourage the landing of catches in fishing harbours outside the metropolitan areas to encourage local economic development. It is not possible to achieve this objective in all sectors. Where possible, the manner of encouraging local economic development will be addressed in Fishery specific policies. In order to prevent the unintended consequence of a fishing community being left out in the allocations process, the Department may use landing site as a scoring or tie-breaking criteria. In addition the Department may also in due course develop policies and a system of levy concessions that encourages rights holders to land and / or process fish in harbours that are especially economically depressed.

Where possible, the Department will also endeavour to achieve allocation of equitable distribution of fishing rights along South Africa's coastline.

#### **7.1.14 Vessels and fishing effort**

##### 7.1.14.1 Vessels

Every applicant in the Cluster A, Cluster B and Cluster C fisheries will be required to demonstrate a right of access to or ownership of a vessel considered suitable for the harvesting of that particular fish stock or stocks. All vessels will have to be pre-registered with the Department for application purposes in order to be nominated as a catching vessel.

A suitable vessel will be defined in each Fishery specific policy, but the minimum requirements for suitability will be:

- ❑ South African flagged (unless an exception is made in a Fishery policy);
- ❑ Fitted with an approved and functioning vessel monitoring system ("VMS");
- ❑ Registered by the South African Maritime Safety Association as being suitable for fishing; and
- ❑ Not listed on any regional or international negative list.

In particular, right holders who own vessels (whether wholly or in part) that are on any negative list will not be eligible for a fishing right. Persons that nominate such vessels to be used for commercial fishing will also be excluded.

Current right holders that have not invested in vessel monitoring systems are strongly advised to purchase such systems without delay.

The Department will require all applicants for commercial fishing rights to utilise the nominated vessel with which they applied for the right. Vessel changes will only be allowed in appropriate instances.

##### 7.1.14.2 Fishing effort

The Department is obliged to conserve marine living resources in terms of the MLRA and to apply precautionary approaches in respect of the management and utilisation of these resources. A key element in

the management and conservation of marine resources is the limitation of applied fishing effort to ensure the optimum utilisation of such resources.

The Department is generally opposed to any further increase in vessel effort. Vessel overcapacity is regarded as one of the primary threats to South African fish stocks. It also places additional burdens on the Department, both in respect of monitoring and enforcing compliance and managing the exploitation of the resource. Subject to Fishery specific policies, joint and cross-sectoral use of vessels is encouraged, as this will result in the more effective and efficient use of vessels throughout the season.

On the other hand, it is recognised that ageing vessels must be replaced, inter alia for safety reasons. Modernisation of the fleet will inevitably result in an increase in catch capacity. Where necessary, effort limitations will be introduced to limit effort.

#### ***7.1.15 Safety of staff and crew***

The safety of crew at sea is of great concern to the Department. Accordingly, applicants will be required to show that they have complied with the regulatory requirements of the South African Maritime Safety Association, in particular the Miscellaneous Amendment Regulations of 2004 promulgated in terms of the Merchant Shipping Act, 57 of 1951.

In addition, applicants will be required to show that they comply with the Occupational Health and Safety Act, 1993 and the Compensation for Occupational Injuries and Diseases Act, 1993. Applicants are further reminded of the Department directive that companies are required to adopt HIV/AIDS policies and may be required to attach these to the 2005 applications.

#### ***7.1.16 By-Catch Mitigation and Reduction Measures and dumping***

Subject to the exceptions discussed in the Fishery specific policies, the Department only supports targeted fisheries. It is recognised that in some fisheries by-catch is unavoidable and constitutes an accepted part of a catch. The Department will continue to develop policies that ensure improved assessment and management of by-catch species. Where it is desirable to establish a new fishery that is currently treated as by-catch, the Department will develop to such (e.g. red eye).

The Department therefore considers the reduction of and mitigation against by-catches as an important consideration. The Department is in particular opposed to the targeting of by-catch species. By-catch should

be reduced and unavoidable by-catch should be landed. Right holders found dumping may be subjected to section 28 revocation procedures.

The Department is in the process of developing a comprehensive management plan regarding by-catch. In determining the appropriateness of by-catch mitigation and reduction devices the Department will consider its suitability to a fishery having regard to the nature of fishery itself; the cost implications of mandating any particular device or mitigation strategy; the local and foreign comparative learnings; and inputs of local fishers and their role in developing such strategies (if applicable).

Until such time as these decisions are made, the Department encourages measures to minimize incidental bycatch of seabirds, sharks, marine mammals, juvenile fish and various vulnerable or threatened marine species. South Africa has developed a National Plan of Action (NPOA) for reducing incidental bycatch of seabirds as well as a NPOA for reducing incidental bycatch of certain species of shark. In this regard, the Department would strongly urge various fishing sectors to employ the use of mitigation devices such as, the tori-line (bird bycatch mitigation for longliners), escapement or exclusion devices for trawl sectors (escapement of juvenile fish and possibly marine mammals) as well as specific mesh sizes to curtail retention of juvenile fish in trawl nets. In addition, the Department strongly condemns the practice of high grading and dumping fish as well as deliberate targeting of bycatch species. The Department would further consider temporal and spatial closures for fishing, where it is deemed necessary for the protection of spawning stocks as well as protection of nursery grounds.

#### ***7.1.17 Environmentally sustainable practices***

Fisheries that are recognised by independent international certification programmes, such as the Marine Stewardship Council, as being managed in an environmentally sustainable way, will be preferred by the Department for the allocation of longer-term fishing rights of up to 15 years.

The Department will recognise fishing operations that have embarked upon, and invested in or supported research into, environmentally sustainable best practices. In particular, the Department has identified the following issues as requiring attention:

- ❑ Introducing energy and fuel reduction mechanisms in factories and vessels;
- ❑ Reducing by-catches and bird mortality;
- ❑ Reducing light pollution;
- ❑ Minimising the adverse affects of ballast water release and other forms of marine pollution.

### **7.1.18 Bait Fisheries**

The Department will not allocate commercial rights for the purposes of bait collection. The only exception to this policy will be in the white mussel sector, which is still developing a commercially viable market for human consumption.

## **7.2 Cross-cutting policy for Quantum Allocations**

In general, quantum decisions are taken separately and independently from the allocation of rights. However, the considerations that apply to rights allocation apply in general also to quantum decisions. In this part of the policy, additional considerations that apply to quantum decisions are set out.

### **7.2.1 Clusters A and B**

In Clusters A and B successful applicants will be allocated a proportional amount (percentage) of the TAC (and not tonnage) or TAE (effort)

For existing right holders, the starting point for the allocation of quantum or effort will be the successful applicant's medium-term allocation. A percentage of this allocation will be deducted and redistributed on the basis of a quantum points system, which will not necessarily be weighted the same as the right allocation points system. For example, more emphasis may be placed on transformation, viability and performance points, for purposes of quantum decisions, than in the rights allocation system.

New entrants will be allocated the same amount of the TAC/TAE.

Notwithstanding the system of allocating points as the basis on which rights are being allocated, the Department intends in general to increase low quantum levels with the intention to create more viable business entities.

### **7.2.2 Clusters C and D**

Successful applicants in these sectors will be allocated a fixed amount of kilograms of the Total Allowable Catch ("TAC") or a part of the Total Applied Effort ("TAE"). This amount will not necessarily be the same for each zone or TURF, but every successful applicant in the same zone or TURF would be allocated the same amount.

This amount will, failing a collapse of the stock, not be changed for the duration of the right.

### **7.2.3 *Excess quantum left after appeals***

Excess quantum left after appeals will not necessarily be distributed proportionately. In some sectors, the excess will be allocated to advance transformation, viability and consolidation.

### **7.2.4 *Increases in the TAC/TAE***

Increases in the TAC will not necessarily be allocated proportionately. It may be determined during the allocation process that a greater percentage of the increase (up to a certain maximum tonnage) will be allocated to right holders with small quantum amounts, especially in sectors where smaller right holders contribute more to the transformation of the sector than larger right holders.

With regard to TAE increases (vessel or crew numbers), the Department may elect to permit further entrants into the fishery.

### **7.2.5 *Enterprise development***

As stated above, within certain sectors, an amount of the TAC may be set aside to be allocated for purposes of industry diversification and enterprise development.

## **PART D: POST ALLOCATION CONSIDERATIONS**

In this part, a number of post-allocation policy considerations are addressed in general terms. Although these policies will not be directly applied in the long-term rights allocation process, it is necessary to include them in this General policy in order to inform potential applicants of the Department's management intentions after the rights allocation process is completed.

### **8. Co-Managing the Commercial Fisheries and recognised industrial bodies (“Industrial bodies”)**

The Department is gradually introducing a change in the management and regulation of South Africa's commercial fisheries, by moving towards a system of co-managing the fisheries with right holders, fishing communities and other relevant stakeholders.

In terms of this approach, management of the commercial fisheries will not rest solely with the Department. The responsibility will be shared with right holders and, where applicable, with the coastal communities who depend on the commercial activities for their income and prosperity. A particular application of the approach, the TURF (Territorial User Rights Fishery) system was introduced in the abalone fishery, and the Department is considering the application of the same principle to some of the other fisheries, such as Handline Hake, West Coast Rock Lobster (Near Shore), Oysters, White Mussels and Netfishing.

As far as the larger commercial fisheries are concerned, the Department will seek closer working relations with recognised industrial bodies to facilitate greater levels of investment in fisheries research, management and compliance.

In order to facilitate co-management, Fishery specific **Management Working Groups** have been established in most of the fishing sectors. Various industrial bodies, organisations and associations representing the right holders are represented on these Working Groups. The function of Management Working Groups is to discuss all issues pertaining to the management of a particular resource or resources, including permit conditions, closed seasons, restricted areas, establishment and amendment of sectoral management plans, compliance and vessel restrictions. As far as the larger commercial fisheries is concerned, the Department also envisages sharing its biological and scientific research obligations of fish stocks and the impact of fishing on ecosystems with fishing sectors through the Working Groups or other appropriate mechanisms.

Section 8. (1) of the MLRA stipulates that “The Minister may, by notice in the *Gazette*, recognize any industrial body or interest group in a branch of the fishing industry which, in the opinion of the Minister, is representative of the specific body or group.” The Department intends to utilise this section in order to formalise its working relationships with the fishing industry. A draft Policy on Recognised Industrial Bodies (*RIB's*), containing recognition criteria will be made available for public comment. A meeting will then be facilitated between the Minister and Industrial Bodies. At this meeting the Minister will consult with Industrial Bodies about the criteria for recognition. The criteria will thereafter be adopted and published. Industrial Bodies that do not meet the criteria will not be recognised by the Department.

In future, the Department will consult and communicate with stakeholders in the fishing industry by way of a number of formal channels. These will include, in the form of written policy, consultation with fishers in coastal communities and consultation with recognised industrial bodies (recognised in terms of section 8 of the Act). Where recognised industrial bodies exist, the Department may elect to communicate via the recognised industrial body only. The Department will require that consultation by rights holders with the Department take place only via their recognised industrial body.

## **9. Levies and costs recovery**

Levies are a fixed amount payable by right holders of commercial fishing rights per unit of fish landed and are therefore linked to the value of the landings. Levies are currently imposed in terms of section 29 of the Sea Fishery Act 12 of 1988.

Currently the income from the levies is used to recover some of the costs that the department incurs in managing the resources (including compliance and research costs). Application, permit and license fees on the other hand, are set to cover the administrative costs of processing applications for rights, permits and licenses and the issuing of permits and licenses.

After the allocation process, the Department will investigate the feasibility of introducing a system of up-front levy payments or payment by monthly instalments on the basis of the proportion of Total Allowable Catch allocated (and not landed). The Department has also invited proposals for the introduction of a complete costs recovery system for the management of commercial fisheries.

## 10. Observer programme

On-vessel and shore-based observer programmes are critical to ensuring sustainable and recorded harvesting of fish stocks as required by law, policy and permit conditions. The Department's current observer programme focuses on *on-vessel* and *shore-based* scientific monitoring and reporting. The Department will expand the current programme to include elements of compliance monitoring and reporting. It is intended to progressively increase observer coverage to as many full commercial fisheries as is practically possible. It is also the intention to introduce new methods of ensuring compliance such as on-board cameras.

The Department will pass on the costs associated with managing and implementing the observer programmes to right holders. Details will be set out in the applicable Fishery sector policies. Further details regarding the cost of observer programmes to right holders in specific fisheries will be gazetted in the Government Gazette as and when necessary.

The Department will require all fishing vessels to carry observers on board at all times while out at sea, if so requested.

## 11. Transfer of Commercial Fishing Rights

Applications for the transfer of fishing rights is dealt with in terms of section 21(2) of the MLRA which provides that fishing rights may be transferred subject to the approval and conditions that the Minister or his/her delegate may impose.

The position regarding the transfer of fishing rights following the allocation of medium term fishing rights was set out in Government Notice 1771 of 27 July 2001. This policy will be applied until replaced after the allocation of long term rights. In the past, transfer of commercial fishing rights has been approved in the following instances:

- ❑ On the death, dissolution, liquidation or sequestration of the right holder;
- ❑ To further transformation;
- ❑ To consolidate the number of right holders in a fishery;
- ❑ To increase efficiency in a fishery.

Once the long-term rights have been allocated, the Department will only permit the transfer of commercial fishing rights in the first third of the period for which the right is allocated, and for one of the above reasons.

“Window” periods for the orderly transfer of rights may be created on a fishery-by-fishery basis, where, in order to further transformation and consolidation, new entrants may be allowed to enter and existing rights holders may be allowed to merge.

An application for the transfer of a right must be brought regardless of the reason for the transfer. A rights holder may wish to transfer a fishing right or wish to exit from the fishing industry for different reasons, such as the restructuring of corporate entities, scaling down of non-core activities, and in the case of individuals, the sale of the right or physical incapacity or death. In all instances, an application for the transfer of a right must be made.

In circumstances where the members of a close corporation or shareholders of a company alienate some or all of their interests or shares, but the fishing right remains with the same legal entity, approval for the transfer of that right does not have to be sought. It is the Department’s view that any transfer of shares or of membership interest that results in a change of control over a juristic person (or trust) holding a fishing right, requires approval. This is to prevent the circumvention of section 21 (2) of the MLRA. In the case of a listed public company, a sale of more than 35% of the shareholding requires approval.

As is described above in this General policy, the Department is committed to the elimination of so-called “paper quotas”. In future rights allocations, applicants for rights will be scrutinised in order to determine whether they have previously applied for rights to be transferred. This will be done in order to minimize the risk of granting fishing rights to persons that were previously granted rights and who had sold or transferred such rights.

## **12. Vehicle use in the coastal zone**

Right holders that require the use of a vehicle in the coastal zone in order to effectively carry on the fishing activity must apply for a permit in terms of the applicable Regulations. Right holders are advised to consider the Guidelines on the Implementation of Regulations Pertaining to the Control of Vehicles in the Coastal Zone: 2004. Both the Regulations and Guidelines are available from the Department (Chief Directorate: Fisheries Compliance) or from [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za). A permit fee of R500 is applicable and the permit will be issued as being valid for the duration of the commercial fishing right.

## **13. Marine protected areas and Fisheries management areas**

### **13.1 Marine Protected Areas**

The Minister of Environmental Affairs and Tourism has designated a number of marine protected areas, protecting approximately 20% of South Africa's coastline. It remains the intention of the Minister and the Department to increase the extent of marine areas protected from fishing from the current 1% to the internationally determined 20% by 2015.

The Department recognises marine protected areas as an important refuge for fish stocks under exceptional fishing pressure. At present these fish stocks include over 50 species of linefish and abalone.

Marine protected areas are also recognised as an important tool to reduce illegal, unreported and unregulated fishing.

### **13.2 Fisheries Management Areas**

Section 15 of the Marine Living Resources Act makes provision for the declaration of fisheries management areas for the conservation, management and development of a fishery. The Department recognises that the declaration of fisheries management areas will be a further tool to effectively manage overlaps between competing fisheries and in this way reduce user conflict.

## **14. Compliance and Section 28 Notices**

In addition, the Department has invested in monitoring, control and surveillance ("MCS") equipment, including the latest vessel monitoring and positioning systems. The Department has further obtained the services of dedicated forensic auditing experts and specialised fisheries prosecutors.

In the next three years, the Department will focus on prevention of transgressions and self-regulation. This initiative will be coupled with strict performance monitoring, regular and ad hoc forensic auditing, co-operation with other regulatory agencies such as the South African Revenue Service and the South African Bureau of Standards, and stricter enforcement of sanctions, including the revocation or suspension of rights in accordance with the provisions of section 28 of the MLRA. The Department has already concluded various memoranda of understanding with key regulatory enforcement agencies both nationally and internationally, to share information and monitor the export and import of fish products.

The Department will issue notices under section 28(1) of the Act in all circumstances where the Department considers a breach of any provision of the MLRA, its regulations or permit condition, to be significant. In terms of section 28(4) of the Act, administrative action such as cancelling, revoking or suspending fishing rights or permits will be pursued in all circumstances that could threaten the sustainability of any fish stock.

Where a fishing right has been allocated and the right holder subsequently fails to pay any fee or levy imposed in terms of the applicable legislation, the Department will not hesitate to issue a notice under section 28 of the MLRA.