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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 400 OF 2005

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

INVITATION TO COMMENT ON THE DRAFT POLICIES CONCERNING THE ALLOCATION AND MANAGEMENT OF LONG TERM FISHING RIGHTS IN THE HAKE DEEP SEA TRAWL, INSHORE TRAWL, HORSE MACKEREL, KWA-ZULU NATAL PRAWN TRAWL, PATAGONIAN TOOTHFISH, SMALL PELAGICS (ANCHOVY AND SARDINE PURSE-SEINE) AND SOUTH COAST ROCK LOBSTER FISHERIES, 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 these Draft Policies on the Allocation and Management of Long Term Fishing Rights 2005 in the manner provided *for* in this Notice.

1. Hake Deep Sea Trawl (English Annexure A, Afrikaans – Annexure B)
2. Inshore Trawl (English - Annexure C, Afrikaans – Annexure D)
3. Horse Mackerel (English - Annexure E, Afrikaans – Annexure F)
4. Kwa-Zulu Natal Prawn Trawl (English - Annexure G, Afrikaans – Annexure H, Zulu – Annexure I)
5. Patagonian Toothfish (English - Annexure J, Afrikaans – Annexure K)
6. Small Pelagics (Anchovy And Sardine Purse-Seine) (English - Annexure L, Afrikaans – Annexure M)
7. South Coast Rock Lobster (English - Annexure N, Afrikaans – Annexure O)

IN THE CASE OF INCONSISTENCY BETWEEN THE ENGLISH, AFRIKAANS AND ISIZULU TEXT, THE ENGLISH TEXT PREVAILS

These fishery specific policies must be read with the Draft General Policy on the Allocation and Management of Long Term Fishing Rights, 2005. Interested parties may submit written comments to the Department by 17h00 on Monday 4 April 2005 in the following manner:

<p>Per Faks: Faks Nummer: (021) 670-1782 Aandag: Die Adjunk Direkteur-Generaal Vissery (Spesifiseer asseblief watter vissery) Beleid Kommentaar</p>	<p>Per Pos: Aandag: Mr Horst Kleinschmidt Die Adjunk Direkteur-Generaal Die Departement van Omgewingsake en Toerisme Postbus 44963 Claremont 7735 Vissery (Spesifiseer asseblief watter vissery) Beleid Kommentaar</p>	<p>Per E-pos: RVU@deloitte.co.za Aandag: Die Adjunk Direkteur-Generaal Die Departement van Omgewingsake en Toerisme Vissery (Spesifiseer asseblief watter vissery) Beleid Kommentaar</p>
		<p style="text-align: center;">By Hand</p> <p>Aandag: Die Adjunk Direkteur-Generaal Die Regte Verifieeringsseenheid Landsdown Road 11 Claremont Vissery (Spesifiseer asseblief watter vissery) Beleid Kommentaar</p>

*Please specify the fishery about which you are commenting.

Copies of all of the draft policies are also available on the Department's official website 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.

DRAFT



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT

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

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

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1. Introduction

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

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

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial hake deep-sea trawl fishing rights. Many of these considerations are not new. They have been applied by the Department when allocating rights in the past and to an extent this policy documents those considerations.

Certain post-rights allocation management policies are also presented in this draft policy. A Hake Deep-sea Trawl Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

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

2. Sector Profile

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

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

The hake deep-sea trawl fishery sustains about 8 800 direct jobs along South Africa's west and south east Cape coasts. Of these jobs, 90 percent are held by persons from historically disadvantaged communities, while 40percent are held by women. Working conditions in the hake deep-sea trawl are considered to be better than those that prevail in other fisheries. The majority of employees are employed on a full-time, year round basis, with fixed salaries and employment benefits. The average annual income of crew (including skippers) is R63 000 per annum. Many of the larger deep-sea trawl fishing companies are registered with the "***Proudly South African***" campaign, which confirms their commitment to nation building initiatives and , fair labour practices.

The hake deep-sea trawl fishery is an extremely capital intensive fishery. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure. The total value of assets in the fishery is estimated to exceed R700 million. The

market value of the landed catch is worth approximately R1,4 billion annually. Although vessels as small as 30 metres in length operate in the fishery, 66 percent of deep-sea trawlers are between 45 metres and 50 metres in length. Fishing trips vary from less than a week to more than 30 days.

3. The medium-term rights allocation process

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

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

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

4. Over-all sectoral objectives

The South African hake deep-sea trawl fishery is the only hake fishery in the world to have been awarded the prestigious **Marine Stewardship Council** certificate (www.msc.org). The MSC certification is a stamp of approval that indicates fish products originate from a sustainable and responsibly managed fishery.

In order to maintain and develop the global image of the South African hake deep-sea trawl fishery, the allocation of commercial fishing rights will be informed by South Africa’s domestic, regional and international obligations. Principal among these obligations is the need to ensure

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

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

- Improve the transformation profile of the hake deep-sea trawl fishery;
- Redistribute the TAC among the right-holders in terms of transformation criteria and criteria aimed at rewarding small- and medium-sized enterprises (“SME’s”) that performed in accordance with their permit conditions;
- Exclude medium-term right-holders with weak or non-existent performance records or with no investment or involvement in the fishery;
- Create an environment that attracts investment and stimulates job creation; and
- Support the economic viability and environmental sustainability of the fishery.

5. Duration

Having regard to –

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

the Department intends to allocate commercial rights for a period of 15 years (01 January 2006 to 31 December 2020), and subject to review at regular intervals against predetermined performance criteria, including the attainment of agreed transformation goals. (***see further paragraph 12 below***).

6. New Entrants

The hake deep-sea trawl fishery is presently over-subscribed with 53 right-holders. The current levels of catch have been reviewed and a conservative management plan has been implemented over the past three years. The TAC has been reduced and further reductions may be required in the near future.

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

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

7. Evaluation Criteria

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

7.1 Exclusionary Criteria

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

- (a) **Form of the Applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.

- (b) **Compliance:** Right-holders, including the directors or controlling shareholders that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine), will not be allocated a hake deep-sea trawl right. Right-holder applicants, including the directors or controlling shareholders, that have had a fishing right cancelled, suspended or revoked in terms of the MLRA will also not be allocated a hake deep-sea trawl fishing right.

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

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

- (c) **Paper Quotas:** Paper quotas, as defined in the General Policy, will be excluded.

- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (*see further paragraph 8 below for the definition of a suitable vessel*).

7.2 Comparative Balancing Criteria

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

(a) Transformation

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

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

(b) Investment in the Fishery

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

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

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

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

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

(c) Performance

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

(d) Value-Adding

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

(e) Jobs

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

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

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

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

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

(f) By-catch

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

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

(g) Environmentally sustainable practices

The practice of trawling is known to cause damage to sea beds. To date there is no conclusive data indicating the extent of the damage caused. The Department, in applying the precautionary management principle, will positively score those applicants that have been practising or who indicate how their trawling operations will –

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

(h) Local Economic Development

The Department will positively score those applicants, particularly smaller right-holders and new entrant applicants that elect to land their catches and have them processed in centres outside of the large metropolitan areas such as Port Elizabeth and Cape Town, but this will not result in penalising the larger hake deep-sea trawl right-holders that have made substantial investments in processing and marketing facilities in Cape Town and Port Elizabeth.

(i) Non-payment of fish levies

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

(j) Compliance

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

7.3 Quantum criteria

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

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

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

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

8. Suitable Vessels

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

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

9. Multi-Sector Involvement

Right-holders in the hake deep-sea trawl fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the hake deep-sea trawl fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries, which are fisheries reserved for fishers reliant on those fish stocks for their income or the majority of their income.

10. Application fees and levies

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

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

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

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

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

11. Management measures

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

11.1 Ecosystem approach to fisheries management

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

11.2 Consolidation of participants

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

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

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

11.3 Fisheries management areas and marine protected areas

The hake deep-sea trawl fishery targets two types of hakes along the west, south and south east coasts of the Cape. Should the proposed Namaqualand Marine Protected Area be designated, the harvesting of hake would then effectively be separated into three distinct areas as trawling activities along the west coast would be split north and south of the MPA.

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

11.4 Vessels and fishing effort

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

11.5 Monopolisation

While the Department will encourage the consolidation of right-holders in this fishery, the Department is opposed to monopolies which may operate to the detriment of smaller right-holders. The Department is concerned, in particular, that the smaller right-holders in the fishery are not able to fully realise the value of their allocations due to

their size. The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control but will monitor whether any large right-holders act in a manner contrary to fair competition practices.

11.6 TAC ratios – trawl : Longline

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

12. Performance measuring

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

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

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

13. Observer programme

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

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.

DRAFT



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

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE INSHORE TRAWL
FISHERY: 2005**

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

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1. Introduction

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

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

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

Certain post-rights allocation management policies are also presented in this draft policy. An inshore trawl Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

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

2. Sector profile

The inshore trawl fishery has a significantly shorter commercial history than its counterpart, the deep-sea trawl fishery. The inshore trawl fishery was pioneered during the 1900's. However, it was only in the 1950's that the fishery took on a commercial face when smaller trawlers entered the fishery to target hakes and the more valuable Agulhas sole. The inshore trawl fishery continues to target these species.

As was the case with the deep-sea trawl fishery, the inshore trawl fishery was largely unregulated until 1978 when participants were not restricted to a maximum catch limit. Since then, the inshore trawl fishery has been managed in terms of a total allowable catch ("TAC") that has remained remarkably stable at around 6 percent of the global hake TAC.

The Department manages the inshore trawl fishery as part of a "*hake collective*". In terms of the MLRA, a "*global*" TAC for all hakes is set annually by the Minister of Environmental Affairs and Tourism. The deep-sea trawl fishery is allocated 83 percent of the TAC, the inshore trawl fishery 6 percent, and the balance is shared by the hake longline and handline sectors. Until 2004, 1 000 tons of hake were set aside for foreign fishing. This allocation will be discontinued.

Inshore trawl grounds are located between Cape Agulhas in the west and the Great Kei River in the east. Trawling for hake is focused on a single fishing ground located at depths shallower than 110 metres but at least five miles off shore.

The inshore trawl fishery sustains some 1 100 direct jobs. Black people occupy more than 90 percent of these jobs, while women hold 42 percent. Working conditions in the inshore trawl fishery are considered to be better than those that prevail in other fisheries. The majority of employees are employed on a full-time, year round basis, with fixed salaries and employment benefits. The average annual income of sea-going crew is R35 000. Sea-going workers are registered with the Bargaining Council for the South African Fishing Industry which has two chambers: one for the deep-sea trawl fishery and one for the inshore trawl fishery. The Bargaining Council sets out basic conditions of employment in these fisheries.

The inshore trawl fishery is not as capital intensive as the deep-sea trawl fishery, but significant investments in the form of vessels, processing and marketing infrastructure have nevertheless been made by the existing participants. The total value of the assets in the fishery is estimated to be more than R100 million. The market value of catch landed is worth approximately R16 million annually.

Hake stocks are currently managed according to a conservative strategy. The TAC for hake has been reduced each year since 2003 and further reductions may be necessary.

3. The medium-term rights allocation process

As with all other commercial fisheries in South Africa, the inshore trawl fishery has historically been dominated by a handful of large white-owned companies. The introduction of the TAC in 1978 resulted in the smaller companies being forced out of the fishery. In 1992, eleven large companies operated 35 trawlers in the fishery. By 2004 however, 16 companies were participating. As importantly, in 1992 the ratio between smallest quota and the largest quota was 1:45. Ten years later, the ratio was reduced to 1:26. The gap between the smallest and the largest allocations is closing.

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

- The inshore trawl fishery is currently 50 percent black-owned;
- 69 percent of right-holders are small- and medium-sized enterprises;
- 37 percent of the hake TAC and 46 percent of the sole TAC is held by black-owned companies (in 1992 this was one percent).

4. Over-arching sectoral objectives

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

- Improve the transformation profile of the inshore trawl fishery;
- Create an environment that attracts investment and stimulates job creation;
- Reduce the adverse impacts of trawling, such as damage to seabeds, and to reduce by-catch; and
- Support the economic viability and environmental sustainability of the fishery.

5. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the fact that the current inshore trawl fleet is old and requires replacement;
- the number of quality full-time jobs provided;
- the need to maintain the current economic stability in the fishery; and
- the fact that the inshore hake and sole resources are well managed with reliable and current data,

the Department intends to allocate commercial rights for a period of 10 years (01 January 2006 to 31 December 2015), subject to a review at regular intervals against predetermined performance criteria, including the attainment of agreed transformation goals. (*see paragraph 12 below*).

6. New Entrants

Hake and sole stocks are presently managed in terms of a recovery plan as there are indications that these stocks are declining. Furthermore, the accommodation of new entrant applicants in the fishery between 1992 and 2002 had resulted in the hake allocation decreasing from an average of 900 tons to an average of 600 tons per right-holder. Sole allocations were similarly reduced from an average of 80 tons to an average of 50 tons per right-holder.

The Department considers the current number of participants and fishing capacity (16 right-holders utilising 35 vessels) as optimal. However, the transformation profile of this fishery is below that of the fishing industry average (66 percent). The Department will therefore prefer new entrant applicants over existing right-holders that have not effected the transformation objectives committed to in their respective medium-term right allocation applications. New entrants may also be preferred over existing right-holders that have not invested substantially in the fishery over the period that they held a medium-term commercial right.

New entrant applicants will only be granted rights if they –

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

7. Evaluation criteria

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

7.1 Exclusionary criteria

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

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the

Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.

- (b) **Compliance:** Right-holders, including the directors or controlling shareholders that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine) will not be allocated an inshore trawl right. Right-holder applicants, including the directors or controlling shareholders, that have had any fishing right cancelled, suspended or revoked in terms of the MLRA will also not be allocated an inshore trawl fishing right.

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

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

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

7.2 Comparative balancing criteria

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

(a) Transformation

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

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

(b) Investment in the fishery

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

- Investments in suitable vessels. Investment in the form of shareholding will be considered. Right-holder applicants will not be rewarded for having concluded charter agreements, catching agreements or vessel purchase agreements;
- Investments in processing and marketing infrastructure. The Department will reward right-holder applicants that have invested in hake and sole processing factories and marketing initiatives.

As far as new entrant applicants are concerned, the Department will consider what investments have been made in the form of vessels, processing and marketing

infrastructure. In addition, new entrant applicants will have to demonstrate whether they have the knowledge, skill and ability to trawl for hake and sole.

(c) Performance

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

(d) Value-Adding

The Department may have regard to the ability or intention of applicants to add to the value of hake and sole by processing fish products for local and international markets.

(e) Jobs

The inshore trawl fishery provides approximately 1 100 relatively high quality jobs. Salaries average R35 000 annually for sea-going employees. The majority of employees are employed on a full-time basis with benefits such as medical aid and pension. Fair labour practices generally prevail.

Applicants that provide, or undertake to provide, their employees with –

- full-time employment;
- medical aid and pension;
- any other employment benefits; and
- safe working conditions,

will be positively scored. In the case of existing right-holders, jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account. The Department will also have regard to the wage differentials of the highest and lowest paid employees.

(f) By-catch

The volume of by-catch in the inshore trawl fishery remains of concern to the Department. The targetting of high value by-catch species such as kingklip (*Genypterus capensis*) and monk fish (*Lophius vomerinus*), is of particular concern. Present catch rates indicate that catches for both species are above sustainable levels. Kingklip abundance on the South Coast is particularly depressed.

The Department has determined the maximum annual by-catch allowances for kingklip to be 3000 tons and for monk fish to be 7000 tons. These by-catch allowances shall apply to the hake fishery as a whole. Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or, if new entrant applicants, would invest in to ensure adherence with the above by-catch limitations.

(g) Local Economic Development

The Department will positively score those applicants, particularly smaller right-holders and new entrant applicants that elect to land their catches and have them processed in centres outside of the large metropolitan areas such as Port Elizabeth and Cape Town, but this will not result in penalising the larger hake inshore trawl right-holders that have made substantial investments processing and marketing facilities in Cape Town and Port Elizabeth.

(h) Non-payment of Fish Levies

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

(i) Compliance

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

7.3 Quantum criteria

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

- (a) **Transformation pool:** 30 percent of the hake and sole inshore trawl TAC will be redistributed in accordance with transformation scores;
- (b) **Performance (other than transformation):** 20 percent of the hake and sole inshore trawl TAC will be redistributed in accordance with the over-all comparative balancing score achieved by each successful applicant (other than transformation);
- (c) **Small- and medium-sized enterprises:** 10 percent of the hake and sole inshore trawl TAC will be set aside for affirming those successful applicants that are small- or medium-sized enterprises. Small- and medium-sized entity applicants are, *inter alia*, entities with an annual turnover that did not exceed R5 million for medium-size operations and R3 million for small operations.

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

8. Suitable vessels

A suitable vessel in the inshore trawl fishery is a vessel that:

- has a maximum SAMSA certified length of 30 metres;
- is fitted with a functioning vessel monitoring system;
- has a maximum horsepower of 750; and
- is geared to target sole and hake at depths of not more than 110m.

9. Multi-sector involvement

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

10. Application fees and levies

The application fee for the inshore trawl fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews. In this regard the costs incurred during the medium-term process will be used as a guide; and
- The value of the fish being allocated over the duration of the right.

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

11. Management measures

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

11.1 Ecosystem approach to fisheries management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic and integrated policy which recognises that fishing and various landbased activities impact on the broader marine environment. This part of the inshore trawl fishing policy does not attempt to provide a policy statement on EAF in the inshore trawl fishery. The EAF in the inshore trawl fishery will be detailed further in the Fishery Management Manual for

the inshore trawl fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

11.2 Fisheries management areas

The hake inshore trawl fishery targets two hake species and Agulhas sole within a relatively small marine area. The Department is concerned that the intensive targeting of hake in this area is placing unsustainable pressure on linefish stocks such as kob and kingklip. The Department also intends to reduce the sharing of fishing grounds by trawlers and longliners.

Section 15 of the Marine Living Resources Act makes provision for the declaration of fisheries management areas. The Department will consider declaring such management areas in an attempt to reduce the by-catch of kob and kingklip in particular, and to address the potential user conflict between longliners and trawlers.

11.3 Consolidation of participants

After to the allocation of 10-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

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

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

11.4 Vessels and fishing effort

There are presently 35 inshore trawl fishing vessels that operate in South African waters. The majority are old vessels that require replacement. The upgrading of the fleet may result in an increase in the fishing efficiency. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the

fleet. Right-holders will not be permitted to introduce vessels capable of expending effort far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 Monopolisation

While the Department will encourage the consolidation of right-holders in this fishery, the Department is opposed to monopolies which may operate to the detriment of smaller right-holders.

The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control but will monitor whether any larger right-holder acts in a manner contrary to fair competition practices.

11.6 TAC ratios– Trawl:Longline

The current TAC ratio of trawl:longline will by and large be maintained. The ratio, however, will be reviewed once further data becomes available on the relative impacts of trawling and longlining.

12. Performance measuring

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

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

- transformation;
- investment in vessels, factories and gear;

- sustainable utilisation and in particular the reduction of by-catch and the ecological impacts of trawling;
- compliance with applicable laws and regulations.

13. Observer programme

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

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.

DRAFT



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT

POLICY ON THE ALLOCATION AND MANAGEMENT OF LONG-
TERM COMMERCIAL FISHING RIGHTS IN THE HORSE
MACKEREL FISHERY: 2005

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

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1. Introduction

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

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

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

Certain post-rights allocation management policies are also presented in this draft policy. A horse mackerel Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial horse mackerel fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

2. Biological status of the fishery

The southern African subspecies of horse mackerel (*Trachurus trachurus capensis*) is found along the entire South African coast, but the largest concentrations of adult fish are found on the Agulhas Bank, near the continental shelf break. Juveniles occur inshore, mainly on the west coast, where they are caught by the purse-seine fishery during the first quarter of the year.

The South African horse mackerel stock is comparatively small by world standards. The status of the South African stock is still being assessed. For this reason, the horse mackerel fishery is managed in terms of a maximum precautionary catch limit (“MPCL”). The MPCL has fluctuated between 22 000 and 54 000 tons since 1990.

It is important to note that the Cape horse mackerel is highly nomadic. Local availability is variable and dependent on environmental conditions.

3. Profile of the Fishery

The horse mackerel resource is harvested mainly by targeted mid-water trawling but there are substantial targeted and incidental catches in the hake-directed bottom trawl fishery. In addition, juvenile horse mackerel is taken as a by-catch in the purse-seine fishery on the west coast. While generally low, the catch of juveniles by the purse-seine fishery has on occasion been substantial and is currently subject to a strict limit of 5 000 tons per annum.

Management of the horse mackerel resource in South African waters is hampered by a lack of data, particularly the lack of a time-series of abundance indices. The most reliable current abundance index is derived from the demersal trawl surveys using bottom trawl gear. However, this index most likely underestimates the size of the resource. Consequently, the status and productivity of the resource is less well known relative to other South African resources such as hake, sardine and anchovy. The data on horse mackerel are inadequate because the primary research focus of monitoring surveys has been the assessment of established fisheries such as hake and sardine.

The horse mackerel fishery employs approximately 50 persons on board one midwater trawler. Of these 50 persons, only 16 are South African. Horse mackerel is transhipped and exported without landing or processing in South Africa. The fish are exported to West Africa, earning approximately R2.50 per kilogram. The value of the catch is worth approximately R55 million annually.

4. The medium-term rights allocation process

In 2001, medium-term rights for targeted mid-water trawling were allocated to 21 companies, of which five were new entrants. The new entrants were allocated 500 tons each and the rest of the TAC was divided among existing right-holders. The allocation considered previous allocations and scores achieved in a comparative balancing assessment.

The medium-term allocation records show that:

- 41 percent of the current participants are black owned;
- 29 percent of the current participants are black managed;
- 37 percent of the TAC is held by black owned companies.

5. Over-arching sectoral objectives

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

- Improve the transformation profile of the horse mackerel fishery;
- Create an environment that attracts investment and stimulates job creation;
- Support the economic viability and environmental sustainability of the fishery;
- Encourage the landing and processing of horse mackerel in South Africa.

The Department will recognise two types of horse mackerel directed effort. First, those that target horse mackerel using a mid-water trawler. These right-holders may only use a mid-water trawl net and all hake harvested will be regarded as a by-catch. The hake by-catch limitations will apply in this regard.

Those right-holders that hold a hake deep-sea trawl right in addition to a horse mackerel right may carry both a deep water and a mid-water trawl net. All hake caught in this instance will be deducted from the right-holder's hake allocation.

Right-holders will be required to specify which option they intend exercising.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery
- the capital intensity of the fishery;
- the need to encourage landing of horse mackerel in South Africa and increase the number of South African jobs in this fishery;
- the need to increase the economic stability and competitiveness of the fishery; and
- the fact that the horse mackerel resource requires further research,

the Department intends to allocate commercial rights for a period of 10 years (01 January 2006 to 31 December 2015 subject to a review at regular intervals against predetermined performance criteria, including whether agreed transformation goals have been achieved (**see paragraph 12 below**)).

7. New Entrants

Notwithstanding that the Department considers this fishery to be optimally exploited, the poor transformation profile, coupled with the fact that horse mackerel is harvested and exported

without processing in South Africa, the Department intends allowing in new entrant applicants. New entrant applicants will only be granted rights if they –

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

8. Exclusionary criteria

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter weighted in terms of a set of “*comparative balancing criteria*”. A cut-off score will then be determined. A proportion of the TAC will then be allocated to each successful applicant in terms of a set of “*quantum criteria*”.

8.1 Exclusionary criteria

Apart from the criteria described in the General Policy pertaining to the lodgement of the applications and material defects, the Department will exclude applicants that fail to meet the following requirements:

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.
- (b) **Compliance:** Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine) will not be allocated a horse mackerel fishing right. Right-holder applicants, including the directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of

the Marine Living Resources Act will also not be allocated a horse mackerel fishing right.

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

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

- (c) **Paper quotas:** Paper quotas, as defined in the General Policy, will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (*see paragraph 9 below*).

8.2 Comparative balancing criteria

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

(a) Transformation

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

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

(b) Investment in the fishery

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

- Investments in vessels suitable for the harvesting of horse mackerel. In this regard, investment in the form of shareholding will be considered.
- Investments in processing and marketing infrastructure. The Department will specifically seek to reward those applicants that undertake to land and process horse mackerel in South Africa.

As far as new entrant applicants are concerned, the Department will consider what investments have been made in the form of vessels, processing and marketing infrastructure. In addition, new entrant applicants will have to demonstrate whether they have the knowledge, skill and ability to fish for horse mackerel.

(c) Jobs

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

- Full-time employment;

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

In addition, right-holder applicants will be rewarded in accordance with the number of jobs created per ton of fish allocated. The Department will also have regard to the wage differentials between the highest and lowest paid employees.

(d) Value-adding

The Department may have regard to the ability of applicants to add or intend to add to the maximum value of horse mackerel by processing fish products for local and international markets.

(e) Performance

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

(f) Payment of fish levies

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

(g) By-catch

The impact of trawling for horse mackerel on dolphins, pelagic sharks and sunfish is a concern. Applicants able to demonstrate steps taken to reduce the impact of mid-water trawling on these species will be positively scored.

The hake by-catch in the horse mackerel targeted mid-water trawl fishery is expected to be just under two percent of the horse mackerel catch. Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or - if new entrant applicants - would invest in to ensure adherence with the above by-catch limitations.

(h) Compliance

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

8.3 Quantum criteria

In respect of right-holders, the Department will use as a base the 2005 allocations. To this will be added proportionately the allocations of right-holders that were excluded. A set of quantum scoring criteria will then be developed based on the –

- (a) Level of transformation:** 20 percent of the TAC will be redistributed in accordance with transformation scores achieved by each successful applicant;
- (b) Landing of Horse Mackerel in South Africa:** 20 percent of the TAC will be redistributed to those successful applicants which intend to land horse mackerel in South Africa and develop products for human consumption;
- (c) The unequal distribution of the MPCL between right-holders:** This is a further factor that will be considered. Ten percent of the MPCL will be allocated to applicants with higher than the average balancing score and less than the average quantum allocation.

New entrants will be allocated the same as the lowest allocation made to a successful right-holder applicant.

9. Suitable vessels

A suitable horse mackerel fishing vessel is a vessel that is –

- Geared for mid-water trawling
- A suitable hake deep-sea trawl vessel that capable of carrying a mid-water trawl net;
- Is SAMSA certified; and
- Is fitted with a functioning vessel monitoring system.

10. Multi-sector involvement

Right-holders in the horse mackerel fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the horse mackerel fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries.

The employment of dedicated mid-water trawl vessels for the purposes of fishing in other sectors will not be permitted except in the case where the right-holder also holds a right in the deep-sea trawl fishery, in which case the vessel may be used to activate both rights.

11. Landing sites

Only the South African ports of Saldanha, Cape Town, Hout Bay, Mossel Bay and Port Elizabeth may be used to land catches.

12. Management measures

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

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12.1 *Ecosystem approach to fisheries management*

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

12.2 *Consolidation of participants*

After the allocation of 10-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

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

12.3 *Maximum precautionary catch limit*

The resource will be managed using a maximum precautionary catch limit (MPCL) and gear restrictions. The MPCL will be determined annually and will be based primarily on an age-structured surplus production model that uses catch data and

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survey biomass estimates. In addition, the MPCL may be adjusted in terms of the perturbation experiment with the purpose of eliciting responses from the resource, thereby improving the information content of the data available for stock assessments. The method of annual MPCL determination may be modified during the rights period, based on available data and improved assessment procedures.

Part of the MPCL will be allocated among right-holders for targeted fishing using bottom and mid-water trawl gears, and part will be held in reserve to cover by-catch in the hake-directed demersal fishery. In addition, the pelagic purse-seine fleet will not be permitted catch more than 5 000 t of horse mackerel.

13. Performance measuring

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

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

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

14. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer

coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

15. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.

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

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF COMMERCIAL
FISHING RIGHTS IN THE KWAZULU-NATAL PRAWN TRAWL FISHERY: 2005**

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

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1. Introduction

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

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

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

Certain post-rights allocation management policies are also presented in this draft policy. A KZN prawn trawl Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial KZN prawn trawl fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to a senior official of the Department.

2. Biology and resource dynamics

White prawns (*Penaeus indicus*), brown prawns (*Metapenaeus monoceros*) and tiger prawns (*Penaeus monodon*) occur on the shallow water mud banks along the north east coast. Bamboo prawns (*Penaeus japonicus*) are also occasionally trawled on the St Lucia grounds. These prawn species grow fast and have a life-span of approximately one year. Eggs are carried on the abdomen of females. Larvae hatch during the second half of the year, and are transported by currents into estuaries along the KZN coast, where they remain up to the first quarter of the following year and grow into juveniles. Juvenile prawns move out of estuaries and recruit onto the mud banks, where they grow to maturity and reproduce, thus closing the life cycle.

Deep water species include pink (knife) and red prawns *Haliporoides triarthrus* and *Aristaeomorpha foliacea*, langoustines *Metanephrops mozambicus* and *Nephropsis stewartii*, red crab *Chaceon macphersoni*, and deep-water rock lobster *Palinurus delagoae*. The life cycles of these species are diverse, but some (such as rock lobster) are slow-growing and long-lived, making them more vulnerable to fishing. Little is known about the biology of the deep-water prawns and langoustines.

3. Sector profile

The KZN prawn trawl fishery is based in Kwazulu-Natal (KZN) and consists of two components: an inshore fishery (5 to 40m depth) on the Tugela Bank and at St Lucia in an area of roughly 400 square kilometres; and an offshore fishery (100 to 600m depth) extending from Cape Vidal in the north to Amanzimtoti in the south, covering approximately 1 000 square kilometres along the edge of the continental shelf.

Up to the 1960s, trawling was sporadic, but thereafter the sector comprised up to 12 companies and 21 vessels, many of which also fished in Mozambique. Regular statistics were collected from 1988 onwards.

Catches and catch rates of individual species or groups of species fluctuate widely, sometimes as a result of fishing strategy (targeting of specific species) rather than fluctuations in abundance. The abundance of shallow-water prawns depends on rainfall patterns and their effects on the flushing of estuaries where larval and juvenile prawns develop. In general, the last two decades have seen declines in the landings of white prawns, pink prawns, langoustines, rock lobster and red crab.

The fishery is managed using a Total Applied Effort (*"TAE"*) strategy which limits the number of vessels permitted to fish on the inshore and offshore fishing grounds. A TAE of eight fishing permits has been maintained for the past decade.

The sector is capital-intensive and its infrastructure, marketing and product distribution is dominated by established companies. The fishery requires specialised trawling vessels and equipment and it is suitable for commercial fishing only. Fishing grounds are on the South African continental shelf and no foreign fishing vessels are allowed. Vessels are large steel trawlers of 24 to 40 metres overall length, with 500 – 1 000 hp engines. Trawl net sizes range from 25- to 60-metre footrope length, with stretched mesh tapering from 70 millimetres in the wings to 38 millimetres in the cod-end. Trawling takes place on a 24-hour basis, at speeds of two to three knots and an average drag duration of four hours. Trawlers carry about 15 crew and remain at sea for two to three weeks at a time.

Catches (by mass) of the KZN trawl fisheries consist of roughly 20 percent target species, 10 percent retained by-catch, and 70 percent discarded by-catch. The retained by-catch includes cephalopods (octopus, squid and cuttlefish), molluscs, and substantial quantities of several fish species. The discarded by-catch (juvenile or small fish, low-value crustaceans, elasmobranchs and molluscs) amounts to about 1 000 to 2 000 tons per annum.

Inshore trawling is seasonal, with good catches made between January and March off St Lucia, and from March to September on the Tugela Bank. Offshore trawling takes place year-round.

The boundary between the inshore and offshore fisheries is situated seven nautical miles from the shore between the St Lucia lighthouse and Zinkwazi.

Catches are size-sorted, graded, packed and blast-frozen at sea. Little value is added on land. Modest shore-based infrastructure, including berthing, re-packing, storage and marketing facilities, is situated in Durban. Frozen products are sold on local markets. The landed catch in the KZN prawn fishery is worth approximately R21 million per annum.

4. The Medium-term rights allocation process

Fishing rights were allocated in 2001 for a medium-term period of four years. Rights are held by five fishing companies (with a total of eight vessels), of which three right-holders (with five vessels) may fish in both the inshore and offshore fisheries, and the other two right-holders (with three vessels) are restricted to the offshore fishery only.

The Department's allocation records show that:

- An estimated 22 percent of right-holders are majority-owned by blacks;
- 30 percent of right-holders are managed by blacks; and
- the sector employs about 150 individuals, 88 percent of whom are black.

5. Over-all sectoral objectives

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

- Significantly improve the transformation profile of the KZN prawn trawl fishery;
- Create an environment that attracts investment and stimulates job creation;
- Support the economic viability of the fishery;
- Ensure the environmental sustainability of the fishery;

- Ensure that steps are taken to mitigate against avoidable by-catch, particularly catches of linefish species that are listed on recreational and prohibited species lists; and
- Ensure that, where possible, by-catch is landed and resources are not wasted.

Transformation will be an important consideration for the long-term rights allocation. An objective will be to ensure that the profile of the fishery more broadly reflects the demographic profile of the country. Although it is probable that the current number of vessels in the fishery (eight) will be maintained, the need for transformation will mean that it may not necessarily be existing right-holders that will be granted rights. New entrants that have transformed may be preferred over existing participants.

The rate of by-catch and the effect of prawn trawling on the benthic habitat are issues of great concern and the Department will reward applicants in this fishery who are able to indicate their intentions to introduce mitigating measures in this regard. The Department will increasingly insist that by-catch is landed, that resources are not wasted, and that right-holders seek to find markets for by-catch. However, the sale of by-catch that comprises linefish species that are listed on recreational and prohibited species lists will not be permitted.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the capital intensity of the fishery; and
- the need to maintain the economic stability and increase the competitiveness of the fishery;

the Department intends to allocate commercial rights for a period of eight years (01 January 2006 to 31 December 2013), and subject to a review at regular intervals against predetermined performance criteria, including the attainment of transformation goals have been achieved (***see paragraph 14 below***).

7. New entrants

New entrant applicants will be considered and may be preferred over existing right-holders, particularly if their inclusion will assist in the transformation the KZN prawn trawl fishery.

8. Evaluation criteria

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter assessed in terms of a set of weighted “*comparative balancing criteria*”. A cut-off score or rank will then be determined in order to select the successful applicants. A proportion of the effort will be allocated to each successful applicant.

8.1 Exclusionary criteria

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

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.
- (b) **Compliance:** Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine) will not be allocated a KZN prawn trawl fishing right. Right-holder applicants, including the directors or controlling

shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA will also not be allocated a KZN prawn trawl fishing right.

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

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

- (c) **Paper quotas:** Paper quotas as defined in the General Policy will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (*see paragraph 9 below*).

8.2 Comparative balancing criteria

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

(a) Transformation:

As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women representation at ownership and executive management levels;

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

(b) Investment in the fishery

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

- Investments in vessels suitable for the harvesting of KZN prawn trawl. In this regard, investment in the form of shareholding will be considered;
- Investments in processing and marketing infrastructure.

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

(c) Jobs

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

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

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

(d) Performance

Financial performance will be measured, as indicated in the General Policy. In addition, the Department will have regard to the applicant's fishing performance, particularly with respect to the number of days spent fishing in South African waters as opposed to fishing in Mozambique or Tanzania.

(e) Payment of fish levies

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

(f) Compliance

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

(g) By-catch

The Department will seek to reward those right-holder applicants that have invested in and implemented measures to reduce the landing of by-catch species. The Department will also positively score applicants that land by-catch and have found markets for by-catch species (other than linefish species on recreational and prohibited species lists.)

8.3 Quantum allocation

The TAE is split between inshore and offshore areas of operation. Applicants will be permitted to apply for both inshore and offshore rights on the same vessel or on two different vessels. It must be noted that offshore vessels will not be permitted to fish inshore. Inshore vessels may, however, fish offshore.

9. Suitable vessels

The KZN prawn trawl fishery is a specialised fishery and applicants must have access to large ocean-going fishing vessels that are rigged to trawl for prawns. Fishing should be by bottom trawling with single net stern, or boom-operated twin or triple nets. Trawl nets shall have a maximum footrope length of 60 metres and stretched mesh tapering from 70 millimetres in the wings to 50 millimetres in the cod-end. Vessels must be fitted with functioning vessel monitoring systems.

10. Multi-sector involvement

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

Vessels employed in the KZN prawn trawl fishery may not be used in other sectors.

11. Landing sites

The South African ports of Durban and/or Richards Bay must be used to land catches. No other ports may be used.

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12. Application fees and levies

Marine resources are renewable resources and user pay principle will be applied. Application fees for the KZN Prawn Trawl fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals review applications. In this regard the costs incurred during the medium-term process will be used as a guide; and
- The value of the fish being allocated over the duration of the right.

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

13. Management measures

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

13.1 Ecosystem approach to fisheries management

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

13.2 By-catch

Bycatch in the KZN prawn trawl fishery is the subject of several research projects which have focused on the quantification of by-catch species; the impacts on linefish species and on ecosystems; the effects of excluder devices on by-catch rates; and the impact of a closed fishing season in the inshore fishery. All retained (but not discarded)

by-catch species and quantities must be declared by skippers. No spotted grunter (*Pomadasys commersonii*) that is caught by the KZN prawn trawl fishery may be sold. Sector specific regulations regarding discarded by-catch will follow the completion of the research projects.

13.3 Vessels

Eight vessels are presently authorised to fish in this sector. The current TAE (in terms of vessels and participants) has been maintained for a decade. However, only 50 to 60 percent of the available effort is applied in KZN; the remainder is latent. Some of the vessels fish in Mozambique for most of the year. No more than eight vessels will be permitted to participate in this sector.

13.4 Nationality of catch

Fish caught in Mozambique may be landed in Durban or Richards Bay, but must be accompanied by documentation stating their origin, i.e. the co-ordinates of the positions where fishing was undertaken, the fishing effort expended and the quantities landed.

13.5 Precautionary principle and sustainability

This is a specialised fishery open to local commercial fishing only. The fishery is comparatively small and no reliable stock assessments of the target species have been performed. The KZN trawling grounds are small and unlikely to expand. A precautionary approach towards managing effort in the fishery will be taken until satisfactory assessments of the stocks and the ecological impacts of fishing have been assessed.

The Department recognises that the variability and unpredictability of the resource limits the profitability of the fishery. The performance of the fishery will be closely monitored and the objective is to manage it effectively and sustainably.

14. Performance measuring

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

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

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the ecological impacts of trawl fishing;
- compliance with applicable laws and regulations.

15. Observer programme

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

16. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.

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DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

BRANCH MARINE AND COASTAL MANAGEMENT

POLICY FOR THE ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING RIGHTS IN THE PATAGONIAN TOOTHFISH FISHERY: 2005

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

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1. Introduction

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

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

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

Certain post-rights allocation management policies are also presented in this draft policy. A Patagonian toothfish Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial Patagonian toothfish fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

2. Biology and resource dynamics

Patagonian toothfish, also known as Chilean sea bass, is a deep-water, demersal species which is found on sub-Antarctic continental shelves down to 3 000 metres. Several countries can lay claim to Patagonian toothfish which occur within the exclusive economic zones (EEZs) of Chile, Argentina and many other countries with sovereignty over southern Ocean islands. South Africa's EEZ around the Prince Edward Islands is a prime fishing ground for Patagonian toothfish. Much of the range of Patagonian toothfish falls within the high seas.

Patagonian toothfish live for over 50 years and reach a length of over two metres. Maturity is attained between six and nine years of age, equivalent to a length range of 70 to 95 centimetres. Spawning occurs on continental shelves in winter, but eggs only hatch in spring.

3. Sector profile

Global catches of Patagonian toothfish have declined sharply since the origins of the fishery in the late 1980s. A combination of its high value, late maturity and occurrence in the high seas has caused the near-collapse of the fishery, which has seen unprecedented levels of illegal, unregulated and unreported (IUU) fishing. South Africa's waters around the Prince Edward Islands were extensively targeted and CCAMLR estimates that as much as 32 000 tons of toothfish, with a value of US\$100 million was illegally fished from the PEI-EEZ between 1996 and 1998. Patagonian toothfish are caught by trawl and by longline. The latter method has had a disastrous impact on seabirds, particularly albatross and petrels.

The harvesting of Patagonian toothfish has been authorised by South Africa since 1996. Following the promulgation of the Marine Living Resources Act in 1998, the fishery has been regulated as an experimental fishery under section 83.

In 1996, the Department of Environmental Affairs and Tourism issued five experimental permits (under the Sea Fisheries Act of 1988) for the harvesting of Patagonian toothfish within the EEZ of the Prince Edward Islands (“the PEI-EEZ”). Since then, the Minister of Environmental Affairs and Tourism has set annual total allowable catches (“TACs”) for this fishery. The TAC for the 1996/1997 fishing season was set at 2 500 tons. However, the TAC for the experimental toothfish fishery has declined steadily and was set at 500 tons for the 2003/2004 fishing season.

The Prince Edward Islands are situated within the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”) Convention Area. South Africa is a founding member of CCAMLR, which is the regional fishery management organisation tasked with primarily monitoring and allocating catching rights for Patagonian toothfish in Antarctic waters. Patagonian toothfish have been targeted by poachers as toothfish is a sought after white fish on Asian and North American markets. Patagonian toothfish is a high value white fish that fetches prices as high as US\$7 000 per ton. It is the fish’s high value that has contributed to the high levels of Illegal, Unregulated and Unreported (“IUU”) fishing in the fishery.

Poaching in the PEI-EEZ has been brought under control. The fishery remains commercially sustainable provided that it is effectively regulated with participants in terms of the Guidelines determined by CCAMLR. The Department has decided to allocate long-term commercial fishing rights in this fishery.

The fishery is a high risk, extremely capital intensive fishery that requires right-holders to make substantial investments in vessels, gear, research and marketing. Start-up costs would require a capital investment of several million rand and operational costs are massive.

4. Experimental permit allocation

Commercial fishing rights have never been allocated in this fishery. In 1996, five experimental permits were issued for the fishing of Patagonian toothfish. With the continuous decline in the TAC, the five experimental permit-holders consolidated costs and effort by reducing the number of

vessels in the fishery from three to two. Four of the operators concluded a joint venture agreement to operate one vessel and have effectively pooled their resources for the catching of Patagonian toothfish in the PEI-EEZ. The fifth permit holder operates in both the PEI-EEZ and on the high seas within the CCAMLR Convention area.

5. Over-arching sectoral objectives

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

- Ensure the continued presence of South African vessels in the PEI-EEZ and on the high seas within the CCAMLR Convention area in order to deter IUU fishing.
- Improve the transformation profile of the fishery;
- Encourage investment in South African vessels, infrastructure and jobs;
- Reduce the avoidable by-catch and catch losses associated with longlining by seeking alternative fishing methods ;
- Support the economic viability of the fishery; and
- Support the environmental sustainability of the fishery

Certain post rights allocation management policy considerations are broadly elaborated below.

6. Duration of rights and limitation of effort

Having regard to –

- the precarious biological state of the resource;
- the fact that the fishery requires substantial capital investments;
- the fact that substantially more data on the biology of Patagonian toothfish is required;

- the need to sustain the number of jobs in this fishery; and
- the objectives of CCAMLR,

the Department will allocate commercial rights for a period not exceeding 10 years (01 January 2006 to 31 December 2015). Every right-holder will, however, be tested at regular intervals against predetermined performance criteria.

With regard to the effort to which this fishery will be subjected, the Department intends to limit the number of vessels in this fishery to two.

7. New entrants

Rights under section 18 of the Marine Living Resources Act have never before been granted for Patagonian toothfish. Accordingly, there are no previous right-holders. The Department will accept applications from entities regardless of whether they held an experimental permit for this fishery. Due to the precarious state of the resource, no more than five right-holders can be accommodated. Furthermore, although the Department does not exclude the possibility of replacing the experimental right-holders, it is unlikely that any other applicants will be admitted.

8. Evaluation criteria

Applications for commercial Patagonian toothfish fishing rights will be evaluated against a number of exclusionary and balancing criteria.

8.1 Exclusionary criteria

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

(a) Form of the applicant: Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. Individuals or sole proprietors) will not be considered.

(b) Compliance: Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine), the Law of the Sea, the Convention, declaration or treaty of CCAMLR, or the provisions of any other country's marine and/or fisheries laws, will not be allocated a Patagonian toothfish fishing right. Right-holder applicants, including the directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA will also not be allocated a Patagonian toothfish fishing right.

Right-holders, including their directors or controlling shareholders, who are currently being investigated for breaches of any of the laws or legal instruments listed above, whether criminal or administrative, will not be allocated a Patagonian toothfish fishing right until the conclusion of the investigation.

(c) Paper quotas: Paper quotas as defined in the General Policy will be excluded.

(d) Access to a suitable vessel: Applicants will have to demonstrate a right of access to a suitable vessel (*see paragraph 9 below*).

8.2 Comparative balancing criteria

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

(a) Transformation

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

- The percentage black and women representation at ownership and executive management levels;
- Whether employees are shareholders in the applicant and the extent of their benefits;
- Affirmative procurement;
- The representivity of blacks and women at the various levels below executive management;
- Compliance with the Employment Equity Act, as well as legislation on skills development and fishing levies. Applicants that do not comply with these laws may be refused a commercial right; and
- Corporate social investment.

(b) Investment in the fishery

Applicants will be evaluated on:

- Investments in suitable vessels. In this regard, investment in the form of shareholding or purchase agreements will be considered. Applicants may be rewarded for having concluded charter agreements or catching agreements; and
- Investment in and access to markets for Patagonian toothfish.

(c) Knowledge of the fishery

Applicants will be required to demonstrate whether they have invested in and have the appropriate knowledge to fish for Patagonian toothfish.

(d) Participation in the experimental fishery

Applicants that successfully participated in the Patagonian toothfish experimental fishery will be preferred. In this regard, the Department will consider, *inter alia*, catch performance, reporting and adherence to permit conditions and CCAMLR conservation measures.

(e) By-catch and dumping

Applicants will be required to demonstrate what by-catch mitigation and reduction measures they have invested in, or would invest in, to ensure that seabird mortality is avoided and by-catch reduced.

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

(f) Ability to commence with fishing operations

Preference will be given to applicants who are able to demonstrate that they are able to commence with fishing operations soon after a right is allocated.

(g) Jobs

Although this fishery is a small fishery, employing a small number of people, the provision of quality jobs will be taken into account. The Department will prefer those applicants that provide their employees with –

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

Jobs created per ton of fish allocated during the experimental phase may be assessed and taken into account. The Department will also have regard to the wage differentials between the highest and lowest paid employees.

(h) Compliance

Minor infringements of the MLRA, including its Regulations, by the applicant, its directors

or controlling shareholders will result in the applicant being penalised.

8.3 Quantum criteria

Quantum will be allocated with reference to the catching ability and, where applicable, the past performance of an applicant. The details will be the subject of consultation between successful applicants and the Department before permits are issued.

9. Suitable vessels

A suitable vessel in the Patagonian toothfish fishery is a vessel that:

- has a minimum SAMSA certified length of approximately 40 metres;
- is fitted with a functioning vessel monitoring system;
- is geared for long lining and is capable of carrying fishing pots;
- is ice strengthened (if the applicant intends to fish south of 60° South);
- is not black-listed by any international or regional fishery organisation; and
- is South African flagged. The Department will consider a foreign flagged vessel to be suitable if the vessel complies with all of the above and the owner of the vessel gives a written undertaking to have the vessel re-flagged as South African within 12 months of the allocation of the fishing right.

10. Multi-sector involvement

Right-holders in the Patagonian toothfish fishery are not precluded from holding rights in any fishery in the other Cluster A and Cluster B fisheries. Right-holders in the Patagonian toothfish fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries.

11. Application fees and levies

The application fee for the Patagonian toothfish fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews. In this regard the costs incurred during the medium-term process will be used as a guide; and
- The value of the fish being allocated over the duration of the right.

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

12. Management measures

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

12.1 *Ecosystem approach to fisheries management*

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

12.2 Marine protected areas

The Minister of Environmental Affairs and Tourism has indicated his intention to declare a Marine Protected Area in the area around the Prince Edward Islands. In so doing, the Department hopes to conserve the unique biodiversity of the sub-Antarctic Islands and their surrounding waters. The intention at this stage is to prohibit all fishing in the territorial waters (i.e. within the 12 nautical mile marine area) but permit controlled fishing in the waters beyond the 12 mile limit. The Minister will, however, consult with all interested and affected parties about this matter in due course.

12.3 Consolidation of participants

As noted above, five participants were allocated an experimental permit for Patagonian toothfish. Four of these permit holders have consolidated operations. Currently, two vessels operate in the experimental fishery. Consolidation is accordingly not of any particular relevance in this fishery.

12.4 Vessels and fishing effort

As stated in **paragraph 6** above, the Department intends to only authorise two vessels to operate in this fishery. The vessels must be rigged to fish with long lines, using suitable bird by-catch mitigation gear. In addition, vessels will be allowed to carry fishing pots.

12.5 Reporting

All right-holders in this fishery will have to adhere to strict reporting measures to ensure that they and South Africa comply with international requirements for this fishery. In particular, right-holders will have to adhere to the requirements of the *Dissostichus* Catch Document (*DCD*) issued by CCAMLR, and report by way of Vessel Monitoring Systems (*VMS*). Each landing of Patagonian toothfish must be accompanied by a *DCD* and the Port State must verify the position of the catches by examining the *VMS* plot supplied by the vessel.

13. Performance measuring

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

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

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the biological and ecological impacts of longline and pot fishing;
- compliance with applicable laws and regulations (both national and international).

14. Observer programme

The Department's current observer programme will be expanded to include compliance observation. Right-holders will be required to carry an observer during every voyage. . Right-holders will be required to bear the costs of the observer programme.

15. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to the experimental fishery for the 2005 season are attached as **Annexure A**. Interested and affected

parties are invited to comment on these permit conditions.

DRAFT



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

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE SMALL PELAGICS
(ANCHOVY AND SARDINE PURSE-SEINE) FISHERY: 2005**

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

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1. Introduction

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

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

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

Certain post-rights allocation management policies are presented. A small pelagic Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial small pelagic fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

2. Sector profile

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

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

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

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

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

3. The medium term rights allocation process

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

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

4. Over-arching sectoral objectives

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

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

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

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

5. Duration of rights

Having regard to –

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

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

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

6. New entrants

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

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

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

7. Evaluation criteria

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter assessed in terms of a weighted set of “*comparative balancing criteria*”. A cut-off score will then be determined to select the successful applicants. Rights will be allocated separately for the anchovy and sardine fisheries and applicants may apply for a right in each of these fisheries. A percentage of the TAC will then be allocated to each successful applicant in terms of a set of “*quantum criteria*”.

7.1 Exclusionary criteria

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

- (a) **Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) will not be considered.

- (b) **Compliance:** Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine) will not be allocated a small pelagic fishing right. Right-holder applicants, including the directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA will also not be allocated a small pelagic fishing right.

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

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

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

7.2 **Comparative balancing criteria**

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

(a) **Transformation:**

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

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

- The percentage of black and women representation at ownership and executive management levels;
- Whether employees are shareholders in the applicant and the extent of their benefits;
- Affirmative procurement;
- The representivity of blacks and women at the various levels of employment below executive management;

- Compliance with the Employment Equity Act 55 of 1998; and
- Corporate social investment.

(b) Investment in the fishery

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

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

As far as new entrant applicants are concerned, the Department will consider what investments have been made in the form of vessels, processing and marketing infrastructure. In addition, new entrant applicants will have to demonstrate whether they have the knowledge, skill and ability to fish for small pelagics.

(c) Performance

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

(d) By-catch and dumping

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

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

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

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

(e) Value-adding

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

(e) Local economic development

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

(f) Jobs

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

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

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

In the case of right-holder applicants, jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account. The Department will also have regard to the wage differentials between the highest and lowest paid employees.

(g) Non-payment of fish levies

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

(h) Compliance

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

7.3. *Quantum criteria*

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

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

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

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

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

8. Suitable vessels

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

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

9. Multi-sector involvement

Right-holders in the small pelagic fishery are not precluded from holding rights in any fishery in the Cluster D and Cluster C fisheries. Right-holders in the small pelagic fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries.

10. Application fees and levies

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

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

incurred during the medium-term process will be considered as a guide and

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

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

11. Management measures

The management measures set out below are a number of the Department's principal post-right allocation management intentions for the small pelagic fishery.

11.1 *Ecosystem approach to fisheries management*

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

11.2 *Consolidation of participants*

Following the allocation of 12-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

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

11.3 *Red-eye round herring directed fishery*

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

11.4 *Vessels and fishing effort*

There are presently 106 small pelagic fishing vessels that operate in South African waters. As many right-holders do not own the vessels they use and as vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation long-term fishing rights. The Department considers the current effort levels in the fishery to be optimal. Right-holders will not be permitted to introduce vessels capable of expending effort that is far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 *Monopolisation*

While the Department will encourage the consolidation of right-holders in this fishery, it is opposed to monopolies that may operate to the detriment of smaller right-holders.

11.6 Introduction of a TAE

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

12. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the 12 year period. It is envisaged that the first set of performance measuring exercises will take place after two years and thereafter every two years.

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

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular by-catch mitigation and measuring the ecological impacts of purse seining;
- compliance with applicable laws and regulations.

13. Observer programme

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

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.

DRAFT



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

**DRAFT POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE SOUTH COAST ROCK
LOBSTER FISHERY: 2005**

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

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1. Introduction

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

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

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

Certain post-rights allocation management policies are also presented in this draft policy. A south coast rock lobster Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial south coast rock lobster fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

2. Biological and resource dynamics

South Coast rock lobster (*Palinurus gilchristi*) is endemic to the continental shelf of southern South Africa, occurring on rocky substrata at depths of 50 to 200 metres. The species is found in commercial quantities at two locations: offshore on the Agulhas Bank in an area roughly 200 kilometres from the coast, and closer inshore (two to 50 kilometres from the coast) between Mossel Bay and East London. South coast rock lobster is a cold-water species that grows slowly and is long-lived. The inshore area between Danger Point and Cape Agulhas is an important settlement area for juveniles, which migrate to adult habitats on the Agulhas Bank and in the inshore area between Mossel Bay and Port Elizabeth. Rock lobsters that occur between Port Alfred and East London are generally smaller, slower-growing and do not migrate.

3. Sector profile

The South Coast rock lobster fishery is a deep water long line trap fishery that began in 1974. At that stage, both South African and foreign vessels exploited the deep water resource. However, in 1976 South Africa declared its 200 mile Exclusive Economic Zone and effectively halted foreign participation in the fishery. A total of 26 South African vessels remained in the fishery. This number dropped to 15 in 1981 after years of unsustainable and unregulated fishing led to the resource's collapse. In 1975, 2 092 tons of south coast rock lobster were harvested; by 1981 this had dropped to a mere 176 tons.

The fishery was first regulated by a total allowable catch ("TAC") in 1984. The TAC was set at 450 tons (tail mass). Ten years later, research indicated that the resource was still in decline. The management strategy for this fishery was fundamentally changed in 2000. A combined TAC and total applied effort ("TAE") strategy was introduced, which limited the number of days that a SCRL vessel may stay at sea. The "sea days" limit is calculated according to the portion of the TAC that is caught by a specific vessel, taking into account that vessel's fishing capacity.

Between 1989 and 2001, the SCRL resource had declined by 65 percent, largely due to overfishing by Hout Bay Fishing Industries (Pty) Ltd.

The Department's management plan for the SCRL fishery has borne fruit. In the 2001/2002 fishing season, the SCRL TAC was set at 340 tons, combined with a TAE of 1 922 sea days. Three years later, the TAC increased to 382 tons, combined with a TAE of 2 089 sea days.

South coast rock lobster catches are off-loaded at Cape Town and Port Elizabeth harbours. The catch is generally frozen at sea and graded and repacked at shore-based facilities. Almost the entire catch is exported, predominantly to the USA.

The SCRL industry employs about 400 people. Of these, 285 are sea-going personnel who are employed on nine vessels. Ninety seven percent of employees are historically disadvantaged persons. On average, workers earn R50 000 per annum in salaries, making this industry one of the best paying in the fishing industry. The value of the catch is approximately R100 million per annum. The market value of vessels operating in the fishery is approximately R70 million.

Vessels are rigged for long-line trap-fishing. Barrel-shaped plastic traps are set for periods of 24 hours to several days. Each vessel typically hauls and resets approximately 2 000 traps per day in sets of 100 to 200 traps. Long-line trap-fishing is a labour-intensive fishing method. Crews consist of up to 35 persons. The vessels in this fishery are large, offshore vessels ranging in length between 30 and 60 metres. They fish for between 180 to 300 days per year.

The south coast rock lobster fishery is capital intensive, requiring large vessels with insured values of between R4 million and R10 million, a substantial number of crew, access to foreign markets and funds for overhead costs such as fuel, vessel maintenance and salaries.

4. The medium-term rights allocation process

Medium-term commercial fishing rights were allocated to 18 right-holders. Right-holders typically hold between two and 10 percent of the TAC, with the exception of one company that holds 41.1 percent. Nine vessels are used to fish the entire TAC.

Of the 18 right-holders:

- 72 percent are black owned entities;
- 47 percent are black managed;

- 65 percent are small- and medium-sized enterprises (“SMEs”).

5. Over-arching sectoral objectives

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

- Maintain or improve the transformation profile of the SCRL fishery;
- Create an environment that attracts investment and stimulate job creation;
- Support the economic viability of the fishery
- Ensure the environmental sustainability of the fishery; and
- Re-distribute the TAC among the rights holders in terms of transformation criteria and criteria aimed at rewarding SMEs that performed in accordance with their permit conditions.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the number of quality full time jobs provided (and to encourage the conversion of part-time employment into permanent jobs);
- the need to maintain the stability in the fishery; and
- the fact that, according to scientific data, the SCRL resource is recovering,

the Department will allocate commercial rights for a period of 15 years (01 January 2006 to 31 December 2020). It is the intention of the Department that every right-holder will be tested at regular intervals against predetermined performance criteria (*see paragraph 13 below*).

7. New entrants

SCRL stocks are currently managed in terms of a conservative recovery strategy. By 1981, the stock had collapsed and it was subjected to years of over fishing between the late 1980’s and

2001. In 1992 the average allocation was 75 tons; 14 tons being the smallest individual allocation. By 2002, the average allocation dropped to a mere 17 tons; with seven tons the smallest individual allocation.

The Department therefore considers the current 18 right-holders and eight vessels to be the maximum that the fishery can sustain at this point. The fishery also has acceptable levels of transformation and substantial numbers of small- and medium-sized enterprises. Although the Department does not exclude the possibility of replacing existing right-holders, it is highly unlikely that any new entrants will be admitted.

8. Evaluation criteria

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter assessed in terms of a set of weighted “*comparative balancing criteria*”. A cut-off score or rank will then be determined in order to select the successful applicants. A proportion of the TAC will be allocated to each successful applicant in terms of a set of “*quantum criteria*”.

8.1 Exclusionary criteria

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

- (a) Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.

- (b) Compliance:** Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine) will not be allocated a SCRL fishing right. Right-holder applicants, including the directors or controlling shareholders, that

have had any fishing right cancelled or revoked in terms of the Marine Living Resources Act will also not be allocated a SCRL fishing right.

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

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

- (c) **Paper quotas:** Paper quotas as defined in the General Policy will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (*see paragraph 9 below*).

8.2 Comparative balancing criteria

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

(a) Transformation:

Currently, 72 percent of right-holders in the SCRL fishery are black owned. These right-holders collectively control 77 percent of the TAC. Furthermore, SMEs make up 65 percent of right-holders and 78 percent of the vessels used in this fishery are black owned.

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

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

(b) Investment in the fishery

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

- Investments in vessels suitable for the harvesting of SCRL. In this regard, investment in the form of shareholding will be considered.
- Investments in marketing infrastructure.

(c) Jobs

The SCRL fishery provides about 400 jobs. Average salaries are R50 000 per year for sea-going employees.

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

- Full-time employment;
- Medical aid and pension;

- Any other employment benefits; and
- Safe working conditions.

In the case of right-holder applicants, jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account. The Department will also have regard to the wage differentials between the highest and lowest paid employees.

(d) Performance

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

(e) Payment of Fish levies

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

(f) Compliance

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

8.3 Quantum criteria

In respect of right-holder applicants, the Department will use as a base the quantum allocated to right-holders during the 2005 season. To this will be added a proportional division of the TAC from any existing participants that were unsuccessful or that did not apply for a long-term right. The following quantum pools will be applied to redistribute the TAC:

(a) Transformation pool:

Fifteen percent of the SCRL TAC will be set aside for affirming those successful applicants that are blackowned and black-managed. All successful applicants will be allocated a percentage of the TAC set aside for transformation, depending on the scores attained for transformation.

(b) Small- and medium-sized enterprise pool

Fifteen percent of the SCRL TAC will be set aside to affirm small- and medium-sized applicants that performed over the medium-term right allocation period. Small- and medium-sized applicants are, *inter alia*, those entities whose annual turnover did not exceed R5 million for medium size operations and R3 million for small operations.

9. Suitable vessels

A suitable vessel in the SCRL fishery is a vessel that:

- has a minimum SAMSA certified length of not less than 30 metres;
- is fitted with a functioning vessel monitoring system;
- is capable of deploying lines of approximately two miles long and 200 traps;
- is capable of storing at least 2 000 traps;
- is capable of carrying the necessary winches; and
- is capable of carrying approximately 30 or more crew members.

10. Multi-sector involvement

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

11. Application fees and levies

Marine resources are renewable resources and the “user pays” principle will be applied. Application fees for the SCRL fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and review applications. In this regard the costs incurred during the medium-term process will be used as a guide; and
- The value of the fish being allocated over the duration of the right.

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

12. Management measures

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

12.1 Ecosystem approach to fisheries management

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

12.2 Consolidation of participants

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

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

Consolidation of right-holders is, however, subject to the Department's approach to monopolies (*see paragraph 12.4 below*).

12.3 Vessels and Fishing Effort

There are presently eight SCRL fishing vessels that operate in South African waters. As some right-holders do not own the vessels they use and because vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation of long-term fishing rights. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort that is far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

12.4 Monopolisation

While the Department will encourage the consolidation of right-holders in this fishery, it is opposed to monopolies which may operate to the detriment of smaller right-holders.

The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control, but will monitor whether any larger right-holder acts in a manner contrary to fair competition practices.

13. Performance measuring

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

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

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the ecological impacts of longline trap fishing;
- compliance with applicable laws and regulations.

14. Observer programme

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

15. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.