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**MARINE LIVING RESOURCES ACT, 1998
(ACT NO. 18 OF 1998)**

**DRAFT SECTOR SPECIFIC POLICIES FOR THE FISHING RIGHTS ALLOCATION PROCESS OF 2021/2022 AND
THE DRAFT POLICY ON THE TRANSFER OF COMMERCIAL FISHING RIGHTS**

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment hereby publish the Draft Policy on the Transfer of Commercial Fishing Rights, as well as the Draft Sector Specific Policies for the Fishing Rights Allocation Process of 2021/2022, for public comment, as contained in the schedule to this notice.

Any person who wishes to comment on the draft transfer policy and/or any of the sector specific policies may submit written comments to the Department in the following manner:

By post: Department of Forestry, Fisheries and the Environment
Attention: Deputy Director: Administration (FRAP)
Private Bag X2, VLAEBERG
8018

By hand: 4th Floor Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town

By email: FRAPPolicycomments@environment.gov.za

Telephone queries – **Mr Msimelelo Mdledle – 084 304 0170**

All written comments must be received by the Department within 30 calendar days of the publication of this notice in the *Government Gazette*. Comments received after this time may not be considered.



**BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

SCHEDULE

1. POLICY FOR THE TRANSFER OF COMMERCIAL FISHING RIGHTS
2. POLICY ON ALLOCATION AND MANAGEMENT OF DEMERSAL SHARK COMMERCIAL FISHING RIGHTS
3. POLICY ON ALLOCATION AND MANAGEMENT OF HAKE DEEP SEA TRAWL COMMERCIAL FISHING RIGHTS
4. POLICY ON ALLOCATION AND MANAGEMENT OF HAKE LONGLINE COMMERCIAL FISHING RIGHTS
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DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DRAFT POLICY FOR THE TRANSFER OF COMMERCIAL FISHING RIGHTS: 2021

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY AND THE
APPLICABLE FISHERY SPECIFIC POLICIES (available at www.environment.gov.za)**

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DEFINITIONS

“Applicant” means a Juristic or Natural person who lodged an application and seeks an approval to transfer a commercial fishing right or right or a part thereof or to transfer a right granted in terms of section 18 of the Marine Living Resources Act to another Juristic or Natural person.

“Change in control” means a change in the direct or indirect ownership of more than 50% of the voting power on the shareholders or members of the named entity.

“Family” means a societal group that is related by blood (kinship), adoption, foster care or the ties of marriage (civil, customary or religious), civil union or cohabitation, and goes beyond a particular physical residents.

“Fronting” means a deliberate circumvention or attempted circumvention of the B-BBEE Act and the Codes. Fronting commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person.

“Same community” means the same fishing zone or area within which the transferor and the transferee have proven historical involvement in fishing, to an extent that both the transferor and the transferee remain part of the same community.

“New entrant” means a Juristic or Natural person who is a Group 2 or Group 3 transferee who is not a right holder in the fishing sector that a commercial fishing right or right or a part thereof is being transferred to.

“People with disabilities” means people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment.

“Part thereof” means part of a commercial fishing right or a right including percentage of shareholding and/or members’ interest, the proportions of the Total Allowable Catch (TAC) or the Total Allowable Effort (TAE) or a combination thereof vested to a Right Holder.

“Transferor” means a Juristic or Natural person who is transferring a commercial fishing right or right or a part thereof to the transferee.

“Transferee” means a Juristic or Natural person to whom a commercial fishing right or right or a part thereof is being transferred by the transferor.

ACRONYMS

MLRA	Marine Living Resources Act, 1998 (Act No. 18 of 1998)
TAC	Total Allowable Catch
TAE	Total Applied/Allowable Effort
LTRAMP2005	2005 Long-Term Rights Allocation and Management Process
FRAP2013	2013 Fishing Rights Allocation Process
FRAP2015/16	2015/2016 Fishing Rights Allocation Process
FRAP2020/21	2020/2021 Fishing Rights Allocation Process

1. EFFECTIVE DATE

- 1.1 This policy will be effective on the date it is gazetted by the Minister of Forestry, Fisheries and the Environment ("the Minister").

2. MONITORING AND EVALUATION OF THE POLICY

- 2.1 In order to ensure the effectiveness of the Transfer Policy to address: (a) the social and economic needs of the fishing industry, (b) affected fishers, and (c) the ecological sustainability of the implicated resources, the Department will monitor and evaluate the policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period in the various fishing sectors where fishing rights have been allocated. It is envisaged that the Department may institute several performance measuring exercises as and when required.

3. PREAMBLE

- 3.1 A right of access as contemplated in the Marine Living Resources Act, 1998 (Act No. 18 of 1998) as amended (hereinafter referred to as the "MLRA") is not a property right and should be understood as statutory permission to harvest a marine resource for a specified period of time. Accordingly, cancellation or revocation does not constitute the expropriation of a property right within the meaning of section 25 of the Constitution of the Republic of South Africa No. 108 of 1996 (Act No. 108 of 1996) or the Expropriation Act, 1975 (Act No. 63 of 1975). This is clear from section 18(6) of the MLRA, which provides that a fishing right is valid for the period determined by the Minister (his or her delegate) whereafter it automatically reverts to the State and may be re-allocated in terms of the applicable provisions of the MLRA. A fishing right is granted to a specific person or entity and, in terms of section 21 of the MLRA, the right may not be transferred without the approval of the Minister or his or her delegate. Therefore, any transfer of the fishing right to a third party requires approval.
- 3.2 The MLRA permits, upon application to the Minister, the lease, division or other transfer of a commercial fishing right, subject further to approval or conditions that the Minister or his or

her delegate may determine. Section 21 of the MLRA provides that *“an application to transfer a commercial fishing right or right or a part thereof shall be submitted to the Minister in the manner that the Minister may determine, and subject to the provisions of the MLRA and any applicable regulation, the Minister may, in writing, approve such an application for the transfer of a commercial fishing right or right or a part thereof”*. Section 79 of the MLRA, *“the Minister may upon the conditions that he or she deems fit, delegate any or all the powers conferred upon him or her, save the power to make regulations, to the Director-General or an officer of the Department nominated by the Director-General”*.

- 3.3 This policy sets out the principles and management that will govern the transfer of a *“commercial fishing right or right or part thereof”*.
- 3.4 An application for a transfer of a *“commercial fishing right or right or part thereof”* consists of a transferor and a transferee that are joint applicants. The transferor will also be considered as the first applicant and the transferee as the second applicant.
- 3.5 The transferor and the transferee will be categorised as follows:
 - 3.5.1 Group 1 transferor is a Juristic or Natural person transferring his or her or its valid *“commercial fishing right or right or part thereof”*. In the case of individual right holders, Group 1 transferor is inclusive of a Juristic or Natural person who became deceased whilst holding a valid commercial fishing right. If an applicant is deceased after the right has been granted, only an Executor or Master's Representative, whose appointment has been confirmed by the Master of the High Court, may deal with the assets and liabilities of a deceased estate.
 - 3.5.2 Group 1 transferee is a Juristic or Natural person, in the same fishing sector as the Group 1 transferor that is transferring a *“commercial fishing right or right or part thereof”* to him or her or it.

- 3.5.3 Group 2 transferee is a Juristic or Natural person, holding a right in another fishing sector other than the fishing sector where a *“commercial fishing right or right or part thereof”* is being transferred, whom a *“commercial fishing right or right or part thereof”* is being transferred to him or her or it.
- 3.5.4 Group 3 transferee is a Juristic or Natural person, who does not hold a commercial fishing right or right in any fishing sector, whom a commercial fishing right or right or a part thereof is being transferred to him or her or it.
- 3.6 This policy puts in place mechanisms to implement transfers in a procedurally and administrative fair manner for the following transfer requests:
- 3.6.1 A transfer of a commercial fishing right or right by a Group 1 legal entity transferor to Group 1 legal entity transferee or to Group 2 or Group 3 legal entity transferees.
- 3.6.2 A transfer of a part of a commercial fishing right or right by Group 1 individual transferor to Group 1, Group 2 or Group 3 legal entity transferees.
- 3.6.3 A transfer of a commercial fishing right or right by Group 1 legal entity transferor to Group 1, Group 2 or Group 3 individual transferee depending on whether a South African citizen is permitted to hold a commercial fishing right or right in that particular fishing sector.
- 3.6.4 A transfer of a part thereof of commercial fishing right or right by Group 1 legal entity transferor to Group 1, Group 2 or Group 3 individual transferees depending on whether a South African citizen is permitted to hold a commercial fishing right or right in that particular fishing sector.
- 3.6.5 A transfer of a commercial fishing right or right by Group 1 individual transferor to Group 1, Group 2 or Group 3 legal entity transferees depending on whether a South African entity is permitted to hold a commercial fishing right or right in that particular fishing sector.

3.6.6 A transfer of a part of a commercial fishing right or right by Group 1 individual transferor to Group 1 legal entity transferee or Group 2 or Group 3 legal entity transferees depending on whether a South African entity is permitted to hold a commercial fishing right or right in that particular fishing sector.

3.6.7 A transfer of a commercial fishing right or right by Group 1 individual transferor to Group 1, Group 2 or Group 3 individual transferees.

3.6.8 A transfer of a part of commercial fishing right or right by Group 1 individual transferor to Group 1, Group 2 or Group 3 individual transferees.

4. MAIN PURPOSE OF THE POLICY

The main purpose of this Policy is to:

- 4.1 Outline the manner in which the applications for transfer of commercial fishing rights or rights or parts thereof should be submitted and processed in order to provide guidance and to ensure consistency in the process; and
- 4.2 Guard against dilution of transformation in the fishing industry and prevent or avoid undue concentration of rights into the hands of one or more individuals or companies and prevent or avoid fronting practices from occurring within the fishing industry.

5. OBJECTIVES OF THE POLICY

The objectives of this policy are to:

- 5.1 Give effect to the provisions of Section 21 of the MLRA and enable fulfilment of the objects and principles of the MLRA that are relevant to commercial fishing rights or rights allocation as enshrined in section 2 of the MLRA.
- 5.2 Outline the guidelines on transfer of commercial fishing rights or rights or parts thereof, which were allocated and/or transferred in terms of the provisions of section 18 and/or 21 of

the MLRA, respectively. The transfer of commercial fishing rights or rights or parts thereof may also facilitate broadening of economic opportunities and participation in the fishing industry, and thus enable inclusive economic growth.

- 5.3 Maintain or improve the transformation profile of the fishing sectors attained through the rights allocation process and/or through transfer of commercial fishing rights or rights or parts thereof.
- 5.4 Broaden access to fishery resource through transfer of commercial fishing rights or rights or parts thereof to new entrants in the fishing industry. That is, broadening access through dividing a commercial right holder's proportion of the Total Allowable Catch (TAC) or Total Applied Effort (TAE) or a combination thereof and sharing a part thereof with new entrants.
- 5.5 Family members in the same household may not be granted more than one right in the West Coast Rock Lobster (Nearshore), Traditional Linefish, Netfish and KZN Beach Seine fishing sectors so as to broaden access to the West Coast Rock Lobster (Nearshore), Traditional Linefish, Netfish and KZN Beach Seine resources. Applicants are required to disclose their relationship to other right holders in the West Coast Rock Lobster (Nearshore), Traditional Linefish, Netfish and KZN Beach Seine fishery as well as in other commercial fisheries. If more than one member of the same household applies for a transfer of a right, the Department should determine who the preferred right holder will be with due regard being taken to the Department's transformation objectives.
- 5.6 Promote transformation, economic development and poverty alleviation in South Africa.

6. APPLICATION, SCOPE AND PRINCIPLES OF THE POLICY

- 6.1 This policy is applicable to the transfer of commercial fishing rights or parts thereof transferred in terms of section 21 of the MLRA or rights or parts thereof granted in terms of section 18 of the MLRA.

- 6.2 This policy is applicable to the applications of change in shareholding and/or members' interests, applications for name changes and straight conversions.
- 6.3 This policy does not deal with transfer of exemptions and/or transfer of shares and/or members' interests within companies and/or close corporations granted exemptions in terms of section 81 of the MLRA.
- 6.4 This policy does not deal with the transfer of small-scale fishing rights, mariculture (marine aquaculture) rights or other non-consumptive rights, such as boat-based whale watching and white shark cage diving.
- 6.5 Change in control of an entity occurs when more than 50% of shares and/or members' interests are ceded by the majority shareholder and/or member to another shareholder and/or member since the granting of the commercial fishing right or right in terms of section 18 of the MLRA. If more than 50% of the number of shares and/or members interest is ceded by the shareholders and/or members during the allocation process, then the Department will also consider this to be a change in control of the entity.
- 6.6 Approval for transfer of a commercial fishing right or a part thereof is required if the sale of shares/members interest results in change of control of the company/close corporation or results in the company/close corporation not being as transformed as at date of allocation of the right that is being transferred. In evaluating the application, the following will be considered:
- 6.6.1 The change in shareholding/members' interest relating to race, youth, gender and people with disability in the right holding entity;
 - 6.6.2 The number (percentage) of shares/members' interest to be sold;
 - 6.6.3 Whether the entity or person acquiring the shares/members' interest is an existing commercial fishing Right Holder in the fishing industry and if so, in which sector;

- 6.6.4 The investment of the transferee entity or person acquiring the shares/members' interest in the fishing industry;
 - 6.6.5 The fishing performance of the entity or person acquiring the shares/members' interest;
 - 6.6.6 Whether the proposed transfer of shares/members' interest will lead to a consolidation of either Right Holders, or of effort;
 - 6.6.7 Whether or not there is evidence that the transferee will be a 'paper quota' and not become directly involved in the catching, processing and/or marketing of the fish caught.
 - 6.6.8 Whether or not there is evidence that the transferee is not a "front" as defined in the draft General Policy.
- 6.7 Approval for the transfer of a commercial fishing right or right or a part thereof is not required if the sale of shares/members' interest does not result in change and control of the company and close corporation and the company/close corporation remains at least as transformed as at the time of allocation of the commercial fishing right or right in terms of section 18 of the MLRA. The Right Holder will still be required to complete a form informing the Department so that the change in shareholding/members' interest can be recorded and acknowledged.
- 6.8 The transfer of majority shares and/or members' interest will not result in the new majority shareholder and/or member having the commercial fishing right or right being transferred into his/her/its name. The commercial fishing right or right will remain in the name of the right holding entity which was originally allocated a fishing right or right for the purposes of the Department's records and permitting processes. In other words, the transferring Right Holding entity will not be replaced by the Right Holder that is receiving a commercial fishing right or right by way of a transfer of majority of shares and/or members' interest.

- 6.9 Repetitive minority sale or transfer of shares/members' interest will be perceived as possible circumvention of the objectives of the MLRA if the cumulative effect of the sale or transfer of shares/members' interest is more than 50% in the case of a private company or close corporation and is more than 35% in the case of a Public Company since the granting of the commercial fishing right or right in terms of section 18 of the MLRA.. In these cases, an application for a transfer of shares/members' interest is required.
- 6.10 In the event of death of a shareholder and/or member, post submission of application form for transfer of a commercial fishing right or right or part thereof, the Department will take into account the transformation profile of such an entity as at the date of submission of the application form.
- 6.11 Application for a name change of a legal entity and/or straight conversion from a close corporation to a company where there is no change in shareholding and/or members' interest, the Right Holder is required to complete the relevant form notifying the Department of such a change and supply all supporting documents in that regard for the Department to update its records.
- 6.12 Public companies are required to apply for the transfer of a "*commercial fishing right or right or a part thereof*" once 35% of shares or more are ceded.
- 6.13 The Department must be notified within 30 days of any change in shareholding and/or members' interest and/or straight conversions or name changes, within right holding entities.
- 6.14 Failure to comply with any provision of this policy will result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

7. LEGISLATIVE FRAMEWORK

The following pieces of legislation, amongst others, will be taken into account when the application for the transfer of commercial fishing rights or rights or parts thereof is considered:

- 7.1 The Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996), as amended.
- 7.2 Marine Living Resources Act 1998 (Act No 18 of 1998), as amended and its Regulations.
- 7.3 Sea Fisheries Act 1988 (Act No. 12 of 1988) as amended.
- 7.4 Criminal Procedure Act 1977 (Act No. 51 of 1977).
- 7.5 Prevention of Organised Crime Act 1998 (Act No. 121 of 1998).
- 7.6 Merchant Shipping Act 1951 (Act No. 57 of 1951) and its Regulations.
- 7.7 South African Maritime Safety Authority Act ("SAMSA") 1998 (Act No. 5 of 1998) and Regulations.
- 7.8 Marine Traffic Act 1981 (Act No. 2 of 1981) and its Regulations.
- 7.9 The Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) (B-BBEE Act), as amended and the B-BBEE codes of practise.
- 7.10 National Empowerment Fund Act 1998 (Act No. 105 of 1998) (NEFA).
- 7.11 Employment Equity Act 1998 (Act No. 55 of 1998).
- 7.12 Skills Development Act 1998 (Act No. 97 of 1998).
- 7.13 Administration of Estates Act 1965 (Act No. 66 of 1965) as amended.
- 7.14 Competition Act 1998 (Act No. 89 of 1998).
- 7.15 Companies Act 2008 (Act No. 71 of 2008) as amended.
- 7.16 Close Corporations Act 1984 (Act No. 69 of 1984) as amended.
- 7.17 Skills Development Levies Act 1999 (Act No. 9 of 1999).
- 7.18 Occupational Health & Safety Act 1993 (Act No. 85 of 1993)
- 7.19 Compensation for Occupational Injuries & Diseases Act 1993 (Act No. 130 of 1993).
- 7.20 Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("PAIA") and its Regulations.
- 7.21 Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA") and its Regulations.

8. RELEVANT POLICIES

- 8.1 The following policies, amongst others, will be taken into account when the application for the transfer of commercial fishing rights or parts thereof is considered:
- 8.1.1 The General Policy on the Allocation of Fishing Rights ("the General Policy").
 - 8.1.2 The Fisheries Sector Specific Policies.
 - 8.1.3 The Policy Review Framework of the National Policy Development Framework: 2020.

9. GENERAL PRINCIPLES

- 9.1 No applicant shall be favoured or prejudiced in considering his or her or its application for the transfer of a commercial fishing right or right or a part thereof.
- 9.2 All applications will be considered on the basis of their own merit and will be subject to requirements and procedure for transfer of *"commercial fishing rights or rights or a parts thereof"*.
- 9.3 The Department may subject the application for the transfer of a *"commercial fishing right or right or a part thereof"* to the criteria that was employed during the assessment and evaluation of application for the allocation of commercial fishing rights or rights for that particular fishing sector.
- 9.4 The Department may subject the Transferor or the Transferee to forensic verification or the information submitted in an application for the transfer of *"commercial fishing right or right or a part thereof"* prior to the finalisation of the application.
- 9.5 No application for the transfer of a *"commercial fishing right or right or a part thereof"* shall be considered unless all the requirements for the transfer of *"commercial fishing rights or rights or a parts thereof"* are met. Any request for deviation from the requirements listed above must be applied for together with the application and will be considered together with the transfer application.

10. CONDITIONS OF TRANSFERS

- 10.1 The Department will only accept an application for the transfer of a “*commercial fishing right or right or a part thereof*” from a transferor who held the commercial fishing right or right for at least three (3) years or more from the date such right was allocated to the transferor in terms of section 18, section 21 or section 80 of the MLRA.
- 10.2 No application for a transfer of a “*commercial fishing right or right or a part thereof*” will be accepted by the Department within two (2) years of the expiry of the right in question (except in the case where an individual right holder passes away two (2) years or less prior to the period of expiry of the right in question).
- 10.3 No applicant shall submit an application for the transfer of a “*commercial fishing right or right or a part thereof*” whilst there are pending fisheries legal proceedings instituted against the transferor or the transferee (e.g. in terms of MLRA, the Criminal Procedure Act and Prevention of Organised Crime Act).

11. TRANSFER PROCEDURE FOR JURISTIC AND NATURAL PERSONS

- 11.1 The application forms for transfer of “*commercial fishing rights or rights or a parts thereof*” and forms for the notification of name change or conversion will be made available by the Department.
- 11.2 The transferor and the transferee will both be required to properly complete a joint application form (except for notification of name change or conversion) and submit in a manner determined by the Department.
- 11.3 The Department will consider an application for a transfer of a “*commercial fishing right or right or a part thereof*” if all the following stipulated requirements are met:
- 11.3.1 An applicant(s) has properly completed a correct application form.
- 11.3.2 Application is submitted in the manner prescribed by the Department.

- 11.3.3 Application form properly signed by both the transferor and the transferee or their authorized representatives.
- 11.3.4 In the case of authorized representatives, a letter of authorization that is signed and dated must be attached, which should not be older than six (6) months.
- 11.3.5 All supporting documents need to be properly commissioned by a Commissioner of Oaths which should not be older than three (3) months.
- 11.3.6 Application fee is paid and proof of payment of the application fee is attached to the application form.
- 11.3.7 Provide proof that the transferor and the transferee have complied with all the tax requirements.
- 11.4 In the event that there are missing or incomplete supporting documents, Applicants will be afforded fourteen (14) working days to provide such outstanding documents. Failure to comply with such request will result in the Application not being processed further and the applicant will be required to collect their documents from the Department within a prescribed period of time and re-submit a new application.
- 11.5 When evaluating the application for the transfer of a commercial fishing right or right or part thereof, for Group 1, 2 and 3 legal entities, the Department will consider the following when evaluating the application:
 - 11.5.1 A resolution to transfer a *“commercial fishing right or right or a part thereof”* was taken in terms of the Companies Act or in terms of a company's Memorandum of Incorporation (“MOI”) when the transferor is a legal entity;
 - 11.5.2 Both the transferor or the transferee (an applicant) are Juristic persons;

- 11.5.3 The legal entity transferor and transferee are still registered with Companies Intellectual Property Commission (CIPC) or Department of Trade, Industry and Competition (**the DTIC**) in terms of the provisions of the Companies Act;
- 11.5.4 The transfer of a commercial fishing right or right or a part thereof will maintain or improve the transformation profile (colour, race, gender, disability and age, etc) of the fishing sector, and/or the degree to which the percentage of TAC and/or TAE held by historical disadvantaged individuals will change and/or give effect to the objectives of the MLRA;
- 11.5.5 The provision of substantive and tangible evidence that the transfer will result in economic transformation, development and decent sustainable employment creation which provides security of employment with benefits that are not less favourable to the employees than those on which they were employed by the transferor for the duration of the right (assets accumulated, investments, medical aid, pension fund, etc);
- 11.5.6 The provision of substantive and tangible evidence that the right transfer will result in broadening of access to a fishing sector(s) (evidence of any growth reform that promote competitiveness and inclusive economic growth where benefits are shared broadly i.e. youth development interventions including training opportunities for previously disadvantaged individuals or financially distressed communities) and the inclusion of previously disadvantaged individuals within entities;
- 11.5.7 The transfer will not result into monopoly and/or oligopoly of the fishing industry by certain Juristic persons or non-Juristic persons. No Right Holder shall act in an uncompetitive behaviour/manner contrary to the provisions of the Competition Act;
- 11.5.8 The transferee complies with the General Policy and applicable Fishery Sector-Specific Policies;
- 11.5.9 The transferor and the transferee have both complied with all the tax requirements;

- 11.5.10 An applicant or any of its members and shareholders or directors has not entered into a plea bargain under the Criminal Procedure Act, for a contravention of the MLRA, or the regulations, or permit conditions. In case of offenses older than 10 years, the applicant(s) or any of its members and shareholders or directors will be required to provide the Department with a copy of an Expungement Certificate;
- 11.5.11 An applicant or any of its members and shareholders or directors has not been convicted of contravention of the MLRA, or regulations, or permit conditions;
- 11.5.12 An applicant has no asset forfeited to the State for a violation of a provision of the MLRA;
- 11.5.13 An applicant had no fishing right or right or permit cancelled or revoked during the duration of the current and/or previous fishing rights periods;
- 11.5.14 The transferor and/or transferee (where applicable) is not in arrears with any levies, licence fees or other payments and does not have outstanding catch returns or other documentation required by the Department in terms of the applicable permit conditions or the Department's legal framework;
- 11.5.15 The transferor had not submitted two applications in an attempt to transfer the same commercial fishing right or right or part thereof to two transferees at the same time of the applications;
- 11.5.16 An application is lodged by Juristic person who is not deregistered or in a process of being deregistered with Companies Intellectual Property Commission (CIPC) or Department of Trade, Industry and Competition (**the DTIC**) in terms of the provisions of the Companies Act; and
- 11.5.17 An application is not from a paper quota applicant and/or a front (transferor and transferee) as defined in General Policy. The Department may institute legal proceedings (civil and/or criminal) and section 28 proceedings if it is found after

approval of the transfer of a commercial fishing right or right or part thereof that the applicant is a paper quota holder (if applicable).

- 11.6 When evaluating the application for the transfer of a commercial fishing right or right or part thereof, for Group 1, 2 and 3 individual applicants, the Department will consider the following when evaluating the application:

- 11.6.1 The transferor and the transferee are Natural persons;
- 11.6.2 The transfer of a commercial fishing right or right or a part thereof will maintain or improve the transformation profile (colour, race, gender, disability and age, etc) of the fishing sector, and/or the degree to which the percentage of TAC and/or TAE held by historical disadvantaged individuals will change and/or give effect to the objectives of the MLRA;
- 11.6.3 The transferee will personally utilise the fishing right or right by being on board the nominated vessel, or personally harvest the resource, or processing or marketing; (consideration may be given to people with disability based on its merits);
- 11.6.4 The transferee complies with the General Policy and applicable Fishery Sector-Specific Policy;
- 11.6.5 The transferor and the transferee have both complied with all the tax requirements;
- 11.6.6 An applicant(s) has not entered into a plea bargain under the Criminal Procedure Act for a contravention of the MLRA, or the regulations, or permit conditions. In case of offenses older than 10 years, the applicant(s) will be required to provide the Department with a copy of an Expungement Certificate;
- 11.6.7 The transferor has not been convicted of contravention of the MLRA, or Regulations, or permit conditions during the duration of commercial fishing right or right or part thereof that is being transferred;

- 11.6.8 The transferee has not been convicted of contravention of the MLRA, or Regulations, or permit conditions during the duration of commercial fishing right or right or part thereof that is being transferred;
- 11.6.9 An applicant has no asset forfeited to the State for a violation of a provision of the MLRA;
- 11.6.10 An applicant had no fishing right or right or permit cancelled or revoked during the duration of the current and/or previous fishing rights periods;
- 11.6.11 The transferor and/or transferee (where applicable) is not in arrears with any levies, licence fees or other payments and does not have outstanding catch returns or other documentation required by the Department in terms of the applicable permit conditions or the Department's legal framework;
- 11.6.12 The transferor had not submitted two applications in an attempt to transfer the same commercial fishing right or right or part thereof to two transferees at the same time;
- 11.6.13 An application is not from a paper quota applicant (transferor and transferee) as defined in General Policy. The Department may institute legal proceedings (civil and/or criminal) and section 28 proceedings if it is found after approval of the transfer of a commercial fishing right or right or part thereof that the applicant is a paper quota holder (if applicable);
- 11.6.14 The transferor and the transferee are from the same household or family and the transferee is dependent on fishing for his or her livelihood (financial records/ bank statements may be required);
- 11.6.15 The transferor and the transferee are from the same community and/or same fishing zone;

- 11.6.16 The transferee has proven historical involvement (confirmation letter/s from marketer/s, processor/s, vessel owner/s who held permits or licenses issued in terms of the MLRA at the time of transferee's involvement in fishing, etc.) and is dependent on fishing for his or her livelihood; and
- 11.6.17 If an applicant is deceased after the right has been granted, the following documentation, but not limited to, must be provided only by an Executor or Master's Representative, whose appointment has been confirmed by the Master of the High Court:
- a. A certified copy of the death certificate.
 - b. A certified copy of the letter of executorship (letter of authority issued by the Master of the High Court).
 - c. A copy of the last will or testament of the deceased that was accepted by the Master of the High Court (if applicable).
 - d. A certified copy of the marriage certificate (if applicable).
 - e. A copy of Liquidation and distribution account accepted by the Mater of High Court (if applicable).
- 11.7 If an applicant submits falsified information or documentation or conceal material information, the Department may institute legal proceedings (civil and/or criminal) and section 28 proceedings in terms of the MLRA.

12. DURATION OF TRANSFERRED RIGHTS

A commercial fishing right or right or part thereof transferred in terms of section 21 of the MLRA will only be valid for the remainder of the original period for which a commercial fishing right or right is valid.

13. FEES

- 13.1 Fees payable for the transfer of a commercial fishing right or right or a part thereof or for the applications of change in shareholding and/or members' interest will be payable in accordance to the Government Gazette Notice.
- 13.2 The application fee for the transfer of a commercial fishing right or right or part thereof or for the applications of change in shareholding and/or members' interest is non-refundable, except where there are reasonable grounds for a refund.

14. MANAGEMENT AND ADMINISTRATION OF THE TRANSFERRED RIGHT

- 14.1 The transferred commercial fishing right or right or part thereof will be subject to the fisheries management and administration provisions as described in each of the commercial Fisheries Sector-Specific Policies and the General Policy. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this Draft Policy and any Fishery Sector-Specific Policy, the provisions of this Draft Policy shall take precedent.

15. MULTI-SECTOR INVOLVEMENT

- 15.1 The policy does not preclude or discourage the transfer of commercial fishing right or right to or from applicants holding fishing rights or rights in more than one fishery. However due consideration will be ensured by the Department to prevent or avoid concentration of rights into the hands of few companies which may result into monopoly and/or oligopoly.

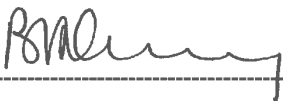
16. FRONTING

- 16.1 The Department shall take reasonable steps to prevent fronting from occurring. The Department may invite applicants to make oral submissions or to present further information in writing if there is uncertainty concerning a material issue regarding their

application. If oral hearings are held, legal representatives maybe permitted to address the Department.

- 16.2 The Department may request verification or investigation on any matter, including the correctness of information provided by the Applicant(s).
- 16.3 Applicants must co-operate with the terms and conditions of the investigation, by timeously submitting responses to written requests for information or explanations, attending meetings with investigators, answering questions satisfactorily at such meetings, and where necessary, by granting investigators access to shareholders, employees, premises, vessels and documents. Failure to co-operate with the investigation, may constitute an independent ground for refusal of the application.
- 16.4 In terms of section 82 of the MLRA, the Department may order an enquiry into any matter identified. The Applicant must fully co-operate with the enquiry as lack of cooperation from any of the parties will negatively affect the evaluation of the application. Failure to co-operate may constitute an independent ground for refusing the application.

APPROVAL SIGNATURE



NAME: (MS) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT,

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

POLICY FOR THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE
DEMERSAL SHARK FISHERY: 2021

THIS POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE ALLOCATION OF
FISHING RIGHTS: 2021 AND THE DRAFT POLICY ON TRANSFER OF COMMERCIAL FISHING
RIGHTS: 2021

(available at www.environment.gov.za)

Draft Policy for Allocation of Commercial Fishing Rights and Management in the Demersal Shark Fishery: 2021

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1. Introduction

This policy for the allocation of fishing rights in the demersal shark fishery is issued by the Minister of Forestry, Fisheries and the Environment ("the Minister") and shall be referred to as the "**2021: Demersal Shark Fishery Policy**". This policy must be read with the General Policy on the Allocation of Fishing Rights: 2021 ("the 2021: General Fisheries Policy").

This policy sets out the objectives, criteria and considerations that will guide the allocation of fishing rights in the demersal shark fishery. This policy will guide the delegated authority in taking decisions on applications in this fishery.

The Minister intends to delegate the Section 18 power to allocate fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to an official of the Department of Forestry, Fisheries and the Environment ("the Department").

2. Sector Profile

2.1. Description of the fishery

The demersal shark longline fishery operates in waters generally shallower than 100 m and uses bottom-set longline gear (~1000 hooks per line) to target demersal sharks. The fishery operates nearshore from Cape Town to East London and predominantly catches soupfin *Galeorhinus galeus* and smoothhound sharks *Mustelus mustelus*. Additional species include white-spotted smoothhound *M. palumbes*, Carcharhinus species such as the bronze whaler *C. brachyurus* and dusky sharks *C. obscurus* as well as skates.

2.2. Research and Monitoring

In 2013 the National Plan of Action for Sharks ("the NPOA-Sharks") was completed with the goal to move towards effective conservation and management of sharks that occur in the South African EEZ to ensure their optimum, long-term, sustainable use for the benefit of all South Africans, including present and future generations. The NPOA-Sharks recognized the need to determine and implement harvesting strategies consistent with the principles of biological sustainability, attained through scientifically based management and consistent with a Precautionary Approach. Shark research activities are guided by the needs identified in the NPOA for Sharks.

In order to develop appropriate management strategies in line with the NPOA for Sharks, South

Africa (2013) for these resources it is vital to understand their biology. Life-history information on growth, maximum age, fecundity and size at maturity, sexual segregation, pupping, mating migrations and the use of nursery grounds of these species will aid the development of these management strategies. Biology and life-history has been investigated for blue sharks and smoothhound sharks while biological data have been collected for a number of other species impacted by fisheries. A gap analysis on the available literature has been conducted on 100 species of chondrichthyes targeted or caught as by-catch in South African Fisheries. Life-history parameters derived from local sampling are available for 15 species, mostly published in grey-literature. Collection of biological samples for the remaining species has been identified as a priority. Protection of chondrichthyes provided by MPAs should be considered through increased research and enforcement of legislation. Research on smoothhound sharks has shown that species uses the habitat within the Langebaan Lagoon MPA for reproduction, feeding and as a nursery ground. These findings indicate that MPAs could provide considerable benefits to the fishery in the form of spill-over if nursery areas are included. Many of the commercially valuable demersal shark species occur within MPAs around South Africa and it therefore likely that MPAs may provide considerable protection for them. Benefits from spill-over of fish from MPAs to neighbouring areas has been shown for many species with a positive overall influence on catches of neighbouring fisheries.

Stock assessments of smoothhound and soupfin sharks show that there is a high probability that current harvest rates across the major fisheries harvesting these species are unsustainable. To allow rebuilding of the stock, total catches would need to be substantially reduced across all sectors catching these species in significant numbers to prevent the stock from declining. It is vital that the size of the resource is considered during the FRAP 2021 process. Both of the main target species in this fishery are overfished and caught by multiple fisheries. Due to the lack of historical performance in this fishery the number of rights allocated should be reconsidered according to performance. Analyses of performance in this fishery suggests that only 4 rights be issued and an increase in effort cannot be allowed for other fisheries targeting the same species (i.e. an increase in effort in the linefishery).

A panel of International Experts were brought together by the Minister in 2020 to review the NPOA 2013 and its internal review. Many recommendations were made to improve on the conservation of chondrichthyes in South Africa. Most importantly, the panel urged DFFE to follow scientific recommendations made on the management of demersal sharks. The most threatened shark

species in South Africa – the soupfin shark will be commercially extinct in 20 years at current fishing levels. Scientific recommendations have been adopted in the Linefishery and the Demersal shark longline fishery. To reduce the probability of commercial extinction, it is vital that the 20 t Precautionary Upper Catch limit (PUCL) as recommended by the Linefish Scientific Working Group be implemented for the inshore trawl fishery with immediate effect.

2.3. History of the fishery

After interest in the tuna longline fishery waned in the mid-1960's, longline fishers turned their attention to other more lucrative stocks. Permits for the demersal shark longline fishery were first issued in 1991. The initial incentive to obtain these permits was by exploiting loopholes in the regulations to catch hake by longline, an activity that was discontinued in 1990.

Fishers used longline gear to target hake and kingklip under the guise of shark permits. When the by-catch limits of hake and kingklip were reduced in the shark fishery, fishing effort decreased exponentially. Prior to 1998 more than 30 permits were issued to target shark, but due to poor performance in the fishery, the total applied effort ("TAE") was reduced to 23 permits in 1998. The TAE was further reduced in 2004 and 2006 to 11 and 6 vessels, respectively, due to poor performance. During the past decade, generally no more than 4 vessels have been active at any point in time.

2.4. Resource users

Prior to 2007, catches of demersal sharks in this fishery were low, although substantial increases in catches have occurred recently. In general, rights holders are only active on a part-time basis, with many rights holders having access to more lucrative rights such as hake longline and tuna pole. With the exception of rights holders active in the Eastern Cape, demersal shark longline rights are activated when catches in other fisheries are low or during off season. This shark resource is harvested by three separate fisheries; demersal shark longline, inshore trawl and commercial line fishery. Consequently, catch reduction, if necessary needs to be applied equally across all three.

It is important to note that these species are targeted or caught as by-catch in high numbers in three fisheries; the inshore trawl fishery, demersal shark longline fishery and commercial linefishery. With the exception of prohibition of retention of hammerhead sharks (*Sphyrna* spp.) and broadnosed sevengill cow sharks *Notorynchus cepedianus* in the demersal shark longline fishery there are currently no species-specific management measures in place to protect demersal sharks. In general,

shark fisheries, including the demersal shark longline and commercial linefishery are largely influenced by market trends.

Most shark fisheries are considered data poor, but there is increasing concerns that the life-history characteristics of many sharks make them particularly vulnerable to overexploitation, such as long lifespans, complicated migration patterns and low fecundity. These attributes result in low productivity (rates of increase) and low resilience to fishing mortality and they can therefore only withstand modest levels of fishing without depletion and stock collapse.

3. 2013 Fishing Rights Allocation Process

In 2013, the Department allocated 6 demersal fishing rights. The fishing rights authorised a maximum of six fishing vessels access to the fishery. Each Right holder was permitted to use only one vessel. 63% of the rights were allocated to black people or black-owned and controlled entities. In terms of female shareholding, 50% of rights were allocated to females or female-owned and controlled entities. Between 2007 and 2020 an average of 98% (ranging between 88 to 100 %) of the total catch was made by 4 vessels. The Department will consider reducing the number of rights allocated during this process. This may aid in overall reducing the catch of these species in addition to the slot limit added to this fishery (and the commercial linefishery) in 2020.

4. Over-Arching Sectoral Objectives

The objectives of allocating fishing rights in the demersal shark fishery are to:

- (a) aid in the recovery and ecologically sustainable use of the demersal shark resource (which requires a reduction in catches as per stock assessment results).
- (b) improve the quality of jobs through permanent employment, promote transformation and broaden meaningful participation (increase participation, value-creation, and linkage)
- (c) promote the interest of applicants who rely heavily on the demersal shark sector as their main source of income.

5. Granting Of Rights

Fishing rights are granted in terms of section 18 of the MLRA. In terms of section 79 of the MLRA the Minister has delegated the power to grant fishing right in each fishery to a Delegated Authority in the Department.

Unless otherwise determined by the Minister, only South African persons shall acquire or hold rights

in terms of section 18 of MLRA. In this fishery the Minister has not exercised his power to allow persons of other nationalities to acquire rights, meaning that only South African persons can acquire rights in the fishery.

The rights granted will be based on applicable balancing criteria and will be reflected as a proportion of the local commercial TAC and/or TAE or a combination thereof that are available at the time that the rights allocation process is conducted.

All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after they will automatically terminate and revert to the State to be reallocated.

It should be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restrictions, in order to address a state of emergency.

5.1. Form of Right Holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights.
- (b) Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered in the demersal shark fishery:
 - i) Close corporation (legal entity); and
 - ii) Company (legal entity)

5.2. Duration of right

Considering the decline of the demersal shark stocks, the level of transformation and the capital intensity of the fishery, the performance during the previous right allocation period. Fishing rights in the demersal shark fishery will be granted for the period of 15 years.

5.3. Total Allowable Catch and Total Applied Effort Allocation

In terms of section 14 of the MLRA the Minister is empowered to determine a TAC, Total Applied Effort (TAE), or combination thereof to apply in each fishery. The demersal shark fishery is regulated by the determination of a Total Allowable Effort of vessels of predetermined specifications, species, area and size regulations. The delegated authority will allocate a proportion of the effort in respect of number of vessels, to each successful right holder. The right holder allocation will remain constant for the duration of the right, whereas auxiliary measures such as species, size and area limits as well as catch limits may fluctuate depending

on the assessment of the resource status.

The TAE / TAC if required is determined by the Delegated Authority considering the history, resource users, sustainability of the operations of right holders, and the viability of the fishery. The Delegated Authority will only allocate a local commercial portion of the determined TAE/TAC to commercial right holders based on the proportion granted to each successful applicant at the time of commercial fishing rights allocation process. The right holder's allocation may decrease, or increase should the annual local commercial portions of determined TAE/TAC decrease or increase respectively. In terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist increases, the mass of the increase shall be available for allocation by the Minister. Changes in TAC can be implemented in permit conditions on an annual basis as dictated by stock assessment results.

5.4. Transfer of Rights Allocated in this Fishery

In terms of Section 21 of the MLRA the Minister may approve the transfer of fishing rights in a whole or in part. However, rights granted in this fishery in terms of the MLRA shall not be transferred within the first three [3] years of being granted.

Rights can only be transferred in terms of the draft Policy for the Transfer of Commercial Fishing Rights: 2021 ("the Transfer Policy").

Any transfer of shares or members' interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members' interest should be dealt with in terms of the draft Transfer Policy.

A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred. In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder results in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity

Failure to comply with any provision of the MLRA, the Regulations, the permit conditions, the draft General Policy and the draft Transfer Policy shall result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

Right Holder in this fishery should refer to the draft Transfer Policy: 2021 for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this draft Policy and the draft Transfer Policy, the provisions of the draft Transfer Policy shall take precedent.

6. Multi Sector Involvement

Applicants for the allocation of rights in this fishery will not be precluded from applying for, or holding commercial rights in other local commercial fisheries sectors.

This shall mean any person can only apply for a right in any fishery sector regardless of whether the applicant has applied for a right or holds a right in any fishery sector. In this case, the “applicant” shall mean an individual, a shareholder or director in a company, or a member in a close corporation applying for a right in any fishery sector.,

Natural persons who hold shares or a member’s interest in an entity which is applying for the allocation of rights in the fishery, may also hold shares, an interest in an entity which is applying for, or already holds rights in another fishery.

Natural persons who are directors or employees of an entity which is applying for the allocation of rights in the fishery, may also be a shareholder, member, director or employee of an entity which is applying for, or already holds rights in another fishery.

The Delegated Authority reserves the right to grant a right to the applicant in any sector and may, however, prefer applicants who rely on the harvesting of demersal shark as a major source of their gross annual income

7. Evaluation Criteria

7.1. Exclusionary Criteria

Apart from the criteria described in the General Policy or relevant amendments thereof pertaining to the lodgement of applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

(a) Compliance

Applicants, including their members, directors or controlling shareholders or vessel master (skippers), or shore skippers, or crew member or general workers (admin or support staff, drivers etc) that have been convicted of a serious transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders or vessel master (skippers), or shore skippers or crew member or general workers (admin or support staff, drivers etc) that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including the payment of admission of guilt fines (maximum fine), may be taken into account as a balancing criterion and may also adversely affect an application.

(b) Paper Quotas

Applications from paper quota applicants, as defined in the General Policy or relevant amendments thereof, will be excluded.

(c) Non-utilisation

Applicants that failed to effectively utilise their demersal shark fishing rights between the period 2014 to 2020. Effective utilisation requires that a) a permit be collected, b) the right is actively used (fished) and that c) catch data is provided. .

7.2. Comparative Balancing Criteria

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted in order to evaluate and assess applications:

(a) Transformation

When assessing and scoring applications, and when allocating portions of the TAE to successful applicants, the Delegated Authority may prefer applicants based on transformation criteria. When attributing a score for transformation criteria, or allocating portions of the TAE, the Delegated Authority may have regard to: census statistics or other information provided by Statistics South Africa regarding the composition of the population of South Africa, and the percentage of that population

made up by different demographic groups; the need to ensure the recognition and meaningful participation in the fishing industry of Historically Disadvantaged Individuals (HDIs); and the codes of good practice under the Broad-Based Black Economic Empowerment Amendment Act.

Applicants, depending on the form of the applicant, will be assessed and scored on the following transformation criteria:

- (i) The percentage of people from designated groups and HDIs represented at top salary, board of directors, members and senior official and management levels;
- (ii) The extent to which an applicant's black ownership and black management transformation credentials (as measured in the 2013 FRAP) have subsequently improved, remained the same, or deteriorated in the period following the granting of rights in the 2013 FRAP
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iv) Compliance with the Employment Equity Act 55 of 1998 and the representivity of designated groups and HDIs at the various levels of employment below senior official and management level;
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of Black persons, youth, women people with disabilities and participation in learnership programmes; and
- (vii) Corporate social investment.

(b) Investment in the fishery

Investment in the demersal shark fishery related to vessels, processing, and human capital will be considered.

(c) Fishing performance

- (i) The fishing performance of applicants holding fishing rights in the demersal shark fishery will be examined to determine if they have effectively utilised their fishing rights.
- (ii) Effective utilisation is shown by a) consistent catches for 17 months for a period of 7 years (20%) and b) submission of 12 log book catch returns per year inclusive of null returns. Quality of log book information will also be considered.
- (iii) Applicants that did not harvest any demersal shark during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) Reliance on demersal shark

Preference will be given to applicants who heavily rely on the harvesting of demersal shark for a significant portion of their gross annual income above applicants deriving income from sources outside the fishery.

(e) Local economic development

- (i) The delegated authority will take into consideration the landing and processing of catches in fishing harbours outside the metropolitan areas to promote local economic development.
- (ii) The delegated authority may, in order to ensure that all fishing communities share in the marine living resources, use the locality of landing sites/fishing harbours and fish processing establishments as scoring or tie-breaking criteria.
- (iii) Applicants are encouraged to land or process fish in harbours and fishing communities that are economically depressed.

(f) Job creation

The Delegated Authority may give preference to any applicant which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated rights in the fishery. For these purposes the Delegated Authority will consider the quality of the employment opportunities which will be created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's commitment to provide their employees with:

- i) permanent employment;
- ii) medical aid or any kind of medical support arrangement;

- iii) pension / provident fund;
- iv) safe working conditions in accordance with the applicable legislative requirements; and
- v) an employee share scheme as a shareholding entity of the right holder.

(g) Payment of levies

Applicants that were granted fishing rights in 20013 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

(h) Suitable vessel

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of demersal shark. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided. Rights holders will have until the mid-term review process to procure a vessel and demonstrate ability to utilize rights. If no progress is shown rights can be removed. However, the number of rights active can never exceed the TAE.

A suitable vessel in the demersal shark fishery is a vessel that:

- i) has a minimum South African Maritime Safety Authority (SAMSA) registered length overall of more than 20 metres
- ii) has a functioning vessel monitoring system at the time of applying for a vessel licence if the application is successful;
- iii) is registered and certified by SAMSA as being suitable for fishing; and
- iv) is geared for demersal shark longline fishing.

In order to verify if the vessel meets the suitable vessel criteria, applicants would need to submit photos of the vessels as well as copies of the SAMSA registration certificate.

(i) Applicants' involvement and relationships with other applicants**(i) Entities and their subsidiaries involvement**

A company and its subsidiary/ies may not be granted more than one right in the demersal shark fishery, so as to avoid fronts and monopolies and to promote broader access to the demersal shark resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the demersal shark fishery, as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in the same fishery, the holding/umbrella/parent company will be preferred with due regard being taken to the Department's transformation objectives.

(ii) Brother-Sister Corporations

If two or more entities which are owned and controlled by the same person or persons or shareholders apply for commercial fishing rights in the demersal shark fishery, and qualify for the allocation of such rights, then the Department may consider: allocating a fishing right to one of the qualifying entities only; or dividing the TAE between the qualifying entities.

8. Quantum Allocation Method

The Department is considering to allocate fishing effort between 4 to 6 fishing vessels in this sector.

9. New Entrants

Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department. New entrant's applicants will have to demonstrate that they have knowledge, skills and capacity to fish and process demersal shark.

10. Application And Grant Of Right Fees

The fees will be published separately in terms of section 25 of the MLRA and made available at the

time of application.

The application fees will be determined by, amongst others:

- (a) The cost the administration of the entire Commercial fishing rights allocation process, including consultation, distribution, receipting, evaluation of applications, verification, appeals and judicial reviews; and
- (b) The relative value of the resource(s) being allocated.

Applicants must pay the Application Fee to the Marine Living Resources Fund before the submission of their Application Form and proof of payment must be submitted with the Application Form when applying for a fishing right. Banking details are as follows:

<p>Account Holder: Marine Living Resources Fund</p> <p>Bank Name: First National Bank</p> <p>Account Number: 62123256382</p> <p>Branch Code: 210554</p> <p>Reference Number: [Applicant must insert the commercial fishing right application number]</p>

The Application Fee is non-refundable, except where there are reasonable grounds for refund.

The grant of right fee is payable by all successful applicants upon the granting of a Right.

11. Provisional List, Representations And Consultations

- 11.1. The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery.
- 11.2. The Delegated Authority may request comment(s) on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 11.3. The Delegated Authority may invite representation regarding the assessment of the applications before making final decisions.

12. Appeals

- 12.1. The Delegated Authority will where necessary set aside a portion of the TAC, TAC or a

combination thereof for appeals. The unallocated portion of the TAC, TAE or a combination thereof that has been set aside for appeals, if any, will be allocated proportionally to all successful applicants and appellants. The allocations of successful applicants may also be adjusted depending on the outcome of the appeals.

- 12.2. The Delegated Authority will inform all applicants of the dates set for appeals.
- 12.3. Any applicant or affected or interested person will have the right to appeal against decisions of the Delegated Authority. The appeal may be lodged against a refusal to grant a right or against the decision, process, and methodology on quantum.
- 12.4. The Minister, as the appeals authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing date for applications, that fact will not be taken into account when considering the appeal.
- 12.5. Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.
- 12.6. Following the appeals authority's decision, appellants may approach the courts for judicial review within 180 days after the appellant has been informed of the decision of the appellant

13. Management Measures

The management measures set out below are a number of the Department's principle post-right allocation management intentions for the Demersal Shark sector.

13.1. Spatial Management

- (a) No fishing shall take east of a line drawn due south of East London Harbour (27°55' E).
- (b) No fishing may take place in the Marine Protected Areas as proclaimed in the Government Gazette No. 42478 dated 23 May 2019.
- (c) Fishing and/or the removal or disturbance of any marine life in the National Parks is prohibited. Fishing in other marine and estuarine areas controlled by the South African National Parks, is subject to regulations promulgated under the National Parks Act, 1976 (Act No. 57 of 1976) as amended.
- (d) No person shall use any fishing equipment within the Bird Island Marine Protected Area, a rectangle around Bird Island in Algoa Bay defined by the latitudes 33°48'0S and 33°52'0S and the longitudes 026°14'5E and 026°20'0E.
- (e) During the period 1 September to 31 December, no fishing shall take place within the

quadrilateral described by lines joining the following four points:

A: 34°48'S 024°00'E;

B: 34°38'S 025°00'E;

C: 34°44'S 025°00'E; and

D: 34°57'S 024°00'E.

13.2. Observer at Sea and Land Based Monitoring

Successful applicants will be expected to deploy accredited sea going scientific observers as specified by the Department on a user pays basis.

14. Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be co-determined with Right Holder's representative associations as decided annually during Departmental sector-specific Management Working Group meetings. Revision, in consultation with associations (majority Right Holder representatives) may also take place *ad hoc* during the season as and when it may be necessary.

15. Monitoring And Evaluation Of The Policy

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years, from the date of finalisation of the appeals.

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

- (a) Transformation.
- (b) Investment in vessels and gear.
- (c) Bycatch mitigation compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met.

16. Contraventions

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their demersal shark fishing right for any two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (c) During the performance measuring exercise, any Rights Holder that has been found to have contravened any condition upon which the Right was granted for;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

APPROVAL SIGNATURE

NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS
IN THE HAKE DEEP-SEA TRAWL FISHERY: 2021**

**THIS POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE ALLOCATION OF
FISHING RIGHTS: 2021 AND THE DRAFT POLICY ON TRANSFER OF COMMERCIAL FISHING
RIGHTS: 2021**

(available at www.environment.gov.za)

DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE HAKE DEEP-SEA TRAWL FISHERY:
2021

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DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE HAKE DEEP-SEA TRAWL FISHERY:
2021

Definitions

"Paper quotas" as defined in the General Policy

"Group of companies" is an economic entity formed of a set of companies.

"Holding company" is a company that owns a controlling interest in other, subsidiary companies.

"Subsidiary company" is company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.

"Category A" applicants who held a right in the fishery for which they are re-applying for.

"Category B" applicants who are currently holding rights in sectors other than the fishery for which they are applying for.

"Category C" applicants who have never been granted a commercial fishing right in any commercial fishing sector.

Acronyms

MLRA: Marine Living Resources Act, 1998 (Act No. 18 of 1998)

TAC: Total Allowable Catch

OMP: Operational Management Procedure

Preamble

This fishery is managed in terms of MLRA and other relevant legislation.

Recognising the need to utilise marine living resources sustainably and to promote equitable access to marine living resources.

Acknowledging that this fishery will be managed in accordance with the Ecosystems Approach to fisheries management.

Rights will be allocated to successful applicants as proportions (percentages) of the Deep-Sea Trawl hake TAC apportionment.

1. Introduction

This draft policy on the allocation and management of fishing rights in the Hake Deep-Sea Trawl fishery is issued by the Minister ("the Minister") of Forestry, Fisheries and the Environment ("the Department") and shall be referred to as the "Hake Deep-Sea Trawl Policy: 2021". This policy must be read in conjunction with the draft General Policy on the Allocation of Fishing Rights: 2021 ("the draft General Policy:2021") and all other Sector Specific Policies including Policy for Small Scale Fisheries Sector in South Africa: 2012 and the draft Policy for the Transfer of Commercial Fishing Rights: 2021.

This policy sets out objectives, criteria and considerations that will guide the application, evaluation and allocation of fishing Rights in the Hake Deep-Sea Trawl fishery ("the fishery").

The Minister delegated the Section 18 power to allocate commercial 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. This policy will guide the delegated authority in taking decisions on applications in this fishery.

2. Profile of the fishery

2.1 Description of the fishery

The South African Deep-Sea Trawl fishery targets the two species of Cape hakes (shallow-water Cape hake *Merluccius capensis* and deep-water hake *Merluccius paradoxus*). The Cape hakes are distributed on the continental shelf and upper slope around the coast of southern Africa. *Merluccius paradoxus* are distributed from northern Namibia to southern Moçambique, whereas *M. capensis* are distributed from southern Angola to northern KwaZulu-Natal. As the names suggest, the distributions of the two hake species differ with depth, although there is a substantial overlap in their depth ranges. *Merluccius capensis* are distributed over a depth range of 30 to 500 m with most of the population occurring between 100 and 300 m, whereas *M. paradoxus* are distributed over a depth range of 110 m to deeper than 1 000 m with most of the population occurring in depths of between 200 and 800 m. The sizes of both species increase with depth and large *M. capensis* consequently co-exist with and feed extensively on smaller *M. paradoxus*.

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2021

It is difficult to distinguish between the two hake species, so they are generally processed and marketed as a single commodity. The hake resource is also targeted by the inshore trawl, hake longline and hake handline fisheries, but the Deep-Sea Trawl fishery catches more than 80% of the annual hake TAC. Hake (both species as a collective) comprise between 80 and 90% of Deep-Sea Trawl catches made on the West Coast (which mainly comprise deep-water hake) and between 60 and 80% of catches made on the South Coast (which are mainly shallow-water hake). The remainder of the catch is made up of various by-catch species, some of which are commercially valuable (such as monkfish and kingklip) and are retained for utilisation. On average, about 90% of the Deep-Sea Trawl catch is retained. Catches of hake (regulated through an annual TAC restriction) have ranged between 110 000 and 158 000 t per annum over the past two decades.

The hake Deep-Sea Trawl fishery, while permitted to operate on both the West and South Coasts of South Africa, is spatially restricted to operate only in the area known as the “hake trawl ring fence”, and is further prohibited from fishing in waters shallower than 110 m, or within 5 nautical miles of the coast (whichever is the greater distance from the coast). Additional spatial restrictions are a prohibition of fishing in Marine Protected Areas, as well as the September – November closure of the area known as the “kingklip box” on the South Coast near Port Elizabeth (closed to protect spawning aggregations of kingklip).

The fishery currently comprises 30 Right Holders, which collectively operate 51 vessels ranging in length from 30 to 90 m. There are two components to the deepsea trawl fleet; the factory vessels (which typically remain at sea for 30 days or more and which process and freeze the catch at sea) and the wetfish vessels (which generally fish for about 4 to 5 days before returning to port, with their catch kept on crushed ice). The Deep-Sea Trawl fishery is currently the most valuable of South Africa's fisheries, contributing about R 8.5 billion. The fishery sustains about 12 400 jobs (6 600 direct and 5 800 indirect) along South Africa's West and South Coasts. Of these jobs, 90% are held by persons from historically disadvantaged communities, while 40% are held by women. Working conditions in the hake Deep-Sea Trawl industry are considered to be better than those that prevail in most other fisheries. The majority of employees are employed on a full-time, year-round basis, with fixed salaries and employment benefits. Seagoing staff

typically earn about R22 000 per month, while processing staff earn about R 9 000 per month. Certain of the larger Deep-Sea Trawl fishing companies are registered with the "Proudly South African" campaign. 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, totalling R7.6 billion.

2.2 History of the fishery

The demersal fishery off southern Africa started with the arrival of the purpose-built research vessel, Pieter Faure, in 1897 and the first commercial trawler, Undine, in 1899 off the Cape. In the early years of the fishery, Agulhas and West Coast sole (*Austroglossus pectoralis* and *A. microlepis* respectively) were the primary target species, with hake being caught as an incidental bycatch. Directed fishing of Cape hakes began towards the end of the First World War, with catches averaging about 1 000 t per annum until 1931. The fishery then began escalating during and after World War II, with catches increasing steadily to around 170 000 t by the early 1960s. The incursion of foreign fleets in 1962 led to a dramatic increase in fishing effort, and catches in South African waters eventually peaked in 1972 at over 295 000 t. By this time, effort had extended farther offshore and also into Namibian waters, with over 1.1 million tons being caught in the South-East Atlantic in 1972.

In 1972, following concerns over the combination of increasing catches and decreasing catch rates, the International Commission for the South-East Atlantic Fisheries (ICSEAF) was established in an attempt to control what had become an international fishery. Various management measures such as a minimum mesh size, international inspections and quota allocations to member countries were implemented through ICSEAF. However, catch rates continued to decline, and in November 1977 the declaration of a 200 nautical mile Exclusive Fishing Zone (EFZ) by South Africa marked the onset of direct management of the South African hake resource by the South African government. With the exception of a few vessels operating under bilateral agreements and subject to South African regulations, foreign vessels were excluded from South African waters.

Subsequent to the declaration of the EFZ, South Africa implemented a relatively conservative management strategy in order to rebuild the hake stocks to B_{MSY} , the biomass level that would

provide the Maximum Sustainable Yield (MSY). Total Allowable Catch (TAC) restrictions were imposed on the fishery, aimed at keeping catches below levels deemed necessary for stock rebuilding. The TACs were recommended on the basis of assessments of the resource using first steady-state models, then dynamic production models, and finally age-structured production models. An Operational Management Procedure (OMP) approach was adopted in 1990 to provide a comprehensive basis for management of the hake resources. The hake OMP is essentially a set of rules that specifies exactly how the TAC is calculated using stock-specific monitoring data (both commercial and fishery-independent indices of abundance). Implicit in the OMP approach is a four-year schedule of OMP revisions to account for possible revised datasets, management objectives and understanding of resource and fishery dynamics. Assessments are routinely updated every year to check that resource indicators remain within the bounds considered likely at the time that the OMP was adopted.

An important recent development in the hake trawl fishery (both inshore and deepsea components) has been the certification of the South African hake trawl fishery by the Marine Stewardship Council (MSC). The fishery first obtained this prestigious eco-label in 2006, and was successfully re-certified in 2010, 2015 and again in 2020. MSC certification has provided substantial socio-economic benefits to the fishery through enabling access to international markets that are increasingly demanding that seafood products are MSC certified. Recent economic studies conducted by the Bureau of Economic Research and independent consultants have indicated that withdrawal of MSC certification of the South African hake trawl fishery would decrease the Net Present Value of the fishery by about 35% over a five year period, and result in a potential loss of up to 13 600 jobs. In fulfilling their mandate of ensuring responsible and sustainable fishing practices through granting the use of the MSC eco-label to a fishery, the MSC have stringent standards in terms of assessments and subsequent management of exploited fish resources. The development of the recent iterations of hake OMPs had to conform to these standards to ensure that certification of the hake trawl fishery will not be jeopardised.

2.3 Management of the fishery

The Department manages the hake Deep-Sea Trawl fishery as part of a "hake collective", with the primary management measure being an annual TAC. In terms of the MLRA the "global" TAC for hakes (both species combined and applied to all hake-directed sectors as a collective) is set annually by the Minister of Forestry, Fisheries and the Environment. A reserve to allow for incidental hake by-catch in the horse mackerel directed midwater trawl fishery is deducted from the global hake TAC before the remainder of the TAC is distributed among the hake-directed fishing sectors; hake Deep-Sea Trawl, hake inshore trawl (hake & sole), hake longline and hake handline. In terms of that arrangement, 83.9268% of the global hake TAC is allocated to Deep-Sea Trawl, 6.179% to inshore trawl, 6.551% to hake long line, 1.8433% to hake handline and 1.5% to small scale fishing. Other management measures include a capacity management system to restrict operational effort (vessels and sea days) to what is required to catch the TAC, spatial and gear restrictions, catch limits on various by-catch species as well as the implementation of measures to reduce seabird mortalities.

Management measures to be considered/implemented during the next Rights cycle (2022 – 2037):

- (a) The Department is considering implementing changes in the hake TAC sectoral apportionment:
 - Longline apportionment increased from 6.551% to 10% of the hake TAC, subject to further investigation on possible impacts on resource dynamics
 - Handline apportionment set aside in its entirety for allocation to small scale
- (b) TAC decrease "cushion" for SMMEs/smaller Right Holders
- (c) Roll overs will be discouraged
- (d) Transfer of hake quota between hake-directed sectors (e.g. from inshore trawl to deepsea trawl) will be discouraged
- (e) Change in the fishing season from the current 1 January – 31 December to 1 March – 28/29 February. The intention is to implement this change in alignment with the new hake OMP that will be developed during 2022 and implemented in 2023.
- (f) Efforts will be directed at removing vessels smaller than 30m from the fishery for safety considerations

3 The Long-Term Fishing Rights Allocation Process

In the 2005/2006 Long-Term Fishing Rights Allocation and Management Process (LTRAMP), rights were allocated to a total of 44 right holders in the Hake Deep-Sea Trawl sector with an average black ownership percentage of 74%. The structure of the fishery has altered somewhat during the intervening period, largely due to various Rights transfers that have resulted in the fishery currently comprising 30 entities.

4 Over-Archiving Sectoral Objectives

Within the framework of the broader objectives specified in the General Policy, the specific objectives to be fulfilled during the allocation of fishing rights in the Hake Deep-Sea Trawl fishery are to:

- 4.1 broaden access to the Deep-Sea Trawl fishery to the extent possible while minimising economic disruption (such as job losses) to the existing fishery;
- 4.2 promote transformation through efficient allocation of fishing rights to historically disadvantaged persons (which shall include the designated groups; youth, women, people with disabilities and military veterans) and broaden meaningful participation (increase participation, value-creation, and linkage) of these groups;
- 4.3 promote the interests of applicants who rely heavily on the Hake Deep-Sea Trawl sector;
- 4.4 promote local economic development through encouraging investments in processing and marketing infrastructure in areas that are economically depressed
- 4.5 promote meaningful participation in the fishery by all Right Holders and eliminate paper quotas through implementation of a minimum allocation approach as well as discouraging restrictive catch and/or joint venture agreements (agreements where a third party conducts all catching, processing and marketing over the entire duration of the Right).
- 4.6 promote SMMEs
- 4.7 promote job creation and retention

5 Granting of Fishing Rights

Fishing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. The Delegated Authority shall allocate proportions of the TAC and/or TAE (Total Applied Effort) to each successful applicant based on the balancing criteria and portion of the local commercial TAC, TAE or

combination thereof that is available at the time the fishing right is allocated. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

5.1 Form of Right Holder

Having regard to the nature of operations and accessibility, only the following South African persons will be considered for a right in the Hake Deep Sea Trawl sector:

- (i) Close Corporations (legal entity).
- (ii) Companies (legal entity).

5.2 Duration of Rights

Having regard to the right allocation process and need to encourage investment, the Hake Deep-Sea Trawl fishery, fishing rights will be granted in the Hake Deep-Sea Trawl fishery for the maximum period of 15 years.

5.3 Total Allowable Catch and Total Applied Effort allocation

In terms of section 14 of the MLRA the Minister is empowered to determine a TAC, Total Applied Effort (TAE), or combination thereof to apply in each fishery. This fishery is regulated by the determination of a TAC.

The TAC is determined by the Delegated Authority considering the history, resource users, sustainability of the operations of right holders, and the viability of the fishery. The Delegated Authority will only allocate a local commercial portion of the determined TAC to commercial right holders based on the proportion granted to each successful applicant at the time of commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of determined TAC decrease or increase respectively. In terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist increases, the mass of the increase shall be available for allocation by the Minister.

5.4 Transfer of Rights Allocated in terms of this Policy

In terms of Section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in this fishery in terms of the MLRA shall not be transferred within the first three [3] years of being granted.

Rights can only be transferred in terms of the draft Policy for the Transfer of Commercial Fishing Rights: 2021 ("the Transfer Policy").

Any transfer of shares or members' interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members' interest should be dealt with in terms of the draft Transfer Policy.

A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred. In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder results in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity

Failure to comply with any provision of the MLRA, the Regulations, the permit conditions, the draft General Policy and the draft Transfer Policy shall result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

Right Holder in this fishery should refer to the draft Transfer Policy: 2021 for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this draft Policy and the draft Transfer Policy, the provisions of the draft Transfer Policy shall take precedent.

6 Evaluation criteria

Applicants 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.

6.1 Exclusionary criteria

Apart from the criteria described in the draft General Policy on the Allocation of Commercial Fishing Rights: 2021 (“the draft General Policy”) pertaining to the lodgement of the applications and material defects, the Delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Compliance:** an applicant, including any of its members, directors, or controlling shareholders or vessel master (skippers), or shore skippers, or crew member or general workers (admin or support staff, including drivers etc) that have been convicted of a serious transgression of the MLRA, or its regulations, or relevant permit conditions (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders or vessel master (skippers), or shore skippers or crew member or general workers (admin or support staff, drivers etc) that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including the payment of admission of guilt fines (maximum fine), may be taken into account as a balancing criterion and may also adversely affect an application.
- (b) **Paper Quota Holders:** applicants who apply under Fishing Rights Allocation Process:2021 (FRAP2021) for new rights, and who are found to be paper quota risk as defined in the draft General Policy will be excluded.
- (c) **Fronting:** Applicants who apply under FRAP2021 for new rights, and who are found to be engaged in fronting as defined in the draft General Policy will be excluded.
- (d) **Non-utilisation:** Applicants which held a right in the fishery during the period of 2005 to 2020, which was not utilised, shall be excluded.

6.2 Balancing criteria

Applicant will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the

corresponding criteria in the draft General Policy for further detail. Weighting and scoring criteria will be developed and designed for Categories A, B and C applicants.

(a) Transformation

The objective of allocating long-term fishing rights in this sector is to improve the transformation profile (involvement of females, youth and people living with disabilities). In addition to the criteria as stipulated in the draft General Policy, applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and HDIs representation at top salary, board of directors, members and senior official and management levels;
- (ii) The extent to which an applicant's black ownership and black management transformation credentials (as measured in the 2005 LTRAMP have either improved, remained the same, or deteriorated in the period following the granting of rights in the LTRAMP);
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iv) Compliance with the Employment Equity Act 55 of 1998 and the representivity of designated groups and HDIs at the various levels of employment below senior official and management level;
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vii) Corporate social investment.

(b) Reliance on the fishery

Applicants who rely heavily on the Hake Deep-Sea Trawl sector for a major source of their gross annual income will be afforded some preference over applicants deriving income from sources outside the Hake Deep Sea Trawl fishery.

(c) Compliance

Applicants, including any of its members, directors, or controlling shareholders or vessel master (skippers), or shore skippers, or crew member or general workers (admin or support staff, including drivers etc) that have paid admission of guilt fines for

contraventions of the MLRA, its Regulations or permit conditions within the last five [5] years, their application may be penalised. Applicants who fail to disclose this information in their application may be excluded.

(d) Fishing Performance

The fishing performance of applicants holding fishing rights in the Hake Deep-Sea Trawl and other fisheries (i.e. Category A and B applicants) will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, proportion of the quota that is landed per annum subsequent submission of catch data and payment of levies for the last 10 years of the Right (i.e. 2010-2019), or a shorter period in the cases of those Right Holders that entered the fishery subsequent to LTRAMP.

(e) Investment in the fishery

As far as category A applicants are concerned, the Delegated Authority may specifically consider:

- (i) Investments in suitable vessels and other fixed assets such as processing and marketing infrastructure in the Hake Deep-Sea Trawl sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding will also be considered.
- (ii) As far as Category B and C applicants are concerned, the Delegated Authority may consider investments made in other sectors in form of vessels, fixed assets, processing and marketing infrastructure. A clear demonstration of their commitment (and ability) to invest in this sector (i.e., access to a vessel and FPE's) will be considered.
- (iii) All Category C applicants are required to demonstrate that they have knowledge, skills and capacity to fish for and process hake.

(f) Access to a suitable vessel

An applicant will be required to demonstrate a right of access to a vessel suitable for harvesting of hake in the Hake Deep-Sea Trawl fishery. Access may be in the form of ownership, part ownership, a catch agreement, a charter agreement, or a bank guarantee for a sufficient capital to purchase or build a vessel. If an applicant intends purchasing a vessel, then additional information must be provided to prove a firm and binding offer by the current owner of the vessel to sell the vessel to the applicant. If an

applicant intends building a new vessel, then additional information must be provided including vessel plans, the cost to be incurred and a firm and binding commitment by the vessel building company to build the vessel.

A suitable vessel in the hake Deep-Sea Trawl fishery is a vessel that:

- (i) Is registered by the South African Maritime Safety Authority (SAMSA) as having a minimum registered length of about 30m;
- (ii) Is geared to fish using the trawling method;
- (iii) Is fitted with a departmental approved and functioning vessel monitoring system (VMS) and
- (iv) Is a South African flagged vessel (unless an exception is made in a fishery specific policy).

The Department is intending to investigate investments made in acquisition and/or long-term leasing of foreign vessels made by the South African fishing companies and the actual ownership.

(g) Local economic development

The Delegated Authority will take into consideration the locality of landing and processing sites to promote local economic development in economically depressed areas.

(h) Multiple sectoral involvement

Applicants in this sector will not be precluded from applying for or holding commercial rights in other fisheries sectors.

The Delegated Authority reserves the right to grant a right to the applicant in any sector and may, however, prefer applicants who rely heavily on the harvesting of deep-sea trawl; hake as a major source of their gross annual income.

However, the number and nature of other sectors in which the applicant already holds Rights, as well as the magnitude of those Rights, will be taken into consideration when evaluating applications and implementing the Quantum Allocation Methodology.

(i) **Applicants' involvement and relationships with other applicants**

(i) **Entities and their subsidiaries involvement**

A company and its subsidiary/ies may not be granted more than one [1] right in the Hake Deep-Sea Trawl fishery, so as to avoid fronts and monopolies and to promote broader access to the hake resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the Hake Deep-Sea Trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in the same fishery, the holding/umbrella/parent company will be preferred with due regard being taken to the Department's transformation objectives.

(ii) **Brother-Sister corporations**

If two [2] or more entities which are owned and controlled by the same person or persons or shareholders apply for a commercial fishing right in the Hake Deep-Sea Trawl fishery, and qualifying for the allocation of such rights, then the Department may consider:

- (a) allocating a fishing right to one of the qualifying entities only; or
- (b) dividing the TAC between the qualifying entities.

(j) **Broader benefits to SA society**

Broad benefits to society or part thereof will be categorised as follows:

- (i) if an entity has its common outstanding shares broadly held by the public and/or by its employees then this shall be regarded as a benefit to the public and it will be scored accordingly.
- (ii) if an entity has paid annual taxes to the South African Revenue Services then that is a benefit to society and it will be scored accordingly
- (iii) dividends paid to shareholders as outline in part a) will also be scored accordingly

(k) **Job creation**

The Delegated Authority may give preference to any applicant which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated rights in the fishery. For these purposes the Delegated Authority will consider the quality of the employment opportunities which will be created, including

compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's commitment to provide their employees with:

- i) permanent employment;
- ii) medical aid or any kind of medical support arrangement;
- iii) pension / provident fund;
- iv) safe working conditions in accordance with the applicable legislative requirements; and
- v) an employee share scheme as a shareholding entity of the right holder

(m) Payment of Levies

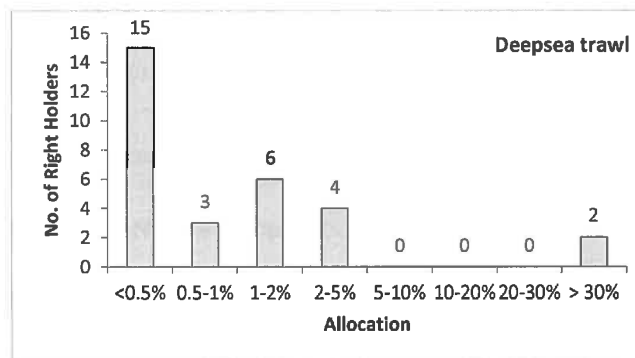
Applicants that were granted fishing rights in 2005 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

7. Quantum allocation methodology

7.1 Starting principles

Implementation of FRAP2021 in the Hake Deep-sea Trawl sector aims to balance the objectives of broadening access to the fishery through the introduction of new entrants against improving the allocations to the smaller Right Holders (and HDI groups in particular) to facilitate their meaningful participation in the fishery throughout the value chain. This balancing of objectives should attempt to minimise negative economic impacts on the industry (such as a net loss of jobs and/or corporate investments), and should account for any changes to resource and socio-economic dynamics that have occurred in the fishery during the course of the previous Rights (such as progress on transformation and measures to increase job creation such as certification of the fishery by the MSC).

The distribution of the allocations among the entities currently operating in the fishery shows that most of the Deep-sea Trawl TAC (i.e. the 83.9268% of the global hake TAC apportioned to the Deep-Sea Trawl sector) is held by two entities that each have allocations greater than 30% of the deep-sea trawl TAC. Half (15) of the entities hold allocations that are less than 0.5% of the TAC, while the remaining 13 entities each hold between 0.5% and 5% of the TAC. These data suggest that many of the entities are currently operating with sub-optimal allocations



Note: Although the plot above shows a marked disparity in the distribution and size of allocations across the fishery, it must be recognised that the two largest entities in the fishery have invested heavily in the sector (both in terms of capital and other social benefits) and have substantially contributed to the SA economy.

(a) Appeals reserve

An appeals reserve (10% of the sector TAC) will be set aside to accommodate successful appeals against the Delegated Authorities decisions. Any "quantum" remaining following Appeals and/or litigation will be distributed *pro rata* among all successful applicants

(b) Minimum allocation

The Department is in the process of exploring an approach to set a meaningful minimum allocation that will promote meaningful participation in the fishery and minimise paper quotas. Information collected from the applications may be used to assist with this work, and stakeholders are encouraged to advise the Department on what may be a useful approach to pursue for this purpose. In devising a minimum allocation, the Department will be considering the suite of objectives encapsulated in section 2 of the MLRA.

7.2 Method

- (a) Apply exclusionary criteria to each applicant's application and flag applicants that the Delegated Authority should consider excluding
- (b) Apply balancing criteria to each applicant's data to generate a score for each applicant (conduct separately for Category A, B and C applicants).
- (c) Rank applicants within each category according to their score.

- (d) Set aside 10% of the Hake Deep Sea Trawl TAC for the Appeals Reserve
- (e) Address minimum allocation concerns and/or introduction of new entrants to the extent possible.

8 New Entrants

Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department. New entrant applicants will have to demonstrate that they have knowledge, skills and capacity to fish and process hake.

9 Application and Grant of Right Fee

The fees will be published separately in terms of section 25 of the MLRA and made available at the time of application.

The application fees will be determined by, amongst others:

- (a) The cost the administration of the entire Commercial fishing rights allocation process, including consultation, distribution, receipting, evaluation of applications, verification, appeals and judicial reviews; and
- (b) The relative value of the resource(s) being allocated.

Applicants must pay the Application Fee to the Marine Living Resources Fund before the submission of their Application Form and proof of payment must be submitted with the Application Form when applying for a fishing right. Banking details are as follows:

<p>Account Holder: Marine Living Resources Fund</p> <p>Bank Name: First National Bank</p> <p>Account Number: 62123256382</p> <p>Branch Code: 210554</p> <p>Reference Number: [Applicant must insert the commercial fishing right application number]</p>

The Application Fee is non-refundable, except where there are reasonable grounds for refund.

The grant of right fee is payable by all successful applicants upon the granting of a Right.

10 Provisional Lists, Representations and Consultations

- 10.1** The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery sector.
- 10.2** The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 10.3** The Delegated Authority may invite representations regarding the assessment of the applications before making final decisions.

11 Appeals

- 11.1** The Delegated Authority will where necessary set aside a portion of the TAC, TAE or a combination thereof for appeals. The unallocated portion of the TAC, TAE or a combination thereof that has been set aside for appeals, if any, will be allocated proportionally to all successful applicants and appellants. The allocations of successful applicants may also be adjusted depending on the outcome of the appeals process.
- 11.2** The Delegated Authority will inform all applicants of the dates set for appeals.
- 11.3** Any applicant or affected or interested person will have the right to appeal against the decisions of the Delegated Authority. The appeal may be lodged against a refusal to grant a right or against the decision, process, and methodology on quantum.
- 11.4** The Minister, as the appeal authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing date for applications, that fact will not be taken into account when considering the appeal.
- 11.5** Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.
- 11.6** Following the appeals authority's decision, appellants may approach the courts for judicial review within 180 days after the appellant has been informed of the decision of the appellate authority.

12 Management Measures

12.1 Spatial Management

- (a) In the area east of 020°E longitude, no fishing shall take place in water depths of less than 110 metres or within 20 nautical miles from the coast, whichever is the greater distance from the coast
- (b) In the area west of 020°E longitude, no fishing shall take place within 5 nautical miles of the coast.
- (c) During the period 1 September to 31 December, no fishing shall take place within the quadrilateral described by lines joining the following four points: —
 - A: 34°48'S 024°00'E;
 - B: 34°38'S 025°00'E;
 - C: 34°44'S 025°00'E; and
 - D: 34°57'S 024°00'E.
- (d) No fishing may take place outside of the areas defined as the "Hake Trawl Ring Fence" as described in the Department VMS MaxSea file "Trawl Ringfenced 2009 Release V1.ptf". This file is available for incorporation into MaxSea navigational software upon request from the Department".
- (e) No fishing may take place in the Marine Protected Areas as proclaimed in the Government Gazette No. 42478 dated 23 May 2019.

12.2 Optimum Utilisation and Promoting Sustainability

Optimum, sustainable utilisation of the SA hake resources has been achieved since 1991 through implementation of an Operational Management Procedure (OMP) approach. An OMP is essentially a combination of pre-specified methods of data collection and analysis, coupled with a set of agreed, simulation-tested decision rules (effectively harvest control rules) that specify exactly how the regulatory mechanism is to be computed each year. In the case of South African hake, the regulatory mechanism (TAC) is calculated from stock-specific monitoring data (commercial CPUE indices and indices of abundance derived from demersal research surveys).

Implicit in this OMP approach is a schedule for OMP revision (every 4 years) to account for updated data sets and possible changes in resource and/or fishery dynamics and management objectives. Such reviews are conducted in consultation with all major

stakeholders to ensure that when recommendations based on these pre-agreed formulas are made, there is little justification to deviate from what is accepted as the best scientific advice.

The next such review is scheduled for 2022. The objectives of the current hake OMP are to maintain the spawning biomass of both species of hake fluctuating about or above Maximum Sustainable Yield Level and to avoid the spawning biomass decreasing below the 2007 level estimated by the Reference Set of Operating Models while keeping TACs as high as possible and minimising inter-annual changes in the TAC to facilitate stability in the industry, except in circumstances where catch rates fall below specified threshold levels.

12.3 Observer at Sea and Land Based Monitoring

Successful applicants will be expected to deploy accredited sea going scientific observers as specified by the Department on a user pays basis.

13 Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be co-determined with Right Holder's representative associations as decided annually during Departmental sector-specific Management Working Group meetings. Revision, in consultation with associations (majority Right Holder representatives) may also take place *ad hoc* during the season as and when it may be necessary.

14 Monitoring and Evaluation of the Policy

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years, from the date of finalisation of the appeals.

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:

- (a) Transformation.
- (b) Investment in vessels and gear.

- (c) Bycatch mitigation compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met.

15 Contraventions

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their hake deepsea trawl fishing right for any two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (c) During the performance measuring exercise, any Rights Holder that has been found to have contravened any condition upon which the Right was granted for;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

APPROVAL SIGNATURE



NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS
IN THE HAKE LONGLINE FISHERY: 2021**

**THIS POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE ALLOCATION OF
FISHING RIGHTS: 2021 AND THE DRAFT TRANSFER POLICY ON ALLOCATION OF
COMMERCIAL FISHING RIGHTS**

(Available at www.environment.gov.za)

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF HAKE LONGLINE FISHERY: 2021
(SEPTEMBER)**

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Definitions

"Paper quotas" as defined in the General Policy

"Group of companies" is an economic entity formed of a set of companies.

"Holding company" is a company that owns a controlling interest in other, subsidiary companies.

"Subsidiary company" is company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.

"Category A" applicants who held a right in the fishery for which they are re-applying for.

"Category B" applicants who are currently holding rights in sectors other than the fishery for which they are applying for.

"Category C" applicants who have never been granted a commercial fishing rights in any commercial fishing sector.

Acronyms

MLRA: Marine Living Resources Act, 1998 (Act No. 18 of 1998)

TAC: Total Allowable Catch

OMP: Operational Management Procedure

Preamble

This fishery is managed in terms of MLRA and other relevant legislation.

Recognising the need to utilise marine living resources sustainably and to promote equitable access to marine living resources.

Acknowledging that this fishery will be managed in accordance with the Ecosystems Approach to fisheries management.

Rights will be allocated to successful applicants as proportions (percentages) of the Hake Longline hake TAC apportionment.

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1. Introduction

This draft policy on the allocation and management of commercial fishing rights in the Hake Longline fishery is issued by the Minister ("the Minister") of Forestry, Fisheries and the Environment ("the Department") and shall be referred to as "the Hake Longline Policy: 2021". This policy must be read in conjunction with the draft General Policy on the Allocation of Fishing Rights: 2021 ("the draft General Policy: 2021") and all other Sector Specific Policies including Policy for Small Scale Fisheries Sector in South Africa: 2012 and the draft Policy for the Transfer of Commercial Fishing Rights: 2021.

This policy sets out objectives, criteria and considerations that will guide the application, evaluation and allocation of fishing Rights in the Hake Longline fishery ("the fishery").

The Minister delegated the Section 18 power to allocate commercial 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

2.1 Description of the fishery

The South African Hake Longline fishery uses demersal longline gear to target the two species of Cape hakes (shallow-water Cape hake *Merluccius capensis* and deep-water hake *Merluccius paradoxus*), which are also targeted by the Deep-Sea Trawl, Inshore Trawl and Hake Handline fisheries. The Cape hakes are distributed on the continental shelf and upper slope around the coast of southern Africa. *Merluccius paradoxus* are distributed from northern Namibia to southern Mozambique, whereas *M. capensis* are distributed from southern Angola to northern KwaZulu-Natal. As the names suggest, the distributions of the two hake species differ with depth, although there is a substantial overlap in their depth ranges. *Merluccius capensis* are distributed over a depth range of 30 to 500 m with most of the population occurring between 100 and 300 m, whereas *M. paradoxus* are distributed over a depth range of 110 m to deeper than 1 000 m with most of the population occurring in depths of between 200 and 800 m. The sizes of both species increase with depth and large *M. capensis* consequently co-exist with and feed extensively on smaller *M. paradoxus*. It is difficult to distinguish between the two hake species, so they are generally processed and marketed as a single commodity. Catches of hake (regulated through an annual TAC restriction) have ranged between 110 000 and 158 000 t per annum over the past two decades. The Hake Longline fishery typically catches between 5 and 6% of the annual hake total catch, with most of the catches over the past 5 years (more than 95% each year) being

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made on the SA West Coast. Between 40 and 60% of the annual Hake Longline catch over the past 5 years has been shallow-water hake (*M. capensis*). By-catch species (primarily kingklip and angelfish) contribute about 5% to the total retained longline catch. The fishery operates around the South African coastline from the Port Nolloth area to Port Elizabeth, and provides appreciable economic benefits to several smaller harbours such as Port Nolloth, Saldanha Bay, Hout Bay, Gansbaai and Port St Francis.

The Hake Longline fishery is permitted to operate on both the West and South Coasts of South Africa, but is prohibited from fishing in waters shallower than 110 m, or within 5 nautical miles of the coast (whichever is the greater distance from the coast). Additional spatial restrictions are a prohibition of fishing in Marine Protected Areas, as well as the September – November closure of the area known as the “kingklip box” on the South Coast near Port Elizabeth (closed to protect spawning aggregations of kingklip).

The fishery currently comprises 109 Right Holders, which collectively operate between 40 and 50 vessels ranging in size 40 to 120+ tons GRT. The vessels are largely “wetfish” vessels that generally fish for about 4 to 5 days before returning to port, with their catch kept on crushed ice. Rights in the fishery range between 0.11655% and 6.76217% of the longline apportionment of the hake TAC, with most of the Right Holders in the fishery considered to be SMMEs. It must be recognised that given the relatively small quotas allocated to the Right Holders, many vessels have insufficient quota to operate throughout the year. This has led to about 64% of the vessels operating in the Hake Longline sector also having to operate in other fisheries (primarily the Tuna Pole and Pelagic Longline sectors) to maintain economic viability, as well as the formation of “economic units” where several Right Holders pool their quota in order to realise economic sustainability. The fishery is appreciably transformed, with black ownership per Right Holder ranging between 40% and 100% and overall black shareholding in the fishery being 84.69%. Almost 80% of the longline TAC is consequently “owned” by HDIs. Recent figures indicate that at present, female ownership in the fishery averages 46.2%. The Hake Longline fishery currently contributes more than R 360 million per annum in terms of the value of the landed catch. The fishery directly sustains between 1 500 and 2 000 jobs. The hake longline fishery is a relatively capital intensive fishery, with the cost of an average size longline vessel being in the region of R 4.5 million. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure, totalling about R 200 million.

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2.2 History of the fishery

Requests to exploit hake using longline gear were first presented in 1982, and nine experimental permits to target hake using longline gear were issued to existing hake trawl quota-holders in 1983. However, the new fishery quickly found good concentrations of the commercially valuable kingklip (*Genypterus capensis*), a species not regulated by quota at that time, so the target species changed with an additional six permits for kingklip-directed longline fishing being issued to non-hake quota-holders in 1985. However, kingklip catches declined as soon as 1986, prompting the imposition of TACs for the 1989 and 1990 fishing seasons and ultimately leading to that fishery's closure at the end of 1990. An experimental longline fishery targeting hake, with tighter controls, was established in 1994 with the intention of promoting and supporting SMME participation in the hake-directed fishery. Rights for a permanent longline fishery for hake were granted in 1997, but stability was only realised with the granting of medium-term (4 years) fishing rights in 2002 and long-term (15 years) rights in 2006.

2.3 Management of the fishery

The Department manages the Hake Longline fishery as part of a "hake collective", with the primary management measure being an annual TAC. In terms of the MLRA the "global" TAC for hakes (both species combined and applied to all hake-directed sectors as a collective) is set annually by the Minister of Forestry, Fisheries and the Environment. A reserve to allow for incidental hake by-catch in the horse mackerel directed midwater trawl fishery is deducted from the global hake TAC before the remainder of the TAC is distributed among the hake-directed fishing sectors; hake deep-sea trawl, hake inshore trawl (hake & sole), hake longline and hake handline. In terms of that arrangement, 83.9268% of the global hake TAC is allocated to deep-sea trawl, 6.179% to inshore trawl, 6.551% to hake long line, 1.8433% to hake handline and 1.5% to small scale fishing. Other management measures include a capacity management system to restrict operational effort (vessels and sea days) to what is required to catch the TAC, spatial and gear restrictions, catch limits on various by-catch species as well as the implementation of measures to reduce seabird mortalities.

Management measures to be considered/implemented during the next Rights cycle (2022 – 2037):

- (a) The Department is considering implementing changes in the hake TAC sectoral apportionment:

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- Longline apportionment increased from 6.551% to 10% of the hake TAC, subject to further investigation on possible impacts on resource dynamics
- Handline apportionment set aside in its entirety for allocation to small scale
- (b) TAC decrease “cushion” for SMMEs/smaller Right Holders
- (c) Roll overs will be discouraged
- (d) Transfer of hake quota between hake-directed sectors (e.g. from inshore trawl to deepsea trawl) will be discouraged
- (e) Change in the fishing season from the current 1 January – 31 December to 1 March – 28/29 February. The intention is to implement this change in alignment with the new hake OMP that will be developed during 2022 and implemented in 2023.

3. The Long-Term Fishing Rights Allocation Process

In the 2005/2006 Long-Term Fishing Rights Allocation and Management Process (LTRAMP), rights were allocated to a total of 141 right holders in the Hake Longline sector. The structure of the fishery has altered somewhat during the intervening period, largely due to various Rights transfers that have resulted in the fishery now comprising 109 entities with black ownership ranging between 40% and 100%, and an overall black ownership of 80% for the sector as a whole.

4. Over-Archiving Sectoral Objectives

Within the framework of the broader objectives specified in the General Policy, the specific objectives to be fulfilled during the allocation of fishing rights in the Hake Longline Trawl fishery are to:

- (a) broaden access to the longline fishery to the extent possible while minimising economic disruption (including employment, and specifically job losses) to the existing fishery;
- (b) promote transformation through efficient allocation of fishing rights to historically disadvantaged persons (which shall include the designated groups; youth, women, people with disabilities and military veterans) and broaden meaningful participation (increase participation, value-creation, and linkage) of these groups;
- (c) promote the interests of applicants who rely heavily on the Hake Longline sector;
- (d) promote local economic development through encouraging investments in processing and marketing infrastructure in areas that are economically depressed
- (e) promote meaningful participation in the fishery by all Right Holders and eliminate paper quotas through implementation of a minimum allocation approach as well as discouraging restrictive

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catch and/or joint venture agreements (agreements where a third party conducts all catching, processing and marketing over the entire duration of the Right).

- (f) promote SMMEs
- (g) promote job creation and retention

5. Granting of Fishing Rights

Fishing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. The Delegated Authority shall allocate proportions of the TAC and/or TAE (Total Applied Effort) to each successful applicant based on the balancing criteria and portion of the local commercial TAC, TAE or combination thereof that is available at the time the fishing right is allocated.

All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

5.1 Form of Right Holder

Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered for a right in the Hake Longline sector.

- (i) Close Corporations (legal entity); and
- (ii) Companies (legal entities).

5.2 Duration of Rights

Having regard to the right allocation process and need to encourage investment, the Hake Longline fishery, fishing rights will be granted in the Hake Longline fishery for the maximum period of 15 years.

5.3 Total Allowable Catch and Total Applied Effort allocation

In terms of section 14 of the MLRA the Minister is empowered to determine a TAC, Total Applied Effort (TAE), or combination thereof to apply in each fishery. This fishery is regulated by the determination of a TAC.

The TAC is determined by the Delegated Authority considering the history, resource users, sustainability of the operations of right holders, and the viability of the fishery. The Delegated Authority will only allocate a local commercial portion of the determined TAC to commercial right holders based on the proportion granted to each successful applicant at the time of commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of determined TAC decrease or increase respectively. In terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist increases, the mass of the increase shall be available for allocation by the Minister.

5.4 Transfer of Rights Allocated in terms of this Policy

In terms of Section 21 of the MLRA the Minister may approve the transfer of fishing rights in a whole or in part. However, rights granted in this fishery in terms of the MLRA shall not be transferred within the first three [3] years of being granted.

Rights can only be transferred in terms of the draft Policy for the Transfer of Commercial Fishing Rights: 2021 ("the Transfer Policy").

Any transfer of shares or members' interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members' interest should be dealt with in light of the draft Transfer Policy.

A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred,. In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder results in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity

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Failure to comply with any provision of the MLRA, the Regulations, the permit conditions, the draft General Policy and the draft Transfer Policy shall result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

Right Holder in this fishery should refer to the draft Transfer Policy:2021 for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this draft Policy and the draft Transfer Policy, the provisions of the draft Transfer Policy shall take precedent.

6 Evaluation Criteria

Applicants 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.

6.1 Exclusionary Criteria

Apart from the criteria described in the draft General Policy on the Allocation of Commercial Fishing Rights: 2021 (“the draft General Policy”) pertaining to the lodgement of the applications and material defects, the Delegated authority will exclude applicants that fail to meet the following requirements:

6.1.1 Compliance: an applicant, including any of its members, directors, or controlling shareholders or vessel master (skippers), or shore skippers, or crew member or general workers (admin or support staff, including drivers etc) that have been convicted of a serious transgression of the MLRA, or its regulations, or relevant permit conditions (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders or vessel master (skippers), or shore skippers or crew member or general workers (admin or support staff, drivers etc) that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including the payment of admission of guilt fines (maximum fine), may be taken into account as a balancing criterion and may also adversely affect an application.

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6.1.2 **Paper Quotas:** applicants who apply under Fishing Rights Allocation Process: 2021 (FRAP2021) for new rights, and who are found to be paper quota risk as defined in the draft General Policy will be excluded.

6.1.3 **Fronting:** Applicants who apply under FRAP2021 for new rights, and who are found to be engaged in fronting as defined in the draft General Policy will be excluded.

6.1.4 **Non-utilisation:** Applicants which held a right in the fishery during the period of 2005 to 2020, which was not utilised, shall be excluded.

6.2 **Comparative Balancing Criteria**

Applicant will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the draft General Policy for further detail. Weighting and scoring criteria will be developed and designed for Categories A, B and C applicants.

(a) **Transformation**

The objective of allocating long-term fishing rights in this sector is to improve the transformation profile (involvement of females, youth and people living with disabilities). In addition to the criteria as stipulated in the draft General Policy, applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and HDIs representation at top salary, board of directors, members and senior official and management levels;
- (ii) The extent to which an applicant's black ownership and black management transformation credentials (as measured in the 2005 LTRAMP have either improved, remained the same, or deteriorated in the period following the granting of rights in the LTRAMP);
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iv) Compliance with the Employment Equity Act 55 of 1998 and the representivity of designated groups and HDIs at the various levels of employment below senior official and management level;
- (v) Affirmative procurement;

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- (vi) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vii) Corporate social investment.

(b) Reliance on the fishery

Applicants who rely heavily on the Hake Longline sector for a major source of their gross annual income will be afforded some preference over applicants deriving income from sources outside the Hake Longline fishery.

(c) Compliance

Applicants, including any of its members, directors, or controlling shareholders or vessel master (skippers), or shore skippers, or crew member or general workers (admin or support staff, including drivers etc) that have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions within the last five [5] years, their application may be penalised. Applicants who fail to disclose this information in their application may be excluded.

(d) Fishing Performance

The fishing performance of applicants holding fishing rights in the Hake Longline and other fisheries (i.e. Category A and B applicants) will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, proportion of the quota that is landed per annum subsequent submission of catch data and payment of levies for the last 10 years of the Right (i.e. 2010-2019), or a shorter period in the cases of those Right Holders that entered the fishery subsequent to LTRAMP.

(e) Investment in the sector

As far as category A applicants are concerned, the Delegated Authority may specifically consider:

- (i) Investments in suitable vessels and other fixed assets such as processing and marketing infrastructure in the Hake Longline sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding will also be considered.

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- (ii) As far as Category B and C applicants are concerned, the Delegated Authority may consider investments made in other sectors in form of vessels, fixed assets, processing and marketing infrastructure. A clear demonstration of their commitment (and ability) to invest in this sector (i.e., access to a vessel and FPE's) will be considered.
- (iii) All Category C applicants are required to demonstrate that they have knowledge, skills and capacity to fish for and process hake.

(f) Access to a suitable vessel

An applicant will be required to demonstrate a right of access to a vessel suitable for harvesting of hake in the Hake Longline fishery. Access may be in the form of ownership, part ownership, a catch agreement, a charter agreement, or a bank guarantee for a sufficient capital to purchase or build a vessel. If an applicant intends purchasing a vessel, then additional information must be provided to prove a firm and binding offer by the current owner of the vessel to sell the vessel to the applicant. If an applicant intends building a new vessel, then additional information must be provided including vessel plans, the cost to be incurred and a firm and binding commitment by the vessel building company to build the vessel.

A suitable vessel in the hake Longline fishery is a vessel that:

- (i) Is registered by the South African Maritime Safety Association (SAMSA) as having a minimum registered length of about 30m;
- (ii) Is geared to fish using the longline fishing method;
- (iii) Is fitted with a departmental approved and functioning vessel monitoring system (VMS) (unless exempted by the Department); and
- (iv) Is a South African flagged vessel (unless an exception is made in a fishery specific policy).

(g) Local economic development

The Delegated Authority will take into consideration the locality of landing and processing sites to promote local economic development in economically depressed areas.

(h) Multiple sector involvement

Applicants in this sector will not be precluded from applying for or holding commercial rights in other fisheries sectors. The Delegated Authority reserves the right to grant a right to the applicant in any sector and may, however, prefer applicants who rely heavily on the harvesting of longline hake as a major source of their gross annual income. However, the number and nature of other sectors in which the applicant already holds Rights, as well as the magnitude of those Rights, will be taken into consideration when evaluating applications and implementing the Quantum Allocation Methodology.

(i) Payment of Levies

Applicants that were granted fishing rights in 2005 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

(j) Applicants involvement and relationship with other applicants

(i) Entity and their subsidiaries involvement

A company and its subsidiary/ies may not be granted more than one [1] right in the Hake Longline fishery, so as to avoid fronts and monopolies and to promote broader access to the hake resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the Hake Longline fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in the same fishery, the holding/umbrella/parent company will be preferred with due regard being taken to the Department's transformation objectives.

(ii) Brother-Sister Corporations

If two [2] or more entities which are owned and controlled by the same person or persons or shareholders apply for a commercial fishing right in the Hake Longline fishery, and qualifying for the allocation of such rights, then the Department may consider:

- a) allocating a fishing right to one of the qualifying entities only; or
- b) dividing the TAC between the qualifying entities.

(k) Broader benefits to South African society

Broad benefits to society or part thereof will be categorised as follows:

- (i) if an entity has its common outstanding shares broadly held by the public and/or by its employees then this shall be regarded as a benefit to the public and it will be scored accordingly.
- (ii) if an entity has paid annual taxes to the South African Revenue Services then that is a benefit to society and it will be scored accordingly
- (iii) dividends paid to shareholders as outline in part a) will also be scored accordingly.

(l) Job creation

The 2021 General Policy seeks to further transform and to improve on the levels of transformation already achieved in the fishing industry. Only quality transformation will be recognised, that is, transformation which results in real benefits to historically disadvantaged persons as defined in the National Empowerment Fund Act 105 of 1998 (NEFA).

- i) permanent employment;
- ii) medical aid or any kind of medical support arrangement;
- iii) pension / provident fund;
- iv) safe working conditions in accordance with the applicable legislative requirements; and
- v) an employee share scheme as a shareholding entity of the right holder

(m) Payment of Levies

Applicants that were granted fishing rights in 2005 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

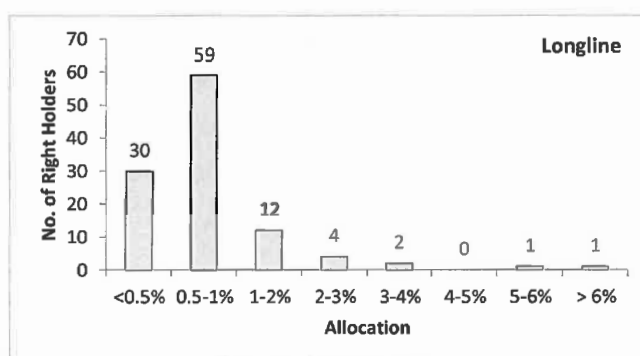
7. Quantum Allocation Methodology**7.1 Starting principles:**

Implementation of FRAP2021 in the Hake Longline sector aims to balance the objectives of broadening access to the fishery through the introduction of new entrants against improving the allocations to the smaller Right Holders (and HDI groups in particular) to facilitate their

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meaningful participation in the fishery throughout the value chain. This balancing of objectives should attempt to minimise negative economic impacts on the industry (such as a net loss of jobs and/or corporate investments), and should account for any changes to resource and socio-economic dynamics that have occurred in the fishery during the course of the previous Rights (such as progress on transformation and measures to increase job creation).

There are currently 109 entities operating in the fishery (an appreciable reduction from the 141 entities that were granted Rights during the 2005 LTRAMP process that has resulted from several Rights transfers that occurred during the intervening period). [Note that some entities in the sector have had their Rights revoked and about 2.97% of the longline TAC is currently being held in reserve pending resolution of the associated legal action]. The distribution of the allocations among these entities shows that 89 of the entities are operating with allocations of less than 1% of the longline portion of the hake TAC (equating to a quantum of less than 90 tons per annum). A further 12 entities are each allocated between 1 and 2 % of the longline TAC, and only 8 entities have been granted allocations in excess of 2%, with the largest entity holding an allocation of 6.7% of the longline TAC. These data suggest that most of the entities have been operating with sub-optimal allocations.



It is notable in this context that a recent socio-economic study of the sector showed that 64% of the vessels in the longline fleet are forced to operate in other sectors as well (primarily tuna pole and pelagic longline), and that a key feature of this fishery is the "economic units" business model, where several entities pool their allocations on a single vessel to maintain economic viability.

7.1.1 Appeals reserve

An appeals reserve (10% of the sector TAC) will be set aside to accommodate successful appeals against the DAs decisions. Any "quantum" remaining following Appeals and/or litigation will be distributed *pro rata* among all successful applicants.

7.1.2 Minimum allocation

The Department is in the process of exploring an approach to set a meaningful minimum allocation that will promote meaningful participation in the fishery and minimise paper quotas. Information collected from the applications may be used to assist with this work, and stakeholders are encouraged to advise the Department on what may be a useful approach to pursue for this purpose. In devising a minimum allocation, the Department will be considering the suite of objectives encapsulated in section 2 of the MLRA.

7.2 Method

- 7.2.1 Apply exclusionary criteria to each applicant's application and flag applicants that the DA should consider excluding
- 7.2.2 Apply balancing criteria to each applicant's data to generate a score for each applicant (conduct separately for Category A, B and C applicants).
- 7.2.3 Rank applicants within each category according to their score.
- 7.2.4 Set aside 10% of the Hake Longline TAC for the Appeals Reserve
- 7.2.5 Address minimum allocation concerns and/or introduction of new entrants to the extent possible.

8. New Entrants

Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department. New entrant's applicants will have to demonstrate that they have knowledge, skills and capacity to fish and process hake.

9. Application and Grant of Right Fees

The fees will be published separately in terms of section 25 of the MLRA and made available at the time of application.

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The application fees will be determined by, amongst others:

- (a) The cost the administration of the entire Commercial fishing rights allocation process, including consultation, distribution, receipting, evaluation of applications, verification, appeals and judicial reviews; and
- (b) The relative value of the resource(s) being allocated.

Applicants must pay the Application Fee to the Marine Living Resources Fund before the submission of their Application Form and proof of payment must be submitted with the Application Form when applying for a fishing right. Banking details are as follows:

<p>Account Holder: Marine Living Resources Fund</p> <p>Bank Name: First National Bank</p> <p>Account Number: 62123256382</p> <p>Branch Code: 210554</p> <p>Reference Number: [Applicant must insert the commercial fishing right application number]</p>

The Application Fee is non-refundable, except where there are reasonable grounds for refund.

The grant of right fee is payable by all successful applicants upon the granting of a Right.

10. Provisional Lists, Representations and Consultations

- (a) The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery sector.
- (b) The Delegated Authority may request comment(s) on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- (c) The Delegated Authority may invite representations regarding the assessment of the applications before making final decisions.

11. Appeals

- (a) The Delegated Authority will where necessary set aside a portion of the TAC, TAE or a combination thereof for appeals. The unallocated portion of the TAC, TAE or a combination thereof that has been set aside for appeals, if any, will be allocated proportionally to all

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successful applicants and appellants. The allocations of successful applicants may also be adjusted depending on the outcome of the appeals process.

- (b) The Delegated Authority will inform all applicants of the dates set for appeals.
- (c) Any applicant or affected or interested person will have the right to appeal against the decisions of the Delegated Authority. The appeal may be lodged against a refusal to grant a right or against the decision, process, and methodology on quantum.
- (d) The Minister, as the appeal authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing date for applications, that fact will not be taken into account when considering the appeal.
- (e) Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.
- (f) Following the appeals authority's decision, appellants may approach the courts for judicial review within 180 days after the appellant has been informed of the decision of the appellate authority.

12. Management Measures

12.1 Spatial Management

- (a) No fishing shall take place within False Bay north of a straight line drawn from the lighthouse at Cape Hangklip to the lighthouse at Cape Point.
- (b) No fishing may take place in the Marine Protected Areas as proclaimed in the Government Gazette No. 42478 dated 23 May 2019.
- (c) No fishing shall take place in water depths less than 110 metres or less than 20 nautical miles from the coast, whichever is the greater distance from the coast east of 020° E longitude.
- (d) No person shall use any fishing equipment in the following areas:
 - (i) On the landward or northerly side of a straight line joining Cape Vacca and the lighthouse at Cape St Blaize;
 - (ii) On the landward or northerly side of a straight line joining the lighthouse at Cape St Blaize and Gericke Point;
 - (iii) Seaward of the high-water mark in the area bounded by a line (160° true bearing) drawn from the Sunday's River mouth and by a line (048° true bearing) drawn from the Donkin reserve lighthouse to its point of intersection with the aforementioned line;

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- (iv) Landward of a (084° true bearing) drawn from the lighthouse at Cape Infanta to the beacon marked K2, situated at Cape Barracouta;
- (v) Within three (3) nautical miles of the coast in the area between Cape Barracouta (34°26'4S, 021°18'1E) and a line drawn 180° (true bearing) from the lighthouse at Ystervarkpunt (34°23'6S, 021°43'7E);
- (vi) Within three (3) nautical miles of the high-water mark in the area between beacon DH1 at Still Bay Point and beacon DH2 between Rys Point and Skipskop (De Hoop Marine Protected Area);
- (vii) Within the Tsitsikamma Marine Protected Area, which is defined as the area bounded by a line beginning at the high-water mark at Die Punt, Nature's Valley (33°59'0S, 023°34'561E), and running eastwards along the high-water mark to the right bank of the Groot River (east) (34°03'6S, 024°11'665E), and then running due south to a point three (3) nautical miles off shore (34°06'6S, 024°11'665E), then running along a straight line to a point three (3) nautical miles from the high-water mark (34°01'817S, 023°38'857E) measured along a line running due south from the right bank of the mouth of the Bloukrans River, and then due north to a point 0.5 nautical miles from the high-water mark (33°59'317S, 023°38'857E), and then along a straight line to a point (33°59'5S, 023°34'561E) due south of Die Punt, Nature's Valley, and then due north to the high-water mark at the point of beginning.
- (viii) Within the Bird Island Marine Protected Area, a rectangle around Bird Island in Algoa Bay defined by the latitudes 33°48'0S and 33°52'0S and the longitudes 026°14'5E and 026°20'0E.
- (ix) During the period 1 September to 30 November, no fishing may take place within the quadrilateral described by lines joining the following four points:—
 - A: 34°48'S 024°00'E;
 - B: 34°38'S 025°00'E;
 - C: 34°44'S 025°00'E; and
 - D: 34°57'S 024°00'E.
- (x) No fishing shall take place within False Bay north of a straight line drawn from the lighthouse at Cape Hangklip to the lighthouse at Cape Point.

12.2 Optimum Utilisation and Promoting Sustainability

Optimum, sustainable utilisation of the SA hake resources has been achieved since 1991 through implementation of an Operational Management Procedure (OMP) approach. An

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OMP is essentially a combination of pre-specified methods of data collection and analysis, coupled with a set of agreed, simulation-tested decision rules (effectively harvest control rules) that specify exactly how the regulatory mechanism is to be computed each year. In the case of South African hake, the regulatory mechanism (TAC) is calculated from stock-specific monitoring data (commercial CPUE indices and indices of abundance derived from demersal research surveys).

Implicit in this OMP approach is a schedule for OMP revision (every 4 years) to account for updated data sets and possible changes in resource and/or fishery dynamics and management objectives. Such reviews are conducted in consultation with all major stakeholders to ensure that when recommendations based on these pre-agreed formulae are made, there is little justification to deviate from what is accepted as the best scientific advice.

The next such review is scheduled for 2022. The objectives of the current hake OMP are to maintain the spawning biomass of both species of hake fluctuating about or above Maximum Sustainable Yield Level and to avoid the spawning biomass decreasing below the 2007 level estimated by the Reference Set of Operating Models while keeping TACs as high as possible and minimising interannual changes in the TAC to facilitate stability in the industry, except in circumstances where catch rates fall below specified threshold levels

12.3 Observer at Sea and Land Based Monitoring

Successful applicants will be expected to deploy accredited sea going scientific observers as specified by the Department on a user pays basis.

13 Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be co-determined with Right Holder's representative associations as decided annually during Departmental sector-specific Management Working Group meetings. Revision, in consultation with associations (majority Right Holder representatives) may also take place *ad hoc* during the season as and when it may be necessary.

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14 Monitoring and Evaluation of the Policy

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years, from the date of finalisation of the appeals.

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:

- (a) Transformation.
- (b) Investment in vessels and gear.
- (c) Bycatch mitigation compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met. During the performance measuring exercise, any Right Holder that has been found to have contravened any condition upon which the Right was granted for; may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

15 Contraventions

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their small pelagic fishing right for any two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (c) During the performance measuring exercise, any Rights Holder that has been found to have contravened any condition upon which the Right was granted for;

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may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

APPROVAL SIGNATURE



NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021

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(SEPTEMBER)



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY ON ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING
RIGHTS IN THE KWAZULU-NATAL CRUSTACEAN TRAWL FISHERY: 2021**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE
ALLOCATION OF COMMERCIAL FISHING RIGHTS: 2021 AND DRAFT POLICY FOR
THE TRANSFER OF COMMERCIAL FISHING RIGHTS: 2021
(available at www.environment.gov.za)**

Draft Policy on Allocation and Management of Commercial Fishing Rights in the KZN Crustacean Trawl Fishery: 2021

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PART A: INTRODUCTION

1. Introduction

This draft policy for the allocation and management of commercial fishing rights in the KwaZulu-Natal Crustacean Trawl Fishery ("the fishery") is issued by the Minister responsible for Forestry, Fisheries and the Environment ("the Minister") and shall be referred to as the "2021: KZN Crustacean Trawl Fishery Policy". The 2021: KZN Crustacean Trawl Fishery Policy shall be read together with the 2021: General Policy on the Allocation Fishing Rights ("2021: General Policy") and the Draft Policy for the Transfer of Commercial Fishing Rights: 2021 ("the Draft Transfer Policy: 2021").

The Minister has, in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") delegated the section 18 powers to grant commercial fishing rights to a senior official of the Department of Forestry, Fisheries and the Environment ("the Department").

The 2021: KZN Crustacean Trawl Fishery Policy sets out objectives, criteria and considerations that will guide the evaluation and allocation of fishing rights in the fishery. This policy will guide the delegated authority in taking decisions on applications in this fishery.

2. Profile of the fishery

2.1. Description of the fishery

Trawling was sporadic up until the 1960s after which it became a more formal sector comprising of approximately 12 companies and 21 vessels; many of which also fished in Mozambique. Regular statistics were collected from 1988 onwards.

The fishery is based in KwaZulu-Natal on trawl grounds comprising soft sediment (sand/mud). It consists of two components being (1) an inshore shallow-water area (20-50m) on the Thukela Bank and a much smaller area situated off the St Lucia Estuary mouth; and (2) an offshore deep-water (200-500m) area of approximately 1750km² in the KwaZulu-Natal Bight that extends from Cape Vidal in the north to Amanzimtoti in the south.

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The shallow-water fishery targets penaeid prawn, mainly white prawn (*Penaeus indicus*), with the remaining catch being brown prawn (*Metapenaeus monoceros*) and the tiger prawn (*P. monodon*). The St Lucia estuary is an important nursery area for these species and the abundance of shallow-water prawns depends on rainfall patterns and their effects on the flushing of estuaries where larval and juvenile prawns develop. However, the St Lucia Estuary has been closed to the Indian Ocean since 2002 which has led to a collapse of penaeid prawn stocks, so catches in the shallow water fishery have been poor for the last 15 years. Initially the shallow-water trawl ground at the Thukela Bank was closed for two months of the year, before being extended to 6 months (September to February), to reduce bycatch of fish targeted by the linefish sector. The establishment of the uThukela Marine Protected Area (MPA) in 2019, which includes the Thukela Bank and prohibits the use of trawl gear in all zones of this MPA, has effectively closed the inshore shallow-water component of this fishery.

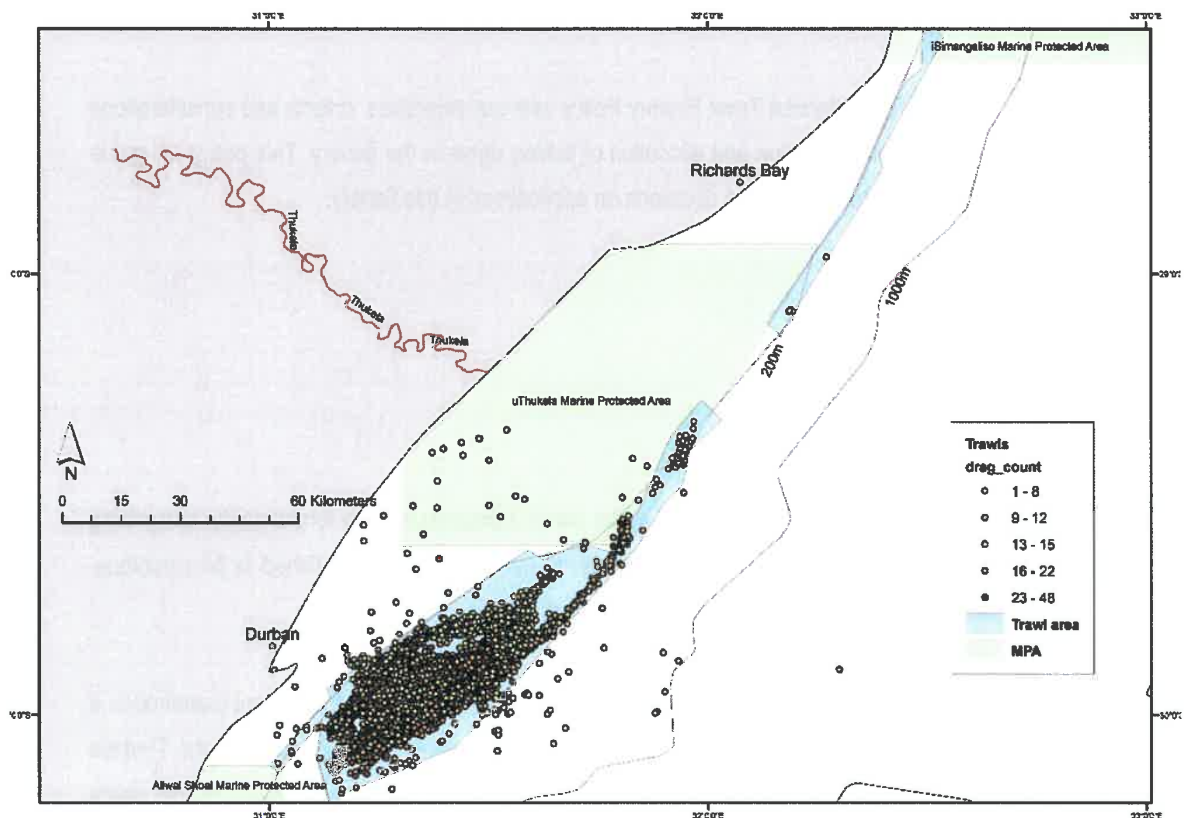


Figure 1. The location of trawls set between 2014 and 2020. The surrounding MPAs and the area suitable for trawling are included.

The deep-water fishery targets pink prawns (*Haliporoides triarthrus*), langoustine (*Metanephrops mozambicus*), whitepincer red crab (*Chaceon macphersoni*) and deep water rock lobster (*Palinurus delagoa*).

Catches can be unpredictable and catch rates of individual species or groups of species fluctuate widely; sometimes as a result of the number of vessels actively fishing and targeted fishing of specific species, rather than fluctuations in resource abundance.

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. Between 1991 and 2005, the TAE limit was set at 8 vessels, 4 inshore and 4 offshore. In 2006 the TAE was reduced to 7 vessels where it has remained, 2 restricted to the offshore and 5 permitted to fish inshore and offshore.

The sector is capital-intensive and its infrastructure, marketing and product distribution are dominated by few established companies. The fishery requires specialised trawling vessels and equipment and is suitable for commercial fishing only. Fishing grounds are on the South African continental shelf and no foreign fishing vessels are allowed to partake in this fishery. Vessels are ex side trawl vessels trawling over the stern or stern trawlers with a single net whereas some vessels fishing in shallow water operates with booms with 2, 3 or 4 nets simultaneously. Trawl net sizes range from 25- to 72-metre footrope length, with a minimum of 50mm mesh size measured from knot to knot. 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 - 18 crew and can remain at sea for two to three weeks at a time. Since most processing occurs at sea, shore-based infrastructure is limited.

As with other prawn trawl fisheries around the globe, the gear is not selective and incidences of the capture of non-target species is high. Catches (by mass) of the offshore fishery consist of roughly 30 percent target species, 20 percent retained by-catch, and 50 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 tons per annum. Levels of discarded by-catch was highest in the inshore fishery on the uThukela Bank; now closed

to fishing since the establishment of the uThukela MPA.

Prior to the collapse of penaeid prawn stocks and the establishment of the uThukela MPA, inshore trawling was seasonal due to seasonal variations in abundance of the target species as well as a mandatory closed period, while the offshore trawling takes place all year-round. A boundary between the inshore and offshore fisheries, situated seven nautical miles from the shore between the St. Lucia lighthouse (28° 30.9'S 32° 24.0'E) and Green Point Lighthouse (30°15.0'S 30° 46.8'E), was necessary to limit the amount of effort in the inshore shallow-water area. By virtue of the main inshore shallow-water trawl area at Thukela Bank being closed to trawl fishing, a boundary is no longer required.

Catches are species-sorted, size-graded, packed and blast-frozen at sea. Little value is added on land. Modest shore-based infrastructure, including berthing, re-packing, cold-storage and marketing facilities, is situated in Durban. Frozen products are sold on local markets.

The fishing season for KZN Crustacean Trawl sector is from 1 January to 31 December (i.e. year round). The majority of the fishing activity (73% of total trawl hours) in the sector over the previous rights period (from 2014 to 2020) could be attributed to two vessels that fished every season over an average of 10 months and an average of >2000 trawl hours per season. The sector has had 3 vessels operating for 4 of the 7 seasons, with 2, 4 and 5 vessels operating for a season each. Between 1 and 2 vessels during some seasons have opted to fish in Mozambique during part of the season where operations are more profitable there than in South Africa.

2.2. 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 of KwaZulu-Natal. 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 completing the life cycle.

Deep water species include pink (knife) prawn *Haliporoides triarthrus*, langoustines *Metanephrops mozambicus*, deep-water red crab (*Chaceon macphersoni*), and deep-water rock lobster *Palinurus delagoa*. 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. And in short-lived species, such as pink prawn and langoustine, abundance is strongly dependent on recruitment and weak or failed recruitment events can have significant impacts on the fishery. While research on the biology of the pink prawns and langoustines has been published in 2013, little is known about the distribution, abundance and life-history characteristics of red crab.

No formal stock assessments for this fishery have been conducted since a Schaefer Surface Production model was used in 2008, when it was noted that further modelling was required. There is substantial logbook data that is available for use in stock assessments despite certain biological reference points for target species not being available.

3. Previous long-term fishing rights allocation process

In 2005/2006 fishing rights were allocated for a period of eight years (2006-2013) to four fishing companies with a total of seven vessels. In 2014 rights were allocated for a period of seven years (2014-2020) to six fishing companies, three of which were returning applicants that previously held rights from 2006-2013.

The results of the 2013 fishing rights allocation process were as follows:

- (a) The percentage of the TAE held by black people was 84%;
- (b) The shares held by black people in this fishery was 84%; and
- (c) The percentage of shareholding/member interest held by women was 39%.

4. Objectives

4.1 The objectives of allocating fishing rights in the fishery are to:

- (a) allocate rights to applicants reliant on KZN crustacean trawl as their main source of income;

- (b) the need to conserve marine living resources for both present and future generations;
- (c) the need to apply precautionary approaches in respect of the management and development of marine living resources;
- (d) achieve optimum utilisation and ecologically sustainable development of marine living resources;
- (e) maintain economic stability of the fishery;
- (f) promote transformation, broaden meaningful participation (increase participation, value-creation, and linkage) and growth;
- (g) improve the quality of jobs through the promotion of permanent employment and allocation of rights to SMMEs owned by historically disadvantaged persons;
- (h) promote adherence to fair labour practices;
- (i) to promote food security and poverty alleviation;
- (j) promote youth and female ownership and development; and
- (k) facilitate the recovery of over-exploited and collapsed fish stocks;

PART B: COMMERCIAL FISHING RIGHTS ALLOCATION PROCESS

5. Granting of fishing rights

Fishing rights are granted in terms of section 18 of the MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after each right granted shall automatically terminate and revert back to the State.

5.1. Form of Right Holders

5.1.1. Applications will only be considered from South African-owned companies, close corporations and co-operatives. Applications from individuals will not be considered.

5.1.2. Those applicants who previously held rights in the fishery and that are re-applying for rights to undertake commercial fishing in this fishery shall be considered to be Category A Applicants. Applicants who previously held rights in sectors other than the KZN crustacean trawl fishery during the period 2006 to 2020 shall be treated as Category B Applicants. Applicants who have never before held commercial fishing rights in any of the commercial fishery sectors of South Africa will be treated as Category C Applicants.

5.2. Duration of rights

Fishing rights will be granted in the fishery for a period not exceeding 15 years. The duration of rights will be determined by the delegated authority taking in to account, amongst other things, the level of transformation in the fishery, the capital intensity of the fishery, the need to encourage further investment and economic growth, the current knowledge of the biological status of the target species and the performance of participants in the fishery.

5.3. Multi-sector involvement

Applicants in the fishery (including their controlling shareholders and members of their executive management team) will not be precluded from holding commercial fishing rights in other fishing sectors.

5.4. Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in the fishery in terms of the MLRA shall not be transferred within the first three (3) years of being granted.

6. Vessel limit and new entrants

Having regard to the following:

- 6.1.1. capital intensity of the fishery and the need to maintain economic stability of the fishery;
- 6.1.2. operational challenges experienced by the fishery (e.g. poor catch volumes, unfavourable size mix, high operation costs, difficult fishing conditions owing to oceanography);
- 6.1.3. the variability and unpredictability of the resource that limits the profitability of the fishery;
- 6.1.4. the lack of scientifically reliable stock assessments;
- 6.1.5. high discarded by-catch percentage;
- 6.1.6. the relatively small size of the offshore trawl grounds has been reduced with the declaration of the uThukela MPA and most of the grounds are already heavily trawled;
- 6.1.7. uncertain impacts of climate change on the resource; and
- 6.1.8. uncertainty in certain biological aspects of the target species e.g. reasons for absence of mature individuals for some species, recruitment processes, density-dependent effects of trawling;

The number vessels accommodated in the rights allocation process within this fishery will not exceed seven (7) vessels. Effort allocations will be made on a preliminary basis until the appeals process has been finalised. Adjustments made to effort allocations, upon the finalisation of appeals, will be applied in the following fishing season within this sector.

New entrants to the fishery will be considered and those with fishing experience and access to suitable infrastructure will be preferred and accommodated within the seven (7) vessel TAE allocation.

7. Evaluation criteria

Applications will be screened in terms of a set of “exclusionary criteria”. All applicants will thereafter be separately scored in terms of a set of weighted “comparative balancing criteria”. A cut-off will then be determined in order to select the successful applicants and effort will be allocated to each successful applicant.

7.1. Exclusionary criteria

In addition to the exclusionary criteria described in the 2021: Draft General Policy pertaining to the lodgement of the applications material defects and requirements (section 6), the delegated authority will exclude applicants that fail to meet the following requirements:

7.1.1. Compliance

An applicant will be excluded if it, a controlling shareholder, a member with a controlling interest, or a director, has been convicted of a transgression of the MLRA, the regulations promulgated thereunder and permit conditions, (without the option of the payment of a fine).

An applicant will also be excluded if it, a controlling shareholder, a member with a controlling interest, or a director, has had any fishing right cancelled or revoked in terms of the MLRA.

7.1.2. Paper quotas

Applications from paper quota applicants, as defined in the 2021: Draft General Policy, will be excluded.

7.1.3. Fronting

Applicants are found to be engaged in Fronting as defined in the 2021: Draft General Policy, will be excluded.

7.1.4. Payment of levies

Applicants must comply with the requirements on the payment of levies as detailed in the 2021: Draft General Policy.

7.2. Comparative balancing criteria

Applicants will be evaluated in terms of the following balancing criteria which will be weighted in order to evaluate and assess applications:

7.2.1. Fishing performance (Applies to Category A applicants)

7.2.1.1 The fishing performance of applicants that held fishing rights in the fishery from 2014 until 2020 will be examined to determine if they have effectively utilised their fishing rights.

7.2.1.2 The number of fishing seasons spent actively fishing, patterns of active fishing across consecutive seasons and the intensity of fishing (e.g. number of trawl hours) will be considered when scoring this criterion.

7.2.2. Fishing experience and knowledge (Applies to Category B and C applicants)

7.2.2.1 The applicant's involvement in other fishing sectors (catching, processing, marketing);

7.2.2.2 The applicant's involvement in the fishery with fishing related activities (catching, Draft Policy on Allocation and Management of Commercial Fishing Rights in the KZN Crustacean Trawl Fishery: 2021

processing, marketing and management of finance by the company and shareholders); and

7.2.1.3 The applicant's knowledge of how this fishery operates and how the applicant intends to utilize the right.

7.2.3. Suitable vessels (Applies to Category B and C applicants)

7.2.3.1. An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of KZN crustacean trawl. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or the purchase of a vessel or the build of a new vessel. If an applicant intends purchasing a vessel, then proof of a purchase agreement and bank guarantee must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company and proof of payment or part payment must be provided.

7.2.3.2. A suitable vessel in the fishery is a large fishing vessel that:

7.2.3.2.1. is rigged to trawl for prawns (bottom trawling with single net stern, or boom-operated twin or triple nets);

7.2.3.2.2. is capable of fishing in the deep-water trawl area >7nm offshore; and

7.2.3.2.3. has a functioning vessel monitoring system.

7.2.3.3. In order to verify if the vessel meets the suitable vessel criteria, applicants are required to submit suitable photos of the vessel as well as copies of its valid SAMSA registration certificate.

7.2.4. Compliance (Applies to Category A and B applicants)

Minor and substantive infringements, including those in respect of which an admission of guilt fine was paid or the applicant entered a plea bargain, between 2014 and 2020 may be taken into account as a balancing criterion and may also adversely affect an

application.

7.2.5. Investment in the fishery (Applies to Category A, B and C applicants)

7.2.5.1. The delegated authority should consider:

7.2.5.1.1. For Category A applicants, the investments made in suitable vessels and other fixed assets such as processing and marketing infrastructure in the KZN crustacean trawl sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding will also be considered.

7.2.5.1.2. For Category B applicants, the investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure, but a clear demonstration of their commitment (and ability) to invest in this sector (i.e. access to vessel) will be required.

7.2.5.1.3. Category C applicants are required to demonstrate that they have the knowledge, skill and capacity to fish for and process crustacean trawl target and bycatch species. Investments made in suitable vessels and other fixed assets such as processing and marketing infrastructure in the KZN crustacean trawl sector will be considered.

7.2.6. Transformation (Applies to Category A, B and C applicants)

7.2.6.1. When assessing and scoring applications, the delegated authority may prefer applicants based on transformation criteria. When attributing a score for transformation criteria, the delegated authority may have regard to: census statistics or other information provided by Statistics South Africa regarding the composition of the population of South Africa, and the percentage of that population made up by different demographic groups; the need to ensure the recognition and meaningful participation in the fishing industry of Historically Disadvantaged Individuals (HDIs); and the codes of good practice under the Broad-Based Black Economic Empowerment Amendment Act.

7.2.6.2. Applicants, depending on the form of an applicant, will be assessed and scored on the following transformation criteria:

- 7.2.6.2.1. The percentage of people from designated groups and HDIs represented at top salary, board of directors, members and senior official and management levels;
- 7.2.6.2.2. The extent to which an applicant's ownership and management transformation credentials of people from designated groups (as measured in the 2013 rights allocation process) have subsequently improved, remained the same, or deteriorated in the period following the granting of rights in the 2013 rights allocation process;
- 7.2.6.2.3. Whether employees (other than top salary earners) benefit from an employee share scheme;
- 7.2.6.2.4. Compliance with the Employment Equity Act 55 of 1998 and the representation of designated groups and HDIs at the various levels of employment below senior official and management level;
- 7.2.6.2.5. Affirmative procurement;
- 7.2.6.2.6. Compliance with legislation on skills development and the amounts spent on training and learnership programmes for designated groups and HDIs; and
- 7.2.6.2.7. Corporate social investment.

7.2.7. Job creation and conditions of employment (Applies to Category A, B and C applicants)

7.2.7.1. The delegated authority may give preference to any applicant which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated a right in the fishery. For these purposes the delegated authority will consider the quality of the employment opportunities which will be created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's commitment to provide their employees with:

- 7.2.7.1.1 permanent employment;
- 7.2.7.1.2 medical aid or any kind of medical support;

- 7.2.7.1.3 pension and provident fund;
- 7.2.7.1.4 safe working conditions in accordance with the applicable legislative requirements; and
- 7.2.7.1.5 an employee share scheme, which ensures that employees enjoy an effective shareholding in the right holder.

7.2.8. By-catch (Applies to Category A applicants)

The delegated authority will seek to reward those right-holder applicants that have invested in and implemented measures to reduce the landing of by-catch species. The delegated authority 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.)

PART C: MANAGEMENT MEASURES

8. Ecosystem approach to fisheries

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

9. Observer programme

- 9.1. The right holder of a KZN crustacean trawl fishing right shall accommodate an observer on board the right holder's nominated vessel when required to do so by the Department or its agent.
- 9.2. The right holder must bear the costs of the observer deployment when so required by the Department.
- 9.3. The right holder shall allow the Observer unrestricted access to monitor fishing activity, and to test compliance with permit conditions and all applicable laws.
- 9.4. Should the Department reasonably believe that an Observer is being prevented from carrying

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out his or her obligations in any way or threatened in any way while on board the right-holder's vessel, the Department may initiate legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/ or criminal proceedings).

10. Transfer of Commercial Fishing Rights and/or Shares and/or Members' Interests

Subject to paragraph 5.4 above, Right Holders in this sector shall consider the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof (the Transfer Policy) when transferring their fishing rights and/or shares and/or members' interests.

11. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful applicants in this fishery and will be revised when the Department deems it necessary.

12. Monitoring and evaluation of the Policy

- 12.1 The Department will monitor and evaluate the policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years.
- 12.2 Although the Department will finalise the precise criteria against which Rights Holders will be measured after the allocation of commercial fishing Rights, and after consulting with Rights Holders, the following broad performance related criteria may be used:
 - (a) Transformation.
 - (b) Investment in vessels, factories and gear.
 - (c) Sustainable utilisation.
 - (d) KZN crustacean trawl catch performance.
 - (e) By-catch mitigation compliance with applicable laws and regulations.
 - (f) Compliance with applicable laws and regulations.
 - (g) Timeous and complete reporting of catches and other information as applicable.
- 12.3 The purpose of performance measuring will be to ensure that the objectives of this draft policy are met.

13. Contraventions

Draft Policy on Allocation and Management of Commercial Fishing Rights in the KZN Crustacean Trawl Fishery: 2021

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their KZN Crustacean Trawl fishing right for any one season during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, MLRA Regulations, Permit Conditions, Rights Transfer Policy and other related Acts included in the Permit conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

APPROVAL SIGNATURE



NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF SMALL PELAGIC
COMMERCIAL FISHING RIGHTS: 2021**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE
ALLOCATION OF COMMERCIAL FISHING RIGHTS: 2021 AND THE DRAFT POLICY FOR
THE TRANSFER OF COMMERCIAL FISHING RIGHTS: 2021**

(Available at www.environment.gov.za)

Draft Policy on the Allocation and Management of Small Pelagic Commercial Fishing Rights: 2021

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1. INTRODUCTION

This Draft Policy on the Allocation and Management of Commercial Fishing Rights in the Small Pelagic Sector for directed anchovy and sardine is issued by the Minister of Forestry, Fisheries and the Environment (the Minister). This draft policy must be read together with the draft General Policy on the Allocation of Commercial Fishing Rights: 2021 (the draft General Fisheries Policy).

This draft policy sets out the objectives, criteria and considerations that will guide the allocation of long-term commercial Small Pelagic fishing rights.

The Minister has, in terms of Section 79 of the Marine Living Resources Act 18 of 1998 (the MLRA), delegated the power to grant fishing rights contained in Section 18 of the MLRA, to Senior Officials of the Department of Forestry, Fisheries and the Environment (the Department). This draft policy document will guide the Delegated Authority in taking decisions on applications in this sector.

2. SECTOR PROFILE

The South African fishery for small pelagic fishes is an industrial-scale fishery that was initiated off the West Coast in the late 1940s using purse-seine nets to target adult sardine (*Sardinops sagax*), horse mackerel (*Trachurus capensis*) and chub mackerel (*Scomber japonicus*). Declining catches of these species during the mid-1960s resulted in the fishery switching to smaller meshed nets to target juvenile anchovy (*Engraulis encrasicolus*) off the West Coast, and this species has largely dominated landings since. A third small pelagic fish, West Coast red eye (*Etrumeus whiteheadi*; also known as round herring) has also been targeted since the 1970s. Because both sardine and round herring juveniles form mixed schools with anchovy juveniles, the former two species are taken as bycatch in anchovy fishing operations.

Small quantities of the two mackerel species are currently taken as bycatch in this sector, but these are negligible compared to initial high catches. Whereas sardine catches remained low for three decades after they declined, the population recovered during the 1990s and the fishery began to also target this species off the South Coast. Sardine catches increased to a second peak in the mid-2000s, before declining again to very low levels in recent years. Mesopelagic fish species (Hector's lanternfish *Lampanyctodes*

hectoris and lightfish *Maurolicus walvisensis*) are occasionally caught by purse-seiners, sometimes in large quantities.

The Small Pelagic sector is South Africa's largest in terms of catch with average annual catches of around 380 000 tonnes over the period 1950–2020, of which 80% has been anchovy and sardine (directed and bycatch combined). Small pelagic targeting occurs inshore, primarily along the Western Cape's west and south coasts (for anchovy, directed-sardine and red eye) and the South and Eastern Cape coast (for directed-sardine). Sardine are also targeted by a seasonal beach-seine fishery along the KwaZulu-Natal south coast during the annual, winter sardine run, but annual catches in that fishery are small (typically around 200 t and have never exceeded 700 t) in comparison to those taken by purse-seine vessels. The pelagic fleet consists of Glass Reinforced Plastic (GRP) and steel-hulled purse-seine vessels, with only a few wooden vessels remaining active. Vessel length ranges from 15 metres to 39 metres, and the number of vessels actively involved in the sector has consistently declined from 95 in 2006 to 63 in 2020. Sardines are canned for human consumption and pet food, and packed and frozen for bait, with most of the canneries on the West Coast and most of the bait packing facilities on the South and East coasts. The other species (so-called "industrial fish") are reduced to fishmeal, fish oil and fish paste in factories on the West Coast only. This difference in product means that one ton of sardine is around 5x as valuable as one ton of industrial fish.

Annual anchovy catches ranged between 79 000 and 307 000 tons and had an average value of 214 000 tons over the previous rights period of 2006-2020. Annual directed-sardine catches ranged between 2 000 (in 2019) and 206 000 (in 2006) tons and had an average value of 79 000 tons over that period, but have declined markedly to below 20 000 tons in recent years. The current low sardine catches are insufficient for profitable operation of the major canning facilities and the bulk of canned sardine products currently produced in South Africa contain sardine that are sourced from Morocco and elsewhere. Whilst this has enabled the industry to retain market share and to keep their workers employed, current unfavourable exchange rates are affecting profitability and threatening the long-term viability of the canning industry, particularly if directed sardine catches remain at low levels.

The Small Pelagic sector is typically managed through an Operational Management Procedure (OMP); an adaptive management approach that uses a simulation-tested set

of rules and pre-specified data, stock assessment methods and harvest control rules to determine and implement management actions. In this sector, management is via the setting of annual Total Allowable Catches (TACs) for sardine and anchovy, and Total Allowable Bycatches (TABs) for juvenile sardine caught in anchovy-directed fishing, and juvenile and adult sardine caught in redeye-directed fishing. However, should input data used for the calculation of TACs and TABs fall outside of the range that was used in simulation-testing of the OMP, Exceptional Circumstances (ECs) are declared and the OMP is not used for setting TACs and TABs and *ad hoc* measures are used instead. Exceptional Circumstances were declared for sardine in 2019 after recording a sardine biomass estimate in 2018 which was below the simulated range, and these ECs have remained since (i.e. during 2020 and 2021) following continued low biomass levels. Exceptional Circumstances were also declared for anchovy in 2020 following lower-than-simulated recruitment, and *ad-hoc* measures have been used to set TACs for this species since. In addition to the TACs and TABs, annual Precautionary Upper Catch Limits (PUCLs) are set for West Coast redeye, mesopelagic fishes, and horse mackerel.

Spatial management has been formally applied in the sardine fishery from 2019 onwards as a regulatory measure by restricting the proportion of the directed-sardine TAC that can be caught off the West Coast. This is because (i) the sardine resource is considered to consist of two components, one off the West and the other off the South Coast, respectively, with the western component markedly more productive in terms of generating recruitment; and (ii) the need to rebuild the sardine population in general, but particularly the western component which is depleted at present.

In addition to being the largest of South Africa's fisheries (despite recent low sardine catches), the Small Pelagic sector is the country's second-most important in terms of value, with an estimated wholesale catch value of R2.4 billion in 2014 that is estimated to be around R5.5 billion at present. This sector employs approximately 5800 people. Of these, 4300 are employed on a permanent basis and 1500 on a seasonal basis. The average annual income of sea-going workers is R458 000 – the highest in the fishing industry. Ninety-five percent of workers in this sector are historically disadvantaged persons. The market value of the 63 vessels operating in this sector is more than R1.2 billion (the average vessel is worth R 7 million). The sector is capital intensive, with operators having to invest in vessels and processing and marketing infrastructure, hence it is not suitable for the Small-Scale Fishery sector. Sixty-four (64) out of 85 (75%)

previous Rights Holders (RHs) did not own vessels, hence a proportion of the catch is caught and processed using agreements with independent entities who themselves do not have a Right. Twenty-one (21) out of 85 (25%) previous RHs were also vessel owners. Nineteen of the 63 (30%) active vessels in 2020 were owned by entities which were not RHs in the sector.

In 2020 there were 22 Permitted Fish Processing Establishments (FPEs) associated with the Small Pelagic sector. Of these five (5) are large, combined fishmeal and canning plants and one (1) is a cannery only plant, with all six (6) being owned by previous RHs. The remaining FPEs are mostly small operations mainly dealing with sardine and involved in bait packing and cold storage facilities, with eight (36%) not owned by previous RHs. Currently, 73 percent of previous RHs in this sector are black-owned. These previous RHs collectively controlled 75 percent of the TAC. Women made up an average of 28,6% of the shareholding of, and small and medium-sized enterprises made up 85%, of the previous RHs.

3. THE LONG-TERM FISHING RIGHTS ALLOCATION PROCESS

At the end of 2005 and subsequent to all appeals being finalized, the Small Pelagic long-term rights period effectively started on 1 February 2006 and ended on 31 December 2020. An exemption was granted to previous RHs to continue fishing from 1 January 2021 to 31 December 2021. Of the 115 Long-term Rights holders, 76 were granted Rights to both sardine and anchovy and 39 were granted Rights to sardine only. By the end of 2020, Rights had been mainly consolidated to 61 to both sardine and anchovy Rights and 24 for sardine only.

4. OVER-ARCHING SECTORAL OBJECTIVES

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

- (a) Maintain the current level (>80%) of Black ownership and improve other aspects of the transformation profile specifically the involvement of females, youth and people living with disabilities.
- (b) Create an environment that attracts investment and stimulates job creation.
- (c) Encourage RHs to invest in suitable vessels; processing and marketing infrastructure.
- (d) Encourage value-adding by RHs through processing some percentage of their industrial fish allocation into products other than fishmeal or fish oil (e.g. bait) but

preferably for human consumption. The Department also encourages the development of new sardine products, for human consumption. Progress in this regard will be determined during regular performance assessments.

- (e) Promote sustainable utilisation of small pelagic fish resources in line with the Ecosystem Approach to Fisheries (EAF).
- (f) Reduce bycatches of sardines, horse mackerel and chub mackerel.
- (g) Ensure strict adherence to Environmental Legislation dealing with wastage and pollution (e.g. both air and water (effluent)).
- (h) Promote viability and environmental sustainability of the sector through an efficient Rights Allocation Process.
- (i) Promote adherence to the Basic Conditions of Employment Act 75 of 1995 as well as the Labour Relations Act 66 of 1995.

5. GRANTING OF FISHING RIGHTS

Fishing rights are granted in terms of section 18 of the MLRA. Only South African persons as defined in the MRLA shall acquire or hold rights. All Rights granted shall be valid from the date of allocation for a period of 15 years, whereafter they will automatically terminate and revert back to the State.

5.1. Form of Right Holder

Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered for a right in the Small Pelagic sector:

- (a) Close Corporations (legal entity).
- (b) Companies (legal entity).

5.2. Duration of Rights

Having regard to the rights allocation process, and the need to encourage investment, fishing rights in the Small Pelagic sector will be granted for the maximum period of 15 years.

5.3. Transfer of Rights Allocated in terms of this Policy

In terms of Section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in the fishery in terms of the MLRA shall not be transferred within the first three (3) years of being granted.

6. 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.

6.1. Exclusionary Criteria

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

- (a) **Compliance:** Applicants, including their members, directors or controlling shareholders that have been convicted of an offence in terms of the MLRA, the Regulations or permit conditions will not be allocated a Small Pelagic fishing right. This does not include the payment of an admission of guilt fine. Applicants, including their members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or the Regulations or permit conditions, or assets seized under the Prevention of Organised Crime Act 21 of 1998 or the MLRA, will also not be allocated a Small Pelagic fishing right.
- (b) **Paper Quotas:** Applicants who apply under FRAP 2021 for new rights, and who are found to be Paper quota holders as defined in the draft General Fisheries Policy of 2021 will be excluded.
- (c) **Fronting:** Applicants who apply under FRAP 2021 for new rights, and who are found to be engaged in Fronting as defined in the draft General Fisheries Policy of 2021 will be excluded.

6.2. Comparative Balancing Criteria

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the draft General Fisheries Policy for further detail. Weighting and scoring criteria will be developed for Categories A, B and C applicants separately and the relative weight of each criterion will differ between Categories. For all categories investment in the sector and access to infrastructure will be heavily weighted

with job creation and sustainable employment, value adding and enterprise development, transformation and performance also important.

(a) Investment in the Sector (Applies to Category A, B and C Applicants)

As far as Category A Applicants are concerned, the Delegated Authority should specifically consider:

- (i) Investments in suitable vessels and other fixed assets such as processing and marketing infrastructure in the Small Pelagic sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding will also be considered.
- (ii) As far as Category B and C Applicants are concerned, the Delegated Authority should consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure, but a clear demonstration of their commitment (and ability) to invest in this sector (i.e., access to vessel and FPE's) will be required.
- (iii) All Category C applicants are required to demonstrate that they have the knowledge, skill and capacity to fish for and process small pelagic fish.

(b) Access to Infrastructure (Applies to Category A, B and C Applicants)

- (i) Access to a Suitable Vessel: Applicants will have to demonstrate access to a suitable vessel. Proof in the form of ownership, part-ownership or catch agreement, together with the South African Maritime Safety Authority (SAMSA) registration certificate and photos of the vessel needs to be included in the application. If the applicant has entered into a purchase agreement to acquire a suitable vessel on successful application, then proof of the sales contract must be provided. In the case of a proposed newly-built vessel, the vessel plans, detailed costing from the vessel building company and proof of finance must be provided.
- (ii) Access to a Fish Processing Establishment: Applicants are required to demonstrate access to a Fish Processing Establishment. Proof in the form of ownership, part-ownership or processing or purchase/lease agreements needs to be included in the application for each of the species applied for. If the applicant has entered into a purchase/lease agreement to acquire a suitable fish processing establishment on successful application, then proof of the sales/lease contract must be provided. In the case of a proposed

newly- built fish processing establishment, the establishment plans, detailed costing from the establishment building company and proof of finance must be provided.

(c) Job Creation and Sustainable Employment

The Small Pelagic sector provides approximately 5 800 jobs. Salaries of sea-going personnel average R458 000 annually – the highest in the fishing industry. The majority of workers are employed on a full-time basis, with benefits such as medical aid, pension and shareholding.

For Category A Applicants, sustainable employment as a result of the previous allocation of long-term fishing rights will be considered, and in particular, applicants that have created jobs and provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of the Employment Act and Labour Relations Act.
- (ii) Medical aid, pension, shareholding.
- (iii) Safe working conditions.

In addition, jobs created and sustainable employment provided per ton of fish allocated during the previous long-term rights allocation period will be assessed and taken into account.

For Category B Applicants, jobs created and sustainable employment provided as a result of the previous allocation of long-term fishing rights in another sector will be considered, and in particular, applicants that have provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of Employment Act and Labour Relations Act.
- (ii) Medical aid, pension, shareholding.
- (iii) Safe working conditions.

For Category C Applicants, jobs created and sustainable employment provided as a result of any previous sector related business development will be considered and in particular, applicants that have provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of Employment Act and Labour Relations Act.

- (ii) Medical aid, pension, shareholding.
- (iii) Safe working conditions.

(d) Local Economic Development (Applies to Category A, B and C Applicants)

There is a need for investment and decent sustainable employment creation in many of South Africa's smaller coastal towns. The Delegated Authority may reward applicants who commit to supplying small quantities of good quality anchovy, sardine or red eye to small scale co-ops in these areas.

(e) Value-adding and Enterprise Development (Applies to Category A, B and C Applicants)

For Category A applicants, the Delegated Authority should consider past enterprise development and their ability to add value to small pelagic fish products for local and international markets during the past 15 years.

The Delegated Authority will consider, in particular, whether applicants have invested in or facilitated, directly or indirectly, the development of products for human consumption of anchovy, sardine (other than traditional canned) and red eye.

(f) Transformation (Applies to Category A, B and C Applicants)

The objective of allocating long-term fishing rights in this sector is to improve the transformation profile (involvement of females, youth and people living with disabilities). In addition to criteria as stipulated in the draft General Fisheries Policy, applicants will be assessed and scored on:

- (i) The percentage women ownership and women representation at top salary, board of directors and senior official and management levels.
- (ii) The percentage of disabled persons and youth ownership and representation at top salary, board of directors and senior official and management levels.
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme.
- (iv) Compliance with the Employment Equity Act 55 of 1998, particularly with regards to the representation of women, people living with disabilities and the youth at the various levels of employment below senior official and management level.

(g) Performance (applies to Category A Applicants)

- (i) Performance by Category A applicants will be determined from their catch statistics relative to the industry catch averages per allocated species for the previous allocation period.
- (ii) Category A applicants that did not exercise their Rights (reported catches) in any given year during the previous allocation period must demonstrate reasons and provide evidence why they could not do so. Failure to do so may result in their performance being scored negatively

All applicants must indicate whether and how they intend to develop a percentage of their allocations of industrial fish for alternative uses, preferably for human consumption. The Delegated Authority may reward applicants who commit to such development.

(h) Multi-sector Involvement

Applicants in the Small Pelagic sector are not precluded from holding rights in any other sectors.

(i) Non-payment of Fish Levies (Applies to Category A and B Applicants)

The Department requires every RH to pay a levy on all fish landed, targeted or caught as a bycatch. Applicants that were granted commercial fishing rights in the previous rights allocation period for this or any other sector are required to provide proof that they are up to date on the payment of their levies on fish landed over the last five (5) years at the date of submitting their applications. Those that have under-reported catches to, *inter alia*, avoid the payment of levies, will not be considered further.

(j) Compliance (Applies to Category A, B and C Applicants)

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions within the last five (5) years, their application may be penalised. Applicants who fail to disclose this information in their application will not be considered further.

7. QUANTUM ALLOCATION METHODOLOGY

For this allocation period, only sardine and anchovy will be allocated under the TACs and TABs, and the quanta allocated will be expressed as a percentage of the TAC for each species. These percentages will not necessarily remain fixed for the duration of the Right and will change under circumstance of low biomass of either anchovy or sardine (see below). The other targeted species (West Coast red eye and mesopelagic fishes) will be managed via unallocated PUCLs. The Delegated Authority shall allocate quanta based on criteria intended to achieve the objectives of this draft policy, such as transformation, value-adding and performance.

For sardine and anchovy, the size of each quantum allocated will be based, *inter alia*, on the following considerations: (i) the anticipated sardine and anchovy TACs over the short to medium term (5-10 years); (ii) the demonstrated capacity of applicants to catch and process small pelagic fish and (iii) a minimum allocation that will be economically meaningful. These minimum viable allocations are likely to range between 200t and 500t for sardine and 1500t and 2000t for anchovy.

When sardine or anchovy stocks are at critical low biomass levels and hence TACs are much reduced, a variable proportion of the total quantum for each species will be allocated to each RH on an annual basis. This will be done through the incorporation of a sliding scale for TAC apportionment at pre-specified low (critical) TAC levels, such that below these levels reductions in allocations are relatively smaller for smaller RHs compared to larger RHs. This mechanism seeks to provide an economic buffer for smaller RHs at low TAC levels. The formula needs final specification and will depend on the level selected for the low (critical) TAC threshold and the range over which it applies.

The proportion P_i of the TAC allocated to a Right Holder in a particular year (TAC_y) will change to $P\#_i$ when the TAC drops below a pre-defined critical level (TAC_{crit}), where

$$P\#_i = \frac{100 \cdot P_i^q}{\sum_i P_i^q} \text{ with } q < 1 \text{ and where } q = \frac{TAC_y}{TAC_{crit}}.$$

Ten percent of the total quantum for each allocated species will be reserved for appeals until all appeals have been finalised. After finalisation, the remaining quanta will be re-distributed on a pro-rata basis to RHs in the sector from the following fishing seasons onwards.

Should any Right be revoked for whatever reason in any year during the current period of allocation that Right will revert to the State. The quanta associated with such Rights will be re-distributed on a pro-rata basis to RHs in the sector from the following fishing seasons onwards.

8. NEW ENTRANTS

The TAC set for anchovy remained relatively stable over the previous Rights allocation period (2006 to 2020). In contrast, there has been a substantial decline (85%) in the TAC set for sardine in this sector. This, together with the inherent variability of stocks of small pelagic fishes and the fact that this sector depends on high volumes with small profit margins has already impacted the viability of rights, particularly small rights. This is borne out by the observed reduction in the number of FPEs and vessels, and the increased consolidation of rights in the sector, over the previous Rights period.

The sardine resource is currently depleted and is unlikely to increase substantially in the short to medium term (5-10 years), whilst the anchovy resource is currently at an optimal status. Hence, to ensure viable long-term allocations of anchovy and sardine the number of access rights in this sector should be reduced, particularly the number of rights allocated for sardine. This could be achieved through, amongst other things, assessment of the performance of the previous RHs.

The Department considers that whereas there is scope for the introduction of new entrants into the sector, this is limited for the sardine fishery. New entrant applicants will have to demonstrate that they have the knowledge, skill and capacity to fish for and process small pelagic species. Additionally, all applicants will be required to demonstrate access to suitable vessels and processing facilities as a pre-requisite.

9. SUITABLE VESSELS

A suitable vessel in the Small Pelagic sector is a vessel that:

- (a) Is SAMSA registered and of a length between 15-40 m (vessels smaller or larger than this range may be considered).
- (b) Has a functioning Vessel Monitoring System (VMS).
- (c) Is geared for purse-seining.
- (d) Is not being detained or has not been confiscated under the MLRA.

To promote value adding, any newly built vessel that enters the sector after Rights have been allocated, must be equipped with a blast freezer which must be used for the freezing of small quantities of good quality fish for the purpose of further product development, e.g. anchovy for bait or human consumption.

10. APPLICATION AND GRANT-OF-RIGHT FEES

The fees will be published separately in terms of section 25 of the MLRA and made available at the time of application.

The application fee for this sector will be determined having regard to:

- (a) The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews.
- (b) The value of the fish being allocated over the duration of the Right.

The grant-of-right fee is payable by all successful applicants upon the granting of a Right.

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 sector.

11.1 Transfer of Commercial Fishing Rights and/or Shares and/or Members' Interests

RHs in this sector shall consider the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof (the Transfer Policy) when transferring their fishing rights and/or shares and/or members' interests.

11.2 Consolidation of Rights Holders

Following the allocation of 15-year commercial fishing rights in this sector, the Department will facilitate the consolidation of the number of RHs active in the sector.

11.3 Monopoly

While the Department will encourage the consolidation of Rights in this sector, it is opposed to the establishment of a monopoly that may operate to the detriment of smaller RHs.

11.4 Ecosystem Approach to Fisheries Management

This sector will be managed in accordance with the Ecosystem Approach to Fisheries (EAF). EAF is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

11.5 Optimising Utilisation and Promoting Sustainability

The sector will be managed to promote sustainable utilisation of the target species and optimal use of both target and bycatch species.

11.6 Spatial Management

Given that the sardine resource comprises two stock components, one predominantly off the West Coast and the other predominantly off the South Coast, spatial management of this fishery is required. This will be achieved through restricting the amount of the directed sardine TAC that may be caught in certain areas. Additionally, fishing for small pelagic fish may be prohibited in certain areas and/or periods for conservation or scientific purposes and spatial management of other species may also be applied.

11.7 Vessels and Fishing Effort

There are presently 63 active small pelagic fishing vessels that operate in South African waters. As many RHs do not own the vessels they use, and as vessels may require replacement, the Department recognises that many RHs will seek to introduce vessels after the allocation of long-term fishing rights. RHs will not be permitted to introduce vessels capable of expending effort that is far in excess of their allocations. In addition, the Department will consider all vessel change applications into the fishery on a case by case basis.

11.8 Observer at Sea and Land Based Monitoring

The Department encourages collaboration with RH's and industry associations to enhance and possibly automate at-sea monitoring, offloading (species composition determination) and data capturing through the use of technology (cameras).

12. PERMIT CONDITIONS

Permit conditions for this sector will be issued annually. The permit conditions will be co-determined with RHs, their representatives or associations as decided annually during Departmental sector-specific Management Working Group meetings. Revision, in consultation with associations (majority RH representatives) may also take place *ad hoc* during the season as and when it may be necessary.

13. MONITORING AND EVALUATION OF THE POLICY

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years, from the date of finalisation of the appeals.

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

- (a) Transformation.
- (b) Investment in vessels and gear.
- (c) Bycatch mitigation compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met.

14. CONTRAVENTIONS

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their Small Pelagic fishing right for any two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (c) During the performance measuring exercise, any Rights Holder that has been found to have contravened any condition upon which the Right was granted for;

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may result in the initiation of legal proceedings (which may include initiation of Section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

APPROVAL SIGNATURE


A handwritten signature in black ink, appearing to read 'B Creecy', is written over a horizontal dashed line.

NAME: (MS) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY FOR THE ALLOCATION OF COMMERCIAL FISHING RIGHTS IN THE
SOUTH COAST ROCK LOBSTER FISHERY: 2021**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE
ALLOCATION OF COMMERCIAL FISHING RIGHTS: 2021 AND DRAFT POLICY FOR
THE TRANSFER OF COMMERCIAL FISHING RIGHTS: 2021
(available at www.environment.gov.za)**

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Draft Policy on Allocation and Management of Commercial Fishing Rights in the South Coast Rock Lobster Fishery: 2021

PART A: INTRODUCTION

1. Introduction

This policy for the allocation and management of fishing rights in the South Coast Rock Lobster Fishery ("the SCRL fishery") is issued by the Minister of Forestry, Fisheries and the Environment ("the Minister") and shall be referred to as the "2021: South Coast Rock Lobster Fishery Policy". The 2021: South Coast Rock Lobster Fishery Policy shall be read together with the 2021 General Policy on the Allocation Fishing Rights ("2021: General Policy").

The Minister has, in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA"), delegated the section 18 power to grant commercial 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 of Forestry, Fisheries and the Environment ("the Department").

The 2021: South Coast Rock Lobster Fishery Policy sets out the objectives, criteria and, considerations that will guide the evaluation and allocation of fishing rights in the South Coast Rock Lobster fishery. This policy will guide the delegated authority in taking decisions on applications in this fishery.

2. Profile of the fishery

2.1. Description of the fishery

The SCRL 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 SCRL 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, 2092 tons of south coast rock lobster were harvested and by 1981 this had dropped to a mere 176 tons.

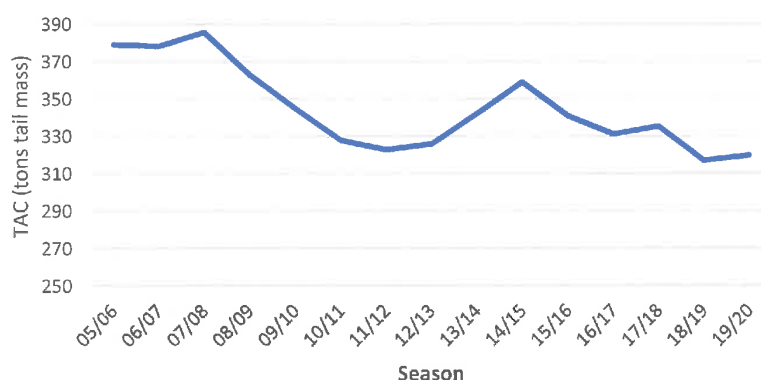
The SCRL fishery was first regulated by a total allowable catch ("TAC") in 1984. The TAC was set at 450 tons (tail mass). Ten years later, research indicated that the resource was

Draft Policy on Allocation and Management of Commercial Fishing Rights in the South Coast Rock Lobster Fishery: 2021

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.

The Department's management plan for the SCRL fishery has borne fruit. The SCRL TAC increased from 340 tons (and 1 922 sea days) in the 2001/2002 fishing season to 382 tons (and 2 089 sea days) in 2007/2008, and has fluctuated by no more than 5% inter-annually between 317 tons and 363 tons since. The decision on catch limits has been guided by the Operational Management Procedure ("OMP"), first introduced in 2008. There have been a number of OMPs developed and revised, with the next revision scheduled for 2022. The objectives of the latest OMP, 'OMP-2019', have been to keep inter-annual TAC change restricted to 5%, to increase the spawning biomass of this resource by 30% over a 20-year period (2006 to 2025) and to not drop the TAC below 321 tons for the 2019/2020 and 2020/2021 seasons. The fishing season for the SCRL fishing sector year round is from 1 October to 30 September with a TAC determined annually by the delegated authority.

SCRL TAC over the last 15 years



Vessels are equipped with onboard processing factory, packing and freezing facilities or specially designed live fish holding facilities. Lobster tails and whole frozen lobsters are frozen at sea and, when off-loaded at Cape Town and Port Elizabeth harbours, are graded and repacked at shore-based facilities. Since most processing occurs at sea, shored-based

infrastructure is limited. Live lobsters are delivered to live lobster tank facilities. Almost the entire catch is exported, predominantly to the USA for frozen product and to Italy, France and Taiwan for live product.

Vessels are rigged for long-line trap-fishing. Barrel-shaped plastic traps are set for periods varying from 24 hours to several days. Each vessel typically hauls and resets approximately 2 000 to 6000 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 the SCRL fishery are large, offshore vessels ranging in length between 30 and 60 metres. They fish for between 180 to 300 days per year. During the last right period, from 2005 to 2020, the number of vessels actively fishing was 10 vessels in the earlier seasons and as the TAC declined the number of vessels stabilised at 7 or 8 vessels per season. These 7/8 vessels have caught on average 38 tons (tail mass) each per season.

The SCRL fishery is capital intensive, requiring large vessels, a substantial number of crew, access to foreign markets and funds for overhead costs such as fuel, vessel maintenance and salaries.

2.2. Biology 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 and restricted between Cape Agulhas in the south-west and East-London in the north-east. 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 (2 to 50 kilometres from the coast) between Mossel Bay and East London. The traditional fishing grounds are split into four areas, Agulhas Bank, Port Elizabeth and Port Alfred. The Port Alfred area has a narrow continental shelf, widening in Port Elizabeth and St Francis and at its widest on the Agulhas Bank. 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. Slipper lobster (*Scyllarides elisabethae*), Octopus (*Octopus magnificus*), Panga, Hagfish and Kingklip are considered as by-catch in of the SCRL fishery.

Draft Policy on Allocation and Management of Commercial Fishing Rights in the South Coast Rock Lobster Fishery: 2021

3. Previous long-term fishing rights allocation process

In 2005 fishing rights were allocated for a period of 15 years to 17 fishing companies (with a total of seven vessels).

The transformation profile for the sector in 2005/2006 was:

- (a) More than 60% of the right holders in the fishery had a greater than 50% black shareholding;
- (b) The percentage of the TAC and the TAE held by blacks was 72.22% and 72.18%, respectively;
and
- (c) The percentage of shareholding/member interest held by women was 18.42%.

Over the duration of the 15-year right, fishing companies have consolidated their rights and at the conclusion of the right in 2020, only seven of the seventeen companies remained.

At the conclusion of the long-term fishing rights in 2020, the seven right holders had caught on average between 94% and 100% of their TAC allocations each season. Four of the seven right holders had a TAC of < 40 tons and four right holders (the company with the highest TAC and the three companies with the least TAC) had rights in other sectors. The two companies with the highest TAC had 100% ownership of four vessels whilst the remaining right holders are likely to have part ownership in the other four vessels used most recently.

Previous right holder	Recent TAC (kg tall mass)	% TAC	Average % TAC caught per season	Number of vessels with 100% ownership	Number of rights in other sectors
Right holder 1	135 198	40.3	92	3	4 active, 4 expired
Right holder 2	83 842	25.0	100	1	0
Right holder 3	59 513	17.8	97		0
Right holder 4	23 508	7.0	98		0
Right holder 5	13 958	4.2	100		1 active, 1 expired
Right holder 6	11 379	3.4	94		1 active, 2 expired
Right holder 7	7 667	2.3	98		1 expired

4. Objectives

Draft Policy on Allocation and Management of Commercial Fishing Rights in the South Coast Rock Lobster Fishery: 2021

4.1 The objectives of allocating fishing rights in the SCRL fishery are to:

- (a) achieve optimum utilisation and ecologically sustainable development of marine living resources;
- (b) the need to conserve marine living resources for both present and future generations;
- (c) the need to apply precautionary approaches in respect of the management and development of marine living resources;
- (d) support economic stability and viability of the fishery;
- (e) allocate rights to applicants reliant on SCRL as their main source of income;
- (f) promote transformation, broaden meaningful participation (increase participation, value-creation, and linkage) and growth;
- (g) improve the quality of jobs through the promotion of permanent employment and allocation of rights to SMMEs owned by historically disadvantaged persons;
- (h) promote adherence to fair labour practices;
- (i) to promote food security and poverty alleviation;
- (j) promote youth and female ownership and development.

PART B: COMMERCIAL FISHING RIGHTS ALLOCATION PROCESS

5. Granting of fishing rights

Fishing rights are granted in terms of section 18 of the MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, whereafter the right shall automatically terminate and revert back to the State.

5.1. Form of Right Holders

5.1.1. Applications will only be considered from South African owned companies, close corporations and co-operatives comprising only of South African juristic entities. Applications from individuals will not be considered.

5.1.2. Those applicants who previously held rights in the SCRL fishery in and that are again applying for rights to undertake commercial fishing in the SCRL fishery, shall be considered as Category A Applicants. Applicants who held rights in fishing sectors other than the SCRL fishery during the period 2005 to 2020 shall be treated as Category B

Draft Policy on Allocation and Management of Commercial Fishing Rights in the South Coast Rock Lobster Fishery: 2021

Applicants. Applicants who have never before held commercial fishing rights in any of the commercial fishery sectors of South Africa will be treated as Category C Applicants.

5.2. Duration of rights

Fishing rights will be granted in the SCRL fishery for a period not exceeding 15 years. The duration of rights will be determined by the delegated authority taking into account, amongst other things, the level of transformation in the fishery, the capital intensity of the fishery, the need to encourage further investment and economic growth, the current knowledge of the biological status of the target species and the performance of participants in the fishery.

5.3. Multi-sector involvement

Applicants in the SCRL fishery (including their controlling shareholders and members of their executive management team) will not be precluded from holding commercial fishing rights in other fishing sectors.

5.4. Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in the fishery in terms of the MLRA shall not be transferred within the first five years of being granted.

6. Number of vessels

There are currently eight SCRL fishing vessels that operate in South African waters that harvest the current 2020/2021 TAC of 337 tons.

As some successful applicants will not wholly own the vessels they intend using and because vessels may require replacement, the Department recognises that many successful applicants will seek to introduce further or new vessels after the allocation of long-term fishing rights and as the SCRL resource recovers and the TAC increases. The Department will carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Successful applicants will not be permitted to introduce vessels capable of expending effort that is in excess of their allocations.

7. New entrants

As a capital-intensive fishery, the Category A applicants have had to make large investments in the fishery in infrastructure (e.g. vessels, processing facilities) and marketing over the last 15 years to establish economically viable entities. The Category A applicants have fully utilised their TAC, catching on average more than 90% of their TAC allocations each season. Though rights had been consolidated over the previous rights period, management measures on the distribution of TAC remained unchanged and had not given preference to those with smaller allocations to assist in providing opportunities for more meaningful participation in the fishery.

Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department.

8. Quantum criteria

In this fishery, the mechanism for allocating quantum will consist of a combined analysis of:

- the previous TAC held by the Category A applicants;
- the degree of utilisation of the TAC by Category A applicants;
- the redistribution of TAC among Category A applicants to improve the allocations of Category A applicants that held historically smaller quantum, to assist in more meaningful participation in the fishery;
- the allocation of TAC to Category B and C applicants that is in line with allocations held by Category A applicants during the previous long-term rights; and
- the degree to which the applicant has achieved the Department's objectives.

Should the resource recover, the TAC may be increased during the rights period. In this instance, the Department will use a sliding scale approach in respect of the allocation of additional quantum that gives preference to right holders with smaller allocations.

Quantum allocations will be preliminary until the finalisation of the appeals process on the allocation of rights in this fishery. Adjustments made to quantum allocations, upon the finalisation of appeals, will be

applied in the forthcoming season.

9. Evaluation criteria

Applications will be screened in terms of a set of “exclusionary criteria”. All applicants will thereafter be separately scored in terms of a set of weighted “comparative balancing criteria”. A cut-off will then be determined in order to select the successful applicants and effort will be allocated to each successful applicant.

9.1. Exclusionary criteria

In addition to the exclusionary criteria described in the 2021: General Policy pertaining to the lodgment of the applications material defects and requirements (section 6), the delegated authority will exclude applicants that fail to meet the following requirements:

(a) Compliance

An applicant will be excluded if it, a controlling shareholder, a member with a controlling interest, or a director, has been convicted of a transgression of the MLRA, the regulations promulgated thereunder and permit conditions (without the option of the payment of a fine).

An applicant will also be excluded if it, a controlling shareholder, a member with a controlling interest, or a director, has had any fishing right cancelled or revoked in terms of the MLRA.

(b) Paper quotas

Applications from paper quota applicants, as defined in the 2021: General Policy, will be excluded.

(c) Fronting

Applicants are found to be engaged in Fronting as defined in the 2021: General Policy, will be excluded.

(d) Payment of levies

Applicants must comply with the requirements on the payment of levies as detailed in the 2021 General Policy.

9.2. Comparative balancing criteria

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted in order to evaluate and assess applications:

(a) Fishing performance (Applies to Category A applicants)

1. The fishing performance of applicants that held fishing rights in the SCRL fishery from 2005 until 2020 will be examined to determine if they have effectively utilised their fishing rights.
2. The number of fishing seasons spent actively fishing, patterns of active fishing across consecutive seasons and the intensity of fishing (e.g. percentage TAC caught, over-catch) will be considered when scoring this criterion.

(b) Fishing experience and knowledge (Applies to Category B and C applicants)

1. The applicant's involvement in other fishing sectors and related activities (catching, processing, marketing), and
2. The applicant's involvement in the SCRL fishery with fishing related activities (catching, processing, marketing and management of finance by the company and shareholders).

(c) Suitable vessels (Applies to Category A, B and C applicants)

1. An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting SCRL. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or the purchase of a vessel or the build of a new vessel. If an applicant intends purchasing a vessel, then proof of a purchase agreement and bank guarantee must be provided. If in the case of a new build vessel, then the vessel plans and cost

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from the vessel building company and proof of payment or part payment must be provided. It is not the intention to increase the number of vessels during the allocation process, but the Minister may have regard to the policy objectives in deciding the number of vessels to be accommodated.

2. A suitable vessel in the SCRL fishery is a fishing vessel that:
 - a. has a minimum SAMSA registered length of approximately 25 metres;
 - b. has a functioning vessel monitoring system;
 - c. is capable of deploying lines of approximately one-mile-long and 100 traps;
 - d. is capable of storing at least 1 000 traps;
 - e. is capable of carrying the necessary winches; and
 - f. is capable of carrying approximately 30 or more crew members

In order to verify if the vessel meets the suitable vessel criteria, applicants would need to submit photos of the vessel as well as copies of the SAMSA registration certificate.

(d) Compliance (Applies to Category A and B applicants)

Minor and substantive infringements, including those in respect of which an admission of guilt fine was paid or the applicant entered a plea bargain, between 2005 and 2020 may be taken into account as a balancing criterion and may also adversely affect an application.

(e) Investment in the fishery (Applies to Category A, B and C applicants)

The delegated authority should consider:

1. For Category A applicants, the investments made in suitable vessels and other fixed assets such as processing and marketing infrastructure in the SCRL fishing sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding will also be considered.
2. For Category B applicants, the investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure, but a clear

demonstration of their commitment (and ability) to invest in this sector (i.e., access to vessel) will be required.

3. All Category C applicants are required to demonstrate that they have the knowledge, skill and capacity to fish for and process SCRL. Investments made in suitable vessels and other fixed assets such as processing and marketing infrastructure in the SCRL fishing sector will be considered.

(f) Transformation (Applies to Category A, B and C applicants)

When assessing and scoring applications, the delegated authority may prefer applicants based on transformation criteria. When attributing a score for transformation criteria, the delegated authority may have regard to: census statistics or other information provided by Statistics South Africa regarding the composition of the population of South Africa, and the percentage of that population made up by different demographic groups; the need to ensure the recognition and meaningful participation in the fishing industry of Historically Disadvantaged Individuals (HDIs); and the codes of good practice under the Broad-Based Black Economic Empowerment Amendment Act.

Applicants, depending on the form of an applicant, will be assessed and scored on the following transformation criteria:

1. The percentage of people from designated groups and HDIs represented at top salary, board of directors, members and senior official and management levels;
2. The extent to which an applicant's ownership and management transformation credentials of people from designated groups and HDIs (as measured in the 2013 rights allocation process) have subsequently improved, remained the same, or deteriorated in the period following the granting of rights in the 2013 rights allocation process;
3. Whether employees (other than top salary earners) benefit from an employee share scheme;

4. Compliance with the Employment Equity Act 55 of 1998 and the representation of designated groups and HDIs at the various levels of employment below senior official and management level;
5. Affirmative procurement;
6. Compliance with legislation on skills development and the amounts spent on training and learnership programmes for designated groups and HDIs; and
7. Corporate social investment.

(g) Job creation and conditions of employment (Applies to Category A, B and C applicants)

The delegated authority may give preference to any applicant which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated a right in the SCRL fishery. For these purposes the delegated authority will consider the quality of the employment opportunities which will be created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's commitment to provide their employees with:

1. permanent employment;
2. medical aid or any kind of medical support;
3. pension and provident fund;
4. safe working conditions in accordance with the applicable legislative requirements; and
5. an employee share scheme, which ensures that employees enjoy an effective shareholding in the right holder.

PART C: MANAGEMENT MEASURES

10. Ecosystem approach to fisheries

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An

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ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

11. Observer programme

- a. The right holder of a SCRL fishing right shall accommodate an observer on board the right holder's nominated vessel when required to do so by the Department or its agent.
- b. The right holder must bear the costs of the observer deployment when so required by the Department.
- c. The right holder shall allow the Observer unrestricted access to monitor fishing activity, and to test compliance with permit conditions and all applicable laws.
- d. Should the Department reasonably believe that an Observer is being prevented from carrying out his or her obligations in any way or threatened in any way while on board the right-holder's vessel, the Department may commence proceedings under section 28 of the MLRA.

12. Quantum of revoked rights

Should a right be revoked in this fishery, then that right may: (a) be allocated to an unsuccessful applicant who applied during the most recent allocation process, (b) who has met all the exclusionary criteria, and (c) scored sufficiently amongst the unsuccessful applicants as recorded in the last General Published Reasons of the Minister or her or his Delegated Authority. Applicants will be placed on a waiting list and will be allocated a right as and when it becomes available without the need to invite or call for further applications.

13. Transfer of Commercial Fishing Rights and/or Shares and/or Members' Interests

Right Holders in this sector shall consider the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof (the Transfer Policy) when transferring their fishing rights and/or shares and/or members' interests.

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful applicants in this fishery and will be revised as and when the Department deems it necessary.

15. Monitoring and evaluation of the Policy

14.1 The Department will monitor and evaluate the policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years.

14.2 Although the Department will finalise the precise criteria against which Rights Holders will be measured after the allocation of commercial fishing Rights, and after consulting with Rights Holders, the following broad performance related criteria may be used:

- (a) Transformation.
- (b) Investment in vessels, factories and gear.
- (c) Sustainable utilisation.
- (d) South Coast Rock Lobster catch performance.
- (e) By-catch mitigation compliance with applicable laws and regulations.
- (f) Compliance with applicable laws and regulations.
- (g) Timeous and complete reporting of catches and other information as applicable.

14.3 The purpose of performance measuring will be to ensure that the objectives of this draft policy are met.

16. Contraventions

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their SCRL fishing right for any one season during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, MLRA Regulations, Permit Conditions, Rights Transfer Policy and other related Acts included in the Permit conditions by the Right Holder, or its

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employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

APPROVAL SIGNATURE



NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY ON ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE
SQUID FISHERY: 2021**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE ALLOCATION
OF COMMERCIAL FISHING RIGHTS: 2021 AND THE DRAFT POLICY FOR THE TRANSFER OF
COMMERCIAL FISHING RIGHTS: 2021
(Available at www.environment.gov.za)**

Draft Policy on Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2021

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PART A: INTRODUCTION**1. Introduction**

- 1.1. This draft policy for the allocation and management of commercial fishing rights in the squid fishery (“the fishery”) is issued by the Minister of Forestry, Fisheries, and the Environment (“the Minister”) and shall be referred to as the “**Squid Fishery Policy: 2021**”. This Squid policy shall be read together with the General Policy: 2021 on the Allocation of Commercial Fishing Rights (the General Policy: 2021) and the Policy for the Transfer of Commercial Fishing Rights: 2021 (Transfer Policy: 2021).
- 1.2. The Minister has delegated the Section 18 powers to allocate commercial 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 of Forestry, Fisheries, and the Environment (the Department).
- 1.3. This Policy sets out objectives, criteria and considerations that will guide the allocation and management of Commercial Fishing Rights specific to the Squid Commercial Fishing sector, and serves to guide the Delegated Authority in taking decisions on applications in this fishery.

2. Profile of the fishery**2.1. Description of the fishery**

The Cape Hope squid (*Loligo reynaudii*), locally known as “chokka” squid, is a commonly occurring loliginid that occurs around the Southern African coast from Namibia to the Wild Coast off the Eastern Cape. Chokka is the target of a boat-based, dedicated local commercial jig fishery that operates mainly between the Cape of Good Hope and Port Alfred. The chokka squid fishery is capital intensive and investments in vessels and fish processing establishments are very important. The fishery is fairly stable and provides employment for approximately 3 000 people locally. The fishery is believed to generate in excess of R480 million in a good year and is South Africa’s fourth largest fishery in monetary terms. Chokka are frozen at sea in small blocks. They are landed mainly between Plettenberg Bay and Port Alfred and exported whole to European countries, most notably Italy.

2.2. History of the fishery

- 2.2.1. Chokka squid has been used as bait by linefishers for many years. The species is also landed as by-catch in the demersal trawl fisheries. In the 1960s and 1970s, the squid resource was heavily exploited by foreign fleets. During this period, squid was caught predominantly by trawlers from the Far East. Foreign fishing activity was phased out during the late 1970s and early 1980s. This followed South Africa's declaration of an Exclusive Economic Zone ("EEZ"). Squid and other cephalopods, (i.e., other species of squid and Octopus), however, continued to be caught by South African trawlers. The squid by-catch in the demersal trawl fishery fluctuates between 200 tons and 800 tons annually.
- 2.2.2. A dedicated commercial jig fishery for squid was initiated in 1984. The jigs are operated by handlines, making this a particularly labour-intensive fishery. Catches in the jig fishery fluctuate monthly and annually. In the 1990s catches ranged between 1 900 and 7 400 tons per annum, and in the 2000s between 2 600 and 13 900 t. In 2004 the squid jig fishery registered its highest catch of just below 14 000 t. Departmental data indicates an increase in jig catches over the period 2001 to 2004, followed by catches stabilizing at approximately 9 000 t between 2005 and 2008, and then increasing again to just over 10 000 t in 2009 and 2010. After 2010, annual catches in both the jig and trawl fisheries declined, reaching an almost record low level in 2013, since the inception of the commercial jig fishery. It is encouraging to note that this declining trend subsequently reversed, increasing to over 13 000 t in 2018. Between 1986 and 1988, a licensing system was introduced with a view to limiting the number of vessels participating in the fishery.
- 2.2.3. The chokka squid fishery is effort-controlled and was historically capped at a maximum of 2 422 crew with the number of vessels commensurate with the number of persons permitted to fish. The approved Squid Total Allowable Effort (TAE) for the 2021/2022 fishing season is 2 422 crew and 295 000 person-days. A mandatory five week closed season (October—November each year) has been implemented since 1988, with the intention of minimising disturbance to spawning squid and improving recruitment the following year. Furthermore, an additional closed season (in the range of three to five months duration) has been implemented since 2014 to guard against the TAE in person-days being exceeded.

- 2.2.4. The management objective for the chokka squid fishery is to cap effort at a level which secures the greatest catch, on average, in the longer term without exposing the resource to the threat of reduction to levels at which future recruitment success might be impaired or catch rates drop below economically viable levels.

2.3. Current resource users

During the 2013 rights allocation process rights were allocated to 93 applicants and an additional 8 rights were allocated through the appeal process amounting to a total of 101 Right Holders in the Squid commercial sector. Fishing occurs mostly in the inshore waters off the Eastern Cape, between Plettenberg Bay and Port Alfred. Squid is landed by the hake-directed demersal trawl fishery as by-catch. The resource is also used by recreational fishers, as well as in the commercial traditional linefish, hake-handline and tuna-pole sectors, which allow a maximum of 20 squid per person per day, for personal consumption, and may not be sold. The Small-Scale Fisheries (SSF) sector has also been allocated a portion of the Squid resource TAE. This is an effort managed fishery therefore, no upper catch limit is set for commercial fishing.

2.4. The biological status of the squid fishery

- 2.4.1. Chokka squid are fast growing, and their total lifespan is less than two years. Sexual maturity is attained approximately within one year of hatching or less. The maximum observed mantle lengths are 48 centimetres for males and 28 centimetres for females. Squid reproduce throughout the year with a peak in summer, and areas where reproductive activity occurs are influenced largely by environmental conditions. Spawning occurs on the seabed, mostly in inshore areas of less than 60 m depth, and occasionally in deeper waters. The chief prey items for squid include fish and crustaceans, but they also sometimes feed on other cephalopods, and cannibalism is fairly frequent. The abundance of squid fluctuates widely, mainly due to biological factors such as spawning distribution and survival rates of hatchlings and juveniles, and environmental factors such as temperature, currents, turbidity, and macro-scale events such as *El Niños*.

2.4.2. Chokka squid is a crucial component of the inshore ecosystem of South Africa as the 4th largest fishery in the country. Some adaptive measures to climate change should potentially be incorporated into the management of the fishery (Augustyn et al 2015). The species response to climate change will require specific research locally before we can fully grasp potential impacts of global climate change.

3. The 2013 fishing rights allocation process

- 3.1. During the 2005 Long Term Rights Allocation Management Process (LTRAMP), it was noted that the calculation of an effort limitation for the chokka squid fishery had to be expressed in terms of the number of person-days permitted in the fishery. However, the conversion of person-days to a more practical equivalent number of persons ("fishers"), proved problematic. At that time, there were over 2 000 persons actively engaged in the squid fishery and it was noted that if re-allocated Rights amounted to about the same number of crew, then the days spent at sea would also be limited to less than the average (150 days at that time), so as not to exceed the then recommended effort level of 300 000 person-days. However, such a limitation was not formally recommended at the time as it was envisaged that the allocation process would result in fewer rights being granted than was the case. Upon finalisation of LTRAMP, however, it was clear that the reduction in rights was not realised, and the final number of crew allocated amounted to 2 422 fishers.
- 3.2. Prior to the 2013 Fishing Rights Allocation Process (FRAP) in the Squid sector, it was both necessary and important for the process to take place on a self-consistent basis so that the allocations were in line with the appropriate level of fishing effort for the resource as indicated by the then updated assessment results (i.e. a target level of 250 000 person-days). This was particularly important given the intention of the Department to extend Rights allocations to include Small Scale Fishers. A process was required to ensure the Rights allocation was effected in a way that respected the fishing limitations.
- 3.3. In 2013 it was explained that if, for example, all those who are allocated Rights fished for a realistic maximum number of days a year (e.g., 210 days per Right Holder), and Rights continued to be granted to 2 422 fishers, then the effort expended would amount to approximately 509 000 person-days. This would greatly exceed the recommended target effort level of 250 000 person-days, which

would have severe adverse long-term consequences for the fishery. Consequently, it was recommended, in the absence of updated data on the number of persons granted fishing Rights (pending the appeals process), that the then current target effort level of 250 000 person-days translated to 1 190 commercial fishers, based on a realistic maximum number of 210 sea days per Right Holder.

- 3.4. In subsequent amendments to the 2013 assessment, the average number of days spent at sea per squid fishing vessel was calculated at 150 days. It was noted that if an additional closed season of four (4) weeks was introduced, this would likely reduce the number of sea days to about 140. Based on this assumption, an effort level of 250 000 person-days would translate to 1 786 commercial fishers. Furthermore, if Rights were to be allocated on 75:25 ratios to commercial: small scale fishers, accommodating new entrants at the small scale fisheries level would necessitate a reduction in the number of commercial fishers to 1 339. However, on conclusion of the 2013 Rights allocation process, 2 443 commercial fishers were allocated squid fishing Rights and Small-Scale fishers were yet to be accommodated under the Small-Scale Fisheries allocation process.
- 3.5. After having considered all the representations by the public, the Director-General, as the delegated authority in terms of the Marine Living Resources Act, 1998 decided in terms of section 14(2), to apportion fifteen percent (15%) of the Squid Total Allowable Effort to the Small-Scale Fisheries sector and 85% of the Squid Total Allowable Effort to the commercial sector.
- 3.6. The apportionment took effect from the start of the 2021/22 squid fishing season and will be reviewed at the beginning of every fishing season with the view of increasing the apportionment of the Small-Scale Fisheries sector from a minimum of 15% to a maximum not exceeding 25%, without exceeding the recommended target effort level.

4. Objectives

The objectives of the Squid Fishery Policy: 2021 are to:

- (a) Set out the criteria for the assessment (exclusionary and balancing criteria) of applications for the allocation of commercial fishing rights in the squid fishery.

- (b) Promote meaningful transformation and growth in the Squid fishery in terms of factory ownership, export, value adding and diversification of squid products, vessel ownership and management, development of skills for skippers, crew and shore personnel.
- (c) Increase of the overall transformation profile of the fishery through consideration of specific demographic groups with a focus on Designated Groups, women and persons with disability in allocation of commercial fishing rights to successful applicants.
- (d) Adherence to Basic Conditions of Employment Act 75 of 1995 as well as the Labour Relations Act 66 of 1995.
- (e) Ensure sustainable utilisation of the squid resource through:
 - I. allocation of fishing rights who are reliant on squid as their main source of income and employment;
 - II. persons who are prioritised based on demographics;
 - III. determination of TAE or input control;
 - IV. Permitting;
 - V. Law enforcement and Observer at sea and land-based monitoring; and
 - VI. other provisions provided for by the MLRA, Regulations, the General policy:2021, this Policy etc.

PART B: COMMERCIAL FISHING RIGHTS ALLOCATION PROCESS

5. Application for commercial fishing rights

The process of submitting applications for the allocation of commercial fishing rights in the squid fishery is as outlined in the General Policy: 2021.

6. 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.

6.1 Exclusionary criteria

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

- (a) **Compliance:** Applicants, including their members, directors or controlling shareholders that have been convicted of an offence in terms of the MLRA, the Regulations or permit conditions will not be allocated a Squid fishing right. This does not include the payment of an admission of guilt fine. Applicants, including their members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or the Regulations or permit conditions, or assets seized under the Prevention of Organised Crime Act 21 of 1998 or the MLRA, will also not be allocated a Squid fishing right.
- (b) **Paper Quotas:** Applicants who apply for rights under FRAP 2021, and who are found to be Paper quota holders as defined in the draft General Fisheries Policy of 2021 will be excluded.
- (c) **Fronting:** Applicants who apply for rights under FRAP 2021, and who are found to be engaged in Fronting as defined in the draft General Fisheries Policy of 2021 will be excluded..

6.2 Comparative Balancing Criteria

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the draft General Fisheries Policy for further detail. Weighting and scoring criteria will be developed for Categories A, B and C applicants separately and the relative weight of each criterion will differ between Categories. For all categories, investment in the sector and access to infrastructure will be heavily weighted with job creation and sustainable employment, value adding and enterprise development, transformation, and performance also important. Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department.

(a) Balancing criteria: Category A / previous right holder applicants

(i) Compliance

- (a) The minor violation period regarding the applicant's conviction of an offence under the MLRA, or the regulations or permit conditions referred to in paragraph 7.1.5 (a)(i) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (b) The minor violation period regarding the applicant's payment of an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions referred to in paragraph 7.1.5(a)(ii) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (c) The minor violation period regarding the applicant's fishing right or permit suspension or reduction referred to in paragraph 7.1.5(a)(iii) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (d) The substantive violations period regarding the applicant having entered a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions referred to in paragraph 7.1.5(a)(iv) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (e) The substantive violations period regarding the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 referred to in paragraph 7.1.5(a)(v) of the General Policy: 2021 shall be from the year 2014 to 2020.

(ii) Access to suitable vessel

- (a) A suitable vessel referred to in paragraph 7.1.6 (a) and (b) of the General Policy: 2021 shall in the squid fishery be one that is:

- (1) a commercial fishing vessel that is equipped with gear to catch squid, using the jigging method and has suitable overnight facilities for crew members in terms of SAMSA merchant shipping regulations.
- (2) HACCP compliant and meets the National Regulator for Compulsory Specifications (NRCS) requirements and specifications to store and freeze squid.
- (3) of a minimum SAMSA registered length of eleven (11) metres and a crew capacity of up to 12 crew.
- (4) of a maximum SAMSA registered length of twenty-five (25) metres with a maximum crew capacity of 32 crew.

(iii) Fishing performance

In addition to what is prescribed in the General Policy: 2021, an applicant will be awarded a weighted score based on:

- (a) Number of crew utilised out of total crew (TAE) allocated during the validity of the commercial squid right that was allocated in the previous 2013 Fishing Rights Allocation Process.
- (b) Number of persons days utilised out of the total number of persons days (TAE) that were allocated during the validity of the commercial squid right that was allocated in the previous 2013 Fishing Rights Allocation Process.

(b) Balancing criteria: Category B applicants

(i) Compliance

- (a) The period regarding the applicant's conviction of an offence under the MLRA, or the regulations or permit conditions referred to in paragraph 7.2.5 (a) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (b) The period regarding the applicant having entered a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit

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conditions referred to in paragraph 7.2.5 (b) of the General Policy: 2021 shall be from the year 2014 to 2020.

- (c) The period regarding the applicant's payment of an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions referred to in paragraph 7.2.5(a)(ii) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (d) The period regarding the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 referred to in paragraph 7.2.5(a)(v) of the General Policy: 2021 shall be from the year 2014 to 2020.

(ii) Access to suitable vessel

- (a) A suitable vessel referred to in paragraph 7.2.6 (a) and (b) of the General Policy: 2021 shall in the squid fishery be one that is:
 - (1) a commercial fishing vessel that is equipped with gear to catch squid, using the jigging method, equipped with now more than two anchors and has suitable overnight facilities for crew members in terms of SAMSA merchant shipping regulations.
 - (2) HACCP compliant and meets the National Regulator for Compulsory Specifications (NRCS) requirements and specifications to store and freeze squid.
 - (3) of a minimum SAMSA registered length of eleven (11) metres and a crew capacity of up to 12 crew.
 - (4) of a maximum SAMSA registered length of twenty-five (25) metres with a maximum crew capacity of 32 crew.

(c) Balancing criteria: Category C / new entrant applicants

(i) Compliance

- (a) The period regarding the applicant's conviction of an offence under the MLRA, or the regulations or permit conditions referred to in paragraph 7.3.4 (a) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (b) The period regarding the applicant having entered a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions referred to in paragraph 7.3.4 (b) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (c) The period regarding the applicant's payment of an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions referred to in paragraph 7.3.4 (c) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (d) The period regarding the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 referred to in paragraph 7.3.4 (d) of the General Policy: 2021 shall be from the year 2014 to 2020.

(ii) Access to suitable vessel

- (a) A suitable vessel referred to in paragraph 7.3.6 (a) and (b) of the General Policy: 2021 shall in the squid fishery be one that is:
 - (1) a commercial fishing vessel that is equipped with gear to catch squid, using the jigging method, equipped with no more than two anchors has suitable overnight facilities for crew members in terms of SAMSA merchant shipping regulations.
 - (2) HACCP compliant and meets the National Regulator for Compulsory Specifications (NRCS) requirements and specifications to store and freeze squid.

- (3) of a minimum SAMSA registered length of eleven (11) metres and a crew capacity of up to 12 crew.
- (4) a maximum SAMSA registered length of twenty-five (25) metres with a maximum crew capacity of 32 crew.

7. **Granting of Commercial Fishing Rights**

Commercial fishing rights in the Squid fishery are granted in terms of Section 18 of the MLRA. Unless otherwise determined by the Minister, only South African persons shall be granted and/or hold Rights in terms of Section 18 of MLRA.

7.1. **Form of Right Holder in the Squid fishery under the commercial sector**

Having regard to the nature of operations and resource accessibility the following South African persons will be considered for a right in the Squid fishery:

- (a) Close Corporations (legal entity).
- (b) Companies (legal entity).

7.2. **Duration of Rights**

Having regard to the Rights Allocation Process, and the need to encourage investment, a Fishing Right in the Squid fishery under the commercial fishing sector will be granted for a period of 15 years, thereafter, it shall automatically terminate and revert back to the State.

8. **Multi-sector involvement**

- 8.1. Right-holders in the Squid fishery under the commercial sector are not precluded from holding rights in any other sectors and is in line with paragraph 7.1.1 (a) and (b) of the General Policy: 2021.

9. **Application and Grant-of-Right fees**

- 9.1. The fees will be published separately in terms of section 25 of the MLRA and made available at the time of application.

Draft Policy on Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2021

- 9.2. The fees for this fishery will be determined having regard to:
- (a) The cost of the entire Rights Allocation Process, including consultation, receipting, evaluation of applications, verification, appeals and reviews.
 - (b) The value of the resources in the fishery being allocated over the duration of the Right.
 - (c) The consumer price index (CPIX).

- 9.3. The Grant-of-Right fee is payable by all successful applicants upon the Granting of Right.

10. Transfer of Commercial Fishing Rights and/or Shares and/or Members' interests in the squid fishery.

- 10.1. In terms of Section 21 of the MLRA the Minister may approve the transfer of Fishing Rights in whole or in part. However, Rights Granted in the fishery in terms of Section 18 or Section 21 of the MLRA shall not be transferred within the first three (3) years of being granted. Rights granted in this fishery shall not be transferred within the last two (2) years before the Right expires.
- 10.2. Commercial Right Holders in the Squid fishery shall in transferring their Squid Commercial Fishing Rights or parts thereof (e.g., a portion of their allocated crew and/or apportioned TAE and/or shares and/or members' interests) adhere to the provisions of Section 21 of the MLRA and the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof ("the Transfer Policy: 2021").
- 10.3. Any transfer of shares or members' interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members' interest should be dealt with in light of the Transfer Policy.
- 10.4. A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred. In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder result in a change of control of the entity, or in the entity being less

transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity.

- 10.5. Right Holder in this Fishery should refer to the Transfer Policy: 2021 for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this Policy and the Transfer Policy, the provisions of the Transfer Policy shall take precedent.

11. Management Measures Sustainable utilisation of the squid resource

11.1. TAE or input control

- (a) The Squid TAE to be allocated to existing fishing sectors thereof shall be determined annually or seasonally in terms of the provisions of Section 14 of the MLRA.
- (b) Ten percent (10%) of the determined portion of the Squid commercial TAE may be reserved for appeals during the rights allocation process.
- (c) Closed season for squid shall be determined annually and set for the squid fishery to prevent the determined TAE from being exceeded, and/or
- (d) The determined portion allocated to the Squid fishery in the commercial fishing sector shall be apportioned proportionally to rights holders allocated commercial fishing rights in the squid fishery.

11.2. Permitting

- (a) The successful rights holders in the Squid fishery under the commercial sector will be required to apply for and fish permits in terms of the provisions of Section 13 of the MLRA to exercise commercial Rights granted in terms of the provisions of Section 18 of the MLRA, the General Policy: 2021, this Policy, and the 2021 Transfer Policy.

- (b) The vessel owner shall apply for a vessel-based Fish Processing Establishment (FPE) permit in terms of the provisions of Section 13 of the MLRA to exercise their commercial rights granted in terms of the provisions of Section 18 of the MLRA, the General Policy:2021, this Policy, and the Transfer Policy: 2021.
- (c) The permit will, in terms of Section 13, be issued together with the permit conditions.

11.3. Law enforcement

- (a) The permit holders will be required to adhere to the provisions of the MLRA and its Regulations, the relevant Policies, and the permit conditions in exercising their Rights.

12. Observer at sea and land-based monitoring

- 12.1. The Department considers that a shore-based monitoring programme is the most suitable programme to collect data from the fishery. On board observer coverage or electronic monitoring (EM) may become mandatory and successful applicants should be responsible for bearing the related cost. The Department will work with RH's and industry associations to enhance and possibly automate at-sea monitoring, offloading (inspection of any other species landed) and data capturing through the use of technology (cameras).

13. Contraventions

- 13.1. Failure to comply with the provisions of the MLRA, the Regulations, the permit conditions, the General Policy: 2021, Squid Policy: 2021 and the Transfer Policy: 2021 should result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.
- 13.2. A breach of the provisions of other related acts included in the Permit conditions by the Right Holder, or their employees (whether permanent, full-time or part-time), their contractors, agents or advisers and the skipper of the vessel; may result in the initiation of legal proceedings, (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

- 13.3. A failure to utilise their Squid commercial Fishing Right for two fishing seasons without any reasonable explanation; may result in the initiation of legal proceedings (which may include initiation of Section 28 proceedings in terms of the MLRA and or criminal proceedings).

14. Monitoring and evaluation of the policy

- 14.1. The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years from the date of finalisation of the appeals.
- 14.2. 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:
- (a) Transformation.
 - (b) investment in vessels and gear.
 - (c) bycatch mitigation compliance with applicable laws and regulations.
- 14.3. During the performance measuring exercise, any Right Holder that has been found to have contravened any condition upon which the Right was granted for, may result in the initiation of legal proceedings, (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

APPROVAL SIGNATURE



NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY FOR THE ALLOCATION AND MANAGEMENT OF
COMMERCIAL FISHING RIGHTS IN THE COMMERCIAL TRADITIONAL LINEFISH SECTOR:
2021**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE
ALLOCATION OF COMMERCIAL FISHING RIGHTS: 2021 AND THE DRAFT POLICY FOR THE
TRANSFER OF COMMERCIAL FISHING RIGHTS:2021**

(Available at www.environment.gov.za)

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1. INTRODUCTION

This draft policy on allocation and management of fishing rights in the Commercial Traditional Linefishery is issued by the Minister of Forestry, Fisheries and the Environment (the Minister) and shall be referred to as "Draft Policy on Allocation and Management of Commercial Traditional Linefishing Rights: 2021". This draft policy must be read with the draft General Policy on the Allocation of Commercial Fishing Rights: 2021 (the Draft General Policy: 2021). The draft Policy for the Transfer of Commercial Fishing Rights: 2021

The Minister has, in terms of section 79 of the Marine Living Resources Act 18 of 1998 (the MLRA), delegated the power to grant fishing rights contained in section 18 of the MLRA, to Senior Officials of the Department of Forestry, Fisheries and the Environment (the Department).

This draft policy sets out the objectives, criteria and considerations that will guide the allocation of fishing rights in the Commercial Traditional Line fishery. This draft policy will guide the Delegated Authority in taking decisions on applications in this fishery.

2. PROFILE OF THE FISHERY

The definition of linefishing in South Africa is the capture of fish with a hook and line, but excludes the use of longlines – linefishing is restricted to a maximum of 10 hooks per line, whether handheld or on rod.

2.1 History of the Traditional Linefishery

The origin of the boat-based linefishery can be traced back to the 1500s. In 1652, restrictions were imposed on the fishery by the Dutch administration and the fishery was slow to develop despite the abundance of fish. In 1795, all restrictions were lifted under new British rule which resulted in a thriving linefish industry by the mid-1800s operating from row and sail boats. Fishing effort around the Cape at the beginning of the 20th century was already quite considerable (between 0.12 and 0.37 boats per kilometre coastline). The sharp increase in fishing effort, technological advances such as echo-sounding equipment, nylon lines, motorised ski-boats on trailers, the construction of small boat harbours and slipways, and the ever increasing offtake of linefish by other

fleets, led to severe overfishing of most of the linefish populations in the last quarter of the 20th century.

First attempts to manage the commercial linefish sector date back to 1940 with the introduction of minimum size limits in response to observed population declines of some species. Around the same time, towable ski-boats were introduced and the recreational boat-based sector expanded rapidly. The need for management became clear and the Minister responsible for Environmental Affairs appointed a National Marine Linefish Committee (NMLC) in 1984 to develop management proposals for the South African linefishery. In 1985 the linefishery was formally recognised, catch returns were made mandatory for commercial fishers and a set of catch limits were introduced. Restrictions and controls included in the 1985 management framework were commercial fishing licenses (fulltime-A category and part-time-B category) and revised minimum size limits equalled to size at maturity. The management framework included revised minimum size limits, daily bag limits, closed seasons, a commercial ban for certain species, and the freezing of the commercial effort at the 1984 level. Although the basic life-histories of some important species had been studied, most remained unknown. At the time of their implementation, the limited scientific data available meant that many bag limits were too large and size limits were inappropriate and did not offer any tangible protection. Furthermore, little information was available on the size and rate of growth of many linefishes in South Africa.

Different management requirements between the Commercial and Recreational sectors eventually resulted in the NMLC being replaced by the newly establish and independent South African Marine Linefish Management Association (SAMLMA) in 1990. By providing a channel for negotiation between the representatives of all sectors, management measures implemented were again a compromise between conflicting views of the sectors. This often led to widespread dissatisfaction among fishers from different sectors.

The management framework also provided for a division of the species into categories based on apparent exploitation vulnerability (i.e. more vulnerable reef species and more resilient shoaling species). Despite the imposed restrictions, catch rates of many species have continued to decline and stock assessments indicated that the so-called more resilient migratory species were severely over-exploited. Research surveys revealed that the regulations have failed to provide a substantial measure of resource protection. It is argued that either the restrictions themselves were not limiting or they may have been poorly enforced. As a result of declining stocks and the increasing claim for access

to the fishery, a substantial revision of the management procedure became necessary to prevent possible stock collapse. In December 2000, the Minister of Environmental Affairs and Tourism, taking cognisance of the critical status of many linefish stocks, declared the linefish resource to be in a State of Emergency, as provided for in the Marine Living Resources Act (MLRA, Act 18 of 1998). Effort was reduced by 70% to the current 455 vessels and 3450 crew allocated in the Long-Term Rights Allocation and Management Process of 2005/2006 (LTRAMP 2005). The hake and tuna components were developed into separate sectors and large deck-boats with overnighting capacity were taken out of the fishery. To rebuild collapsed stocks and to achieve a sustainable level of utilisation, a Linefish Management Protocol (LMP) was developed in 1999 in order to base regulations in the linefishery on quantifiable reference points. A comprehensive set of species-specific management plans was developed and regulations pertaining to species mainly caught by recreational fishers were introduced. Despite these bold measures, the linefishery continued to decrease with regard to catches and formal participants. Even though recent stock assessments (Linefish Scientific Working Group 2017) indicate a recovery in some of the main linefish populations, Commercial Traditional Linefishing continues to be a labour intensive, low earning activity at the edge of economic viability, as linefishers have to compete with demersal trawl, shark longline, hake handline, squid, prawn-trawl sectors as well as small-scale, interim relief and illegal recreational operators when selling their catch.

2.2 Linefish management and recent fishery profile

Together, the three sectors of the linefishery (Commercial, Small-scale and Recreational) access inshore marine resources, at times competing for the same species.

The current Commercial Traditional Linefishery operates from access points around the entire coast, from Port Nolloth to Richard's Bay. The majority of current linefish vessels are trailerable ski-boats that can be towed and launched at different access points, from slipways and even from the beach. Traditional displacement-type vessels ("chukkie") are still in use in some fishing communities such as Arniston and Kalk-bay. These boats require harbours and have inferior range and speed to the high-powered ski-boats.

The Small-scale sector was legally created to recognise those fishers who depend on marine living resources for direct food security – usually poor coastal communities or those using simple traditional fishing methods. There are an estimated 30 000 small-scale fishers active along the South African coastline, 85% of whom harvest linefish. Small-scale fishers have been formally organised into co-operatives which will be

targeting a 'basket' of species that includes linefishes. The first small-scale co-operative was launched in Port Nolloth in September 2018. More than 300 communities in the four coastal provinces have been identified as small-scale fishing communities. These community co-operatives will be given 15-year small-scale fishing Rights and each will be able to access a "basket" of species based upon their needs and location along the coast. As these species are shared with other fisheries and are identical to those of the traditional linefishery for the boat-based component of the small-scale fishery, vessel and crew effort allocations to small-scale co-operatives is determined within the overall Linefish Total Allowable Effort.

The Recreational linefishery (including the shore-based sector) has by far the largest number of participants (>450 000) of all fishery sectors in South Africa and consequently has great socio-economic value. This is especially important to coastal regions dependent on the tourist trade, but also to industries associated with the small craft, outboard motor, fishing tackle and bait trades.

The commercial traditional linefishery is divided into three different management zones, zones A to C, respectively Port Nolloth to Cape Infanta, Cape Infanta to Port St John's and Port St John's to Kosi Bay. The three zones have different fishery profiles in terms of operations and target species. Zone A has by far the largest number of participants, due to the availability of Cape snoek, *Thyrsites atun*, the species that constitutes more than half of the entire linefish catch in some years. Zone B and Zone C are reliant on a larger variety of species. The excess fishing pressure exerted on this fishery over decades has reduced some linefish populations to exceptionally low levels. Productivity and hence annual catches are seriously compromised, with negative ramifications for job creation, tourism and food security. In addition, the risk of stock collapse, as has already occurred for some species that previously constituted some of the main targets of the fishery in the B and C zones, such as the seventy-four, dageraad and red steenbras, is high. The reduction in effort and the separation from sectors that use large deck-boats with overnighing capacity has stabilised catches and some of the primary target species have shown signs of rebuilding. However, it is of concern that high levels of illegal activity (fishing inside MPAs, non-compliance with size and bag limits) and the Interim Relief measures (~1 000 additional fishers) have hampered the recovery of numerous stocks that are of local importance. Moreover, unregulated recreational and small-scale fishing effort and the high levels of catch and by-catch of linefish in other fisheries continue to jeopardise the sustainability of this fishery. Sustainability of the South African Linefishery is intrinsic to its management, and the Linefish Management Protocol (LMP) has clear objectives to "*manage the linefish resources of South Africa*

so as to ensure the equitable and optimum sustainable utilisation of these resources". The specific goal of the LMP with reference to determining annual catch and effort levels is to *"actively facilitate the recovery of over-exploited linefish stocks, and to maintain such stocks at optimum levels of production"*.

The traditional commercial linefishery is currently managed through effort allocation. However, changes in the fishery dynamics in recent years (including introduction of the small-scale sector, interim relief, increasing by-catch of linefish by the trawl fisheries and uncertainty regarding the magnitude of catch in the recreational sector) and changes in the assessment methodology necessitated an update of the effort determination and effort management in the linefishery. The baseline effort for the traditional fishery is determined by the number of vessels per management zone. To account for the difference in fishing capacity among the different linefish vessels, the effort is shown in terms of 'standard' vessels. A vessel with the standardised fishing capacity of 1 is defined as a medium-sized linefish vessel with a crew of 7. The underlying calculations are based on long term catch data and details are provided in each annual Scientific Recommendation document. In addition to the effort limits, individual species are managed with bag, size and area limits, as well as closed seasons, based on scientific recommendations of the Linefish Scientific Working Group. These output restrictions also pertain to the recreational and the small-scale sector. A review of some of these limits has been concluded and the gazetting of the changes in these limits has been signed off by the delegated authority, but the long turnaround times when changing these management measures has in the past jeopardized their effectiveness.

2.3 Target Species Information and Resource Assessment

Species targeted in the linefishery display diverse life-history strategies, including many traits that cause populations to be particularly vulnerable to over-fishing or slow to recover, including long life-spans (>20 years), estuarine-dependence, sex change and aggregating behaviour. Many of the species are endemic to South Africa and are not shared with our coastal neighbours. Target species include reef-fishes (e.g. roman and slinger), coastal migrants (e.g. geelbek and dusky kob) and nomads (e.g. snoek and yellowtail). Linefishes are typically predatory and include a number of apex predators (i.e. sharks, rockcods, red steenbras, etc.). Although the linefishery catches over 200 species, ninety percent of the current catch is made up of only eight species (snoek, yellowtail, silver kob, geelbek, carpenter, hottentot, slinger and santer). Most linefish species are not exclusively caught by the linefishery but may form important components of the catch or the by-catch of other fisheries, including the tuna pole, hake handline, demersal shark longline and trawl fisheries. Stock assessments conducted in the mid-

1990s revealed that most commercially exploited linefish stocks were severely depleted or had collapsed. Hardest hit had been the resident reef fish which are long-lived and slow to reach sexual maturity such as the dageraad (*Chrysoblephus cristiceps*), those that form spawning aggregations, such as seventy-four (*Polysteganus undulosus*) and red steenbras (*Petrus rupestris*), but coastal migrants such as dusky kob (*Argyromus japonicus*) and geelbek (*Atractoscion aequidens*), which form predictable aggregations during key life-history stages such as spawning, had equally collapsed. The only exceptions to these collapses were the more resilient pelagic nomadic species such as snoek (*Thyrsites atun*) and yellowtail (*Seriola lalandi*) whose unpredictable location makes targeting more difficult, and faster growth enables quicker stock recovery. The eight primary target species of the traditional fishery (together comprising more than 70% of the catch per management area) are being comprehensively assessed on average every seven years. Assessments are only performed for these species as they form the basis for the effort allocation per area. The latest assessments have been undertaken in 2017 and indicate that five of the eight species are optimally utilised, whereas two species, the silver kob and the geelbek are severely overexploited.

Other locally important linefish species are assessed less frequently, but changes in their populations are monitored by analysis of change in Catch per Unit Effort, Size-frequency, catch and standardised demersal survey indices. Assessments of the two most important shark species caught by the linefishery in Zone A and B, the smoothhound and the soupfinshark, conducted in 2019, indicate that these species are currently severely overfished and in case of the soupfin shark. The assessment of a number of reef-associated species indicate that some of them, such as the blue hottentot, show signs of recovery, whereas others, such as Dageraad, Red Steenbras and Seventy-four remain collapsed. Information on stock status and management advice on individual species is contained in the annual recommendation of the Linefish Scientific Working Group.

3. FISHING RIGHTS ALLOCATIONS PRINCIPLES

Although some species have shown signs of recovery, overall Linefish resources are still diminishing due to overexploitation or due to competition by other fisheries (LSWG TAE 2021). Consequently, the linefishery continues to decline in terms of catches and number of participants. A significant number of previous Rights Holders have performed poorly during this period and only 67% of Rights Holders showed any catch performance. Linefish catches continued to decline to from over 12000 tonnes to an all-

time low of around 5000 tonnes, indicating that the fishery in its current state struggles to remain economically viable. The overarching principle for allocating linefish rights is to allocate the available linefish resources in the three management areas to traditional linefishers who are directly dependent on the resource and utilise it as their main source of income. The linefishery is 60% black owned, but overall transformation levels are much higher, as the large majority of crew and peripheral workers is black. The involvement of females (6%) in linefish ownership needs to be considerably strengthened and the fishery has, despite the relatively low investment costs, a very small percentage of young Right Holders (7%).

The 2021 Rights allocation will build on the experience of the last two rounds of allocations and will consider:

- (a) The availability, size and current stock status of the primary linefish species in the three management areas.
- (b) The catch performance of the fishery in the three management areas during the last allocations.
- (c) The type, number and size of vessels in operation during previous allocations.
- (d) The overlap with other fisheries in terms of target and by-catch species and vessel utilisation.
- (e) The economic viability of the fishery.
- (f) Cross-sectoral involvement.
- (g) The transformation profile of the fishery, in particular regarding women and youth.
- (h) Skills development and professionalisation of shore personnel, skippers and crew.
- (i) Upliftment of traditional linefishing communities.

4. OBJECTIVES

The over-all objectives of allocating long term fishing rights in the traditional line fish sector are:

- (a) The effective utilisation of the rights allocated in this fishery, within the gear and vessel specifications and management framework outlined in this policy.
- (b) Optimal, sustainable use of the linefish species in accordance with best available scientific information in line with the Ecosystem Approach to Fisheries (EAF).
- (c) Rebuilding of over-exploited and collapsed linefish stocks to achieve maximum economical yield.
- (d) Allocation of commercial rights to traditional line fishers reliant on traditional line

fishing for their main source of income.

- (e) Allocation of a fair proportion of rights to applicants based at fishing harbours that are historically associated with traditional line fish catches.
- (f) Promotion of adherence to Basic Conditions of Employment Act 75 of 1995 as well as the Labour Relations Act 66 of 1995.
- (g) Professionalization of the fishery and its operations in terms of compliance, safety, product quality and adherence to regulations. [Labour relations, SAMSA etc.]

5. GRANTING OF FISHING RIGHTS

Fishing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister, only South African persons shall acquire or hold rights in terms of section 18 of MLRA. In this fishery, the Minister has not exercised her power to allow persons of other nationalities to acquire rights, meaning that only South African persons can acquire or hold rights in this fishery.

5.1 Form of Right Holder

Having regard to the nature of operations and resource accessibility only South African individuals will be considered for a right in the Commercial Traditional Linefishery.

5.2 Duration of Rights

Having regard for the decline in the resources caught in this fishery and the need to apportion these among this and the emerging small scale fishery, Fishing rights in the Commercial Traditional Linefishery will be granted for a period of 7 years where after they shall automatically terminate and revert back to the State. Significant upward changes in the resource can only be measured reliably in that time frame.

5.3 Same household individuals

The same household may not be granted more than one right in the fishery applied for, so as to avoid fronts and monopolies and to broaden access. Applicants are required to disclose their relationship to other applicants in other commercial fisheries. If more than one member of the same household applies for a right, the Department may engage the applicants and thereafter determine who the preferred successful applicant will be. The Delegated Authority may also consider dividing one fishing right between the successful applicants if they all qualify for a fishing right in the fishing sector applied for.

5.4 Deceased applicants

Applications from individual applicants who became deceased during the process of assessment of the applications and on/or before a right to engage in commercial fishing activity in a fishing sector is decided will be assessed in terms of the set criteria. If an applicant is deceased after the right has been granted only an Executor or Master's Representative, whose appointment has been confirmed by the Master of the High Court, may deal with the assets and liabilities of a deceased's estate.

Family member(s) of the deceased applicant shall immediately inform the Department, in writing, after such applicant is deceased. On receipt of the notification of a deceased applicant, the Delegated Authority, may in terms of section 82 of the MLRA order an enquiry into the matter.

5.5 Transfer of Rights Allocated in Terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in the fishery in terms of the MLRA shall not be transferred within the first 3 years of being granted.

6. EVALUATION CRITERIA

Applicants will be categorised into three tiers (Category A, B and C), based on their previous involvement in commercial fisheries, according to the draft General Policy: 2021. Applications will be screened in terms of a set of "exclusionary criteria". All applicants will thereafter be separately scored in terms of a set of weighted "comparative balancing criteria". A cut-off will then be determined in order to select the successful applicants and effort will be allocated to each successful applicant.

6.1 Exclusionary Criteria

Apart from the criteria described in the draft General Policy: 2021 pertaining to the lodgement of applications and material defects, the Delegated Authority will exclude applicants that fail to meet the following requirements:

(a) Compliance

Applicants, including their members, directors, controlling shareholders, representatives and skippers that have been convicted of an offence in terms of

the MLRA, its regulations or permit conditions, will not be allocated a Commercial Traditional Linefishing right. This does not include the payment of an admission of guilt fine.

Applicants, including their members, directors, controlling shareholders, representatives and skippers that have had a fishing right, license or permit, is revoked or cancelled in terms of the MLRA, its regulations or permit conditions, assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA, will not be allocated a Commercial Traditional Linefishing right.

(b) Paper Quotas

Applications from paper quota applicants, as defined in the draft General Policy: 2021, will be excluded.

(c) Fronting

Applicants who are found to be engaged in Fronting as defined in the draft General Policy: 2021 will be excluded.

(d) Access to a Suitable Vessel (Applicable to Category A, B and C Applicants).

Applicants will have to demonstrate direct ownership, direct part-ownership of, or direct access to a suitable vessel not owned nor part-owned by the applicants. Applicants who cannot demonstrate their planned direct fishing involvement in the Commercial Traditional Linefishing operations from nominated suitable vessel not owned nor part-owned by the applicants will be excluded.

Proof of ownership or part-ownership, together with the South African Maritime Safety Authority (SAMSA) registration certificate, and photos of the vessel needs to be included in the application. If the applicant has entered into a purchase agreement to acquire a suitable vessel on successful application, then proof of the sales contract must be provided. In the case of a new build vessel, the vessel plans, detailed costing from the vessel building company and proof of finance must be provided. Catch agreements in which a vessel owner fishes on behalf of a right holder will not be considered in this fishery. Applicants who cannot demonstrate access to a suitable vessel will be excluded.

(e) Non-utilisation

Category A Applicants that failed to effectively utilise their Commercial Traditional Linefishing right between the period 2013 to 2020 and/or have not collected a catch permit for 3 or more years will be excluded. Effective utilisation shall mean activation and having been issued with a permit to undertake commercial linefishing, landing of catch and subsequent submission of catch data for at least six years during the period 2013-2020. In addition, during the same period, previous Commercial Traditional Linefish Right Holders will be expected to have submitted catch return forms that confirm landings of at least 20 tonnes of linefish species over the right period.

Category B and C applicants will not be rated according to catch performance.

6.2 Balancing Criteria

Applicants will be evaluated in terms of the balancing criteria outlined in the Draft General Policy: 2021. In addition, the following criteria, specific to the Commercial Traditional Linefishery will be considered, which will be weighted in order to evaluate and assess applications:

(a) Fishing Performance

Performance on linefish species (Applicable to Category A Applicants only) measured in terms of effort and catch during the last allocation period.

(b) Data Submission

Submission of a complete set of catch return forms for the full duration of the last allocation period (Applicable to Category A Applicants).

(c) Value adding

Value adding and fisheries improvement such as, but not limited to, keeping fish on ice and introducing protocols to improve quality (Applicable to Category A Applicants only)

(d) Transformation

(i) An improvement of the transformation profile of the pool of applicants from the previous round of allocations will be considered (Applicable to Category A Applicants). The following will be considered positively: Increase in right

ownership, demonstrated increase in skilled personnel (i.e., skippers, competent crew) of designated groups, in particular ownership and direct involvement of historically disadvantaged individuals (HDIs), in particular females, youth and people living with disabilities.

- (ii) Overall transformation (Applicable to Category B Applicants). The following will be considered: Transformation levels with respect to ownership, skilled personnel (i.e., skippers, competent crew) of designated groups, in particular, female, youth and people living with disabilities.
- (iii) Overall transformation (Applicable to Category C Applicants) with respect to designated groups, in particular, female, youth and people living with disabilities.

(e) Multi-sector Involvement

Applicants in the Commercial Traditional Linefishery (including their controlling shareholders and members of their executive management team) will not be precluded from holding commercial fishing rights in other fishing sectors (Applicable to Category A, B and C Applicants). Applicants will have to apply separately for a right in the other fisheries sectors. Applicants that are intending to apply for rights in multiple fisheries sectors must consider vessel specifications and restrictions in the respective fisheries sectors. Vessels are only permitted to fish pursuant to one right at a time. Applicants that rely on Commercial Traditional Linefishing as their main source of income will receive preference.

(f) Reliance

All applicants will be rewarded for demonstrating historical involvement in the traditional line fishing industry for their livelihood such as being a skipper, a crewmember or shore-worker in the fishery. Preference will be given to applicants who actively participate in the fishery and rely on the harvesting of Commercial Traditional Linefish for a significant portion > 50% of their gross annual income above applicants deriving income from sources outside the fishery.

(g) Local Economic Development

To promote local economic development in economically depressed fishing towns, preference will be given to applicants that elect to land and process their catches

at harbours outside metropolitan areas (Applicable to Category A, B and C Applicants).

(h) Compliance

Applicants that have fished in line with the MRLA, its regulations or permit conditions will be preferred over applicants, including their members, directors, controlling shareholders, representatives and skippers that have paid admission of guilt fines for offences committed under the MLRA, its regulations or permit conditions.

7. EFFORT ALLOCATION

Effort allocation in the Commercial Traditional Linefishery will take into account previous catches in relation to the number of vessels and the stock status of primary target species per management zone. Given the decline in catch and the decline in effective utilization of previous rights in terms of performance, there is limited scope to increase the effort in this fishery. Accordingly, the Department aims to maximize effort according to the availability of the stocks in line with paragraph 4.2 of the General Policy on the Allocation of Commercial Fishing Rights 2021 and allocate in accordance with the current TAE a maximum of 455 standard vessels, divided between the regions in the manner set out below. The TAE per zone will be apportioned between the Small-scale and the traditional commercial linefish sector according to the percentage decided by the Delegated Authority. A standard vessel is defined as a vessel that can carry a crew of 7. Vessels with a maximum length overall of 10 meters and a maximum crewing capacity of 14, including the skipper, will be considered, as long as the maximum fishing power per zone is not exceeded. The maximum fishing power, determined based on previous performance of the fleet (LSWG TAE recommendation 2021) that can be sustained in each management area is as follows:

Maximum standard vessel allocation for the three Management Zones:

A	Port Nolloth to Cape Infanta	340
B	Cape Infanta to Port St Johns	64
C	KwaZulu-Natal	51

Figures here represent to total available effort per zone. Percentage allocation to the linefishery needs to be determined after considering the distribution of potential Small-scale effort in the zones.

7.1 Management Areas

Total Allowable Effort levels and management measures in the linefishery will be determined separately for each management area. Applicants have to nominate the management area in which they intend to fish. Right holders may only migrate their right to another management area on written motivated request and subject to approval by the delegated authority. Migration requests will only be considered if the targeted management area has available free effort.

Each successful applicant will be granted the right to use one vessel only. If all 455 vessels are not allocated, the delegated authority may allocate the remaining vessels to applicants who scored the highest number of points in the comparative balancing process in the region and who nominated more than one suitable vessel for catching line fish. The number of crew that may fish from any vessel will be restricted to the number appearing on the SAMSA safety certificate for the nominated vessel.

Ten percent (10%) of the TAE per management zone, in terms of standard vessels, has been set aside for internal appeals to the Minister. The unallocated portion of the 10%, if any, after appeals, will be allocated to the New Entrants first and then to successful applicants.

8. NEW ENTRANTS (Category B and C Applicants)

Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department. As far as new entrant applicants are concerned, the Delegated Authority will consider applicants that have made investments in the form of vessels, fixed assets and marketing infrastructure. In addition, new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity (access to a suitable vessel) to fish in the Commercial Traditional Linefishery. New entrants that can demonstrate historical involvement in the fishery as skippers, crew or shore workers will receive preference.

9. SUITABLE VESSELS

9.1 Vessel specifications

A suitable vessel in the Commercial Traditional Linefishery is a trailerable "skiboat" type vessel or a traditional replacement "chuckie" type vessel that

- (a) Has a maximum SAMSA overall length (LOA) not more than 10 meters and is registered for not more than 14 seafarers. Larger displacement-hull vessels (deckboats) with overnighing capacity and sleeping accommodation will not be considered even if they have been used to catch linefish in the past.
- (b) Is certified by SAMSA to have an operational range not exceeding 40 nautical miles.
- (c) Has a functioning vessel monitoring system or AIS system at the time of applying for a vessel license if the application is successful.
- (d) Is equipped with ice facilities.
- (e) Is a commercial linefishing vessel as opposed to a luxury yacht, a recreational vessel or recreational charter vessel.
- (f) Is, if it enters the fishery for the first time, rigged out specifically for Commercial Traditional Linefishing.

9.2 Vessel change

To avoid effort increase in this fishery, applicants will have to utilise the vessel nominated in the right application for at least three years before a vessel replacement upgrade in terms of size and crew number is possible. The delegated authority will consider vessels upgrades if the increased fishing power is within the stipulated limits of the vessel specifications only if there is under-utilised effort in the within the management zone that the right holder has nominated. The increase is restricted to a maximum of 2 m length over all and two additional crew members. If the nominated vessel becomes unavailable, applicants may nominate a replacement of similar size (within less than 5% difference in terms of length overall, tonnage, crewing level and horsepower).

10. PAYMENT OF APPLICATION AND GRANT OF RIGHT FEES

The fees will be published separately in terms of section 25 of the MLRA and made available at the time of application.

The fees for this fishery will be determined having regard to:

- (a) The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- (b) The value of the fish being allocated over the duration of the right.

The grant of right fee is payable by all successful applicants upon the granting of rights.

11. PROVISIONAL LIST

The Delegated Authority may issue a provisional list of successful applicants for comment on any aspect relating to an application in this fishery.

The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received, make a final decision.

The Delegated Authority may invite representations regarding the assessment of the applications in this before making a final decision.

12. ANNOUNCEMENT OF DECISIONS

The Delegated Authority shall after final decisions on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision.

The General Reasons for decisions in a specific fishery will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure outlining the scores obtained by all applicants in the Commercial Traditional Linefishery.

13. MANAGEMENT MEASURES

Listed below are some of the Department's principal, post-right allocation management measures for the Commercial Traditional Linefishery. A comprehensive management protocol, based on the principles outlined here will be developed after the allocation is complete. Effort levels in the Commercial Traditional Linefishery will be managed according to total allowable effort per management zone. Baseline boat-based effort for the long-term allocation of fishing rights is allocated taking into account the stock status of the primary linefish species per area. The boat effort by management zone is

determined by the product of the number of boats, including commercial and small-scale, and a weighing factor based on the fishing power of the individual boat. The 'standard' boat, used as a reference with a factor of one, is defined as a ski-boat of 7 m length with a maximum of 7 crew members including the skipper (Appendix I). Maximum crew and boat length are restricted to 12 and 10 m, respectively. The maximum allowed time on sea is 24 hours. Maximum effort in terms of standard boat units per management zone is fixed for the period of the long-term rights allocation.

13.1 Tools to adjust effort

To ensure stability and sustainability of the fishery maximum effort per zone, as described above, will only be adjusted on the basis of scientific evidence for a change in the resource. Effort will not be curtailed for the period of the allocation except in exceptional circumstances after all other management measures have failed. The exceptional circumstances are defined by extreme declines of standardised Catch Per Unit Effort trends of individual populations of primary species over a period of three years, by primary species dropping below 10% of the Biomass necessary to achieve Maximum Sustainable Yield.

Effort reduction mechanisms will be invoked in the following order, depending on the severity of the situation:

- (a) Restrictions on linefish by-catch in other fisheries that catch target species such as the recreational fishery, the trawl fishery, the squid fishery, the tuna-pole fishery and the hake-handline fishery
- (b) Restrictions on annual number of sea days
- (c) Effort reduction by reducing the number of vessels per zone

13.2 Management tools for individual species

Individual species that do not fall under the primary target species group are managed in terms of annual adjustment of size limits, bag limits, closed seasons and area limits, including Marine Protected Areas and Fisheries Exclusion Areas and moratoria, if required. Annual adjustments of individual species limits will be determined by the Linefish Scientific Working Group according to assessments, CPUE time series, availability time series, occurrence in the catch, and stakeholder concern. The details on the recommendation will be contained within standardised supporting documents (LSWG document number), which outline why a particular management tool is recommended.

13.3 Transfer of Commercial Fishing Rights

Subject to paragraph 5.4 above, Right Holders in this sector shall consider the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof (the Transfer Policy) when transferring their fishing rights.

13.4 Consolidation of Right Holders

Following 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.

13.5 Ecosystem Approach to Fisheries

This fishery will be managed in accordance with the EAF. EAF is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

13.6 Observer at Sea and Land Based Monitoring

The Department considers that a shore-based monitoring programme is currently the most suitable programme to collect additional data from the fishery. Electronic monitoring (EM) may become mandatory and successful applicants will be responsible for bearing the related cost. The Department will work with right holders and industry associations to enhance and possibly automate at-sea monitoring, offloading (species composition determination) and data capturing through the use of technology (cameras) on access points and vessels.

13.7 Co-management

The Department encourages right holders to organise themselves into recognised industrial bodies. The Department will work with recognised industrial bodies in the co-management of the fishery and provide regular updates on the status of the fishery and its resource.

14. PERMIT CONDITIONS

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful applicants in this fishery and will be revised as and when it may be necessary. Permit conditions related to species, time, area and gear limits will be revised annually dependent on best available scientific

evidence. [Include Management and SWGs].

15. MONITORING AND EVALUATION OF THE POLICY

The Department will monitor and evaluate the policy by instituting a number of formal performance measuring exercises for the duration of the seven (7) year period. It is envisaged that the first set of performance measuring exercises will take place after three (3) years.

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

- (a) crew upliftment and empowerment
- (b) job creation;
- (c) Investment in processing and value adding to line fish catch;
- (d) Investment in vessels, on-shore facilities and gear.
- (e) Catch performance.
- (f) Compliance with size, bag, area, time and gear limits
- (g) Timeous and complete reporting of catches and other information as applicable.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met.

16. CONTRAVENTIONS

Contraventions of the following kind:

- (a) A successful applicant that fails to utilise its Commercial Traditional Linefishing right for any one season during the period for which the right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, MLRA Regulations, Permit Conditions, Rights Transfer Policy and other related Acts included in the Permit conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (c) During the performance measuring exercise, any Right Holder that has been found to have contravened any condition upon which the Right was granted for;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

APPROVAL SIGNATURE

A handwritten signature in black ink, appearing to read 'B Creecy', written over a horizontal line.

NAME: (Ms) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 9/9/2021



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

**DRAFT POLICY ON ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE
TUNA POLE-LINE FISHERY: 2021**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL POLICY ON THE ALLOCATION
OF COMMERCIAL FISHING RIGHTS: 2021 AND THE DRAFT POLICY FOR THE TRANSFER OF
COMMERCIAL FISHING RIGHTS: 2021**

(Available at www.environment.gov.za)

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1. INTRODUCTION

This draft policy on allocation and management of fishing rights in the Tuna Pole-line fishery is issued by the Minister of Forestry, Fisheries and the Environment (the Minister) and shall be referred to as "The Draft Policy on Allocation and Management of Commercial Fishing Rights in the Tuna Pole-Line Fishery: 2021". This draft policy must be read with the draft General Policy on the Allocation of Commercial Fishing Rights: 2021 (the Draft General Policy: 2021).

The Minister has, in terms of section 79 of the Marine Living Resources Act 18 of 1998 (the MLRA), delegated the power to grant fishing rights contained in section 18 of the MLRA, to Senior Officials of the Department of Forestry, Fisheries and the Environment (the Department).

This draft policy sets out the objectives, criteria and considerations that will guide the allocation and management of Commercial Fishing Rights in the Tuna Pole-line fishery. This draft policy will guide the Delegated Authority in taking decisions on applications in this fishery.

2. PROFILE OF THE FISHERY

2.1 Description of the Fishery

The Tuna Pole-line fishery was developed largely due to a significant catch of yellowfin tuna in 1979 that exceeded 9,000 tonnes (Sea fisheries report no. 47, 1979). When the yellowfin tuna failed to appear the following year the expectant fishery started targeting southern Albacore tuna (predominantly juveniles). The fishery uses poling gear to target schooling southern Albacore tuna in the southeast Atlantic, largely for export to canning markets. Yellowfin tuna in recent years has been increasingly targeted with rod and reel and is largely exported to fresh tuna markets, with limited quantities sold on the domestic market. Other tuna species landed include bigeye and skipjack, but these species make up a negligible proportion of the annual catch.

Prior to 2006, the Tuna Pole-line fishery was managed under the bracket of commercial line fishery. During the long-term Rights allocation process in 2005, the commercial line fishery was divided into three separate sectors consisting of the Traditional Line fish fishery (452 vessels and 3 450 crew), the Hake Handline fishery (130 vessels and 785 crew) and Tuna Pole-line fishery (200 vessels and 3 600

crew). Of the 200 vessels and 3 600 crew allocations available for 8 years, only 198 vessels and 2961 crew were allocated in 2005 (Total Allowable Catch/Total Allowable Effort, 2015).

Over the years, two types of vessels have emerged in this fishery ranging from 10 m - 30 m overall length (LOA) and costing between R2 million and 15 million in value. The first are large vessels (> 20 m) with on-board freezers, capable of spending 30 days at sea with a crew of 20 or more. The second are smaller ice vessels that spend approximately 3 – 10 days at sea and carry less than 20 crew members. Many of the vessels currently utilised are old, with an average age of approximately 30 years.

Several vessels of less than 10 m in length were allowed into the fishery as they had displayed a limited level of tuna performance over the previous allocation period. However, these vessels are not deemed to be suitable for this fishery because of: **(a)** the distances of the tuna fishing grounds from shore; **(b)** the safety aspects; and **(c)** the limited tuna performance that these vessel types can provide. Allocations to vessels less than 10 m will not be considered.

2.2 Life History

Albacore tuna thrive in productive cool temperate water and is more abundant along the west coast of South Africa. In contrast, yellowfin prefers warmer water and is more abundant along the south and east coast of South Africa. Southern Albacore tuna spawn in the western Atlantic and migrations follow the South Atlantic gyre. During the summer months (October to February) the sub-adult and juvenile component of the resource form surface schools and migrate north along the west coast of South Africa. Environmental conditions such as upwelling, ocean fronts and weather, as well as food availability, are thought to play a large role in determining the abundance of the migrating schools in South Africa's coastal waters. Yellowfin tuna, in contrast, spawn in tropical waters of both the Atlantic and the Indian Ocean. It is hypothesized that some of the large adult yellowfin in the Indian Ocean use the Mozambique and Agulhas currents to undertake extensive migrations to feeding areas off Cape Point. Like southern Albacore tuna the abundance of the resource in South African waters is highly variable and is thought to be influenced by environmental conditions. Unlike southern Albacore tuna, yellowfin tuna also seems susceptible to fishing pressure on the high seas and in coastal waters of East African countries. Both tuna species have wide geographic distributions occurring in all the major

ocean basins.

2.3 Management of Tuna

Tuna are highly migratory fishes, meaning a single stock can be shared by many different fishing nations. Consequently, these stocks are managed globally by the tuna Regional Fisheries Management Organisations (tRFMOs). These are inter-governmental bodies that are responsible for the management of these resources, including stock assessments, allocating country quotas, and adopting conservation and management measures. The RFMO responsible for the management of tuna and tuna-like species in the Atlantic Ocean is the International Commission for the Conservation of Atlantic Tunas (ICCAT). Its counterpart in the Indian Ocean is the Indian Ocean Tuna Commission (IOTC). South Africa is a founding member of ICCAT and a full member of IOTC and CCSBT, the Commission for the Conservation of Southern Bluefin Tuna since 2016. The Tuna Pole-line fishery is currently managed on the basis of Total Allowable Effort (TAE) in relation to number of vessels. Furthermore, ICCAT and CCSBT regulate certain species through country-specific Total Allowable Catch (TACs). For South Africa, these currently include southern Albacore tuna, swordfish and southern Bluefin tuna. South Africa's catches of southern Albacore tuna have declined from about 8 000 tonnes per annum in the 1990s to between 3000 tonnes and 4000 tonnes in the last decade. One of the main reasons for this decrease occurred when Namibia declared its independence and consequently access to one of the main fishing areas, namely Tripp Seamount, was no longer available to South African vessels. The removal of this fishing ground also reduced incentives for vessels to search for southern Albacore tuna along the west coast of South Africa. Rising fuel costs further constrained fishing activities to fishing grounds which are in close proximity to the major fishing harbours of Hout Bay and Cape Town. In recent years concerns have also been expressed regarding the increased number of seismic surveys conducted along the coast, which is thought to have altered the movement patterns of tuna.

2.4 Current Status of the Fishery

The target species of the Tuna Pole-line fishery include southern Albacore tuna (*Thunnus alalunga*), yellowfin tuna (*Thunnus albacares*) and, to a lesser extent, bigeye tuna (*Thunnus obesus*), skipjack tuna (*Katsuwonus pelamis*) and southern bluefin tuna (*Thunnus maccoyii*). Catches of southern southern Albacore tuna have fluctuated over the last decade, averaging approximately 3 200 tonnes

per year, albeit with an upward trend in recent years. Yellowfin tuna and Bigeye tuna catches exhibit large fluctuations between 200 tonnes and 1200 tonnes, and 9 tonnes and 126 tonnes, respectively. These species are not always available to the bulk of the fleet in the waters around the Cape of Good Hope. A portion of South Africa's Southern Bluefin tuna allocation has been allocated to the Tuna Pole-line fishery in line with the Department's intentions to further grow this sector but catches remain negligible (less than 5 tonnes). By-catch, or non-target species of the Tuna Pole-line fishery permits include snoek (*Thyrsites atun*), yellowtail (*Seriola lalandi*), oilfish (*Ruvettus pretiosus*) and angelfish (*Brama brama*). Yellowtail has a bag limit of 10 per person per trip. Other by-catch such as oceanic squid and dorado (*Coryphaena hippuris*) is caught occasionally, in smaller quantities. Catches of snoek, the main target of the Traditional Linefish sector in the Western Cape, have increased more than fivefold to 1300 tonnes in the last 5 years. Recent adjustments in permit conditions are aimed to counteract this development. Annual by-catch weight may not exceed that of the target species, i.e., tuna and more specific management measures to regulate by-catch are under development.

Pole and Line vessels, which represent the bulk of the fleet, are mainly older displacement-type vessels, converted from other fisheries. These vessels can undertake multiday trips of limited duration and range, as the catch is kept on ice. Freezer vessels are mainly vessels up to 30 m and 230 GRT. Due to their large size and freezing facilities, these vessels can stay out at sea for long periods and reach the farthest fishing grounds. In more recent years, improvements in navigational gear, the use of live bait and sonar equipment has improved the performance of these vessels.

3. FISHING RIGHTS ALLOCATIONS PRINCIPLES

In 2013, long-term fishing Rights were only awarded to legal entities. No Rights were allocated to individuals in this fishery. The Department allocated 164 fishing Rights and a total of 165 vessels. Fifty-nine percent (59%) of the Rights were allocated to black people or black-owned and controlled entities. In terms of female shareholding, 35% of Rights were allocated to females or female-owned and controlled entities. In terms of the TAE, 59% was held by Black people. The fishery is operated by entities that can be described as Small, Micro and Medium Enterprises (SMMEs). A significant number of previous Rights Holders have performed poorly during this period with some Rights Holders not applying for permits in some years. Consequently, some Rights were revoked by the Department. Some previous Right Holders have increased their catches of by-catch species while performing poorly

on catching tuna.

The 2021 Rights allocation will build on the experience of the last round of allocations and will consider:

- (a) The availability, size and current stock status of the tuna stocks
- (b) The catch performance of the fishery towards tuna during the last allocations.
- (c) The type, number and size of vessels that performed consistently during previous allocations.
- (d) The overlap with other fisheries in terms of by-catch and target species.
- (e) The economic viability of the fishery.
- (f) Cross-sectoral involvement.
- (g) The overall transformation profile of the fishery.
- (h) Compliance to Conservation and Management Measures (CMMs) and reporting obligations towards tRFMOs.

4. OBJECTIVES

The objectives of allocating fishing Rights in the Tuna Pole-line fishery are:

- (a) The effective utilization of the target species allocated to this fishery, namely southern Albacore tuna, yellowfin tuna, bigeye tuna and southern bluefin tuna and skipjack tuna with the gear and vessel specifications and management framework outlined in this policy.
- (b) Optimal, sustainable use of the target species in accordance with tRFMO's CMMs and best available scientific information in line with the Ecosystem Approach to Fisheries (EAF).
- (c) Improvement of South Africa's tuna catch performance regarding the target species to promote increases in future allocations by tRFMOs.
- (d) Effective regulation of by-catch with consideration for the economic viability of the fishery
- (e) Expansion of the Tuna Pole-line fishery to non-traditional tuna fishing areas of the Eastern Cape, Northern Cape and KwaZulu-Natal, depending on species distribution and availability.
- (f) Promotion of meaningful transformation and growth in the Tuna Pole-line fishery in terms of factory ownership, export, value adding and diversification of tuna products, vessel ownership and management, development of skills for skippers, crew and shore personnel.
- (g) Increase of the overall transformation profile of the fishery.
- (h) Adherence to Basic Conditions of Employment Act 75 of 1995 as well as the Labour Relations Act 66 of 1995.

5. GRANTING OF FISHING RIGHTS

Fishing Rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister, only South African persons shall acquire or hold Rights in terms of section 18 of MLRA. In this fishery, the Minister has not exercised her power to allow persons of other nationalities to acquire Rights, meaning that only South African persons can acquire or hold Rights in this fishery.

5.1 Form of Right Holder

Having regard to the nature of operations and resource accessibility only the following South African persons will be considered for a right in the Tuna Pole-line fishery:

- (a) Close Corporations (legal entity).
- (b) Companies (legal entity).

5.2 Duration of Rights

Having regard to the rights allocation process, and the need to encourage investment, fishing Rights in the Tuna Pole-line fishery will be granted for a period of 15 years, where after it shall automatically terminate and revert back to the State.

5.3 Transfer of Rights Allocated in Terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in the fishery in terms of the MLRA shall not be transferred within the first three (3) years of being granted.

6. EVALUATION CRITERIA

Applicants will be categorized into three tiers (Category A, B and C), based on their previous involvement in commercial fisheries, according to the draft General Policy: 2021. Applications will be screened in terms of a set of "exclusionary criteria". All applicants will thereafter be separately scored in terms of a set of weighted "comparative balancing criteria". A cut-off will then be determined in order to select the successful applicants and effort will be allocated to each successful applicant.

6.1 Exclusionary Criteria

Apart from the criteria described in the draft General Policy: 2021 pertaining to the lodgment of applications and material defects, the Delegated Authority will exclude applicants that fail to meet the following requirements:

(a) Compliance

Applicants, including their members, directors, controlling shareholders, representatives and skippers that have been convicted of an offence in terms of the MLRA, its regulations or permit conditions, will not be allocated a Tuna Pole-line fishing right. This does not include the payment of an admission of guilt fine.

Applicants, including their members, directors controlling shareholders, representatives and skippers that have had a fishing right, license or permit suspended, revoked, cancelled or altered in terms of the MLRA, its regulations or permit conditions, assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA, will not be allocated a Tuna Pole-line right.

(b) Paper Quotas

Applications from paper quota applicants, as defined in the draft General Policy: 2021, will be excluded.

(c) Fronting

Applicants who are found to be engaged in Fronting as defined in the draft General Policy: 2021 will be excluded.

(d) Non-utilization

Category A Applicants that failed to effectively utilise their Tuna Pole-line fishing right between the period, 2013 to 2020 and/or have not collected a catch permit for any particular reason will be excluded.

Effective utilisation shall mean activation and be issued with a permit to undertake commercial fishing for tuna by means of the pole-line method, landing of catch and subsequent submission

of catch data for at least six years during the period 2013-2020. In addition, during the same period, previous Tuna Pole-line Right Holders will be expected to have landed at least a total of 200 t of large pelagic species.

Category B and C applicants will not be rated according to catch performance.

6.2 Balancing Criteria

Applicants will be evaluated in terms of the balancing criteria outlined in the Draft General Policy: 2021. In addition, the following criteria, specific to the Tuna Pole-line fishery will be considered, which will be weighted in order to evaluate and assess applications:

(a) Fishing Performance

Performance on target species (Applicable to Category A Applicants only). Proportion of target species (i.e. tuna) in the catch over the period 2013 to 2020 will be considered as an additional balancing criterion.

(b) Data Submission

Timely and complete submission of catch information (Applicable to Category A Applicants).

(c) Transformation

(i) Increase in overall transformation (Applicable to Category A Applicants). An improvement of the transformation profile from the previous round of allocations will be considered. The following will be considered positively: Demonstrated increase in Right ownership, management, skilled personnel (i.e., skippers, officers, fishing masters, competent crew) of designated groups, in particular Historically Disadvantaged Individuals (HDIs), female, youth and people living with disabilities.

(ii) Overall transformation (Applicable to Category B Applicants). The following will be considered: Transformation levels with respect to ownership, management, skilled personnel (i.e., skippers, officers, fishing masters, competent crew) of designated groups, in particular HDIs, female, youth and people living with disabilities.

- (iii) Overall transformation (Applicable to Category C Applicants) with respect to designated groups, in particular HDIs, female, youth and people living with disabilities.

(d) Access to a Suitable Vessel

Applicants will have to demonstrate a right of access to a suitable vessel (Applicable to Category A, B and C Applicants). Proof in form of ownership, part-ownership or catch agreement, together with the South African Maritime Safety Authority (SAMSA) registration certificate, International Maritime Organization (IMO) number and photos of the vessel needs to be included in the application. If the applicant has entered into a purchase agreement to acquire a suitable vessel on successful application, then proof of the sales contract must be provided. In the case of a new build vessel, the vessel plans, detailed costing from the vessel building company and proof of finance must be provided.

No foreign flagged fishing vessel will be permitted in this fishery.

(e) Multi-sector Involvement

Applicants in the Tuna Pole-line fishery (including their controlling shareholders and members of their executive management team) will not be precluded from holding commercial fishing Rights in other fishing sectors (Applicable to Category A, B and C Applicants). Applicants will have to apply separately for a right in the other fisheries sectors. Applicants that are intending to apply for Rights in multiple fisheries sectors must consider vessel specifications and restrictions in the respective fisheries sectors. Vessels are only permitted to fish for one right at a time.

(f) Reliance

Preference will be given to applicants who rely on the harvesting of tuna pole-line for a significant portion (>50%) of their gross annual income above applicants deriving income from sources outside the fishery (Applicable to Category A and Category B Applicants).

(g) Local Economic Development

To promote local economic development in economically depressed fishing towns, preference will be given to applicants that elect to land and process their catches at harbours outside metropolitan areas (Applicable to Category A, B and C Applicants).

(h) Job Creation and Sustainable Employment

For Category A Applicants, sustainable employment as a result of the previous allocation of long-term fishing rights will be considered, and in particular, applicants that have created jobs and provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of the Employment Act and Labour Relations Act.
- (ii) Medical aid, pension, shareholding.
- (iii) Safe working conditions.

In addition, jobs created and sustainable employment provided per ton of fish allocated during the previous long-term rights allocation period will be assessed and taken into account.

For Category B Applicants, jobs created and sustainable employment provided as a result of the previous allocation of long-term fishing rights in another sector will be considered, and in particular, applicants that have provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of Employment Act and Labour Relations Act.
- (ii) Medical aid, pension, shareholding.
- (iii) Safe working conditions.

For Category C Applicants, jobs created and sustainable employment provided as a result of any previous sector related business development will be considered and in particular, applicants that have provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of Employment Act and Labour Relations Act.
- (ii) Medical aid, pension, shareholding.
- (iii) Safe working conditions.

7. EFFORT ALLOCATION

For this allocation period, the target species of the Tuna Pole-line fishery include southern Albacore tuna (*Thunnus alalunga*), yellowfin tuna (*Thunnus albacares*) and, to a lesser extent, bigeye tuna (*Thunnus obesus*), skipjack tuna (*Katsuwonus pelamis*) and southern bluefin tuna (*Thunnus maccoyii*). Other By-catch, or non-target species will be permitted (13.1 below). Annual by-catch weight of the by-catch or non-target species must not exceed that of the target species.

Effort allocation in the Tuna Pole-line fishery will take into account previous catches in relation to the number of vessels and the stock status of available target species. Given South Africa's current ICCAT allocation of the recovered southern Albacore tuna stock is 4400 tonnes, and a maximum catch of 4300 tonnes of southern Albacore tuna per year by less than 100 vessels during the previous Rights period the fact that this allocation is shared between the Tuna Pole-line and the Large Pelagic Longline fishery, there is limited scope to increase the effort in this fishery. Accordingly, the Department aims to maximize effort according to the availability of the stock, given by the country allocation in line with paragraph 4.2 of the General Policy on the Allocation of Commercial Fishing Rights 2021 allocate a Total Applied Effort of 110 vessels in the sector. Applicants that nominate more than one vessel must either own the vessels or own a substantial equity (more than 50%) in the vessels. Multiple Tuna Pole-line Rights on a single vessel will not be allowed.

Ten percent (10%) of the TAE has been set aside for internal appeals to the Minister. The unallocated portion of the 10% if any after appeals, will be allocated to successful applicants that own and have nominated more than one suitable vessel in their applications. Preference will be given to the applicant(s) which received the highest score.

8. NEW ENTRANTS

As far as new entrant applicants (Category C Applicants) are concerned, the Delegated Authority will consider investments made in the form of vessels, fixed assets and marketing infrastructure. In addition, new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity (access to a suitable vessel) to fish in the Tuna-Pole line fishery.

Ten percent of the TAE has been set aside for new entrant applicants. The unallocated portion of the 10%, if any, will be allocated to all successful applicants that own and have nominated more than one suitable vessel in their applications. Preference will be given to the applicant(s) which received the highest score.

9. SUITABLE VESSELS

A suitable vessel in the Tuna Pole-line fishery is a vessel that:

- (a) Has a minimum SAMSA overall length (LOA) of 15 meters. Smaller vessels will not be considered even if they have been used to catch tuna in the past.
- (b) Is certified by SAMSA to have an operational range exceeding 40 nautical miles.
- (c) Has a functioning vessel monitoring system at the time of applying for a vessel license if the application is successful.
- (d) Is equipped with freezer or ice facilities.
- (e) Is a commercial tuna fishing vessel as opposed to a luxury yacht, recreational vessel or recreational charter vessel.
- (f) Is not a vessel that is listed on the official negative vessel lists of ICCAT, the IOTC or the CCSBT.
- (g) Is, if it enters the fishery for the first time, rigged out specifically for Tuna Pole-line fishing.

10. PAYMENT OF APPLICATION AND GRANT OF RIGHT FEES

The fees will be published separately in terms of section 25 of the MLRA and made available at the time of application.

The fees for this fishery will be determined having regard to:

- (a) The cost of the entire fishing Rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- (b) The value of the fish being allocated over the duration of the right.

The grant of right fee is payable by all successful applicants upon the granting of Rights.

11. PROVISIONAL LIST

The Delegated Authority may issue a provisional list of successful applicants for comment on any aspect relating to an application in this fishery.

The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received, make a final decision.

The Delegated Authority may invite representations regarding the assessment of the applications in this before making a final decision.

12. ANNOUNCEMENT OF DECISIONS

The Delegated Authority shall after final decisions on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision.

The General Reasons for decisions in a specific fishery will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure outlining the scores obtained by all applicants in the Tuna Pole-line fishery.

13. MANAGEMENT MEASURES

The measures set out below are a number of the Department's principal, post-right allocation management measures for the Tuna Pole-line fishery.

13.1 Principal Regulatory Measures

These will apply to the harvesting of Large Pelagic species in the Atlantic and Indian Oceans and will be reviewed annually and subject to change by the Department, taking into approved and adopted CMMs by tRFMOs and on recommendation of the Large Pelagics and Sharks Scientific Working Group and the Large Pelagics Management Working Group.

Atlantic Ocean	Indian Ocean
<p>Southern Albacore tuna: ICCAT has a catch limit system in place for CPCs.</p> <p>For Right Holders in the Tuna Pole-line sector, no individual catch limits are in place.</p> <p>The Department will however monitor the catches so as not to exceed country allocation.</p>	<p>Southern Albacore tuna: No country allocations. No catch limits for Right Holders.</p> <p>It should be noted though that IOTC is currently embarking on a process of allocating fishing rights in the IOTC Area of Competence and once these have been allocated, catch limits will be applied accordingly.</p>
<p>Tropical Tunas (Yellowfin, Bigeye and Skipjack): No country allocations. No catch limits for Right Holders. It should be noted though that due to these species being overfished and subject to overfishing, reduction of catches may be applied in accordance with ICCAT Recommendations.</p>	<p>Tropical Tunas (Yellowfin, Bigeye and Skipjack): No country allocations. No catch limits for Right Holders. It should be noted though that IOTC is currently embarking on a process of allocating fishing rights in the IOTC Area of Competence and once these have been allocated, catch limits will be applied accordingly.</p>
<p>Southern Bluefin tuna: The Tuna Pole-line sector shall be allocated a portion of southern Bluefin tuna, which shall be equally divided to the Right Holders that have confirmed interest in catching and landing of southern Bluefin tuna. Individual apportionment is dependent upon the CCSBT</p>	<p>Southern Bluefin tuna: The Tuna Pole-line sector shall be allocated a portion of southern Bluefin tuna, which shall be equally divided to the Right Holders that have confirmed interest in catching and landing of southern Bluefin tuna. Individual apportionment is dependent upon the CCSBT country allocation</p>

country allocation granted to South Africa. Right Holders will have to confirm their interest in catching and landing of southern Bluefin tuna. The confirmed Right Holders shall register by submitting their details to the Department by completing a registration form to be submitted to the CCSBT Secretariat.	granted to South Africa. Right Holders will have to confirm their interest in catching and landing of southern Bluefin tuna. The confirmed Right Holders shall register by submitting their details to the Department by completing a registration form to be submitted to the CCSBT Secretariat.
Pelagic Sharks: The Tuna Pole-line fishery will not permit the catching and/or landing of any pelagic shark species.	Pelagic Sharks: The Tuna Pole-line fishery will not permit the catching and/or landing of any pelagic shark species.
By-catch or Non-target Species: The Tuna Pole-line fishery shall be permitted to fish for snoek (<i>Thyrsites atun</i>), yellowtail (<i>Seriola lalandi</i>) (bag limit of 10 per person per trip), oilfish (<i>Ruvettus pretiosus</i>), angelfish (<i>Brama brama</i>), oceanic squid and dorado (<i>Coryphaena hippuris</i>).	By-catch or Non-target Species: The Tuna Pole-line fishery shall be permitted to fish for snoek (<i>Thyrsites atun</i>), yellowtail (<i>Seriola lalandi</i>) (bag limit of 10 per person per trip), oilfish (<i>Ruvettus pretiosus</i>), angelfish (<i>Brama brama</i>), oceanic squid and dorado (<i>Coryphaena hippuris</i>).
Live-bait fishing: Operations will be regulated by a precautionary upper catch level (PUCL) per annum of retained fish (combined for anchovy and redeye round herring, only), depending on the Scientific advice.	Live-bait fishing: Operations will be regulated by a precautionary upper catch level (PUCL) of per annum of retained fish (combined for anchovy and redeye round herring, only), depending on the Scientific advice.

13.2 Transfer of Commercial Fishing Rights and/or Shares and/or Members' Interests

Right Holders in this sector shall consider the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof (the Transfer Policy) when transferring their fishing rights and/or shares and/or members' interests.

13.3 Consolidation of Right Holders

Following 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.

13.4 Ecosystem Approach to Fisheries

This fishery will be managed in accordance with the EAF. EAF is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

13.5 Observer at Sea and Land Based Monitoring

The Department considers that a shore-based monitoring programme is currently the most suitable programme to collect additional data from the fishery. On board observer coverage or electronic monitoring (EM) may become mandatory and successful applicants will be responsible for bearing the related cost. The Department will work with RH's and industry associations to enhance and possibly automate at-sea monitoring, offloading (species composition determination) and data capturing through the use of technology (cameras).

13.6 Co-management

The Department prefers to work with recognized industrial associations in the co-management of the fishery.

14. PERMIT CONDITIONS

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful applicants in this fishery and will be revised as and when it may be necessary. Applicable CMMs of the tRFMO's responsible for tuna and tuna-like species, like but not limited to CCSBT, ICCAT and IOTC will be incorporated into the final permit conditions.

15. MONITORING AND EVALUATION OF THE POLICY

The Department will monitor and evaluate the policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years.

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

- (a) Transformation.
- (b) Investment in vessels, factories and gear.
- (c) Sustainable utilisation.
- (d) Tuna catch performance.
- (e) By-catch mitigation compliance with applicable laws and regulations.
- (f) Compliance with applicable laws, regulations and CMMs.
- (g) Timeous and complete reporting of catches and other information as applicable.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met.

16. CONTRAVENTIONS

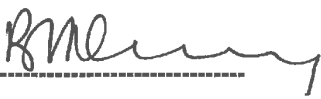
Contraventions of the following kind:

- (a) A successful applicant that fails to utilise their Tuna Pole-line fishing right for two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, MLRA Regulations, Permit Conditions, Rights Transfer Policy and other related Acts included in the Permit conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;

- (c) During the performance measuring exercise, any Right Holder that has been found to have contravened any condition upon which the Right was granted for;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

APPROVAL SIGNATURE



NAME: (MS) B CREECY, MP

DESIGNATION: MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

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