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## **GENERAL NOTICE**

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**NOTICE 1291 OF 2005**

### **DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

The Minister of Environmental Affairs and Tourism hereby publishes the Final Policy for the Allocation and Management of Commercial Fishing Rights In the Traditional Line Fishery: 2005 for general information.



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM  
BRANCH MARINE AND COASTAL MANAGEMENT

## TRADITIONAL LINE FISH POLICY

### POLICY FOR THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE TRADITIONAL LINE FISHERY: 2005

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This Policy is also available at [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za) and in Afrikaans, isiXhosa and isiZulu

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## 1. Introduction

This policy on the allocation and management of commercial fishing rights in the traditional line fish sector is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). The Minister intends delegating **his** 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 an official of the Department.

The General Fisheries Policy published in GN 931 (GG 27683 of 15 June 2005) does not apply to the allocation of rights in **the** traditional line fish sector. This policy sets out **the** criteria, which will guide the evaluation and allocation of commercial fishing rights in the traditional line fish sector. This policy **has** an important annexure, which must be read together with *the policy* as it explains how applications will be distributed and evaluated and it contains details of the help and support that will be provided to applicants.

In addition to **this** policy, the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") will develop a Traditional Line Fishery Management Manual in consultation with right holders and recognised industrial bodies and interest groups during the course of 2006. The manual will stipulate in detail the management methodology and procedures to be applied in the sector. In particular, *the* Manual will deal more fully with **the** management of this fishery on a regional basis.

## 2. Profile of the Line Fishery

The origins of **the** South African boat-based line fishery can be traced back to the fishing activities of European seafarers in the 1500s. The Dutch colonised the Cape in 1652, but because of various **restrictions**, the fishery was slow to develop despite an abundance of fish. When the British captured the Cape Colony in 1795, all fishing restrictions were removed, and by the **mid-1800s** the commercial line fishery had become a thriving industry. The next spurt in **the** growth of the fishery **occurred** after the Second World War when both fishing effort and line fish catches increased substantially as a result of the simultaneous introduction of motorised vessels, **the** construction of small boat harbours along the coast and the availability of echo-sounding technology.

In spite of the 200 year history of the fishery, **the** basic life histories of many species have only recently been described. The first attempts at managing **the** fish resources were marked by the introduction of minimum size limits for selected species in 1940. However, **the** absence of **life-history** information about line fish **stocks** meant that these regulations were determined on a **fairly** arbitrary basis. As a result of growing **concerns** for the line **fish** resources, biological studies on a few important species (e.g. *seventy four*, *hottentot*, *carpenter*) were initiated in the 1960s. **With** the exception of a closed season for **elf** in KwaZulu-Natal, and *snook* in the Cape, **no** other restrictions were promulgated until a comprehensive management Framework was introduced for the line fishery in **early** 1985.

The 1985 management framework included revised minimum size limits, daily bag limits, closed seasons, commercial fishing bans for certain species and the capping of the commercial effort at the 1984 level. Owing to a lack of biological and fisheries data, the level of protection afforded to each species depended largely on qualitative indications of its vulnerability to exploitation, rather than on quantitative evaluations. Furthermore, the absence of clear management guidelines and the existence of strong lobby groups resulted in considerable compromise between managers and fishers regarding the implementation of management action for certain species.

The South African line fishery is a multi-user, multi-species fishery consisting of approximately 200 species of which 95 contribute significantly to commercial and recreational catches. The user groups may be broadly divided into recreational, commercial and subsistence components. The recreational component consists of approximately 450 000 users and may be divided into estuarine anglers, who fish from boats or river banks, rock and surf anglers and a recreational skiboat sector which operates in a similar environment to the commercial component. The subsistence sector is a new component, which was first recognised by the MLRA. The subsistence sector exists along the east coast, from the Eastern Cape to Northern KwaZulu-Natal and comprises shore-based and estuarine fishing activity. Due to high operating costs, the subsistence sector does not include a boat-based fishery. This policy concerns the commercial fishery only.

The traditional line fishery is a boat-based activity and currently consists of 3 450 crew operating from about 450 commercial vessels of between 4.5m and 15m in length. The crew use hand line or rod-and-reel to target approximately 200 species of marine fish along the full 3000 km coastline, of which 50 species may be regarded as economically important. To distinguish between line fishing and long lining, line fishers are restricted to a maximum of 10 hooks per line. Target species include resident reef-fish, coastal migrants and nomadic species. Annual catches prior to the reduction of the commercial effort were estimated at 16 000 tons for the traditional commercial line fishery. Almost all of the traditional line fish catch is consumed locally.

Owing to the large number of users, launch sites, species targeted and the operational range, the line fishery is managed in terms of a total applied effort ("TAE"), bag limits for species, closed areas, limitations of the gear used and restraints on the trade of collapsed and over-exploited species.

Geographically, line fishing takes place from Port Nolloth on the west coast to Richards Bay on the east coast. The fishery is not capital intensive and is exceptionally traditional in nature with fisher families having participated, in many instances, for generations and centuries. The fishery is characterised by insecure labour relations, including the ad hoc employment of crew.

### 3. The Biological Status of Line Fish Stocks

Stock assessments conducted since the mid 1980s have revealed that with the exception of fast growing species, such as *snoek* and *yellowtail*, most commercially exploited traditional line fishes have been depleted to dangerously low levels. As a result productivity and hence annual catch are much lower than they could be, with obvious ramifications for job creation, tourism and conservation. Apart from these losses, the risk of stock collapse and commercial extinction, as has occurred for *seventy-four*, is extremely high.

Responding to the poor status of most traditional line fish resources, the Minister declared an environmental emergency in the traditional line fishery in December 2000. In terms of the emergency, the Minister determined that no more than 3450 persons may fish commercially for traditional line fish. The TAE allocated to the traditional commercial line fishery is an attempt to stabilise the declining trends in the fishery and then to re-build over-exploited species.

Given their long life span and complex life histories and continuing fishing pressures, it is unlikely that significant positive changes will occur within a decade. During the World Summit on Sustainable Development ("WSSD"), countries undertook to maintain or rebuild fish stocks to levels that can produce the maximum sustainable yields. The goal is to be achieved on an urgent basis for depleted stocks, and if possible, by not later than 2015.

### 4. The Medium Term Rights Allocation Process

Commercial fishing rights for the traditional line fishery were allocated for the very first time in July 2003. A total of 346 vessels with a total effort of 2048 line fish crew were granted rights, The Minister subsequently accommodated a further 448 crew. On 28 August 2003, the Minister issued a statement that addressed the particular challenges faced in allocating commercial line fish rights. He stated:

"In evaluating the appeals, it became abundantly clear that the majority of appellants fell into one of the following categories:

- ❖ *They are right holders in other commercial fisheries.* This fact was particularly evident amongst appellants from Arniston, Kalk Bay and Hout Bay. Some appellants hold two, three and even four commercial rights such as hake long line, pelagic and squid; or
- ❖ *They are weekend fishers.* Many appellants unashamedly stated that they are employed in fulltime employment as consultants, undertakers, teachers or

managers but their lifestyles require the additional income which they derive from line fishing. The commercial line fishery, which is in state of environmental crisis, is not intended to supplement and support such lifestyles.”

In the end, a total of 2496 commercial line fishers were accommodated. **This** means that 954 crew remained unallocated. The Department then undertook an extensive coastal consultation process to determine which line fishers were excluded in the medium term rights commercial process. This process lasted for the remainder of 2003. In 2004, the balance of the crew TAE was allocated by way of exemptions under section 81 of the MLRA.

## 5. Objectives of Allocating Commercial Traditional Line Fish Rights

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

- Promote the participation of black traditional line fishers;
- Allocate commercial rights to traditional line fishers reliant on traditional line fishing for their main source of income;
- Endeavour to allocate a fair proportion of rights to applicants based at fishing harbours that are historically associated with traditional line fish catches;
- Promote adherence to fair labour practices;
- Support the management of effort in order to facilitate the recovery of over-exploited and collapsed fish stocks;
- Lay the foundations for the management of this fishery on a regional basis; and
- Ensure substantially higher levels of compliance by fishers.

## 6. Empowerment of Line Fish Crew

The Department will require all fishing crew who are intending to work on traditional line fish boats to register with the Department on the Crew Register. All line fish right holders will be required to select their crewmembers from among those who are listed on the Crew Register. The Department will only register persons on the crew list if they have successfully undertaken a SAMSA safety training course, demonstrate a reliance on traditional line fishing and are able to demonstrate some form of historical involvement in traditional line fishing.

Crew will be registered free of charge and the registration process will commence in the last quarter of 2005. Everyone that qualifies will be registered. There will be no maximum number of crew to be registered on the list. Registered crew may only



fish from vessels authorised to catch traditional line fish, but Registered crew will not be limited to work on any particular line fish vessel or area. Persons registered on the Crew List may also crew on vessels in other fisheries.

#### 7. Duration of Rights

Having regard to the biological status of line fish stocks, the need to encourage higher levels of compliance and adherence to fisheries laws and the need to affirm line fishers from traditional line fish villages along the entire coast, commercial rights will be allocated for a period of 8 years (1 January 2006 to 31 December 2013). Each right holder will be tested at regular intervals against predetermined performance criteria.

#### 8. New Entrants

The traditional line fishery is oversubscribed. It is estimated that the ratio of oversubscription (fishers:TAE) may be as high as 2:1. In addition, the traditional line fishery remains in a state of environmental emergency. The Minister set the TAE at 3450 crew and 450 vessels and no additional rights or exemptions will be granted in this fishery. Current right holders and exemption holders may be replaced, especially if they do not rely on line fishing for their main source of income, have not fished in accordance with the permit conditions or have failed to transform their businesses as undertaken in their applications for fishing rights or exemptions. These right holders or exemption holders may be replaced with traditional line fishers, including those who were unsuccessful in applying for a medium term right in 2003 or line fish exemption in 2003/2004.

#### 9. Full Commercial & Limited Commercial Rights and Exemptions

The delegated authority will no longer allocate "limited commercial" and "full commercial" long term line fish commercial rights. Only commercial fishing rights will be allocated in terms of section 18 of the MLRA.

This means that exemptions and limited commercial fishing rights will not be re-allocated. Exemption holders and limited commercial fishing right holders wishing to participate must apply for commercial fishing rights and both categories will be regarded as medium term right holders for purposes of the allocation of long term commercial fishing rights. While called "commercial fishing rights", line fish rights are intended for small scale commercial line fishers who rely on line fishing for their income or a substantial part of their income.

#### 10. Evaluation Criteria

All applications for commercial line fish rights 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 in the manner set out below.

#### 10.1 Exclusionary Criteria (See further Annexure A)

~~--- Apart from the criteria described in Annexure A pertaining to the lodgement of the applications and material defects,~~ the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of Right Holder:** Only natural persons will be granted traditional ~~line~~ fish rights. Right-holders who previously operated in ~~the~~ form of juristic persons (such as close corporations, trusts or companies) must apply *in* their individual capacities, but will be considered to be "medium *term right-holders*" for purposes of ~~the~~ allocation process provided that they were members of close corporations, shareholders of companies and beneficiaries of trusts when these entities were allocate medium term rights in 2001/2002. The delegated authority may regard other individuals to be medium term right holders if they obtained control Over a medium term right, by way of a transfer approved by the responsible authority.

Persons who were members of a close corporation, shareholders of a company or beneficiaries of a trust may continue to operate in this form provided that they nominate one individual from ~~the~~ close corporation or company to apply on behalf of all ~~the~~ other members, shareholders or beneficiaries. The delegated authority ~~will~~ take into account the relationship between the applicant and ~~the~~ former right holder when allocating rights.

- (b) **Compliance:** Applicants that have been convicted of a serious infringement of the MLRA, the regulations, permit conditions or other serious fishery related offences during ~~the~~ medium-term right period, will not be allocated a traditional line fish right. This does not include the payment of an admission of guilt fine. ~~If~~ ~~the~~ applicant was a member of a close corporation or a shareholder of a company that held a medium term right, then ~~the~~ applicant will not be granted a right if the medium term right holder (the close corporation or company) or ~~one~~ of its members, directors or its controlling shareholder was convicted of a serious infringement of the MLRA, the regulations, permit conditions or other serious fishery related offences during ~~the~~ medium term right period,

Rights will also not be allocated to an applicant *if* the applicant has had any fishing right cancelled or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLAA. ~~If~~ ~~the~~ applicant was a member of a close corporation or a shareholder of a company that held a medium term right, ~~the~~ applicant will not be granted a right if ~~the~~ medium term right holder (the close corporation or company) ~~or~~ one of its

members, **directors** or controlling shareholder had a right cancelled or revoked in terms of the MLRA, or had assets seized under the Prevention of Organised Crime Act.

Decisions may be reserved on applications if there is a pending criminal investigation, or section 28 **proceedings**, which may affect ~~the~~ outcome the application.

- (c) **Paper Quota Applicants:** In the long-term rights allocation process, the delegated authority will exclude new entrant applicants who appear to be paper quota risks. For this purpose, the delegated authority will consider an applicant to be a "**paper quota risk**" if that applicant appears to have ~~no~~ serious intention to share the risk of fully participating in the sector, especially if a danger exists that an applicant has not applied in order to enter the industry but to gain some financial benefit without direct involvement in the main activities associated with exploiting any right that may be granted. In determining whether a new entrant applicant poses such a paper quota risk, the applicant's assets and access to capital and its financial and business planning and commitments should be considered. The delegated authority will also exclude as "**paper quota risk**" applicants considered to be *fronts* for other beneficiaries. Fronting occurs when, in order to circumvent a policy objective, an application is made through another entity. An example is an application made by an ostensibly transformed entity with the intention that the main benefits will flow to an untransformed entity or individuals that are not black persons.

Large groups of identical, or very similar applications, that are sponsored by consultants or commercial fishing companies and other entities, will be excluded as fronts (paper quotas) regardless of the merits of individual applications.

A household (comprising parents and children) may not be granted more than one right so as to avoid fronting and to broaden access to ~~the~~ traditional line fish resource. Applicants may be required to disclose their relationship to applicants in the line fish sector or other commercial fisheries. If more than one member of a household applies for a right, all ~~the~~ **applications** from that household may be excluded, unless the applicants clearly and convincingly demonstrate that they have established separate small commercial operations.

- (d) **Non-utilisation:** The delegated authority may refuse to reallocate a right if a right holder applicant failed to fully utilise a medium-term right or exemption between 2003 and 31 December 2004. The delegated authority may also refuse to allocate a right to an applicant who was a member of a close corporation or a director or shareholder of a company that held a medium term right **and that failed to** fully utilise the right. The delegated authority should have regard to the frequency and regularity of the submission of catch effort data by right and exemption holders.

- (e) **Personal** involvement in **harvesting** of the resource: Applicants **will** be required to demonstrate that, during the fishing season, they are personally involved in traditional line fishing, in that they are **active** on fishing vessels and **participate** in the operation of the business. Only applicants incapable of participating due to a permanent physical disability will **be** exempt from this requirement. Women applicants will **not** be exempt from having to participate on board. A year after the allocation of rights, **the** Department will consider applications for exemption from the requirement to **be** on board the nominated vessel, and may grant such an exemption for a good reason, for example, if this is necessary in order to allow a skipper to gain the necessary experience to qualify and if the right holder demonstrates that he **or** she **will** continue to be involved in the **line fish** business.
- (f) **Vessel** access: Applicants will have to demonstrate that they have access to a suitable line fish vessel (**see** further paragraph 11 **below**).

## 10.2 Balancing Criteria (**See** further Annexure A)

Applicants will be evaluated in terms of balancing criteria (**if applicable** to them) which **will** be weighted in order to assess the strength of each application.

### (a) Transformation

To improve the transformation profile of the traditional line fish sector, **Male** applicants will **be** positively scored. Gender may be **used** as a tie-breaking factor, **i.e.** where **more** than **one** applicant scores **the** same, a female applicant will be preferred over a male applicant.

Applicants will also be assessed on –

- The percentage of black **persons** and women involved in **the** management of the applicant's enterprise and employed by the applicant;
- Whether **the** applicant complies with skills development laws (if applicable) and whether the applicant has invested in **the** training and development of crew;
- Whether the applicant regularly shared **profit** with crew;
- **Affirmative** procurement; and
- Corporate social investment.

**(b) Investment in the Fishery**

Investment in vessels and equipment will be recognised, as long as the investment demonstrates a real commitment to participate in the fishery. The delegated authority may decide not to reward the purchase or ownership of a vessel not currently in the traditional line fishery. Shareholding in vessels obtained at minimum or no cost to the applicant should not be recognised as investment. The delegated authority should also consider whether the applicant has invested in fish processing initiatives or intend investing in any line fish processing initiatives to add further value to traditional line fish caught.

**(c) Deck Boats**

Applicants resident along the west and south east coasts who intend to use traditional wooden deck boats (provided they are approximately 10m or less) may be rewarded, provided that the applicant is able to demonstrate that the vessel has a good performance history in the traditional line fishery.

**(d) Fishing Performance**

Right holder and exemption holder applicants will be assessed having regard to their traditional line fishing performance and record during the medium term rights allocation period. ,

New entrant applicants will be assessed having regard to whether they have the ability, knowledge and skills to participate in the traditional line fish sector.

**(e) Job creation**

Right-holder and exemption holder applicants who can demonstrate that they have provided temporary or permanent employment during the medium-term period, will be rewarded, especially those that have provided employees with -

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

**(f) Traditional Fishing Communities**

A number of traditional fishing villages along South Africa's coast have historically been centres of traditional line fishing. The delegated authority may positively score applicants that have been resident in a traditional line fishing village for at least the past 10 years and who intend to fish from a local harbour or slipway only.

**(g) Historical involvement**

All applicants will be rewarded for demonstrating historical involvement in the traditional line fishing industry, such as being a skipper or a crewmember in the fishery.

**(h) Reliance on line fishing**

The delegated authority should prefer applicants who rely on traditional line fishing for a significant proportion of their gross annual income. Applicants who derive income from sources outside the fishing industry may be negatively scored. New entrant applicants will be required to demonstrate their historical dependency on the traditional line fishery for their livelihood.

**(i) Compliance:**

Minor infringements of Marine Living Resources Act, the Regulations and permit conditions will be negatively scored.

**10.3 Effort Allocations**

The delegated authority will allocate rights to a maximum of 450 vessels capable of carrying a maximum of 3450 crew, divided between the regions in the manner set out below. The number of vessels allocated to each regional management area has been determined after consideration was given to the number of active vessels in each region over the past five years and the fishing effort levels that can be sustained in each region.

Regional Management Areas	Vessel Effort
Port Nolloth to Cape Infanta	295
Cape Infanta to Port St Johns	103

Kwazulu-Natal	52
	450

Each successful applicant will be granted the right to use one vessel only. If all 450 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. Medium term right holders of "limited commercial rights" must seek the amendment of current **SAMSA** certificates if they wish to be allocated more units of crew effort than the limited commercial right permitted.

#### 11. Suitable Vessels

All applicants need to demonstrate access to a suitable line fish vessel. A suitable vessel in the traditional line fishery is a vessel that:

- is either a skiboat or traditional wooden deck boat of approximately 10m or less (this criterion should be flexibly applied by the delegated authority) that is currently operating in the fishery. The vessel must be certified by **SAMSA** as being safe for fishing; and
- is geared for hand line fishing.

The Department may require each vessel holder to invest in an acceptable vessel monitoring system ("**VMS**") after the allocation of fishing rights. Regard will be had to the cost of the VMS system before imposing the requirement.

#### 12 Multi-sector Involvement

Right holders in the traditional line fishery may not be the controlling shareholder of a company, or a member of a close corporation, or part of the executive management team of an entity that holds a commercial fishing right in the Cluster A and B fisheries. The Cluster A fisheries are:

- Hake Deepsea Trawl
- Hake Inshore Trawl
- Horse Mackerel

- Small Pelagics
- Patagonian Toothfish
- KZN Deepsea Prawn Trawl
- South Coast Rock Lobster

The Cluster B fisheries are:

- Tuna Pole
- Hake Longline
- Squid
- Seaweed
- WCRL (Offshore)
- Demersal Shark

Right holders in the traditional line fishery may hold the following rights, in addition to their line fish right:

- Right holders permanently resident between Port Nolloth and Gansbaai may hold west coast rock lobster fishing rights (near shore only), provided that the person does not hold an abalone right as well;
- Right holders permanently resident between Cape Infanta and Port St Johns may hold hake handline fishing rights: and
  - Right holders permanently resident in KwaZulu-Natal may hold not fish rights (such as shove nets etc), including beach seine rights.

The provisions of Government Notice 4727 of 29 December 2000, in so far as it prohibits the holder of a commercial traditional line fishing right from holding any other commercial fishing right, are hereby amended and the holder of a traditional line fish right is authorized to hold the following fishing rights only:

- West coast rock lobster (near shore);
- Hake handline; and
- KwaZulu-Natal Beach seine nets (including shove nets).

Traditional line fishing right holders who are also allocated West coast rock lobster (near shore) fishing rights will not be permitted to carry any gear for the harvesting of lobster while traditional line fishing. Right holders will be permitted to fish



hake handline and traditional line fish on the same trip (they may carry both permits). Such right holders will be allocated the same number of crew for hake handline and line fish.

### 13. Regional management

The Department intends to manage this fishery on a regional basis, prohibiting the movement of vessels from one region to the next and regulating the use of vessels within the regions.

More particularly, should an applicant be successful in its application, the right holder will then be restricted to a particular region. An applicant allocated a right on one region may not migrate to another region. The delegated authority will allocate traditional line fish rights in the following three management regions:

- Port Nolloth to Cape Infanta;
- Cape Infanta to Port St Johns; and
- KwaZulu-Natal

Within each region, shoaling species namely, kob, yellowtail, geelbek, carpenter and snoek may be targeted away the area registered on the nominated vessel, such as Saldanha or Cape Town. This will allow for the mobility of the traditional line fish fleet and will stem the concentration of effort on depleted reef fish species. For example, when a west coast or Cape Town based traditional line fish vessel moves to Struis Bay to target shoaling species it will not be permitted to catch any other species in that area. A Struis Bay based vessel may move to the Fake Bay to target geelbek, or the west coast to target snoek, but it will not be allowed to catch reef fish outside of the Struis Bay area. In addition, the Department will prohibit the harvesting of line fish stocks that are either overexploited or collapsed in particular regions.

### 14. Application Fees and Levies

The application fee for this fishery have been determined having regard to:

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

The annual levies payable with effect from 1 January 2006 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

## 15. Management Measures

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

### 15.1 Ecosystem Approach to Fisheries Management

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is an holistic and integrated policy which recognises that fishing and various land based activities impacts on the broader marine environment. The EAF will be detailed further in the Fishery Management Manual for the traditional line fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

### 15.2 Access to Snoek

The Department will continue to permit traditional line fishers access to *snoek*. The Department had previously stated that a separate *snoek* fishery is not viable as *snoek* is a highly nomadic species, as is presently evident.

### 15.3 Marine Protected Areas

Further marine protected areas will be designated during the duration of the line fish rights. In particular, during 2005, the Minister will designate the Namaqualand Marine Protected Area. The Department remains committed to protecting 20% of its marine area from fishing.

### 15.4 Vehicle use in the Coastal Zone

Right-holders in the traditional line fishery must apply to the Deputy Director-General of Marine and Coastal Management for a permit to use a vehicle in the coastal zone if required to launch a vessel outside of a licensed boat launching site.

Application forms for vehicle use in the coastal zone will be made available, along with the application forms for rights in this fishery. These application forms are also available from [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za). The fee to apply for a permit to use a vehicle in the coastal zone is R500 (five hundred rand).

## 16. Performance Measuring

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is intended that the first set of performance measuring exercises may take place on the first anniversary of the right, and thereafter every three years.

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

- crew empowerment;
- investment in processing and value adding to line fish stocks;
- job creation; and
- compliance with applicable laws and regulations.

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

## 17. Provisional lists

Before the delegated authority makes final decisions on the successful applicants, he or she should issue a provisional list of successful applicants. The provisional list will be circulated to each fishing area. Interested and affected parties in these areas may then be invited to comment on the list and, in particular, inform the delegated authority if any persons who historically fished for traditional line fish in the area have been excluded from the provisional list or whether any person included on the provisional list is not reliant on the traditional line fish resource.

## 18. Observer and Monitoring Programme

The Department's current monitoring programme will be expanded to this fishery. Right holders will be required to bear the costs of a land-based observer monitoring programme.

## 19. Permit Conditions

Permit conditions for this fishery will be issued annually. Permit conditions may be amended at any time during the season but after consulting with right holders or recognised industrial bodies and interest groups.

## Annexure A

## 1) The Applications Process

## (a) Communication

During the application period, officials of the Department, the delegated authority and the Minister, will not communicate with individual applicants regarding their applications, other than in the manner described in this annexure. Similarly, applicants or their representatives may not communicate with the Minister, the delegated authority or officials of the Department regarding their applications other than in the manner described in this annexure. No reliance may be placed on any information given or obtained in any other manner. Attempts to influence a decision of the delegated or appellant authority on the allocation or a right or effort in any other manner will constitute an independent ground for refusing an application or an appeal.

Unless otherwise provide in this annexure, communication between the Minister, the delegated authority and officials of the Department on the one hand, and applicants on the other, may only take place through the following six mechanisms:

- ❑ Electronic Media: Policies and other materials will be published on the Department's official website, [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za)).
- ❑ Government Gazette: All policies, invitations to apply and general notices will be published in the Government Gazette.
- ❑ Recognised industrial bodies and interest groups: Policies and other materials will be circulated through recognised industrial bodies and interest groups.
- ❑ Call centre: The Department has established a call centre with assistants to answer right allocation queries.
- ❑ Customer Services Centre: The Department has established a customer services centre in Cape Town.
- ❑ Departmental officials will render assistance to applicants at the distribution and receipting points and will hold meetings at several advertised venues along the coastline where the application process will be explained.

## (b) Language

In this fishery, the policy and explanatory notes to the application forms will be available in English, Afrikaans, isiXhosa and isiZulu.

In the case of conflict, the English text of the policy or explanatory note, will prevail.

**(c) Invitation to apply for rights**

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

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

- a A short invitation to apply for the applicable commercial fishing right within a specified period.
- a This policy.
- A specimen applicable application form with a set of instructions and explanatory notes.

**(d) Application Forms**

A separate traditional line fish application form will be used to obtain the information considered relevant to effectively evaluate applications for commercial line fish rights.

**(e) Distribution of application forms and payment of fees**

Application forms will be distributed at various advertised regional venues along the coastline. Applicants will be required to take a cheque or a postal order in the amount of the application fee to the distribution point. Applicants will be required to submit a brief set of biographical details to the staff members at the distribution point, such as name, identification number, contact details and the like. On completion, and on having submitted proof of deposit of the application fee, applicants will be provided with an application form.

**(9) Receipting**

Applicants will be required to hand deliver the completed application forms and annexures at various pre-advertised regional receipting points along the coastline during a specified period.

**(g) Copies**

The applicant or authorised representative of the applicant will be required, after the application form and the annexures are completed, to sign the application form and to attest to the declaration before a commissioner of oaths. This application form, together with its annexures must be photocopied and both the original and the copy must be submitted.

**(h) Design of criteria and weighting**

Information submitted by applicants will be captured on a database. The policies, the database and information submitted by way of annexures, will be then be used for the development of detailed criteria and weighting for the purposes of assessing the applications and thereafter the allocation of effort.

**(i) Information to be considered**

The approach set out below will be adopted by the delegated authority and the appellate authority regarding, information to be taken into account for assessing the applications.

**(i) Parts of application form not completed**

Unless otherwise indicated in the application form, if a part of the application form is not completed, it will be assumed that that part of the form does not apply to the applicant. If the section has positive points associated with the answer, no points will be awarded.

A specific icon (the "warning sign" icon) will be used to indicate where, if not completed, an answer adverse to the applicant will be assumed. For example, if left blank, it will be assumed that the applicant answered 'yes' to a question such as: 'Have you ever been convicted of an offence under the MLRA'? The warning sign icon may also be used to indicate that if the answer to a positively framed or an open-ended question is left blank, it will be assumed that the applicant answered the question negatively. For example, if left blank, it will be assumed that the applicant answered "no" to a question such as: 'Have you participated as a crew member on a vessel that operated in a limited or full commercial fishery?'

**(ii) Late information**

Information submitted after closing day will not be considered, unless requested by the Rights Verification Unit, the delegated authority or the Minister as part of the rights allocation or the appeal process. The approach to the submission of additional information on appeal is described below.

**(iii) Information from external sources**

Prejudicial information about an application received from external sources will not be taken into account by the Minister or the delegated authority unless the applicant is afforded the opportunity to make representations in respect of that information.

**(iv) Use of Departmental databases**

The Minister or the delegated authority may use information contained in the Department's own databases during the long term rights allocation process, but will do so only to the extent that applicants were afforded the opportunity to make representations concerning the correctness of the data.

**(v) Submission of false information or documents and non-disclosure**

Applicants or their authorised representatives are required to attest to a declaration before a commissioner of oaths stating, amongst other things, that they have not submitted false information or false documents and that they have not failed to disclose material information. The submission of false information or false documents or the failure to disclose material information will constitute an independent ground for refusing an application. It will be assumed that an applicant has provided false information if there is a material discrepancy between the information provided by the applicant and the information contained in databases held by the Department and where both versions cannot be correct. It will further be assumed that an applicant has provided false information when there is a material discrepancy between the information provided by the applicant in the original application and information provided by the applicant on appeal, and where both versions cannot be correct. In addition, the making of a false statement in an attested declaration, knowing it to be false, constitutes a criminal offence.

**(vi) Copies of documents**

Applicants will not be required to have any copy certified as a true copy but it will be assumed that any copy submitted is an exact replica of the original.

**(j) Calls for further information, investigations and consultation**

The Minister or the delegated authority may invite applicants to make oral submissions or to present further information in writing if there is uncertainty concerning a material issue in a substantial number of the applications. If oral hearings are held, legal representatives will be permitted to address the Minister or the delegated authority.

The Minister or the delegated authority may request the Rights Verification Unit to investigate any matter, including the correctness of information provided. Applicants must **co-operate** with investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with **investigators**, by answering questions satisfactorily at such meetings, and where necessary, **by** granting investigators access to premises, vessels and documents. The failure to co-operate will constitute an independent ground for refusing an application.

#### **(k) Support for delegated authorities**

The delegated authority responsible for the decisions on the applications in the line fish sector may be supported **by an** "Advisory Committee", and also **by** professional project managers, consultants and **legal** practitioners. The **role** of the Advisory Committees will be determined by the delegated authority. The Advisory Committee may be called upon to **assist** in the assessment of **the** applications under the supervision **of**, and in accordance with the criteria and weighting **determined by**, the delegated authority.

#### **(l) Provisionallists**

The delegated authority may issue provisional lists for comment on any aspect in this **sector**. For example, the delegated authority may request comment on whether the provisionally successful applicants are dependent on the resource and on the basis of the comments received make a final decision.

#### **(m) Notification of decisions and the reasons**

After the delegated authority **has** made decisions on the allocation of rights and quantum **or** effort, the Department will notify an applicant in writing of **the** decision **on** **the** application. In addition, the Department will publish **the** results electronically and communicate the results through recognised industrial **bodies** and interest groups,

#### **Unsuccessful applicants**

Unsuccessful applicants will receive the following together with **the** letter informing them of the outcome of the application:

1  
3  
3  
3  
3  
1  
1



- ❑ The General Published Reasons which will record the criteria, the decision-making process and the methodology pertaining to decisions on quantum or effort;
- ❑ A specific reason why the application was unsuccessful;
- ❑ An appeal form, which applicants must submit together with the appeal;
- ❑ A notification of the closing date, details of the appellate authority and other formal requirements for the submission of appeals: and
- ❑ A copy of any final score sheet used to record the assessment of the application.

In addition, the following documents will be automatically available for inspection or purchase at the prescribed fee:

- ❑ The Spreadsheet of Decisions which contains a summary of the assessment of all the applications in the line fish sector;
- ❑ Final Score sheets of other applicants; and
- ❑ The decision-making lists of the delegated authority or the Minister.

The specific reason contained in the notification letter to unsuccessful applications, together with the General Published Reasons, the final score sheet and the information that is automatically available, constitute the reasons for a decision to refuse an application.

### **Successful applicants**

Successful applicants will receive the following together with the letter informing them on the decision on their application:

- ❑ The General Published Reasons which will record the criteria, the decision-making process and the methodology pertaining to decisions on quantum or effort;
- P An Appeal Form, which applicants must submit together with an appeal on quantum or effort;
- ❑ A notification of the closing date, details of the appellate authority and other formal requirements for the submission of appeals;
- ❑ A copy of any final score sheet used to record the assessment of the application; and
- P A set of generic permit conditions that are applicable to the fishery.

In addition, the following documents will be automatically available for inspection or purchase at the prescribed fee:

- ❑ The Spreadsheet of Decisions which contains a summary of the assessment of all the applications in the line fish sector;
- P Final Score sheets of other applicants; and
- ❑ The decision-making lists of the delegated authority or the Minister.

The General Published Reasons, the final score sheet and the information that is automatically available, constitute the reasons for decisions to grant an application for a commercial fishing right and to award quantum or effort.

#### (n) Appeals

Every applicant 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 on quantum or effort. Details about the submission of appeals will be contained in the notification letter.

The appellate 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 day for applications that fact will not be taken into account when considering the appeal.

Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.

#### (o) Access to information

The following records will be automatically available for inspection or purchase at the prescribed fee after the results are announced:

- ❑ Any score sheet, spreadsheet or other document used by the delegated authority, the Minister, or their assistants, to record the assessments of the applications; and
- ❑ At the request of the applicant or its authorised representative, the applicant's own application or appeal documentation.

Requests for access to the following records will be dealt with under the Promotion of Access to Information Act 2 of 2000:

- ❑ The application form of another applicant;
- ❑ The annexures submitted together with an application of another applicant; and
- ❑ Appeal documentation submitted by another applicant.

In respect of access to these records, the Department's information officer (the Chief Director: Resource and Coastal Management) will apply the procedures and provisions of PAIA. In order to assist with the administration of access to information applications, applicants will be required to submit certain documents in respect of which the information officer

may refuse access, such as those relating the applicant's fishing plans, marketing plans and financial statements, in a separate folder.

## 2. Decision-making

All decisions will be based on the applicable laws and guided by the applicable policies. The policies and the database compiled after the applications are received, will be used to develop more refined criteria and weighting for purposes of the assessment of the applications. These criteria are developed with reference to data received after dosing day and are accordingly not released before the allocation process.

### (a) Criteria used for decision-making on the allocation of rights

The Department expects a large number of applications for long term rights and anticipates that, given the current limits on catch or effort in all the fisheries, not all applicants will be granted rights. Some applicants will be rejected because they do not meet the basic requirements. The rest are ranked according to a set of objective criteria in order to identify the best applicants in terms of the policies and weighted criteria. The process is competitive and the aim is to identify the best applicants.

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

Applications will be screened in terms of a set of "*exclusionary criteria*", and thereafter ranked in terms of a set of "*weighted balancing criteria*". In addition, in the traditional linefish sector, the delegated authority may employ one or more of a number of "*tie-breaking factors*" in order to make a decision if there are too many applicants with the same score. A proportion of the TAE will then be allocated to each successful applicant in terms of a set of "*effort criteria*".

### (i) Exclusionary criteria

Three types of exclusionary criteria will be employed.

Firstly, an application will be screened to determine whether it was properly lodged. An application is improperly lodged if it was received late; if the applicant made no payment or short payment or late payment of the application fee; or if it was lodged in a manner contrary to the instructions, such as by fax, or on a form other than the official prescribed application

form. The delegated authority and the Minister ~~has~~ no discretion to condone non-compliance with ~~the~~ lodgement requirements.

Secondly, an application will be screened to determine whether it is materially defective. An application is materially defective ~~if~~ the declaration is not signed by the applicant, ~~or~~ if the applicant's declaration was not attested to by a Commissioner of Oaths, or if more than one application was received from the applicant ~~for~~ a fishing right in ~~the same~~ sector, or if the applicant provided false information or false documents, or failed to disclose material information, or attempted to influence the Minister ~~or~~ the delegated other than in the manner provided for in this General ~~policy~~ during the application period. The delegated authority and the Minister has no discretion to condone non-compliance with ~~the~~ requirements relating to ~~materially~~ defective applications.

Thirdly, an application will be screened to determine whether an applicant meets the minimum essential requirements for participating in ~~the sector~~, set ~~out~~ in paragraph 10.1 of the Linefish policy. The delegated authority and the Minister ~~has~~ no discretion to condone non-compliance with an essential requirement for participating in ~~the~~ sector.

#### **(ii) Balancing criteria: new entrants and medium term right holders**

Applications that were properly lodged, not materially defective and that meet the essential requirements will be scored in terms the set of balancing criteria set out in paragraph 10.2 ~~of the~~ Linefish policy ("*the balancing criteria*"). The balancing criteria will be weighted for purposes of ranking the applicants.

The applications from medium right holders or exemption holders will not be scored in terms of exactly the same criteria and weighting ~~as~~ potential new entrants and will be ranked separately. Cut-offs will then be determined separately for medium term right holders and potential new entrants. All applicants with a score equalling or more than the cut-off will ~~be~~ allocated rights.

#### **(iii) Tie-breaking factors**

If there are too many applicants with the same score, the delegated authority may use tie-breaking criteria, in order to choose between the applicants with ~~the~~ same score. The tie-breaking factors may comprise of criteria not scored or scored criteria differently weighted.

**(b) Criteria used for awarding effort**

There are two separate decisions. After the decisions identifying the successful applicants are taken, the delegated authority will decide on the allocation of quantum or *effort* to each successful applicant in line with the policy described in paragraph 10.3 above.