

DRAFT



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

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

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

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1. Introduction

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

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

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

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

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

2. Sector profile

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

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

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

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

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

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

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

3. The medium-term rights allocation process

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

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

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

4. Over-arching sectoral objectives

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

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

5. Duration of rights

Having regard to –

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

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

6. New Entrants

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

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

New entrant applicants will only be granted rights if they –

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

7. Evaluation criteria

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

7.1 Exclusionary criteria

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

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

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

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

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

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

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

7.2 Comparative balancing criteria

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

(a) Transformation

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

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

(b) Investment in the fishery

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

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

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

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

(c) Performance

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

(d) Value-Adding

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

(e) Jobs

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

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

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

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

(f) By-catch

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

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

(g) Local Economic Development

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

(h) Non-payment of Fish Levies

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

(i) Compliance

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

7.3 Quantum criteria

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

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

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

8. Suitable vessels

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

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

9. Multi-sector involvement

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

10. Application fees and levies

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

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

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

11. Management measures

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

11.1 Ecosystem approach to fisheries management

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

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

11.2 Fisheries management areas

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

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

11.3 Consolidation of participants

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

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

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

11.4 Vessels and fishing effort

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

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

11.5 Monopolisation

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

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

11.6 TAC ratios– Trawl:Longline

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

12. Performance measuring

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

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

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

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

13. Observer programme

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

14. Permit conditions

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