



DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT

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

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

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the small pelagic fishery for anchovy and sardine is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). This policy must be read with the General Policy on the Allocation and Management of Long-Term Commercial Fishing Rights: 2005 ("the General Fisheries Policy").

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial small pelagic fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") when allocating rights in the past and to an extent this policy documents those considerations.

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

The Minister intends to delegate the section 18 power to allocate commercial small pelagic fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

2. Sector profile

The small pelagic fishery dates back to the late 1940's when a fleet of privately owned purse-seine vessels began targeting sardine and horse mackerel. In 1953 an annual maximum catch limit of 270 000 tons was set but was never enforced. As a result, catches regularly exceeded this figure. By 1961, the maximum limit was repealed. In 1962, more than 410 000 tons of sardine were landed, but by 1966, the catch had dropped to 100 000 tons. The fleet then started targeting anchovy, using nets with a smaller mesh size. In 1987 anchovy catches peaked at 600 000 tons, but catches declined thereafter and in 1996 only 40 000 tons of anchovy were landed. Anchovy and sardine catches have subsequently increased, with

landings of both species averaging around 250 000t each over the past five years. The fishery is currently managed in terms of an Operational Management Procedure (“OMP”) that sets annual Total Allowable Catches (“TAC”) for anchovy and sardine.

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

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

The pelagic fleet consists of wooden, GRP and steel hulled purse-seine vessels, ranging in length from 15 metres to 30 metres. The industry employs approximately 7 800 people. Of these, 5 300 are employed on a permanent basis and 2 500 on a seasonal basis. The average annual income of sea-going workers is R94 000 – the highest in the fishing industry. Ninety-five percent of workers in this fishery are historically disadvantaged persons. The value of fish landed is presently worth approximately R800 million per annum. The market value of the 106 vessels operating in this fishery is more than R600 million (the average vessel is worth R 7 million). The fishery is capital intensive, with right-holders having to invest in vessels and processing and marketing infrastructure, or gain access to such through catching and processing agreements.

3. The medium term rights allocation process

In 1992, historically disadvantaged persons controlled some approximately seven percent of the small pelagic fishery. The accommodation of new entrants since 1992 has resulted in a narrowing of the gap between the largest and smallest allocations. Over the same period there has been a ten-fold increase in black involvement and ownership in the fishery (from seven

percent to 73 percent). In 2001 and 2002, the 113 medium-term (four-year) commercial small pelagic fishing rights were allocated. Of these:

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

4. Over-arching sectoral objectives

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

- Maintain or improve the transformation profile;
- Create an environment that attracts investment and stimulates job creation;
- Encourage investment in vessels (particularly the replacement of old vessels) and processing and marketing infrastructure;
- Encourage value-adding by supporting the development of new products, particularly products for human consumption;
- Reduce by-catches of horse mackerel; and
- Promote the economic viability and environmental sustainability of the fishery.

Commercial rights will not be allocated for the sole purpose of utilising fish for bait.

5. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the fact that the current purse-seine fleet is old and requires replacement;
- the high number of quality permanent jobs provided; and

- the need to maintain the economic stability that currently prevails in the fishery,

commercial rights will be allocated for a period not exceeding 15 years (1 January 2006 to 31 December 2020). The Department will regularly evaluate right holders against predetermined performance criteria (see further paragraph 12 below).

6. New entrants

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

The Department therefore considers that there is no room for the introduction of additional effort and the number of participants will not be increased. Existing participants may, however, be replaced in the rights allocation process with new entrants.

7. Evaluation criteria

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

7.1 Exclusionary criteria

Apart from the criteria described in the general policy pertaining to the lodgement of the applications and material defects, the delegated authority 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. Natural persons (i.e. individuals or sole proprietors) will not be granted rights. Current natural person right holders must apply in the form of a close corporation or company and will be treated as medium term right holder applicants provided that they comply with the guidelines set out in the General Policy.

- (b) **Compliance:** If a right holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant will not be allocated a small pelagic fishing right. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a right holder applicant if the applicant, or its members, directors or controlling shareholders that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Decisions may be reserved on applications if a right holder (or its members, directors or controlling shareholders) are being investigated for breaches of the MLRA. A decision on such an application will be made after the completion of the investigation.

The Department requires every right-holder to pay a levy on targeted fish landed. Right-holders that have under-reported catches to, *inter alia*, avoid the payment of levies will be excluded. Right-holders that have not paid levies will be penalised in the comparative balancing process as set out below. Should such an applicant nevertheless qualify for a right, a fishing permit will not be issued until the outstanding monies have been paid to the Department.

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

7.2 Comparative balancing criteria

Right-holder applicants and new entrant applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation:

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

One of the objectives with the allocation of long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;

- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and
- Corporate social investment.

(b) Investment in the fishery

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

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered;
- Investments in processing and marketing infrastructure.

As far as new entrant applicants are concerned, the delegated authority will consider investments made in other sectors in the form of vessels, fixed assets, processing and marketing infrastructure. All new entrant applicants will be required to demonstrate that they have the knowledge, skill and capacity to fish for small pelagics.

(c) Performance

Right-holder applicants that without good reason over- or under-caught by more than 10 percent of their allocation will be penalised. Financial performance will be measured, as indicated in the General Fisheries policy.

(d) By-catch and dumping

The Department is concerned about illegal, directed purse-seining of linefish (yellowtail, white steenbras and kob), and also the exceeding of the precautionary upper catch limit for juvenile horse-mackerel. Fishery interactions with seals are another concern. The unintentional catching of dolphins in nets must be avoided.

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

The dumping of fish is prohibited and may lead to the revocation of a right in terms of section 28 of the MLRA.

(e) Value-adding and enterprise development

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

(e) Local economic development

There is a need for investment and job creation in many of South Africa's smaller coastal towns. The delegated authority may take into account whether the applicants have elected to land their catches and have them processed in harbour facilities other than Cape Town and Saldanha. If the delegated authority positively scores these applicants, this must not result in penalising right holders that have invested in facilities in Cape Town and Saldanha.

(f) Jobs

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

Job creation and increases in jobs as a result of the allocation of medium term fishing rights will be rewarded, and in particular, applicants that have provided their employees with –

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

Jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account.

(g) 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.

(h) Compliance

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, the applicant will be penalised.

7.3. Quantum criteria

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

In this fishery, the mechanism for allocating quantum will form the subject of further consultation with applicants once the applications in this fishery have been assessed and the successful applicants have been identified. Subject to the outcome of the consultation process, the following three principles will be applied in respect of the allocation of quantum. Firstly, the allocation of quantum to successful medium term right holder applicants will be determined with reference to the quantum held by right holders in 2005. Secondly, the delegated authority must endeavour to redistribute at least 10% (ten percent) of the TAC to small businesses and right holders with small allocations, provided that these entities are sufficiently transformed and performed well during the medium term process.

Thirdly, and in addition to the above two principles, the delegated authority shall be entitled to allocate quantum based on criteria intended to achieve the objectives of this policy, such as transformation, value-adding and performance. These criteria must be designed in a manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria.

Any successful new entrant applicant may be allocated an amount equivalent to the lowest of the successful medium term right-holder applicant. Where the lowest amount allocated was zero (for either sardine or anchovy), the delegated authority will then allocate the second lowest amount, provided that the successful new entrant applicant applied for that specie.

8. Suitable vessels

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

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

9. Multi-sector involvement

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

10. Application fees and levies

The application fee for this fishery will be 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.

11. Management measures

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

11.1 Ecosystem approach to fisheries management

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

11.2 Consolidation of participants

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

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

11.3 Red-eye round herring directed fishery

Although the small pelagic fishery is focused on anchovy and sardine utilisation, red-eye round herring is also targeted, particularly early in the year. There is evidence that round herring is substantially under-utilised. The Department wishes to generate further revenue and create more jobs by encouraging better utilisation of this species. To this end the Department is investigating the possibility of creating a managed

fishery for this species. The Department reserves the right to introduce such a fishery at any time in the future after consultation with right-holders and other interested parties.

11.4 Vessels and fishing effort

There are presently in excess of 100 small pelagic fishing vessels that operate in South African waters. As many right-holders do not own the vessels they use and as vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation of long-term fishing rights. The Department considers the current effort levels in the fishery to be optimal. Right-holders will not be permitted to introduce vessels capable of expending effort that is far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

11.5 Monopolies

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

11.6 Introduction of a TAE

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

12. Performance measuring

The Department will institute a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after two years and thereafter every four years.

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

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular by-catch mitigation and the reduction of the ecological impacts of purse seining;
- 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.

13. Observer programme

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

14. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.