



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 600

Pretoria, 12 June
Junie 2015

No. 38871

PART 1 OF 2

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No. 496

12 June 2015

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
HAKE INSHORE TRAWL FISHERY: 2015**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND
MANAGEMENT OF FISHING RIGHTS: 2013**

(available at www.daff.gov.za)

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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

(In case of any inconsistency, the English text prevails)

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1. Introduction

This policy on the allocation and management of fishing rights in the Hake Inshore Trawl fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Department”) (“the Minister”) and shall be referred to as the “**2015: Hake Inshore Trawl Policy**”. This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”) and all other Sector Specific Policies including Policy for Small Scale Fisheries in South Africa and the Policy for the Transfers of Commercial Fishing Rights.

This policy sets out objectives, criteria and considerations that will guide the application, evaluation, allocation and management of fishing rights in the Hake Inshore Trawl fishery (“the fishery”). This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

2. Profile of the Fishery

2.1 Description of the fishery

The South African hake resource comprises of two species, the shallow-water Cape hake (*Merluccius capensis*) and the deep-water Cape hake (*M. paradoxus*). Cape hakes are targeted by four fishery sectors: deepsea and inshore demersal trawl and hake longline and hake handline sectors. Since 2013, an apportionment of Total Allowable Catch (TAC) for small scale fishing was reserved and currently there is no targeting of hake by this sector as no fishing rights have been allocated yet. The inshore trawl and handline sectors operate only on the South Coast, while the deepsea trawl and longline fleets operate on both the West and South Coasts. Although the demersal trawl fisheries also target sole and horse mackerel, hake is the largest and most commercially important component of the catch of all four of the sectors, which collectively provide the basis for some 30 000 jobs and a landed value in excess of R2.5 billion.

There are currently 16 Right Holders operating in the Hake Inshore Trawl sector and the 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 generally 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.

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 R60 million annually.

2.2 History of the fishery

Commencing in the 1890s, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa's most important fishery and, for the last decade, it has accounted for more than one half of the wealth generated from commercial fisheries. Although the inshore trawl fishery was pioneered at the start of the twentieth century, 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 (*Austroglossus pectoralis*). The inshore trawl fishery continues as a "dual quota" fishery targeting both shallow-water hake (*Merluccius capensis*) and Agulhas sole.

As was the case with the deep-sea trawl fishery, prior to 1978, the inshore trawl fishery was largely unregulated and participants were not restricted to a maximum catch limit. In 1978, the demersal fishery was formally separated into inshore and offshore sectors, a global annual total allowable catch ("TAC") was introduced and was divided between the sectors. An annual sole TAC was also set. Individual quotas were introduced in 1982. Since then, an annual TAC has been set for both the Cape hakes and for Agulhas sole. The inshore trawl fishery has been managed in terms of a sole TAC and a portion of the hake TAC. The sectoral allocation of the global hake TAC has remained remarkably stable at around 6 percent.

The Cape hakes became subject to increasing levels of exploitation after the First World War. The incursion of foreign fleets during the 1960s culminated in a peak catch of close to 300 000 tons in the early 1970s. After the declaration of the 200 nautical mile Exclusive Fishing Zone (EFZ) in 1977, South Africa implemented a relatively conservative management strategy by imposing Total Allowable Catches (TACs) in order to rebuild the hake stocks, and annual catches have subsequently remained relatively stable in the 120 000 – 160 000 tons range. The TACs were recommended on the basis of assessments of the resources using first steady-state, then dynamic and then age-structured production models. Since 1991, the South African hake resource has been managed using Operational Management Procedures (OMPs). An OMP is essentially a combination of pre-specified methods of data collection and analysis, coupled with a set of simulation-tested decision rules which specifies exactly how the regulatory mechanism is to be computed each year. In the case of South African hake, the regulatory mechanism is a

TAC, the value of which is calculated from stock-specific monitoring data (commercial CPUE indices and indices of abundance derived from demersal research surveys). Implicit in the OMP approach is a schedule of OMP revision (every 4 years) to account for updated data sets and possible changes in resource and fishery dynamics.

An important consideration in the development of the recent hake OMPs (OMP-2006, OMP-2010 and now OMP-2014) has been the certification of the South African hake trawl fishery (incorporating both the deepsea and inshore trawl sectors) by the Marine Stewardship Council (MSC). The fishery first obtained this prestigious eco-label in 2006, and was the first (and currently the only) fishery in Africa to be MSC certified. The fishery was successfully re-certified in 2010, and is currently undergoing assessment for its second re-certification. MSC certification has provided substantial socio-economic benefits to the fishery through enabling access to international markets that are increasingly demanding that seafood products that are eco-labelled.

2.3 The Management of the fishery

The Department manages the inshore trawl fishery as part of a "hake collective". In terms of the MLRA, a "global" TAC for all hakes (both species combined) is set annually by the Minister of Agriculture, Forestry and Fisheries. Of the global hake TAC a reserve to cover bycatch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing was set aside prior to distribution among the hake fishing sectors. Currently the Global Hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake longline, hake handline fishery and small scale fishing sectors without regard to the hake species split in the respective fishery sectors. The Minister determines the Global Hake TAC apportionment amongst sectors within this fishery. However, a sectoral allocation procedure that takes cognisance of the species taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species. In terms of such a procedure, the sectoral allocation of hake to the Inshore Trawl Fishery would be determined only by the status of the shallow-water hake resource. Sole allocation will also be determined in order to match Sole exploitation to productivity. Sole TAC apportionment will be proportional to the percentage of Hake allocation as this fishery operates as a "dual quota" fishery targeting both shallow-water hake (*Merluccius capensis*) and Agulhas Sole

Inshore trawl grounds are located between Cape Agulhas in the west and the Great Kei River in the east. Vessels operating in the inshore fishery may not exceed 35m and may not use heavy trawl gear. In addition, vessels fishing on deep-sea trawl permits may not

operate in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast. However, inshore vessels are not restricted from fishing deeper than 110m. Trawling for hake occurs throughout the traditional "inshore" area i.e. in waters shallower than the 110m isobath and on the two offshore fishing grounds. Trawling for Agulhas sole is in water depths of 50-80m, mainly between Mossel Bay and Struisbaai, in areas where the substrate consists of mud/shale. Most of the bays on the South coast are closed to trawling.

3. The 2005/2006 long term rights allocation process

In the 2005/2006 long-term fishing rights allocation process, rights were allocated to a total of 16 right holders in the Hake Inshore Trawl sector with an average black ownership percentage of 37%.

4. Objectives

4.1. The objectives of allocating fishing rights in the hake inshore trawl fishery are to:

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities) and broaden meaningful participation (increase participation, value-creation, and linkage);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improved working conditions;
- (d) promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of Hake Inshore Trawl for a significant portion of their gross annual income above applicants deriving income from sources outside the Hake Inshore Trawl;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks;
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources; and
- (i) promote investments in processing and marketing infrastructure in areas outside the metropolitan areas which are economically depressed;

5. Granting of rights

Fishing rights are granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA"). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of the MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial

Total Allowable Catch (TAC), Total Applied Effort (TAE) or combination thereof. It shall be further noted that in terms of Section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency. However, when the Hake stocks are in danger, the Minister may suspend all or any of the fishing in this fishery in terms of Section 16 of MLRA.

5.1 Form of right holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights.
- (b) Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered in the Hake Inshore Trawl fishery:
 - (i) a company;
 - (ii) close corporations and
 - (iii) co-operatives.

5.2 Duration of right

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

5.3 Total Allowable Catch allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery, the Delegated Authority will only allocate an initial maximum of 9057.186 tons which shall not be exceeded for the right duration. It shall be anticipated that individual allocations may decrease and annual approved TAC decrease. However, in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister.

5.4 Transfer of rights allocation in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, Hake Inshore Trawl rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure in activate or apply for any permits, declare any catches during the first five years shall result to an automatic cancellation of the right by Minister.

Rights can only be transferred in terms of the Policy for the Transfer of Commercial Fishing

Rights (Government Gazette No 32449, 31 July 2009) or relevant amendments thereof.

6. Multi-sector involvement

Applicants in the Hake Inshore Trawl fishery will not be precluded from holding commercial rights in the local commercial fishing sectors. This shall mean any person can only apply for right in any fishery sector regardless of the fact that the applicant has applied for a right or holds a right in any fishery sector. However, the Delegated Authority reserves the right to grant a right to the applicant in any sector.

7. Evaluation criteria

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

7.1 Exclusionary criteria

Apart from the criteria described in the 2013: General Policy pertaining to the lodgement of applications and material defects, the Delegated Authority will exclude applicants that fail to meet the following requirements:

(a) Compliance

Applicants that have been convicted of a serious offence n of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements of the MLRA, including payment of admission of guilt fines, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) Paper quotas

Applications from paper quota applicants, as defined in the 2013: General Policy, will be excluded.

(c) Non-utilization

Applicants that had a Hake Inshore Trawl right and did not harvest hake during the period of 2006 to 2014 shall be excluded.

7.2. Balancing criteria

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

(a) Transformation

The South African population percentage composition of demographic groups

(79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official and management levels;
 - (ii) Whether employees (other than top salary earners) benefit from an employee share scheme;
 - (iii) Compliance with the Employment Equity Act 55 of 1998 and the representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
 - (iv) Affirmative procurement;
 - (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
 - (vi) Corporate social investment.
- (b) **Fishing performance**
- (i) The fishing performance of applicants holding fishing rights in the Hake Inshore Trawl fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.
- (c) **Local economic development**
- (i) The Delegated Authority will take into consideration the landing and processing of catches outside the metropolitan areas to promote local economic development. 80% of hake inshore trawl TAC shall be landed and processed in the South Coast.
 - (ii) The Delegated Authority shall, in order to ensure that all fishing communities shares in the marine living resources, use locality of landing sites and fish processing establishment as scoring or tie-breaking criteria.
- (d) **Job creation**
- Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with:

- (i) permanent employment;
 - (ii) medical aid and pension / provident fund;
 - (iii) safe working conditions in accordance with the applicable legislative requirements; and
 - (iv) an employee share scheme as a shareholding entity of the right holder.
- (c) **Access to a suitable vessel**
- An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of hake inshore trawl. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (d) **Applicants involvements and relationship with other applicants**
- (i) **Entity and their subsidiaries involvement**

An entity and its subsidiary may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the Hake Inshore Trawl resource. Applicants may be required to disclose their relationship to applicants in the hake inshore trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in this sector, the entity (not subsidiary) will be preferred.
 - (ii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Hake Inshore Trawl fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Hake Inshore Trawl fishery.

7.3. Suitable vessel

- (a) A suitable vessel in the Hake Inshore Trawl fishery is a vessel that:
 - (i) has a maximum South African Maritime Safety (SAMSA) registered length not exceeding 35 metres;
 - (ii) has a maximum horsepower of 900; and
 - (iii) is geared to target hake and sole.
 - (iv) Upon allocation of fishing right such a vessel shall be fitted with a functioning Vessel Monitoring System (VMS);

8. Provisional lists, consultation and representations

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

9. Announcement of decisions

The Delegated Authority shall after making a final decision on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision. Further General Reasons for decisions in a specific fishery sector will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure referred to as decision sheet outlining all applicant scores in the Hake Inshore Trawl sector.

10. Payment of application and grant of right fees

- 10.1 The fees for this fishery will be determined having regards to:
- (a) The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews;
 - (b) The value of the fish being allocated over the duration of the right;
- 10.2 The non-refundable application fee shall be payable before submission of the application and only proof of payment shall be brought to the receipting centre; and
- 10.3 The grant of right fee is payable by all successful applicants upon the granting of rights.

11. Management Measures

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

11.1 Ecosystem approach to fisheries

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

11.2 Observer programme

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

11.3 Performance measuring

Successful applicants will be subjected to a number of performance measuring exercises for the duration of the fishing rights. 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.

11.4 Offences

Successful applicants that fail to utilise their Hake Inshore Trawl right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

12. Permit Conditions

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

13. Glossary of Terms

- 13.1 "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.2 "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.3 "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.4 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.

- 13.5 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.6 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.7 "Total allowable catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 13.8 "Total applied effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish for individual species or groups of species.
- 13.9 "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.10 "legal entity" means a close corporation, South African company or trust, other than a processing factory.
- 13.11 "ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.

IMPORTANT

Information

from Government Printing Works

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2. Notices can only be submitted in Adobe electronic form format to the email submission address submit.egazette@gpw.gov.za. This means that any notice submissions not on an Adobe electronic form that are submitted to this mailbox will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
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4. All customers who walk in to GPW that wish to submit a notice that is not on an electronic Adobe form will be routed to the Contact Centre where the customer will be taken through the completion of the form by a GPW representative. Where a customer walks into GPW with a stack of hard copy notices delivered by a messenger on behalf of a newspaper the messenger must be referred back to the sender as the submission does not adhere to the submission rules.
5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
6. The current cut-off of all Gazette's remains unchanged for all channels. (Refer to the GPW website for submission deadlines – www.gpwonline.co.za)
7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za)
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9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address submit.egazette@gpw.gov.za.



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