



## forestry, fisheries & the environment

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA

### **SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)**

#### **REVISED (2020): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2**

**NAME OF THE PROPOSAL: THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS: HAKE DEEP SEA TRAWL**

1. Please DO NOT ALTER the template and questionnaire
2. Date must be clearly indicated
3. Draft SEIAS report should have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
4. FINAL report will be in PDF format and will be inclusive of the sign-off
5. FINAL report will have the approval stamp of the Presidency on the front cover and will include the signoff
6. Sign off forms are only valid for a period of six months.
7. Bills and Regulations that introduce permitting, licensing and registration system must be accompanied by a streamlined process map and indicate the proposed turnaround time for processing of such.

## **PART ONE: ANALYSIS FOR FINAL SEIAS REPORT**

*Please keep your answers as short as possible. Do not copy directly from any other document.*

### **1. Conceptual Framework, Problem Statement, Aims and Theory of Change**

#### 1.1. What socio-economic problem does the proposal aim to resolve?

**The main socio-economic problem is the determination of fishing rights allocations in line with the Marine Living Resources Act (MLRA) which requires “the need to utilise marine living resources to achieve economic growth, human resource development, capacity building,” and “have particular regard to the need to permit new entrants, particularly those from historically disadvantaged sectors of society,” whilst being mindful of the particular dynamics of the Hake Deep Sea Trawl sector and its inherent constraints. There is a need to, where possible, address concentration in the sector, and remove barriers to entry to promote the objectives of the Sector Policy, General Policy and the MLRA, whilst minimising economic disruption within the sector.**

The Hake Deep Sea Trawl (HDST) Sector faces similar challenges to other fisheries in terms of sustainably managing fluctuating fish stocks, whilst promoting the core objectives of transformation, economic development, and SMME support. This particular sector is highly capital intensive<sup>1</sup>– requiring significant capital investment in order to profitably participate in the sector.

#### **The Hake Deep Sea Trawl Sector**

The sector is sustainably managed using an Operational Management Procedure (OMP) to regulate exploitation of the resource. The sector has been repeatedly awarded the Marine Stewardship Council (MSC) Certification. There has been historical variance in total hake TAC with fluctuations between 110 000 and 158 000 t per annum over the past two decades.

The sector provides 12 400 jobs (direct and indirect), with 90% of these held by historically disadvantaged individuals. The sector is the most valuable fishery, contributing about R8.5 billion to the national economy.

There has been significant improvement in transformation within the sector, with HDI shareholding of rights holders increasing from 30% in 2005 to around 70% currently.

Existing participants in the sector have invested significantly in the industry, upward of R7.6 billion, towards vessels, processing facilities and marketing infrastructure.

The sector is highly capital intensive, with both harvesting and processing of the resource requiring high capital investment. Vessels can cost between R70 million and R250 million. Voyage costs range from “R1.5 million for a small vessel to R6 million for a large vessel”, 80% of which are fixed costs regardless of the voyage catch.<sup>2</sup>

#### **Right Holders within the Sector during the last commercial fishing rights period (2005-2020)**

This sector was highly concentrated. Following the LTRAMP2005 process and subsequent rights transfers and consolidations, two companies were allocated 68 % of the total HDST TAC, with the remaining 32% of the TAC being allocated among the 28 other entities.

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<sup>1</sup> As included in the SEIAS Phase 1 Hake Deep Sea Trawl Document

<sup>2</sup> Economic Study of the Hake Deep-Sea Trawl Fishery and the Implications for Future Fishing Rights Allocation Policy, Genesis, 2020.

These “larger” Long Term Rights Allocation and Management Process of 2005 (LTRAMP2005) rights holders have invested in integrated business models, focussing on value addition, creating significant employment and supporting SMMEs through the supply chain. The contribution of these companies through investment, BBBEE Spend, Corporate Social Investment (CSI), tax contribution and shareholder beneficiation<sup>3</sup> does need to be considered.

Many “smaller” LTRAMP2005 rights holders, however, were allocated rights that are sub-optimal due to the economies of scale required in the sector. As a result, “smaller” LTRAMP2005 rights holders formed “economic units”, pooling resources to operate efficiently. In some cases, these rights holders transferred their rights, or chose not to participate further in the sector. This low allocation of HDST TAC did increase the “paper quota” risk of some rights holders, as they could not meaningfully participate in the sector.

“Paper Quotas” are stakeholders who are allocated rights but have no intention to invest in the fishery, bear risks, and participate in the sector. As such they may simply choose to engage in catch agreements, and outsource the resource harvesting, processing and marketing. Or they may choose to sell or transfer their quota to other individuals or companies. This behaviour is problematic for the sector as it does not promote skills development, job creation or investment.

It is clear that the unique constraints within the HDST sector need careful consideration and balancing to ensure fair commercial fishing rights allocation that does not create economic disruption, but rather further promotes economic development, transformation, job creation and SMME development.

### 1.2. What are the main root causes of the problem identified above?

<b>What socio-economic problem does the proposal aim to resolve</b>	<b>What are the main roots or causes of the problem</b>
Capital intensive nature of the sector results in barriers to entry.	<ul style="list-style-type: none"> <li>- High capital and infrastructure costs.</li> <li>- Established value chains require high volumes of TAC for viability.</li> </ul>
High concentration in the sector, with two companies holding 68% of the HDST rights during LTRAMP2005.	<ul style="list-style-type: none"> <li>- The capital-intensive nature of the operations of the fishery requires relatively large allocations per Right Holder to enable meaningful participation.</li> <li>- A sector where economies of scale are critical to promote profitable participation</li> <li>- A business strategy which emphasises an integrated value chain to ensure value addition, requiring high volumes of TAC for viability.</li> </ul>
Lack of meaningful participation by smaller rights holders.  (Half of the LTRAMP2005 right holders held only 7.5% of the total TAC allocated, combined)	<ul style="list-style-type: none"> <li>- Capital intensive nature of the fishery</li> <li>- Economies of scale play a major role among Right Holders in determining profitable participation, this scale is difficult to achieve with small rights allocations.</li> <li>- Small allocations from the LTRAMP2005 process.</li> </ul>

<sup>3</sup> Economic Study of the Hake Deep-Sea Trawl Fishery and the Implications for Future Fishing Rights Allocation Policy, Genesis, 2020.

Paper Quotas	<ul style="list-style-type: none"> <li>- Inability to meaningfully participate in the sector due to small rights allocations</li> <li>- Lack of enforcement</li> <li>- Application forms and processes did not identify and deter paper quota risks.</li> </ul>
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**1.3. Summarise the aims of the proposal and how it will address the problem in no more than five sentences.**

The proposal aims to review the sector specific Policy on the Allocation and Management of Commercial Fishing Rights in the Hake Deep Sea Trawl Fishery (HDST Policy) to ensure meaningful participation and transformation in line with Section 18(5) of the MLRA, whilst balancing historical investment and successful participation in the sector.

This will be achieved through policy adjustments as follows:

- removing vessel ownership as a barrier to entry to the sector (rather opening the right up to all who have access to a vessel),
- allowing new entrants within the sector where justifiable,
- ensuring meaningful participation in the sector through measures to reduce paper quotas and fronting,
- the application of exclusionary and balancing criteria to ensure meaningful participation in the sector, full utilisation of the resource, the promotion of transformation, local economic development support and SMME support within the sector.
- The recognition of ‘economic units’ in the final policy and application process.
- The inclusion, as the final step of the Quantum Allocation Method, of the following “address small allocation concerns and/or introduction of new entrants to the extent possible.”

These proposed amendments to the HDST sector policy will ensure that the specific challenges within the sector are addressed.

**1.4. How is this proposal contributing to the following national priorities?**

National Priority	Impact
1. Economic transformation and job creation	Some improvement to economic transformation to allow smaller businesses to participate through the removal vessel ownership as a barrier to entry and allowing new entrants. Continued focus on transformation in terms of balancing criteria for applicants will further promote this. As will the recognition of economic units. This may be achieved at the cost of some job losses from larger LTRAMP2005 Rights Holders who may get TAC allocations lower than what they received during LTRAMP2005, or from LTRAMP2005 Rights Holders who have not transformed or fully utilised their rights.

2. Education, skills and health	SMME development and promotion that will be coordinated by the Fisheries Transformation Council will result in increased small business development within the sector and resultant skills development.
3. Consolidating the social wage through reliable and quality basic services	Removing vessel ownership as a barrier to entry, and measures to reduce fronting and paper quotas, will improve meaningful participation by “smaller” rights holders, with improved stability and hence stable/ long-term employment opportunities. This may be achieved at the cost of some job losses from larger LTRAMP2005 Rights Holders who may get TAC allocations lower than what they received during LTRAMP2005, or from LTRAMP2005 Rights Holders who have not transformed or fully utilised their rights.
4. Spatial integration, human settlements and local government	N/A
5. Social cohesion and safe communities	Some improvement in long-term, stable employment opportunities among “smaller” right holders, but this may be achieved at the cost of some job losses from the larger Right Holders.
6. Building a capable, ethical and developmental state	The proposed changes reflect a capable and ethical state, promoting the development of a transformed and inclusive sector, whilst balancing environmental concerns to ensure sustainable use of Hake Longline resources.
7. A better Africa and world.	Some improvement to economic empowerment of HDI groups

**1.5. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.**

<b>Option 1.</b>	Allocate commercial fishing rights, manage and monitor and evaluate the performance by successful fishing rights holders using the current General Policy and simply review Application Forms and Selection Criteria, with input and advice obtained from the Consultative Advisory Forum (CAF).
<b>Option 2.</b>	Allocate commercial fishing rights, manage them and monitor and evaluate the performance by successful fishing rights holders using the MLRA, with input and advice obtained from CAF.

## PART TWO: IMPACT ASSESSMENT

### 2. Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of contradiction and how will the contradictions be resolved
GENERAL POLICY ON THE ALLOCATION OF FISHING RIGHTS: 2021	Department of Forestry, Fisheries and the Environment (DFFE)	Need to be read together	No contradictions
POLICY ON TRANSFER OF COMMERCIAL FISHING RIGHTS: 2021	Department of Forestry, Fisheries and the Environment (DFFE)	Need to be read together	No contradictions
Policy for Small Scale Fisheries Sector in South Africa: 2012	Department of Forestry, Fisheries and the Environment (DFFE)	Need to be read together.	No contradictions
Marine Living Resources Act (MLRA)	Department of Forestry, Fisheries and the Environment (DFFE)	<ul style="list-style-type: none"> <li>- Section 2: Objectives of the MLRA.</li> <li>- Section 14: Determination of Total Allowable Catch (TAC) and Total Allowable Effort (TAE).</li> <li>- Section 18: Granting of commercial fishing rights; and</li> <li>- Section 28: Cancellation and Suspension of rights, licenses and permits.</li> </ul>	<p>No contradictions.</p> <p>The MLRA is a high level national legal framework that provides for commercial harvesting of marine fisheries resources in South Africa and the General Policy is complimentary to the MLRA, providing enabling guidance towards implementation of the provisions of the MLRA and achievement of set objectives thereof.</p>
National Empowerment Fund (NEF) Act, 1998 (Act No 105 of 1998)	The DTIC	Section 3: Objects of the Trust	No areas of contradiction, the NEF Objectives are complimentary to those of the MLRA

Merchant Shipping Act 57 of 1951	South African Maritime Safety Authority (SAMSA)	Section 68: Licensing of Vessels	No areas of contradiction, this Section of the Merchant Shipping Act is enabling and complimentary certain elements of the MLRA
BBBEE Codes of Practice	Department of Trade and Industry	Informs and guides transformation imperatives of the sector policy.	No areas of contradiction.
National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks)	Department of Forestry, Fisheries and The Environment	Informs and guides monitoring and evaluation of the sector policy.	None
National Plan of Action for the Conservation and Management of Seabirds (NPOA-Seabirds)	Department of Forestry, Fisheries and The Environment	Informs and guides monitoring and evaluation of the sector policy.	None

**2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.**

**a) What and whose behaviour do the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?**

1. Lack of meaningful participation within the sector; non-utilisation or under-utilisation of allocated rights.

Due to the fact that half of the LTRAMP2005 right holders each held less than 5% of the HDST TAC, and that this sector requires relatively large allocations to ensure profitable operations, some rights holders were unable to utilise their allocated rights whilst maintaining business viability. As a result, these rights were transferred or under-utilised, or rights holders formed “Economic Units” through which they could pool their resources to exercise their granted rights.

If SMMEs cannot meaningfully participate in the sector, it is difficult for them to be promoted and supported within the sector. It further follows that those with the capital to fully utilise their rights will do so, potentially purchasing rights from smaller rights holders, potentially leading to increased concentration in the sector.

2. Without transformation, job creation, SMME support and local economic development incentivised, beneficiation from the sector may well be felt by “large” rights holders and their shareholders alone (as they may choose a highly mechanised/ low labour business strategy).
3. “Paper Quotas” are stakeholders who are allocated rights but have no intention to invest in the fishery, bear risks, and participate in the sector through actively engaging in the various aspects of the value chain. As such they may simply choose to engage in catch agreements, and outsource the resource harvesting, processing and marketing. This behaviour is problematic for the sector as it does not promote skills development or job creation through participating in the sector and various value-adding activities related to processing and marketing the resource. There is an opportunity cost in allocating rights to “paper quota” holders – that of jobs that might have been created, local economic development that might have been generated if such quotas were allocated to stakeholders willing to invest and participate in the sector.
4. Fronting behaviour can undermine the transformation objectives of the sector. This undermines the core objectives of the policy and the MLRA, again generating an opportunity cost in terms of transformation that could have been achieved had rights been allocated to different stakeholders.

**b) How does the proposal aim to bring about the desired behavioural change?**

1. Lack of meaningful participation within the sector, non-utilisation of allocated rights. The proposal aims to address this behaviour through the following:
  - Recognition of economic units that were formed as a result of the LTRAMP2005 process. Economic units are recognised in the policy and in the application form.
  - Vessel access is used as a balancing criteria for evaluating applicants, no longer as exclusionary criteria, removing some barriers to entry, enabling smaller stakeholders who have less capital, to participate.



- Differentiating between Category A, B and C sectors will ensure that new entrants will be evaluated against one another, and potentially be able to meaningfully participate in the sector.
  - The inclusion of SMME support as one of the core objectives of the policy
  - The inclusion, as part of the Quantum Allocation Method, of the provision that a step will be taken to “address small allocation concerns and/or introduction of new entrants to the extent possible.”
  - Non-utilisation of commercial fishing rights from the LTRAMP2005 allocations is included as exclusionary criteria when assessing applicants.
2. The inclusion of transformation, local economic development, investment, public benefit and SMME support throughout the policy ensures that benefits derived from the HDST sector are felt throughout the South African economy. Businesses are incentivised to utilise a high employment business strategy, to include SMMEs within the supply chain, and adhere to BBBEE codes of good practise. This ensures that core objectives of the policy will be met.
  3. Paper Quotas will be addressed through the following measures:
    - Including paper quota risks as part of the exclusionary criteria when assessing applicants.
    - Including historical fishing performance, investment, job creation, and benefits to society as balancing criteria when evaluating applicants.
    - A moratorium on transfer of rights only after the first 3 years post commercial fishing allocations. This will prevent applicants who merely apply for commercial fishing rights in order to transfer them.
  4. Fronting behaviour will be addressed through the following:
    - Including “Fronting” as part of the exclusionary criteria when assessing applicants.
    - Including “transformation” as balancing criteria for applicants, with the requirement to submit transformations statistics during the application process.

### 2.3. Consultations

- a) **Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g., business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.**

#### **Consulted Government Departments, Agencies and Other Organs of State**

The draft Policy was gazetted for public comments on 20 September 2021 (Government Gazette Number 45180) and the gazette was circulated to interested and affected parties, including Government Departments, Agencies and other Organs of State. The Public consultations to solicit inputs/comments on the draft policy were conducted from 13 October to 21 October 2021. Meeting with Recognised Industrial Bodies were also held. Interested parties submitted comments to the SEIAS Phase 1 as well as the proposed revised Policy for Hake Deep Sea Trawl to which the department has responded.

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs and risks?</u>	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
<p><b>Competition Commission</b></p> <p><b>Note:</b> While they only commented on the General Policy, some of the comments were pertinent to the Hake Deep Sea Trawl Sector and were therefore considered.</p>	<p><b>Benefit:</b></p> <p>Reducing sector concentration.</p> <p>Increasing competition within the sector.</p> <p>Increasing economic participation in the sector by HDIs and SMMEs</p> <p>Promoting Fairness</p> <p><b>Implementation/Compliance Costs:</b> None</p> <p><b>Risks:</b> None</p>	<p>Supports the review of the policy to effect proposed changed.</p>	<p>The competition commission proposed the following:</p> <ol style="list-style-type: none"> <li>1. Including skippers within the exclusionary criteria of MLRA contravention.</li> <li>2. The Competition Commission advised that the Department ensures that no preference is shown towards applicants in a particular category of the three (3) categories (e.g., Category A, B &amp; C).</li> <li>3. The Competition Commission would like to see the Department make provision for applicants who have made errors in their applications being given an opportunity to rectify such errors.</li> <li>4. With respect to the Balancing Criteria, the Commission would like to advise the Department against having clauses that could lead to barriers to trade, particularly for Category C applicants;</li> </ol>	<ol style="list-style-type: none"> <li>1. <b>Yes, skippers are included in the</b> exclusionary criteria of MLRA contravention in Section 6.1.1 of the proposal</li> <li>2. Yes, to the extent that the General Policy does not show any preference towards any category</li> <li>3. Section 6.1. of the revised General Policy allows for some discretion by the Delegated Authority with regards to Improperly Lodged applications.</li> <li>4. As per section 6.2.5 of the proposal, access to a Suitable Vessel is now a Balancing Criteria, not an Exclusionary Criteria.</li> </ol>
<p><b>SAMSA</b></p> <p><b>Note:</b> While they only commented on the General Policy, some of the</p>	<p><b>Benefits:</b></p> <p>More enabling conditions for employees within the Hake Deep Sea Trawl Sector</p>	<p>SAMSA supports the proposed review of the General Policy.</p>	<p><b>Proposed amendments:</b></p> <p>On the Balancing Criteria (Job creation sections), SAMSA advised the insertion of text on compliance with the Merchant Shipping Act, 1951 (Act No 57 of 1951)</p>	<p><b>Yes, this was included in the Section 7.2.9 (d) of the General policy,</b></p>

comments were pertinent to the Hake Deep Sea Sector and were therefore considered.	<b>Implementation/Compliance Costs:</b> None  <b>Risks:</b> None			
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### Consulted stakeholders outside government

Below are examples from the comments and responses received on the draft HSDT policy which was published for comment in September 2021. The Hake Deep Sea Trawl CRR document is attached as an appendix in its entirety.

Name of Stakeholder	What do they see as main benefits, Implementation/ Compliance costs and risks?	Do they support or oppose the proposal?	What amendments do they propose?	Have these amendments been incorporated in your proposal?
“Larger” LTRAMP 2005 Rights Holders (Sea Harvest, I&J)	<b>Benefits: Fair and optimal allocation of fishing rights within the Hake Deep Sea Trawl fishery.</b>  <b>Implementation/ Compliance: The status quo remains</b>  <b>Risks:</b> i) <u>Reduction of rights allocation to “large” rights holders</u> can undercut viability of business operations, as economies of scale will no longer be attainable. They cite the “Genesis Study” which simulates reduction of rights among large rights holders and seems to demonstrate that they will not withstand a reduction of	Oppose the potential cumulative effects of the proposal where it would result in material loss of TAC to LTRAMP2005 Rights holders	The following proposals were made: 1. Set a maximum % of TAC to be removed from existing “large” rights holders, capping it at 10%.  2. Allocate this (alongside any % available due to the removal of paper quotas, non-performing rights holders), to smaller Category A rights holders who performed well historically and new entrants (where viable).  3. Sea Harvest proposed that the fishery take on new entrants only where evidence shows that the industry can handle their incorporation.	Suggestion 1. and 2. Were not incorporated. This is due to the fact that Commercial Fishing rights expired in December 2020, there are in fact no existing fishing rights holders in this sector.  3. This proposal was incorporated with the following wording included in Section 14, “However it shall be noted that there is limited

	rights allocation by more than 10% of their existing TAC allocation. Should this be exceeded there would be significant job losses, tax losses, and they would no longer be able to do business with the multiple SMME they engage with throughout the value chain.		4. Remove mention of minimum allocation for Category As, but implement a minimum 500t allocation (about 0.43% of the HDST TAC) to successful Category Bs and Cs 5. Remove appeals reserve	room to accommodate New Entrants in this fishery”  4. Mention of meaningful minimum allocation was removed from the final policy, due to difficulties of implementation both legally and operationally.  5. As per numerous stakeholder comments, the Appeals reserve was removed from the final policy.
Larger LTRAMP 2005 Rights Holders, and South African Deep-Sea Trawling Industry Association (SADSTIA)  (Blue Continent Products (Pty) Ltd, Irvin & Johnson Limited, SADSTIA, Sea Harvest)	<b>Benefits:</b> Optimal Allocation of the Hake resource <b>Implementation/Compliance Costs:</b> Stats quo remains <b>Risks:</b> Rights Holders cannot make use of sub-optimal TAC apportionment.	Oppose the inclusion of the “promotion of SMMEs” as a HDST sector objective. Argue the sector is not well suited to SMMEs due to high capital intensity. Argue further that SMMEs are promoted through the Hake value chain which larger LTRAMP holders support and promote. As motivation for comments, stakeholders cited the Genesis Study.	Suggest removing the “promotion of SMMEs” as a HDST sector objective.	This proposed amendment was not incorporated. The final policy retains this clause – to include the promotion of SMMEs within the sector. SMME promotion is fundamental aspect of the National Development Plan (NDP) and identified as a major driver of job creation.
Operators across the HDST Fishery.	<b>Benefits: Optimally allocating fishing rights for business viability</b>	i) Oppose the increase of Hake Longline to 10% of Global Hake TAC.	-Suggest leaving Hake Longline Allocation at 6.551% of Global Hake TAC.	The following wording is included in Section 2.3 (a) of the proposal:

<p>(ZWM Fisheries, Blue Continent Products (Pty) Ltd, Irvin &amp; Johnson Limited, ZWM Fishing Pty Ltd, Sea Harvest, SeaVuna Fishing Co. (Pty) Ltd, Premier Fishing SA Pty Ltd, South African Fishing Empowerment Corporation Proprietary Limited (SAFEC))</p>	<p><b>Implementation/ Compliance Costs:</b> Status Quo Remains</p> <p><b>Risks:</b> Reducing % Global TAC allocation to Hake Deep Sea Trawl will put pressure on a fully subscribed sector.</p>		<p>-Provide a definition for “smaller” Right Holder</p> <p>-“Small” Rights Holders be allocated no less than 4000 tons and ideally, more.</p>	<p>“The Department is considering implementing changes in the hake TAC sectoral apportionment: - Longline apportionment increased from 6.551% to 10% of the hake TAC, subject to further investigation on possible impacts on resource dynamics and how the 3.449% of the TAC that would be required for this will be sourced.” This is sufficient to allay concerns with regard allocation of increase in TAC apportionment to Hake Longline.</p> <p>Mention of meaningful minimum allocation was removed from the final policy, due to difficulties of implementation both legally and operationally.</p> <p>i)</p>
<p>Operators across the HDST Fishery</p> <p>Letap Fishing, SeaVuna Fishing Co. (Pty) Ltd, Mayibuye Fishing (Pty) Ltd, Sea Harvest Group Ltd</p>	<p><b>Benefits:</b> Rights Holders who receive sub-optimal allocations will be able to transfer their rights, for optimal utilisation of the Hake resources.</p> <p><b>Implementation/Compliance Costs:</b> Status quo remains</p> <p><b>Risks:</b> Allocated rights are not utilised.</p>	<p>Oppose the inclusion of the 3 Year moratorium on transfer of rights.</p>	<p>Suggest removing the clause in its entirety.</p>	<p>The proposed amendment was not incorporated. The final policy retains the clause – to reduce paper quota risks</p>
<p>Large and Small LTRAMP 2005 Rights holders as well as SADSTIA</p>	<p><b>Benefits:</b> Ensure Rights Holders receive full benefits of rights, even if there are problems with harvesting the resource in a particular year</p>	<p>Oppose the wording in Section 4.2 (b) “Roll-overs to be discouraged”</p>	<p>-Propose removing the wording.</p>	<p>This proposal was not incorporated in the final policy. Section 4.2 (b) retained the wording, “Roll-overs to be discouraged”. It is imperative that the proposal promote the optimal use of the resource and encourage Rights Holders to make full use of their allocated rights. The fact</p>

	(i.e., industry strikes, Covid-19) <b>Costs:</b> Status quo remains. <b>Risks:</b> Rights Holders are not able to benefit from Rights fully in a particular year, due to factors outside of their control.			that roll-overs are discouraged and completely prohibited should allay stakeholders' concerns.
Operators located in the Eastern Cape	<b>Benefits: Increase allocation of TAC to Eastern Cape Based operators</b> <b>Costs: Status quo remains</b> <b>Risks: Insufficient allocations</b>	Oppose the omission of provincial statistics with regard to the understanding of the fishery, and the TAC allocations.	Make provisions for greater apportionment of TAC to stakeholders within the Eastern Cape within the policy.	This suggestion was not included due to the fact that the management of marine living resources is the competence of National Government.
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NGOs – WWF	<b>Benefits: Sustainable management of the Hake Resources</b> <b>Costs: None to WWF</b> <b>Risks: Roll-overs and transfers of quota will happen too frequently, and as such the proposal will not have its intended affect.</b>	No opposition to any sections, suggestions. Further inclusions were submitted.	WWF Proposed the following: - Define conditions under which roll-overs would be considered. - Define conditions under which transfer of quota will be considered. - Include EAF in the Management Measures utilised within the fishery.	These amendments were not included. "Section 2.3 (b) Roll-overs will be discouraged" is sufficient to address concerns. The Transfer Policy defines the conditions under which transfer of quota will be considered.  EAF was not included as Hake is managed through the implementation of an Operational Management Procedure (OMP) approach which promotes sustainable use of the resource.
LTRAMP 2005 Rights Holders who historically have participated in economic units	<b>Benefits:</b> Fishing performance and data related to economic unit performance will be considered when assessing applicants.	The support the proposal but suggest the inclusion of economic units to be considered when assessing applicants and allocating rights.	Suggestions: _ Include opportunities to submit data related to economic units in the application form.	The suggested amendments were incorporated as follows:  The following wording was incorporated in Section 6.2.4, Section 6.2.5, Section 6.2.10, "The Department recognises that the "economic unit" business model is a feature of this fishery, and that such circumstances may

	<p><b>Implementation/Compliance Costs:</b> Status quo remains</p> <p><b>Risks:</b> “Smaller” LTRAMP2005 Rights holders be penalised or excluded from applying because of participation in economic units.</p>		<p>Recognition of economic units within the description of the Hake Deep Sea Trawl sector.</p>	<p>complicate the submission of the required investment information by individual entities. In these cases, the applicant should, to the extent possible, provide the information in terms of its proportional involvement in the economic unit, and any binding agreements/documentation pertinent to the economic unit, as well as financial records, should be submitted as an annexure to enable the Department to properly evaluate the applicant against this criterion.”</p>
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Further submissions are summarised below as multiple stakeholders made similar submissions.

See Annexures: *CRR Hake Deep Sea Trawl* and *IAL from the Stakeholder Consultation Sessions*

- b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position**

The following points of disagreement were noted, and the suggested amendments were not included or only partially included in the final policy.

1. **Objection to Section 8 of the Draft HDST Policy, allowing for new entrants to be included in the sector during this rights allocation cycle.** Stakeholders who objected to the inclusion of new entrants cited the following reasons:
  - i) The fishery is already fully subscribed in terms of exemption and permit holders.
  - ii) Allowing new entrants will not necessarily improve the transformation profile of the industry.
  - iii) Where allocations are removed from existing “larger” rights holders and allocated to new entrants, this could lead to significant job losses. Shifting rights away from “larger” right holder who have invested in a value-added mixed processing strategy toward right holder who employ a commodity business strategy will result in losses of jobs, investment tax revenue from the value-adding sectors.
  - iv) Stakeholders drew attention to a Constitutional Court finding<sup>4</sup> and a Judicial Review in the Horse Mackerel sector by the Western Cape Division of the High Court, both of which determined that new entrants need not be included in the sector if there is sufficient transformation within the sector, and the core objectives of the MLRA and NDP are met.
  - v) One comment indicated that Category B entrants could be considered “new entrants” and as such there is no need to include Category C applicants.

Stakeholders opposing new entrants in the sector included: SADSTIA, Irvin & Johnson Limited, Ntshonalanga Fishing (Pty) Ltd, Premier Fishing SA Pty Ltd.

It should be noted that the following parties were in favour of the admission of new entrants to the sector. Al-Aman Fishing CC, Zimele Fishing Enterprises CC, Unathi-Wena CC, Blue Continent Products (Pty) Ltd, Risar Fishing CC, Suidor Fishing (Pty) Ltd, SeaVuna Fishing Co. (Pty) Ltd, Anc Fishing Desk, Letap Fishing, CAMISSA FISHING (PTY) LTD. These stakeholders argued that new entrants should not be allocated rights at the expense of the well performing well transformed entities and should demonstrate experience and knowledge about fishing.

**In response to these concerns, the final policy retains Section 8, allowing for the inclusion of new entrants within the sector with demonstrated “knowledge, skills and capacity to fish and process hake.” A final sentence was included acknowledging the limited room within the fishery to accommodate new entrants.**

2. **Access to a suitable vessel.** Stakeholders were divided as to whether access to a vessel should be exclusionary criteria. Some stakeholders submitted that access to a vessel should be exclusionary criteria, other stakeholders welcomed the draft policy’s approach – as it broadened access to the sector.

Stakeholders who submitted access to a vessel should be included in exclusionary criteria: SADSTIA, Irvin & Johnson Limited, Blue Continent Products (Pty) Ltd. They highlighted the

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<sup>4</sup> Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others (CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004).



opportunity for paper quota holders to become involved in the sector if this clause is applied too loosely, and vessel access is not scrutinised. These stakeholders submitted that catch agreements should include some form of investment, and not merely a catch agreement.

**The final policy retains the concept that access to a vessel will not be exclusionary. Access to a vessel in the form of “ownership, part ownership, a catch agreement, a charter agreement, or a bank guarantee for a sufficient capital to purchase or build a vessel” will be considered as part of the balancing criteria. The final policy defines more clearly what is meant by a suitable vessel.**

3. **Lack of consideration for economic units.** Many stakeholders commented that economic units were not considered in the Draft HDST Policy. ‘Economic Units’ arose as a joint venture/business agreement between smaller rights holders who were allocated rights during the LTRAMP2005 cycle, which were too small for them to exercise feasibly. Such rights holder’s pooled resources in order to afford vessels, processing facilities, etc. Not only did operating in these units enable viable fishery operations, but it also generated jobs, small business development, facilitated further meaningful transformation in the sector, and successful economic units paid taxes and thus contributed to the economy of South Africa. Due to this circumstance, prospective applicants request the following:

- i) They be able to submit documents and data relating to their fishing performance, job creation, investment, etc., relating to the “Economic Unit” in application for the LTRAMP in relation to applications for rights in the HSOT in 2022. For example, individual rights holders do not employ crew members, but as a result of their rights pooling in the economic unit, they are able to ensure sustainability and viability of the economic unit. Furthermore, assets may not be in the name of the applicant.

Supporters of this comment: Al-Aman Fishing CC, Blue Continent Products (Pty) Ltd, Zimele Fishing Enterprises CC, Risar Fishing CC, Mayibuye Fishing (Pty) Ltd, Eyethu Fishing (Pty) Ltd, Combined Fishing Enterprises (CFE)

A distinct group of stakeholders submitted that economic units and consideration therefore should be excluded from the policy. These stakeholders argued that Economic Units need to be carefully considered as they can provide an environment in which rights holders do not meaningfully participate in the fishery and thus become “paper quotas”.

**The Final policy includes the mention of “economic units’ and ways in which information submitted by applicants within economic units would be considered. The policy requires demonstration where possible in terms of proportional contributions to ensure there is a limit to paper quota risks. The application was amended to include information from economic units.**

4. **Meaningful minimum allocation – there were many submissions in favor of and against meaningful minimum allocations, as mentioned in the draft HDST policy.**

The following stakeholders favored the inclusion of a minimum economically justifiable allocation approach: Al-Aman Fishing CC, Zimele Fishing Enterprises CC, Risar Fishing CC, ZWM Fishing Pty Ltd, Ntshonalanga Fishing (Pty) Ltd, Premier Fishing SA Pty Ltd, Anc Fishing Desk, Letap Fishing, Combined Fishing Enterprises (CFE), Suidor Fishing (Pty) Ltd, CAMISSA FISHING (PTY) LTD, Impala Fishing (Pty) Ltd, WWF-SA

They argued for various prescriptions on minimum allocation from 2500 tons (or 2% of the HDST TAC), up to 4000 tons. They argued that this would enable meaningful participation in the industry, without the need to participate within economic units.

**A different group of stakeholders argued that minimum economically justifiable allocation should be done away with in its entirety. The following stakeholders argued against meaningful**

**minimum allocations:** Blue Continent Products (Pty) Ltd, Irvin & Johnson Limited, Sea Harvest, SeaVuna Fishing Co. (Pty) Ltd, South African Fishing Empowerment Corporation Proprietary Limited (SAFEC)

The following concerns were raised:

- i) Lack of clarity as to the methodology that would be used for the calculation of such allocations.
- ii) Stakeholders cited the 2002 “Rhodes Study”<sup>5</sup> which found minimum viable allocations was “not a viable option” for the industry.
- iii) “Larger” rights holders operate a fully integrated value chain, they need materially larger allocations than those who operate within one part of the value chain.
- iv) The need for an economic-impact study to substantiate any meaningful minimum allocation approach.

**This section of the draft policy was removed from the final policy.**

**5. Hake Longline apportionment increase.** Stakeholders raised concerns about the increase in HLL apportionment. Concerns centered around the need for clarity as to where the allocation of TAC would be drawn from. Should the allocation of TAC be drawn from HDST the following objections were cited:

- i) This will not necessarily lead to an increase in jobs. The following statistics were cited: “Hake Longline generates 25 jobs per 1000t of quota whereas HDST generates 100 jobs per 1000t of quota in vertically integrated options.”
- ii) Furthermore, it has been noted that the HLL TAC has been significantly under caught for several years; the average catch of the HLL sector has been less than 5% of the HLLTAC since 2011.
- iii) As such the suggestion was rather to allocate under caught HLL TAC to HLL.

Due to these reasons objectors believe that this section should be removed from the policy.

Stakeholders who opposed the HLL increase, or queried where it should be drawn from included: ZWM Fisheries, Blue Continent Products (Pty) Ltd, SADSTIA, Irvin & Johnson Limited, ZWM Fishing Pty Ltd, Sea Harvest, SeaVuna Fishing Co. (Pty) Ltd, Premier Fishing SA Pty Ltd, South African Fishing Empowerment Corporation Proprietary Limited (SAFEC)

It should be noted that there was significant support for keeping the section in the policy. The following parties supported the increase of Hake Long Line apportionment: Mayibuye Fishing (Pty), Eyethu Fishing (Pty) Ltd, Andrew Kaye, Blue Wave Fish Traders, Zimele Fishing Enterprises CC, Impala Fishing (Pty) Ltd

The following reasons were given for including the clause in the policy:

- ii) HLL fishery is more conducive to SMMEs.

**6. The final policy section 2.3 (a) is retained, “Longline apportionment increased from 6.551% to 10% of the hake TAC, subject to further investigation on possible impacts on resource dynamics”, with a further addition of the following “and how the 3.449% of the TAC that would be required for this will be sourced.”** Objection to the management measure included in 2.3,

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<sup>5</sup> Sauer, Whh & Hecht, Tom & Britz, Peter. (2002). Economic and sectoral study (ESS) of the South African fishing industry. Volume 2: Fishery Profiles

“rollovers to be discouraged”. Stakeholders submitted that this should be at the purview of the DA and does not need to be included in the policy. Further objections also cited specific circumstances (such as adaptations to Covid-19, which necessitated rollovers).

Stakeholders who submitted concerns: SADSTIA, ZWM Fishing Pty Ltd, Premier Fishing SA Pty Ltd, Letap Fishing, Sea Harvest, Combined Fishing Enterprises (CFE)

It should be noted that at least one stakeholder (WWF-SA) supported the inclusion of the section.

**The final policy retains the wording in the draft policy.**

**7. Three Year Moratorium on rights transfers.** Many objections were made to clause 5.4 which prevents the transfer of rights within the first three years of rights being granted. Concerns included:

- i) Following the LTRAMP2005 process, there may be a number of businesses that have insufficient allocations to remain economically viable. If this is the case, they may need to transfer rights/re-organise in order to ensure business viability.
- ii) This moratorium should only apply to new entrants within the sector – those who are successfully fishing in the sector and are re-allocated rights are not at risk of being paper quotas.
- iii) The transfer policy sets out that all transfers must happen with departmental approval. As such the department already has a guard against paper quotas through the transfer policy.

Stakeholders who objected to this included: Letap Fishing, SeaVuna Fishing Co. (Pty) Ltd, Mayibuye Fishing (Pty) Ltd, Sea Harvest Group Ltd.

**The final policy retains the clause – to reduce paper quota risks.**

**8. The Hake Deep Sea Trawl sector is not conducive to SMMEs and therefore the over-arching sector objectives - to “promote of SMME’s” is not applicable.**

The following stakeholders made submissions with regard the sector not being suitable for SMMEs: Blue Continent Products (Pty) Ltd, Irvin & Johnson Limited, SADSTIA, Sea Harvest

The stakeholders cited various studies which examined the sector and SMMEs within the sector, including the “Genesis study”<sup>6</sup> and the “Empowerdex study” which were submitted as annexures to their comments.

It should be noted that some stakeholders believed strongly that the sector is well suited to SMME development, these included: Zimele Fishing Enterprises CC, Christine Leonie Fishing, and Blue Wave Fish Traders.

**The final policy retains the clause – to include the promotion of SMMEs within the sector. SMME promotion is fundamental aspect of the National Development Plan (NDP) and identified as a major driver of job creation.**

**The following points of disagreement were noted, which led to amendments to the proposal and incorporation of the suggestions.**

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<sup>6</sup> Economic Study of the Hake Deep-Sea Trawl Fishery and the Implications for Future Fishing Rights Allocation Policy, Genesis, 2020.

- i) Objection to the “TAC decrease “cushion” for SMMEs/smaller right holders” included in Section 2.3. The suggestion was incorporated, and the final policy removes this section altogether.
- ii) Stakeholders requested that the Appeals Reserve be removed from the policy. Stakeholders argued that 100% of allocations should be appointed, and subsequently adjusted once appeal concluded. Stakeholders were concerned that the resource would be underutilized during the appeals process. The final policy incorporated these suggestions and removed mention of the appeals reserve.
- iii) Stakeholders’ objection to the inclusion of 2.3 (f) of the Draft HDST Policy, “Efforts will be directed at removing vessels smaller than 30m from the fishery for safety considerations.” The final policy was edited to include more detail in terms of what determines a ‘suitable vessel’. The description in the final policy does not include a minimum or maximum size but rather requires that the nominated vessel must be certified by SAMSA as safe and able to operate in the sector.
- iv) Stakeholders objected to crew members and employees being considered in terms of compliance. Section 6.1.a) of the final policy was amended to specify which parties would need to ensure MLRA compliance. This will only apply to Shareholders (with a shareholding of more than 10%), Directors, Senior Management, and skippers. Furthermore, section 6.2 c) of the final policy was amended to ensure clarity with regard to compliance and balancing criteria. Weighted scoring would be utilized in balancing criteria with regard to MLRA contraventions of applicants

**b. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.**

List of beneficiaries (groups that will benefit)	How will they benefit?
New entrants	Will gain access to the sector and thus get unprecedented opportunities to expand/develop their fishing businesses to benefit themselves, their immediate dependants and respective communities.
Small Right Holders that have performed well	May receive greater rights allocations due to performance, enabling not only business continuity, but also business growth.
All HDST Rights Holders, their crew, employees and their respective dependents	Granting of economically justifiable fishing rights will ensure food security, economic growth and better-quality life

All Processors and Marketers of fish and fisheries products within the HDST sector	Assurance of business continuity and good investor confidence
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List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
Larger LTRAMP2005 Right Holders	May receive smaller rights allocation when compared with LTRAMP allocations due to measures to increase SMME participation and decrease concentration within the sector.
DFFE	Implementing and evaluating policy changes will carry a cost. Furthermore, the appointment of external service providers; costs related to stakeholder consultations (e.g., travelling & accommodation costs, printing of policies in four different official, languages, contract workers, etc.)
Stakeholders identified as paper quota or fronting risks	Will no longer be able to participate in the sector
Unsuccessful applicants (Category A and B), their employees and suppliers	Loss of income and employment
Unsuccessful applicants (Category C)	Will bear the administrative burden and associated application costs

2.5. Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

*Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.*

*For instance, when the UIF was extended to domestic workers:*

- *The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- *The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- *To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits*

*from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.*

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
DFFE	<p>Appointment of commercial fish Catch Data Monitors.</p> <p>Costs of undertaking fishing stock assessments and overtime.</p> <p>Processing permit Applications and Issuing of Permits.</p> <p>Issuing of Section 28 Notices.</p> <p>Fishing vessel inspections.</p> <p>OMP Revision conducted every 4 years to ensure sustainable utilization of the SA hake resource.</p> <p>Filling of vacant posts and creation of key posts additional to the establishment.</p>	<p>Costs of participating at Local, Regional and International Forums as well as costs of meeting the annual reporting obligations</p>	<p>Costs:</p> <p>Stock assessment and related fisheries research undertakings (e.g., Research vessel operation and maintenance costs, sea going allowance, etc.)</p> <p>Fisheries Surveillance and Monitoring costs (e.g., Vessel operational and maintenance costs, overtime costs, etc.)</p> <p>Benefits: sustainable utilization of the SA hake resource to ensure long term reliable stock levels.</p>	
Fishing Rights Holders	<p>Deploying observers at sea on a user pays basis to ensure monitoring and sustainable utilisation of the resource.</p> <p>Resources allocated to provide supplementary information during the application process.</p>	<p>Fishing Rights Application costs.</p> <p>Granting of Fishing Rights Fee.</p> <p>Annual Permit application costs.</p> <p>Imports and Export Permits costs</p>	<p>Costs:</p> <p>Some potential job losses due to shifts in TAC apportionment promoting SMMEs, transformation and underutilisation of rights.</p> <p>Benefits:</p> <p>Sustainable utilisation of the SA hake resource,</p> <p>Getting or retaining MSC Certification,</p> <p>Resource use optimised to maximise employment, transformation and SMME development.</p>	

**2.6 Cost to government: Describe changes that the proposal will require and identify where the affected agencies will need additional resources**

**a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and?**

FRAP2020/2021 has been budgeted for in the current Financial Year (2021/2022) with a dedicated FRAP2020/2021 Cost Centre within the Marine Living Resources Fund. For the remaining MTEF period, budgeting will take place annually, as usual, and this takes into consideration costs associated with implementation of all fisheries policies, including Hake Deepsea Trawl Policy.

**b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)?**

Implementation of Fisheries policies is an operational function of the Department and doing so is an integral part of the day-to-day duties of existing staff complement. However, filling of vacant position and the creation of posts additional to the establishment remains critical. In the interim, to augment capacity, the Department will partner with other relevant departments and agencies like SAPS, NRCS, SAMSA, etc.

*Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.*

**2.7 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.**

**For groups outside of government (add more lines if required)**

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?
Fishing Rights Holders	Fishing Rights Application costs). Granting of Fishing Rights Fee. Annual Permit application costs; Imports and Export Permits costs	<ul style="list-style-type: none"> <li>It has been a very long time since the Department revised Fishing Rights Application costs and consultation with the Minister of Finance is a requirement whenever rights application fees are reviewed, and consultation extends to fishing industry stakeholders as well.</li> </ul>
Fishing Rights Holders	High investment costs in Hake Deep Sea Trawl with historically low allocations result in low returns on investment.	<ul style="list-style-type: none"> <li>Considering the economic viability when allocating rights will ensure that rights holders get a viable return on their investment costs which are high in the Hake Deep Sea Trawl sector</li> </ul>

**For government agencies and institutions:**

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?
DFFE	Appointment of FRAP contract workers and filling of vacant	Entering into formal agreements with other government Departments and Agencies with



	posts and creation of key posts additional to the establishment	respect to certification of fisheries products destined for local and international markets (e.g. NRCS); safety at sea and vessel licensing (e.g. SAMSA); prevention and combating of illegal fishing activities (e.g. SAPS); Bilateral and Multi-lateral Agreements on Fisheries Management, Research and Compliance (e.g. MoU between the Republic of South Africa and Republic of Namibia on Fisheries Management and Aquaculture, BCC, SADC, etc).
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## 2.8 Managing Risk and Potential Dispute

a) ***Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.***

***Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.***

- Litigation with regard to the HDST FRAP2020/2021 process and final HDST policy. Stakeholders within the sector have raised concerns with regard the process, particularly with regard to the SEIAS process, and emphasised the need to ensure that HDST apportionment from global TAC be grounded in economic studies of the sector.
- Assessing applicants within the Hake Deep Sea Trawl sector for the FRAP2020/2021 allocations will take time, especially with regard to thorough assessment of balancing criteria (and vetting submitted information). The careful balancing of sector specific information with stakeholder specific information and policy objectives will be essential for the successful rights allocation process. This will require capacity to ensure that all procedures are followed, and that the final decisions are grounded in policy objectives. If the necessary capacity is not mobilised to ensure a thorough assessment process, the department faces risks of litigation, as well as insufficiently implementing the objectives of the MLRA.
- Successful appeals by unsuccessful fishing rights applicants and or aggrieved successful fishing rights applicants pose a risk as they would lead to costly court processes; further prolonging of the status quo; and denial of access to the fishing resource by successful new entrants and others.
- Prolonged and severe Covid-19 related restrictions on day-to-day business operations would negatively affect critical milestones and overall achievement of FRAP2020/2021 objectives

a) ***Describe measures taken to manage the identified risks. Add more rows if necessary.***

***Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.***

Identified risk	Mitigation measures
Litigation with regard to the FRAP 2021 policy review process and FRAP final policies.	<p>Ensure relevant policy comments are incorporated where appropriate.</p> <p>Ensure relevant policy comments are responded to.</p> <p>Thorough stakeholder engagement sessions have been completed, where concerns were addressed.</p> <p>Ensure policy amendments are clear, backed by legal expertise and necessary sector data.</p> <p>Ensure policy amendments are in line with the General Policy, MLRA, NDP and other relevant strategic government objectives.</p> <p>Ensure procedures are adhered to and stakeholders communicated with regard to correct procedure.</p>
Capacity to implement the HDST Policy, applications and management processes.	<p>Ensure sufficient departmental capacity to conduct a thorough assessment of applicants and submitted information.</p> <p>Plan processes and identify resourcing requirements to ensure policy objectives will be met.</p>
Appeals by unsuccessful fishing rights applicants.	<p>Ensure procedures are adhered to and stakeholders communicated with concerning correct procedures.</p> <p>Thorough stakeholder engagement sessions have been completed, where concerns were addressed.</p> <p>Appointment of an independent Service Provider to oversee FRAP2020/21 to ensure due diligence, quality management and compliance to applicable legislation and prescripts.</p> <p>Facilitate meetings with aggrieved applicants and solicitation of advisory input from CAF.</p>
Covid-19 pandemic	Use of virtual platforms to host FRAP2020/2021 and SEIAS meetings and further stakeholder engagement sessions.

b) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

**Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.**

Nature of possible dispute (from sub-section above)	Stakeholders involved	Proposed Dispute-resolution mechanism
Legal challenges to the FRAP 2020/21	Existing / potential Rights Holders and the Department (DFFE)	Sharing of a Portfolio of Evidence demonstrating compliance with SEIAS Guidelines as well as records of virtual meetings convened with The Presidency on SEIAS completion by DFFE.
Transformation/New entrants' provisions	The Department (DFFE) and certain Fishing Rights Holders; and The Department and more labor absorbing Fishing Entities with huge investments in the sector	Establishment of the Fisheries Transformation Council
Appeals and Litigation (including with regard to the application and allocation process)	The Department (DFFE) and Unsuccessful Commercial Fishing Rights Applicants and or aggrieved successful applicants unhappy with TAC/TAE allocated	Appointment of a Consultative Advisory Forum to advise the Minister and the Delegated Authority

## 2.9 Monitoring and Evaluation

*Note: Sound implementation of policy and legislation is due to seamless monitoring and evaluation integration during the policy development phase. Policies and legislation that are proficiently written yet unable to report on implementation outcomes are often a result of the absence of an M&E framework at the policy and legislative planning phase. It is therefore imperative to state what guides your policy or legislation implementation monitoring.*

2.9.1 Develop a detailed Monitoring and Evaluation Plan, in collaboration with your departmental M&E unit which should include among others the following:

2.9.1.1 Provide clear and measurable policy or legislative objectives

2.9.1.2 Provide a Theory of Change clearly describing the following components:

- Impact: the organisational, community, social and systemic changes that result from the policy or legislation.
- Outcomes: the specific changes in participants (i.e., beneficiaries) behaviour, knowledge, skills, status and capacity.
- Outputs: the amount, type of degree of service(s) the policy or legislation provides to its beneficiaries.
- Activities: the identified actions to be implemented
- Input: departmental resources used in order to achieve policy or legislative goals i.e., personnel, time, funds, etc.
- External conditions: the current environment in which there's an aspiration to achieve impact. This includes the factors beyond control of the policy or legislation (economic, political, social, cultural, etc.) that will influence results and outcomes.
- Assumptions: the facts, state of affairs and situations that are assumed and will be necessary considerations in achieving success

2.9.1.3 Provide a comprehensive Logical Framework (LogFrame) aligned to the policy or legislative objectives and the Theory of Change. The LogFrame should contain the following components:

- Results (Impact, Outcomes and Output)
- Activities and Input
- Indicators (A measure designed to assess the performance of an intervention. It is a quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor)
- Baseline (the situation before the policy or legislation is implemented)
- Targets (a specified objective that indicates the number, timing and location of that which is to be realised)

2.9.1.4 Provide an overview of the planned Evaluation, briefly describing the following:

- Timeframe: when it the evaluation be conducted
- Type: What type of evaluation is planned (formative, implementation or summative) – the selection of evaluation type is informed by the policy owners' objective (what it is you want to know about your policy or legislation.

2.9.1.5 Provide a straightforward Communication Plan (Note: a common assumption is that the target group will be aware of and understand how to comply with a policy or legislation come implementation. However, increases in the complexity and volume of new or amendment policy or legislation render this assumption false. Hence, the need for a communication plan to guide information and awareness campaigns to ensure that all stakeholders (including beneficiaries) are informed.

## **2.10 Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.**

- There would be significant benefit of research into the different business models within the Hake Deep Sea Trawl Sector (both nationally and abroad) with particular attention to strategies to increase employment (through harvesting, processing and marketing, both on shore and offshore) as well as broader contributions to the South African economy. A comparison thereof in relation to jobs per investment, or jobs per ton of TAC could guide future policy adjustments. One stakeholder drew a comparison to jobs created in the Namibian Hake Deep Sea Trawl sector. Further attention to business strategies in relation to capital investment (and the reduction thereof) should also be investigated.
- The “Rhodes Study” cited by a few stakeholders was commissioned and published almost 20 years ago. A further study into a meaningful minimum allocation approach and the economic benefits thereof could be particularly useful to the sector.

## **PART THREE: SUMMARY AND CONCLUSIONS**

- 1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.**
  - a) Allocation of Hake Deep Sea Trawl resource in a manner that promotes Section 2 of the MLRA, whilst being mindful of the capital-intensive nature of the fishery.
  - b) The measures proposed to resolve the problem are as follows:
    - Removing *vessel access* as an exclusionary criterion when assessing applicants in the sector (reducing barriers to entry, and capital intensity).
    - Exclusionary and balancing criteria to adjudicate applicants promote the objectives set out in section 2 of the MLRA, with an emphasis on transformation, job creation, investment and benefit to the broader SA public.
    - The inclusion of new entrants, where possible, will decrease concentration within the sector.
    - Exclusionary and balancing criteria to adjudicate applicants ensures meaningful participation in the sector, eradicating fronting and paper quota risks.
    - The recognition of “economic units” in the final policy and application form will ensure SMME’s continue to participate in the sector. “Economic units” reduce the capital investment required from individual “smaller” rights holders within the sector.
    - The inclusion, as part of the Quantum Allocation Method, that a step will be taken to “address small allocation concerns and/or introduction of new entrants to the extent possible.”

**2. Identify the social groups that would benefit and those that would bear a cost and describe how they would be affected. Add rows if required.**

<b>Groups</b>	<b>How they would be affected</b>
<b><i>Beneficiaries</i></b>	
1. Successful Fishing Rights Applicants	Receive rights allocations which enable business operations.
2. Employees of Successful Fishing Rights Applicants	Improved job sustainability and increased skills development opportunities.
3. Small LTRAMP2005 Right Holders who have performed well	May receive greater rights allocations due to performance, enabling meaningful participation through achievable economies of scale.
4. All Processors and Marketers of fish and fisheries products within the HDST sector	Assurance of business continuity and good investor confidence
<b><i>Cost bearers</i></b>	
1. DFFE	<p>Costs of implementing final policy objectives with regard to allocation and management of the Hake Deep Sea Trawl Resource, particularly with regard to assessment of applications and auditing of submitted information.</p> <p>Filling of vacant DFFE positions and funding for approved posts additional to the establishment, as well as costs related to stakeholder Resource Management Working Groups (e.g., travelling &amp; accommodation costs, etc.) and costs for undertaking annual stock assessments</p>

**3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?**

- Litigation with regard to the HDST FRAP2020/2021 process and final HDST policy. Stakeholders within the sector have raised concerns with regard the process, particularly with regard to the SEIAS process, and emphasised the need to ensure that HDST apportionment from global TAC be grounded in economic studies of the sector.
- Lack of capacity to adequately assess applicants may result in ineffectual implementation of the policy and its core objectives. Attention needs to be given towards adequately capacitating the department in order to ensure a thorough assessment of applicants and to reduce the risk of appeals.
- Successful appeals by unsuccessful fishing rights applicants and or aggrieved successful fishing rights applicants pose a risk as they would lead to costly court processes; further prolonging of the status quo; and denial of access to the fishing resource by successful new entrants and others.

**4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.**

- Appointment of FRAP contract workers, the filling of vacant posts and the creation of key posts additional to the establishment. The FRAP2020/21 budget and the breakdown thereof can be made available, on request; and
- Existing institutional arrangements (e.g., Fisheries Management and Scientific Working Groups, Delegated Authorities, etc.), collaboration with other government departments and agencies (e.g., SAPS, SAMSA, Customs, NRCS, etc.), as well as the Fisheries Transformation Council (FTC) and Consultative Advisory Forum (CAF) in the implementation of the policy would suffice.

**5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted?**

There is a need to address concentration within the sector whilst being mindful of sector constraints. The proposed policy amendments will enable meaningful participation by “smaller” rights holders and SMMEs, whilst minimising disruption to “larger” rights holders and reliant value chains.

**6. Please provide two other options for resolving the problems identified if this proposal were not adopted.**

<b>Option 1.</b>	Allocate commercial fishing rights, manage and monitor and evaluate the performance by successful fishing rights holders using the current General Policy and simply review Application Forms and Selection Criteria, with input and advice obtained from the Consultative Advisory Forum (CAF)
<b>Option 2.</b>	Allocate commercial fishing rights, manage them and monitor and evaluate the performance by successful fishing rights holders using the MLRA, with input and advice obtained from CAF

**7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?**

Ensuring sufficient capacity within the department to enable thorough assessment of rights applications and allocation of rights will reduce the risk of appeals and litigation and ensure meaningful implementation of policy objectives. This is a key measure that will reduce long term costs, maximise benefits and mitigate against risks associated with the legislation.

**8. Is the proposal (mark one; answer all questions)**

	<b>Yes</b>	<b>No</b>
a. Constitutional?	X	
b. Necessary to achieve the priorities of the state?	X	
c. As cost-effective as possible?	X	
d. Agreed and supported by the affected departments?	X	

## 9. What is the impact of the Proposal to the following National Priorities?

National Priority	Impact
1. Economic transformation and job creation	Some improvement to economic transformation to allow smaller businesses to participate through the removal of vessel ownership as a barrier to entry and allowing new entrants. Continued focus on transformation in terms of balancing criteria for applicants will further promote this. As will the recognition of economic units. This may be achieved at the cost of some job losses from larger LTRAMP2005 Rights Holders who may get TAC allocations lower than what they received during LTRAMP2005, or from LTRAMP2005 Rights Holders who have not transformed or fully utilised their rights.
2. Education, skills and health	SMME development and promotion that will be facilitated by the Fisheries Transformation Council will result in increased small business development within the sector and resultant skills development.
3. Consolidating the social wage through reliable and quality basic services	Removing vessel ownership as a barrier to entry, and measures to reduce fronting and paper quotas, will improve meaningful participation by “smaller” rights holders, with improved stability and hence stable/ long-term employment opportunities. This may be achieved at the cost of some job losses from larger LTRAMP2005 Rights Holders who may get TAC allocations lower than what they received during LTRAMP2005, or from LTRAMP2005 Rights Holders who have not transformed or fully utilised their rights.
4. Spatial integration, human settlements and local government	N/A
5. Social cohesion and safe communities	Some improvement in long-term, stable employment opportunities among “smaller” right holders, but this may be achieved at the cost of some job losses from the larger Right Holders.
6. Building a capable, ethical and developmental state	The proposed changes reflect a capable and ethical state, promoting the development of a transformed and inclusive sector, whilst balancing environmental concerns to ensure sustainable use of Hake Longline resources.
7. A better Africa and world.	Some improvement to economic empowerment of HDI groups



*For the purpose of building a SEIAS body of knowledge please complete the following:*

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