



FishRights

The Fortnightly Newsletter about South Africa's Commercial Fishing Rights Allocations: 2005

FishRights will appear every second Monday on www.mcm-deat.gov.za and www.deat.gov.za and will be emailed to those persons interested in subscribing to this service. You may register your email address at bgeland@deat.gov.za.

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1. Taking Stock of Rights Allocations

The process of rights allocations has taken longer than was anticipated. It is for this reason that exemptions were issued in a number of sectors enabling medium term rights holders to continue fishing, thus protecting market supply as well as jobs.

The reason for the delay in allocations arose because of the unexpectedly high number of applications received, necessitating a much larger effort to assess individual applications than had been initially planned for.

The Department had to organise additional resources as well as ensure that the Rights Allocations Unit continued working throughout the festive season. By the end of 2005, rights

were allocated in the South Coast rock lobster, KZN prawn trawl, Patagonian toothfish, seaweed, West Coast rock lobster (nearshore) and horse mackerel sectors.

The allocation of the remainder of the Cluster A and the majority of Cluster B fisheries and traditional line fish will take place in January. The process of allocating rights across the 20 commercial fisheries will be completed by the end of February 2006.

2. WCRL Nearshore Zone B and Zone C Allocations

The West Coast rock lobster (near shore) sector, it turned out, was the most over-subscribed (by a factor of 5.7) of all the sectors in which rights are to be allocated. The allocation of WCRL fishing rights was also always going to be controversial and extremely difficult to make. The sad but difficult reality is that the home of the WCRL - the *West Coast* - is home to much fewer lobsters than at any time in the history of commercial or subsistence fishing. We know that lobsters are migrating away from the West Coast; we also know that there are many, many more fishers than there are fish to catch.

With respect to the allocation of rights and in order the expedite matters, the Delegated Authority, Dr. Andy Cockroft, decided to allocate these rights on a zonal basis, such that

those areas where the lobster first go into berry are allocated before other zones. This has meant that allocations were made in the northern most west coast areas first and then moving down the coast, ending with Zone G, the most eastern point being Gansbaai.

The delay in finalising the allocations was, in part, also caused by the decision, motivated by fishing communities, that pre-allocations, "provisionally successful" lists be issued first, giving communities with a deep knowledge of the people who applied in their area, a chance to comment. The facility was thus created to comment on the bona fides of those the Department proposes to allocate rights to. If they wanted to, they could do so via the Tip-Offs Anonymous service the Department offers through an independent outside service provider.

The process of commenting on 'those who get' by those 'who did not get' was always going to attract controversy. In the end this process was chosen as a trade-off that provides for greater transparency, despite the likely down side. As it turned out many people availed themselves of this opportunity. Some useful comment was obtained, notably where applicants had apparently misrepresented themselves. Unfortunately much of the comment received was also self-seeking and lacked objectivity or fact that could be substantiated.

A list of successful applicants in Zones B and C is included as part of the WCRL GPR, which may be accessed at www.mcm-deat.gov.za. In all 110 rights were allocated. Those allocated rights each received an allocation of 750kg. The limits imposed by research that shows that more quantum should not be allocated lest we diminish the capacity for this stock to remain stable, prevented the allocation to more applicants.

An article co-authored with by Dr. Cockcroft and that appeared in the Cape Times a week ago is attached to this Newsletter. It further elaborates on the difficulties associated with making the allocations in this sector.

Finally, with respect to the allocation of rights to applicants in Doringbaai (Zone B), the delegated authority decided to reserve his decision on applicants from this area. The reason for this is that during the consultation process on the provisionally successful list of applicants, it became apparent that Doringbaai applicants could not have been successful in terms of the criteria as no-one in this fishing village held a medium term right. This meant that everyone from the Doringbaai community could not demonstrate either involvement as a crew member in the WCRL sector, nor could they demonstrate adequate reliance on the resource during the medium term, the two critical considerations.

The delegated authority decided that this warranted further investigation. He accordingly decided to reserve his decision on applicants from this area. The delegated authority has therefore decided that if it was genuinely impossible for applicants in the area to demonstrate involvement and reliance in the requested manner, a different approach should be adopted in respect of these applicants.

3. Allocation of 10 Year Rights in the Horse Mackerel Fishery

Ten year long commercial fishing rights were granted to 15 applicants in the horse mackerel fishery. At this stage, 7 vessels have been authorised to fish for horse mackerel. Of the 15 successful applicants, 3 have been requested to nominate an alternative vessel as the vessel nominated is a dedicated midwater trawler. The horse mackerel policy stipulates that the fishery

can only accommodate one dedicated midwater trawler.

Of the rights allocated, 47% are to black controlled companies. For further details, please feel free to peruse the Horse Mackerel General Published Reasons on www.mcm-deat.gov.za.

4. Allocation of 10 Year Rights in the Seaweed Sector

On 29 December 2005, the delegated authority, Ms Theresa Akkers, allocated a total of 26 commercial seaweed harvesting rights to applicants in the seaweed sector. Rights were allocated in each of the 23 concession areas. In addition, in certain concession areas multiple rights were allocated to harvest different seaweed genus.

Of the 26 rights granted, 55% are to be black controlled entities. , 47% are to black controlled companies. For further details, please feel free to peruse the Seaweed General Published Reasons on www.mcm-deat.gov.za.

5. Appeals and Accessing Information

Applicants not granted a right or who believe that they should have been granted more quantum than what they were allocated may wish to lodge an appeal. In this regard, it is appropriate to provide outline what is required from the appellant and what can be expected from the Department.

The following set of documentation was sent to each applicant when the Delegated Authorities' decisions were announced (or, where the decision is still to be made, what documentation will be sent):

- * A personalised letter telling the applicant whether they were successful or not and the reason for the refusal;
- * A copy of the General Published Reasons (GPR);
- * Copies of all other applicants' score sheets and assessment forms;
- * An appeal form.

In the Gazette outlining the General Policy it states:

As in the past, once the assessment of the applications is completed and the decisions are announced, most records held by the Department will be disclosed voluntarily and will be automatically available, as provided for in section 15 of the Promotion of Access to Information Act (PAIA). In other words, access to information forms do not have to be completed. Records may be inspected and copies will be furnished on informal request at the prescribed fee for production. In general, the Department will only require access to information to information forms to be completed, and will only assess requests in terms of the provisions of PAIA, when access to the records created by third parties (such as completed application forms and their annexures) are sought. The approach to access to information is dealt with in greater detail below.

() Access to information

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

- * Any score sheet, spreadsheet or other document used by the delegated authority, the

Minister, or their assistants, to record the assessments of applications; and

- * At the request of the applicant or its authorised representative, the applicant's own application or appeal documentation.

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

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

In respect of access to these records, the Department's information officer (the Chief Director: Resource and Coastal Management) will apply the procedures and provisions of PAIA. In order to assist with the administration of access to information applications, applicants will be required to submit certain documents in respect of which the information officer may refuse access, such as those relating to the applicant's fishing plans, marketing plans and financial statements, in a separate folder.

A basic distinction is made in the GPR between documents generated by the Department and documents created by the applicants. The documentation that has been sent to all applicants is done to relieve the Department from having to deal with large numbers of requests for access to information in terms of the applicable legislation.

However the Department cannot allow automatic access to documents generated by the applicants, primarily because these may contain confidential information or commercially valuable information. Such requests must be dealt with in terms of the Access to Information Act, as provided for in the General Policy. The requests must comply with the formal requirements of the Act. The prescribed forms need to be filled in and records will be kept by the Departments' information officer. If a request for access is processed, some parts of the forms may have to be blocked out and third parties (the successful applicants whose forms have been requested) will be consulted.

This is to be provided by the Department before the closing date of the appeals.

For further information about the rights allocated in the above fisheries, please visit www.mcm-deat.gov.za

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SUMMARY OF RIGHTS ALLOCATION PROCESS TO DATE

| | Rights Allocated | Date of Allocation | Exemption Validity | Appeal Deadline | BEE status (Applicants that are more than 50% Black owned): 2001 figure in brackets |
|--------------------------------------|------------------|-----------------------------|--------------------|-----------------|---|
| South Coast Rock Lobster | 12 | 7 Nov. 2005 | Not applicable | 13 Jan. 2006 | 71% (72%) |
| Patagonian Toothfish | 5 | 18 Nov. 2005 | Not applicable | 30 Jan. 2006 | 58% (-) |
| KZN Prawn | 4 | 15 Nov. 2005 | Not applicable | 23 Jan. 2006 | 63.25% (22%) |
| Seaweed | 26 | 29 Dec. 2005 | Not applicable | | 55% (43%) |
| Small Pelagics | | Anticipated End of Jan 2006 | 31 January 2006 | | |
| Horse Mackerel | 15 | 28 Dec. 2005 | Not applicable | 10 Feb. 2006 | 47% (41%) |
| Demersal Shark | | Anticipated 11 Jan 06 | | | |
| Hake Deep Sea | | Anticipated 10 Jan 06 | | | |
| Hake Inshore | | Anticipated 10 Jan 06 | | | |
| Hake Handline | | Anticipated End Jan 2006 | 31 Jan. 2006 | | |
| Hake Longline | | Anticipated February 2006 | 28 Feb. 2006 | | |
| Squid | | Anticipated Mid Jan 2006 | 31 Jan. 2006 | | |
| West Coast Rock Lobster (near shore) | | Anticipated End Jan 2006 | | | |
| - Zone A | 19 | 2 Dec. 05 | n/a | | 100% |
| - Zone B | 110 | 27 Dec 05 | n/a | | 98.7% |
| - Zone C | | 27 Dec 05 | n/a | | 100% |
| - Zone D | | Anticipated End Jan 2006 | n/a | | |
| - Zone E | | Anticipated End Jan 2006 | n/a | | |
| - Zone F | | Anticipated End Jan 2006 | n/a | | |
| - Zone G | | Anticipated End Jan 2006 | n/a | | |
| West Coast Rock Lobster (off shore) | | Anticipated End Jan 2006 | | | |
| Oysters | | Anticipated End Feb 2006 | 28 Feb. 2006 | | |
| White Mussels | | Anticipated End Feb | 28 Feb. 2006 | | |

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|----------------------|--|--------------------------------|-----------------|--|--|
| | | 2006 | | | |
| Tuna Pole | | Anticipated End Jan 2006 | 31 January 2006 | | |
| Net fishing | | Anticipated End Feb 2006 | 28 Feb. 2006 | | |
| Traditional Linefish | | Anticipated End Jan 2006 | 31 Jan. 2006 | | |