



24 March 2006

GENERAL REASONS FOR THE DECISIONS ON THE ALLOCATION OF RIGHTS IN THE KWAZULU-NATAL BEACH SEINE FISHERY

1. Introduction

After the allocation of medium-term rights in 2001/2002 and the finalisation of the appeals processes in 2002/2003 the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (*the Department*) commenced with preparations for the allocation of long-term commercial fishing rights.

In January 2004, the Minister of Environmental Affairs and Tourism (*the Minister*) announced the commencement of the planning phase. The Minister called on the fishing industry and all other interested and affected parties to submit comment to the Department. A comment box was opened at MCM in which comments could be placed. In order to facilitate communication with the public and fishing communities, the Department developed a dedicated fisheries website (www.mcm-deat.gov.za); it established a customer services centre (0861 123 626) at its Cape Town head office and it further resourced each of the 29 fishery control offices along the coast.

In 2004, the Department also procured the services of project management specialists, specialist legal advisers, IT specialists, and a forensic auditing consortium to advise it on the long-term commercial fishing rights process. A Rights Allocation Unit was established in 2005 to co-ordinate and manage the long-term rights allocation process.

Earlier, during the latter half of 2003, rights were allocated to abalone divers for a period of ten years. In December 2004, another set of *long-term* commercial fishing rights were allocated in the large pelagic (tunas and swordfish) fishing industry. Long-term fishing rights for the remaining 20 commercial sectors were scheduled for the last quarter of 2005. The KwaZulu-Natal Beach Seine Fishery (*the KZN Beach Seine Fishery*) sector is one of these sectors.

This document is titled the *General Reasons for the Decisions on the Allocation of Rights in the KZN Beach Seine Fishery* and will be referred to as the *GPR*. The GPR sets out the criteria, the process and methodology and the policy reasons for the decisions on the allocation of rights and quantum in a fishery

Applicants are therefore advised to carefully study the GPR before considering the assessment of their applications and the specific reasons for decisions taken.

Every applicant for a fishing right will receive the following documentation by mail:

- A notification letter, informing the applicant of the delegated authority's decision, together with the reason for that decision;
- A copy of the GPR; and
- A copy of the decision-making lists of the delegated authority.

The specific reason contained in the notification letter to unsuccessful applicants, together with the GPR, constitute the reasons for the decisions on the allocation of rights and effort and the fishery.

2. Policy and Application Form Development for Long-Term Rights Allocation

A detailed report entitled "*Public Participation in the Development of Policy and Application Forms for the Allocation of Long-term Commercial Fishing Rights*" will be made available on the Department's website (www.mcm-deat.gov.za).

A Committee was established to co-ordinate and manage the drafting of a general fisheries policy and sector specific fishing policies. Draft policies were finalised after the Minister held a series of Ministerial *Izimbizo* with coastal communities along the west, south east and east coasts between June and November 2004 and after all registered industrial bodies and interest groups were consulted on sector management issues. On 1 March 2005, the Minister issued for public comment 19 draft fishery specific policies and a draft general policy on the allocation and management of long-term fishing rights.

A key feature of the draft policies was to divide the different commercial fisheries into four clusters. The clusters were determined having regard to the level of formal organisation within the various fisheries, the capital required for participation and the make-up of the participants in a fishery. A different allocation process (method of consultation, registration, distribution, receipting, communication and evaluation) was proposed for each cluster. The KZN Beach Seine fishery was included in "*Cluster D*", along with other similar fisheries such as oysters, mussels and drift/gillnets.

The draft policies were published in isiXhosa, Afrikaans, isiZulu and English in the Government Gazette and on the Department's website and copies were distributed along the coastline. For purposes of public consultation, the notice and comment process set out in the Promotion of Administrative Justice Act 3 of 2000 and its regulations were adopted. In order to assist members of affected communities to comment, the Department consulted with fishing communities along the coast during March 2005. A total of 53 villages, towns and cities were visited and more than 6000 fishers were consulted. In April 2005, further consultations with communities took place in 16 venues along the coast about the draft traditional line fish policy. At each

consultation, every comment was recorded and documented by the Rights Verification Unit (“RVU”), an independent team of auditors. At the end of the consultation process, more than 9000 fishers between Port Nolloth and Durban had been heard orally. Apart from the thousands of oral comments which were recorded, the Department also received more than 900 written comments on the policies. Significant changes were made to the policies after the comments were considered.

In May 2005, Cabinet approved the 19 “*sector specific policies*” and the “*General policy*”. In July 2005, Cabinet also approved the traditional line fish sector policy.

3. Appointing the Delegated Authority

In December 2005, and acting in terms of section 79 of the MLRA, the Minister appointed Ms Abeeda Mugjenkar, the Chief Director: Monitoring, Control and Surveillance, as the Delegated Authority responsible for the allocation of long term fishing rights in the KZN Beach Seine sector.

4. Distributing and Receipting of Applications

A detailed report entitled “*Registration, Distribution and Receipting in the Long-Term Rights Allocation Process*” will be made available on the Department’s website (www.mcm-deat.gov.za).

Once an applicant or his/her representative would arrive at one of the various distribution and receipting centres, he or she would have been directed to the representatives of the Rights Verification Unit based at the specific venue. The Rights Verification Unit had control over the application forms and would have released an application form to an applicant or applicant representative on presentation of his or her original identification document and receipt of payment of the relevant application fee by means of either a cheque, postal order or cash. In those cases where the applicant could not personally collect the form, it was required that he or she should send a representative with a letter authorizing the representative to collect the form, as well as a copy of the applicant’s identification document. The Rights Verification Unit representative would then have issued the applicant or applicant representative with a blank application form, as well as a receipt.

The Rights Verification Unit representative would then have directed the applicant to the Departmental officials for further assistance. The Departmental officials would then have assisted the applicant with completion of the application form and annexures. Once the application form was completed, the applicant would have signed the form in the presence of the Commissioner of Oaths present at the venue. The Departmental officials would then have taken into possession the completed and signed application form and annexures, issued the applicant with a receipt, and handed over the application to the Rights Verification Unit for safekeeping.

The final deadline for registration and lodgement of applications for Cluster D sectors was set at 16h00 on 2 December 2005. A total of 451 applicants registered for Cluster D commercial fishing rights. All 451 lodged their applications timeously.

The RVU receipted a total of 25 applications for long-term commercial fishing rights in the KwaZulu-Natal Beach Seine fishery. Of the 25 applications received, 16 were from medium-term right holder applicants and 9 were from new entrant applicants.

5. An Interactive Application Process

In Cluster D, the delegated authorities adopted a highly interactive process, deploying teams of multilingual officials who were overseen by the Rights Verification Unit in a number of coastal villages along the coast. The officials were trained on the Cluster D policies and application forms. Applicants in the Cluster D fisheries were informed by hardcopy newsletters, posters that were put up at local harbours, slipways and harvesting areas and by local radio advertisements to visit a particular venue where a Cluster D application form could be collected and handed in.

A team consisting of 5 departmental officials and two representatives of the Rights Verification Unit were deployed in Kwa- Zulu Natal to attend to the distribution and receipting of Cluster D application forms. They were based in Durban at the KZN Wildlife Permit Office on 28 November 2005 from 08h30 to 16h30. From there they moved to Ballito where they were based in the Sangweni Tourism Centre on 29 November 2005, also from 08h30 to 16h30. The team then returned to the KZN Wildlife Permit Office in Durban from where they managed the distribution and receipting of applications on 30 November 2005, also from 08h30 to 16h30. From there they travelled to Hibberdene where they were based in the Town Hall on 1 December 2005, also from 08h30 to 16h30.

The departmental officials were also available to assist those applicants who required help to complete the application forms, which could be completed in English, Afrikaans, isiXhosa or isiZulu. A report entitled "*The Interactive Application Process for the Allocation of Long-Term Rights Allocation Process*" will be made available on the Department's website (www.mcm-deat.gov.za).

The delegated authority further communicated in Cluster D through website notices and updates and by way of "*FishRights*" – a fortnightly E-Newsletter that is placed on the Department's website every second Monday. This newsletter is also e-mailed to over 300 fishing companies, journalists and circulated through interest groups and industrial bodies recognised by the Minister in terms of section 8 of the MLRA.

A hardcopy illustrated newsletter was also developed for communicating specifically with Cluster C & D applicants. The hardcopy version differed from the electronic newsletter substantially as it was written for a significantly different audience. The hardcopy version was written in English, isiXhosa, isiZulu and Afrikaans

and distributed along the entire coastline via the fishery control officers, including members of Ezemvelo KwaZulu-Natal in KwaZulu-Natal. In total, 6 editions were published between July 2005 and December 2005. Each publication set comprised 20 000 copies. In total 120 000 copies of the newsletter were published and distributed along the coast between July 2005 and December 2005 when the rights registration process ended.

6. Decision-Making Process

The delegated authority was assisted by an Advisory Committee; legal advisors; the RVU and auditors; IT specialists; communication consultants; and administrative and project management specialists.

A report entitled “*The Decision-making Processes for the Allocation of Long-Term Rights*” will be made available on the Department’s website (www.mcm-deat.gov.za). In short, the process of allocating commercial fishing rights in the KZN Beach Seine sector involved the following steps:

☞ Database Development: After the applications were receipted by the RVU, the delegated authority instructed the IT advisers to design a database to facilitate the analysis of applicant data across a range of fields, including, transformation, investment, job creation, compliance, and issues such as safety and environmentally sustainable practices. The purpose of the database was to assist with identifying internal inconsistencies and deviations that required special verification and consideration.

☞ Constitution of the Advisory Committees: The delegated authority constituted an advisory committee, which was chaired by members of the Rights Allocation Unit. The advisory committee for the KZN Beach Seine fishery consisted of –

- ☞ Mr Shaheen Moolla (Chair);
- ☞ Ms Micha-Rose Emmett; and
- ☞ Mr Cheslyn Liebenberg

☞ The role of the Advisory Committee in the KZN Beach Seine fishery was to assess whether the applications were properly lodged, not materially defective and met the essential requirements of the fishery and to assess the information provided in each application.

☞ Instructing the Advisory Committees: Each advisory committee was briefed and instructed by the delegated authority, members of the Rights Allocation Unit and legal advisors on, *inter alia*, the following:

- The applicable statutory provisions and case law;

- The general policy and the sector specific policy adopted by the Minister and Cabinet for the KZN Beach Seine fishery;
- The current biological, economic and transformation profiles of the fishery;
- The criteria to be applied;
- The purpose of each question asked in the application form applicable to the KZN Beach Seine fishery.

☞ Guiding the Advisory Committees: During the verification and evaluation process, the delegated authority met with the advisory committee and if necessary, instructed them on the manner in which to verify information or assess a particular aspect of the application.

☞ Decision-making: After all applications were evaluated, the chairperson of the advisory committee presented the results to the delegated authority. The delegated authority then considered each application, having regard to the assessments of the advisory committee. If there was any uncertainty regarding the assessment, the delegated authority instructed these aspects to be carefully re-assessed. The delegated authority also considered whether the selected criteria achieved the objectives set for the allocation of rights in the general and sector specific policies and, if necessary, adjusted the criteria in order to better achieve the objectives.

7. Sector Profile Prior to Long Term Rights Allocations

The KwaZulu-Natal commercial sardine beach-seine fishery is highly seasonal. During the winter months large shoals of sardines (*Sardinops sagax*) enter the waters of KwaZulu-Natal from the south. This classical spawning migration is referred to as the KZN “sardine run”.

The annual sardine run corresponds with an offshore movement of the warm Agulhas Current in the region of the Wild Coast during autumn through to winter and its replacement by a cool, narrow band of water inshore. This event provides a corridor for cold-water-loving sardines to migrate northward in large shoals that may be 15 kilometres long, three kilometres wide and 40 metres deep. The shoals attract thousands of predators such as gannets, dolphins and sharks.

The KZN sardine beach-seine fishery relies entirely on the sardine run. Moreover, KwaZulu-Natal’s tourism industry is geared towards capitalizing on the spectacle of the sardine run, including the excitement of beach-seine operations. There are, however, years when the intrusion of cold water does not occur or sardines do not appear inshore. Catches in the KwaZulu-Natal sardine beach-seine fishery have been close to zero in some years.

The KZN sardine beach-seine fishery has been regulated since the 1970s. Prior to the Marine Living Resources Act (1998), permits were issued by the KZN Fisheries Licensing Board. A maximum of 35 permits were allocated annually. Permits, and nowadays rights, were issued exclusively for the capture of sardines; all other fish had to be returned to the water alive.

The commercial sardine beach-seine fishery is restricted to KwaZulu-Natal. Due to it being a short, seasonal fishery which is only activated during the sardine run, most of the participants are employed in other fishing sectors for the remainder of the year.

Although sardines are a TAC-controlled species, targeted predominantly by the pelagic fishing industry, the KZN beach-seine fishery is managed on the basis of Total Applied Effort ("TAE"). This is because the biomass landed by beach-seines in KZN is less than 0.1 percent of the total national catch. Effort is not restricted to any particular beaches or areas, thereby allowing the fishers to follow the sardines along the coast and catch the fish as they move inshore. Gear restrictions apply and fishing in marine protected areas is prohibited. The TAE (the number of nets that may be used) is set by the Minister each year.

The sardine beach-seine nets are laid using converted ski-boats. Teams of fishers - approximately 20 per net - then haul the net shoreward by hand. Sardines are sold locally by the right-holder, or buyers purchase the contents of the net while it is still on the beach. The bulk of the catch is used for bait but a limited amount of sardines are consumed by locals. When the sardine run occurs, an average of 20 000 crates or 500 tons is landed, with an annual catch value of between R1.5 and R2 million.

In the past few years, two rights were used by squid right-holders from the Eastern Cape. These right-holders have introduced more technologically advanced procedures to the fishery. Their use of a spotter plane and superior fishing gear has resulted in them out-competing the other fishers.

All teams employ temporary labour during the season. Approximately 700 workers may be employed for a one- to two-month season each year.

8. Profile of Medium Term Right Holders

The allocation of medium-term fishing rights in 2001 introduced a degree of stability to the fishery. In previous years permit-holders entered or exited the fishery each year. The TAE was set at 35 rights in 2001. Only 27 applications were received, 26 of which were granted.

This fishery is relatively capital intensive due to the capital outlay required for a powered ski-boat, a beach-seine net and 4X4 vehicle, as well as the risk associated with the short, unpredictable sardine season.

After the allocation of medium-term rights, the fishery was 50 percent black-owned and managed.

9. Applicants for Long Term Rights

The Rights Verification Unit received a total of 25 applications for long term commercial fishing rights in this fishery. Of the 25, 16 were from medium term right holder applicants and 9 were from new entrant applicants.

This may be related to the fact that a number of applicants decided to not apply for rights in the fishery due to the poor runs of sardines over the past few years.

10. Criteria

All the applications were initially scrutinised to determine whether they were properly lodged, whether they were not materially defective and whether they fulfilled the essential requirements of the sector, including whether they presented a paper quota risk.

An application was ***improperly lodged*** if:

- ☞ The application was not lodged at the prescribed place within the prescribed time;
- ☞ The correct application fee was not paid within the required timeframes; or
- ☞ The application was not lodged on the official prescribed application form.

An application was ***materially defective*** if:

- ☞ The declaration was not signed and attested by the authorised representative of the applicant, and if applicable, the authorised representative of the Holding Company, the Sister Company or the JV Partner(s);
- ☞ The application did not include a signed audit report;
- ☞ More than one application was received from the same applicant in the same sector;
- ☞ The applicant provided false information or false documents; or
- ☞ The applicant failed to disclose material information, or attempted to influence the Minister or the delegated other than in the manner provided for in the General policy during the application period.

An applicant failed to meet the ***essential requirements*** of the sector if:

- ☞ The applicant pose a paper quota risk as defined in the General policy;
- ☞ The applicant is not a close corporation or an individual;
- ☞ The applicant breached a provision of the MLRA resulting in the sanctions provided for paragraph 8.1(d) of the KZN Beach Seine policy;

- ☞ The applicant is either not a South African citizen or is not more than 50% South African owned, if a close corporation;
- ☞ The applicant is not a traditional beach seiner, demonstrating knowledge and the ability to fish for sardines using a beach seine;
- ☞ The applicant failed to demonstrate a right of access to appropriate beach seine nets and a suitable vessel;
- ☞ The applicant, if a medium term right holder applicant, failed to regularly utilise its right between 2002 and 2004;
- ☞ The applicant holds a right in a Cluster A or Cluster B fishery, or is a shareholder or director of a Cluster A or Cluster B fishery right holder;
- ☞ The applicant indicates that it will not be personally involved in the harvesting of the resource or in the participation of the business (if the applicant is a close corporation); or
- ☞ The applicant is unable to demonstrate a degree of historical dependence on the resource for a livelihood.

11. The Allocation of Rights and policy reasons for decisions

The delegated authority allocated rights to 22 of the 25 applicants. The reasons for the decisions are as follows:

- 11.1 As KZN Beach Seine fishery was undersubscribed, the delegated authority considered it unnecessary to design detailed criteria and weightings for the purposes of comparative balancing.
- 11.2 Three applicants were excluded on the basis of material defects and essential requirement failures. The reasons for excluding these applicants have been dealt with in the General policy and the KZN Beach Seine sector policy and will not be repeated here. One applicant was excluded because the declaration she signed was not commissioned. A second applicant was refused as he is a director of a Cluster A and Cluster B right holder. A third applicant was refused a right as he failed to demonstrate that he is a traditional beach seiner.

The following lists are attached as annexure "A" to this GPR:

- "A.1", the list of medium term right holder applicants; and
- "A.2", the list of new entrant applicants.

Annexure B records the successful applicants in application number order.

Of the 22 rights allocated, 45% are held black persons or black controlled close corporations.

12. Permit Conditions for this Fishery

The KZN Beach Seine fishery policy stipulates that prior to the finalisation of permit conditions for this fishery, the Department will consult with the right holders. The Chief Director: Resource Management (*“the Chief Director”*) will design permit conditions to ensure that this fishery is sustainably managed and that vehicle use in the coast zone only takes place under a permit issued and in terms of conditions stipulated under the Regulations promulgated to control vehicle use in the coastal zone.

Ms Abeeda Mugjenkar

Delegated Authority: KZN Beach Seine

24 March 2006

Annexure A
List of Applicants

Annexure A1

Medium term right holder applicants

NO.	APPLICATION NUMBER	NAME OF APPLICANT
1	KSBM0001	Francis Sean Douglas
2	KSBM0002	Pillay Leonard
3	KSBM0003	Naidoo Valayithum
4	KSBM0004	Rademan Stephen Abraham
5	KSBM0006	Naidoo Vinothie Arumugam
6	KSBM0007	Younus Mahomed Shameem
7	KSBM0008	Outar Brahmanand
8	KSBM0009	Buckle Gerald Vernon
9	KSBM0011	Sardine Fever CC (RH Spavins)
10	KSBM0012	Adcan Marine Suppliers CC (Alexandros Demetrios Stamatias)
11	KSBM0016	Christy James Steven Mark
12	KSBM0017	Pellew Howard Bryan Watson
13	KSBM0019	Simes Alan Humphrey
14	KSBM0022	Sardinops Fishing
15	KSBM0023	Snyman Mark Wayne
16	KSBM0024	Dicken Kenneth Victor

Annexure A2

New entrant applicants

NO.	APPLICATION NUMBER	NAME OF APPLICANT
1	KSBM0010	Smith Andrew Maurice
2	KSBM0013	Chetty Vellanathan
3	KSBM0014	van der Walt Gavin Paul
4	KSBM0015	Poole Glen
5	KSBM0018	Mdwadube Bonakele
6	KSBM0020	Bremner Kevin William
7	KSBM0021	Umtwalume Community Fishing Enterprises
8	KSBM0025	Khululeka Fishing (Michael James Gradwell)
9	KSBM0026	Louw Ritzema

Annexure B
List of Successful Applicants

Control	Successful Applicants
1	KSBM0001 – Sean Douglas Francis
2	KSBM0002 – Leonard Pillay
3	KSBM0003 – Valayithum Naidoo
4	KSBM0004 – Stephen Abraham Rademan
5	KSBM0006 – Vinothie Arumugam Naidoo G.S Seafood and Poultry CC
6	KSBM0007 – Mahomed Shameem Younus
7	KSBM0008 – Brahmanand Outar
8	KSBM0009 – Gerald Vernon Buckle
9	KSBM0010 – Andrew Maurice Smith
10	KSBM0011- Sardine Fever CC(RH Spavins)
11	KSBM0012 – Adcan Marine Suppliers CC(Alexandros Demetrios Stamatis)
12	KSBM0014 – Gavin Paul van der Walt
13	KSBM0015 – Glen Poole
14	KSBM0017 – Howard Bryan Watson Pellew
15	KSBM0018 – Bonakele Mdwadube
16	KSBM0019 – Alan Humphrey Simes
17	KSBM0020 – Kevin William Bremmer
18	KSBM0021 – Umtwalume Community Fishing Enterprises
19	KSBM0022 – Sardinops Fishing
20	KSBM0023 – Mark Wayne Snyman
21	KSBM0024 – Kenneth Victor Dicken
22	KSBM0025 – Khululeka Fishing (Michael James Gradwell)