DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE HAKE DEEP-SEA TRAWL FISHERY: 2021

THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION OF FISHING RIGHTS: 2021 AND THE POLICY ON TRANSFER OF COMMERCIAL FISHING RIGHTS

(available at www.environment.gov.za)

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Definitions

"*Paper quotas*" as defined in the General Policy
"*Group of companies*" is an economic group formed of a set of companies.
"*Holding company*" is a company that owns a controlling interest in other, subsidiary companies.
"*Subsidiary company*" is company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.
"Category A" applicants are applicants who held a right in the fishery for which they are re-applying during the period 2006 to 2020.
"Category B" applicants are applicants who held rights in sectors other than the fishery they are applying for during the period 2006 to 2020.
"Category C" applicants ("new entrant" applicants) are applicants who did not hold commercial fishing rights during the period 2006 to 2020.

Acronyms

MLRA: Marine Living Resources Act, 1998 (Act No. 18 of 1998)
TAC: Total Allowable Catch
OMP: Operational Management Procedure
LTRAMP: The Long Term Rights Allocation and Management Process

Preamble

This fishery is managed in terms of MLRA and other relevant legislation.
Recognising the need to utilise marine living resources sustainably and to promote equitable access to marine living resources.
Acknowledging that this fishery will be managed in accordance with the Ecosystems Approach to fisheries management.
Rights will be allocated to successful applicants as proportions (percentages) of the Deep-Sea Trawl hake TAC apportionment.

1. Introduction

This policy on the allocation and management of fishing rights in the Hake Deep-Sea Trawl fishery is issued by the Minister of Forestry, Fisheries and the Environment ("the Minister") and shall be referred to as the "Hake Deep-Sea Trawl Policy: 2021". This policy must be read in conjunction with the General Policy on the Allocation of Fishing Rights: 2021 ("the General Policy: 2021") and all other Sector Specific Policies including Policy for Small Scale Fisheries Sector in South Africa: 2012 and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out objectives, criteria and considerations that will guide the application, evaluation and allocation of fishing Rights in the Hake Deep-Sea Trawl fishery ("the fishery").

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

2. Profile of the fishery

2.1 Description of the fishery

The South African Deep-Sea Trawl fishery targets the two species of Cape hakes (shallow-water Cape hake *Merluccius capensis* and deep-water hake *Merluccius paradoxus*). The Cape hakes are distributed on the continental shelf and upper slope around the coast of southern Africa. *Merluccius paradoxus* are distributed from northern Namibia to southern Moçambique, whereas *M. capensis* are distributed from southern Angola to northern KwaZulu-Natal. As the names suggest, the distributions of the two hake species differ with depth, although there is a substantial overlap in their depth ranges. *Merluccius capensis* are distributed over a depth range of 30 to 500 m with most of the population occurring between 100 and 300 m, whereas *M. paradoxus* are distributed over a depth range of 110 m to deeper than 1 000 m with most of the population occurring in depths of between 200 and 800 m. The sizes of both species increase with depth and large *M. capensis* consequently co-exist with and feed extensively on smaller *M. paradoxus*. Whilst it is difficult to distinguish between the two species in frozen form, and they are generally processed and marketed as a single commodity, fresh products can be identified to species level and marketed as separate commodities. The hake resource is also targeted by the inshore trawl, hake longline and hake handline fisheries, but the Deep-Sea Trawl fishery catches more than 80% of the annual hake TAC. Hake (both species as a collective) comprise between 80% and 90% of Deep-Sea Trawl catches made on the West Coast (which mainly comprise deep-water hake) and between 60% and 80% of catches made on the South Coast (which are mainly shallow-water hake). The remainder of the catch is made up of various by-catch species, some of which are commercially valuable (such as monkfish and kingklip) and are retained for utilisation. On average, about 90% of the Deep-Sea Trawl catch is retained. Catches of hake (regulated through an annual TAC restriction) have ranged between 110 000 tonnes and 158 000 tonnes per annum over the past two decades.

The hake Deep-Sea Trawl fishery, while permitted to operate on both the West and South Coasts of South Africa, is spatially restricted to operate only in the area known as the "hake trawl ring fence", and is further prohibited from fishing in waters shallower than 110 m, or within 5 nautical miles off the coast (whichever is the greater distance from the coast). Additional spatial restrictions are a prohibition of fishing in Marine Protected Areas, as well as the September – November closure of the area known as the "kingklip box" on the South Coast near Port Elizabeth (now known as Gqeberha) (closed to protect spawning aggregations of kingklip).

The fishery currently comprises 30 Right Holders, which collectively operate 51 vessels ranging in length from 30 to 90 m. There are two components to the deepsea trawl fleet; the factory vessels (which typically remain at sea for 30 days or more and which process and freeze the catch at sea) and the wetfish vessels (which generally fish for about 4 to 5 days before returning to port, with their catch kept on crushed ice). The Deep-Sea Trawl fishery is currently the most valuable of South Africa's fisheries, contributing about R 8.5 billion. The fishery sustains about 12 400 jobs (6 600 direct and 5 800 indirect) along South Africa's West and South Coasts. Of these jobs, 90% are held by persons from historically disadvantaged communities, while 40% are held by women. Working conditions in the hake Deep-Sea Trawl industry are considered to be better than those that prevail in most other fisheries. The majority of employees are employed on a full-time, year-round basis, with fixed salaries and employment benefits. Seagoing staff typically earn about R22 000 per month, while processing staff earn about R 9 000 per month. Certain of the larger Deep-Sea Trawl fishing companies are registered with the "Proudly South

African" campaign. The hake Deep-Sea Trawl fishery is an extremely capital intensive fishery. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure, totalling R7.6 billion.

2.2 History of the fishery

The demersal fishery off Southern Africa started with the arrival of the purpose-built research vessel, Pieter Faure, in 1897 and the first commercial trawler, Undine, in 1899 off the Cape. In the early years of the fishery, Agulhas and West Coast sole (*Austroglossus pectoralis* and *A. microlepis* respectively) were the primary target species, with hake being caught as an incidental bycatch. Directed fishing of Cape hakes began towards the end of the First World War, with catches averaging about 1 000 tonnes per annum until 1931. The fishery then began escalating during and after World War II, with catches increasing steadily to around 170 000 tonnes by the early 1960s. The incursion of foreign fleets in 1962 led to a dramatic increase in fishing effort, and catches in South African waters eventually peaked in 1972 at over 295 000 tonnes. By this time, effort had extended farther offshore and also into Namibian waters, with over 1.1 million tonnes being caught in the South-East Atlantic in 1972.

In 1972, following concerns over the combination of increasing catches and decreasing catch rates, the International Commission for the South-East Atlantic Fisheries (ICSEAF) was established in an attempt to control what had become an international fishery. Various management measures such as a minimum mesh size, international inspections and quota allocations to member countries were implemented through ICSEAF. However, catch rates continued to decline, and in November 1977 the declaration of a 200 nautical mile Exclusive Economic Zone (EEZ) by South Africa marked the onset of direct management of the South African hake resource by the South African government. With the exception of a few vessels operating under bilateral agreements and subject to South African regulations, foreign vessels were excluded from South African waters.

Subsequent to the declaration of the EEZ, South Africa implemented a relatively conservative management strategy in order to rebuild the hake stocks to (*Biomass maximum sustainable yield* (B_{MSY}), the biomass level that would provide the Maximum Sustainable Yield (MSY). Total Allowable Catch (TAC) restrictions were imposed on the fishery, aimed at keeping catches below levels deemed necessary for stock rebuilding. The TACs were recommended on the basis of assessments of the resource using first steady-state models, then dynamic production models, and finally age-structured production models. An Operational Management Procedure (OMP) approach was adopted in 1990 to provide a comprehensive basis for management of the hake resources. The hake OMP is essentially a set of rules that specifies exactly how the TAC is calculated using stock-specific monitoring data (both commercial and fishery-independent indices of abundance). Implicit in the OMP approach is a four-year schedule of OMP revisions t o account for possible revised datasets, management objectives and understanding of resource and fishery dynamics. Assessments are routinely updated every year to check that resource indicators remain within the bounds considered likely at the time that the OMP was adopted.

An important recent development in the hake trawl fishery (both inshore and deepsea components) has been the certification of the South African hake trawl fishery by the Marine Stewardship Council (MSC). The fishery first obtained this prestigious eco-label in 2006, and was successfully re-certified in 2010, 2015 and again in 2020. MSC certification has provided substantial socio-economic benefits to the fishery through enabling access to international markets that are increasingly demanding that seafood products are MSC certified. Recent economic studies conducted by the Bureau of Economic Research and independent consultants have indicated that withdrawal of MSC certification of the South African hake trawl fishery would decrease the Net Present Value of the fishery by about 35% over a five year period, and result in a potential loss of up to 13 600 jobs. In fulfilling their mandate of ensuring responsible and sustainable fishing practices through granting the use of the MSC eco-label to a fishery, the MSC have stringent standards in terms of assessments and subsequent management of exploited fish resources. The development of the recent iterations of hake OMPs had to conform to these standards to ensure that certification of the hake trawl fishery will not be jeopardised.

2.3 Management of the fishery

The Department manages the hake Deep-Sea Trawl fishery as part of a “hake collective”, with the primary management measure being an annual TAC. In terms of the MLRA the “global” TAC for hakes (both species combined and applied to all hake-directed sectors as a collective) is set annually by the Minister of Forestry, Fisheries and the Environment. A reserve to allow for incidental hake by-catch in the horse mackerel directed midwater trawl fishery is deducted from the global hake TAC before the remainder of the TAC is distributed among the hake-directed fishing sectors; hake Deep-Sea Trawl, hake inshore trawl (hake & sole), hake longline and hake handline. In terms of that arrangement, 83.9268% of the global hake TAC is allocated to Deep-Sea Trawl, 6.179% to inshore trawl, 6.551% to hake long line, 1.8433% to hake handline and 1.5% to small scale fishing. Other management measures include a capacity management system to restrict operational effort (vessels and sea days) to what is required to catch the TAC, spatial and gear restrictions, catch limits on various by-catch species as well as the implementation of measures to reduce seabird mortalities.

Management measures to be considered/implemented during the next Rights cycle (2022 – 2037):

(a) 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.

(b) Roll overs will be discouraged.

(c) Transfer of hake quota between hake-directed sectors (e.g. from inshore trawl to deepsea trawl) are discouraged.

(d) Change in the fishing season from the current 1 January – 31 December to 1 March – 28/29 February. The intention is to implement this change in alignment with the new hake OMP that will be developed during 2022 and implemented in 2023.

3 The Long-Term Fishing Rights Allocation Process

In the 2005/2006 Long-Term Fishing Rights Allocation and Management Process (LTRAMP), rights were allocated to a total of 44 right holders in the Hake Deep-Sea Trawl sector with an average black ownership percentage of 74%. The structure of the fishery has altered somewhat during the intervening period, largely due to various Rights transfers that have resulted in the fishery currently comprising 30 entities.

4 Over-Arching Sectoral Objectives

This policy recognises the need to ensure the optimal, long-term and justifiable use of marine living resources in order to ensure sustainable development of the fishing sector to achieve inclusive economic growth, to achieve the objectives and principles as listed in Section 2 of the MRLA through the Marine Living Resources Fund (MLRF) and to create sustainable employment consistent with the development objectives of National Government. In terms of the Marine Living Resources Act, 1998, the responsible authorities are obliged to achieve optimum utilisation and ecological sustainable development of marine living resources; conserve marine living resources for both present and future generations; apply precautionary approaches in respect of the management and development of marine resources; utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture sectors, employment creation and a sound ecological balance consistent with the development objectives of the national government; protect the ecosystem as a whole, including species which are not targeted for exploitation; preserve marine biodiversity, and to minimise marine pollution.

Within the framework of the broader objectives specified in the General Policy, the specific objectives to be fulfilled during the allocation of fishing rights in the Hake Deep-Sea Trawl fishery are to:

4.1 broaden access to the Deep-Sea Trawl fishery to the extent possible while minimising economic disruption (such as job losses) to the existing fishery;

4.2 promote transformation through efficient allocation of fishing rights to historically disadvantaged persons (which shall include the designated groups; youth, women, people with disabilities and military veterans) and broaden meaningful participation (increase participation, value-creation, and linkage) of these groups;

4.3 promote the interests of applicants who rely heavily on the Hake Deep-Sea Trawl sector;

4.4 promote local economic development through encouraging investments in processing and marketing infrastructure in areas that are economically depressed;

4.5 promote meaningful participation in the fishery by all Right Holders and eliminate paper quotas through discouraging restrictive catch and/or joint venture agreements (agreements where a third party conducts all catching, processing and marketing over the entire duration of the right);

4.6 promote SMMEs; and

4.7 promote job creation and retention.

5 Granting of Fishing Rights

Fishing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. The Delegated Authority shall allocate proportions of the TAC and/or TAE (Total Applied Effort) to each successful applicant based on the balancing criteria and portion of the local commercial TAC, TAE or combination thereof that is available at the time the fishing right is allocated. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

5.1 Form of Right Holder

Having regard to the nature of operations and accessibility, only the following South African persons will be considered for a right in the Hake Deep Sea Trawl sector:

(i) Close Corporations (legal entity).

(ii) Companies (legal entity).

5.2 Duration of Rights

Having regard to the right allocation process and need to encourage investment, the Hake Deep-Sea Trawl fishery, fishing rights will be granted in the Hake Deep-Sea Trawl fishery for the maximum period of 15 years. Right Holders will be expected to keep their own records of catches, levy payments and fishing effort data for the duration of the right. Right Holders will also be expected to ensure that landing declaration forms and distribution of catch per right holder declarations are accurately completed and signed off at the landing site.

5.3 Total Allowable Catch and Total Applied Effort allocation

In terms of section 14 of the MLRA the Minister is empowered to determine a Total Allowable Catch (TAC), Total Applied Effort (TAE), or combination thereof to apply in each fishery. This fishery is regulated by the determination of a TAC.

The TAC is determined by the Delegated Authority considering the history, resource users, sustainability of the operations of right holders, and the viability of the fishery. The Delegated Authority will only allocate a local commercial portion of the determined TAC to commercial right holders based on the proportion granted to each successful applicant at the time of commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of determined TAC decrease or increase respectively. In terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist increases, the mass of the increase shall be available for allocation by the Minister.

5.4 Transfer of Rights Allocated in terms of this Policy

In terms of Section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in this fishery in terms of the MLRA shall not be transferred within the first three [3] years of being granted.

Rights can only be transferred in terms of the Policy for the Transfer of Commercial Fishing Rights ("the Transfer Policy").

Any transfer of shares or members' interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members' interest should be dealt with in terms of the Transfer Policy.

A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred, In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder results in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity.

Failure to comply with any provision of the MLRA, the Regulations, the permit conditions, the General Policy and the Transfer Policy shall result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

Right Holders in this fishery should refer to the Transfer Policy for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this Policy and the Transfer Policy, the provisions of the Transfer Policy shall take precedence.

6 Evaluation criteria

Applicants will be screened in terms of a set of "exclusionary criteria", and thereafter assessed in terms of a weighted set of "comparative balancing criteria". A cut-off score will then be determined to select the successful applicants.

6.1 Exclusionary criteria

Apart from the criteria described in the General Policy on the Allocation of Commercial Fishing Rights: 2021 ("the General Policy") pertaining to the lodgement of the applications and material defects, the Delegated authority will exclude applicants that fail to meet the following requirements:

6.1.1. **Compliance:** an applicant, including any of its Directors, Senior Management, Shareholders or Members (where such shareholding and/or members' interest exceeds 10%) or Skippers that have been convicted of a serious transgression of the MLRA, or its regulations, or relevant permit conditions (without the option of the payment of a fine) will be excluded. Applicants, including their Directors, Senior Management, Shareholders or Members (where such shareholding and/or members' interest exceeds 10%) or Skippers that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including the payment of admission of guilt fines (maximum fine), may be taken into account as a balancing criterion and may also adversely affect an application.

6.1.2. **Paper Quota Holders:** applicants who apply under Fishing Rights Allocation Process: 2021 (FRAP2021) for new rights, and who are found to be paper quota risk as defined in the General Policy will be excluded.

6.1.3. **Fronting:** Applicants who apply under FRAP2021 for new rights, and who are found to be engaged in fronting as defined in the General Policy will be excluded.

6.1.4. **Non-utilisation:** Applicants that held a Right in the fishery during the previous rights allocation period ((2006 to 2020)) and did not utilise that right, shall be excluded.

It must be noted that applicants who have been excluded on one of the exclusionary criteria, will still be evaluated and assessed against the balancing criteria. This will be done for the purposes of generating scoresheets for such excluded applicants. .

6.2 Balancing criteria

Applicant will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. Weighting and scoring criteria will be developed and designed for Categories A, B and C applicants.

6.2.1. Transformation: The objective of allocating long-term fishing rights in this sector is to improve the transformation profile (involvement of females, youth and people living with disabilities). In addition to the criteria as stipulated in the General Policy, applicants will be assessed and scored on:

(i) The percentage of people from designated groups and HDIs representation at top salary, board of directors, members and senior official and management levels;

(ii) The extent to which an applicant's black ownership and black management transformation credentials (have either improved, remained the same, or deteriorated in the period following the granting of rights in the LTRAMP);

(iii) Whether employees (other than top salary earners) benefit from an employee share scheme;

(iv) Compliance with the Employment Equity Act 55 of 1998 and the representivity of designated groups and HDIs at the various levels of employment below senior official and management level;

(v) Affirmative procurement;

(vi) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and

(vii) Corporate social investment.

6.2.2 Reliance on the fishery: Applicants, depending on the form of an applicant, will be awarded a weighted score based on: —

i. The percentage (%) income derived from a fishing sector/s within South Africa; and

ii. The percentage (%) income derived from a fishing sector/s outside of South Africa.

6.2.2. Compliance: Applicants, depending on the form of an applicant, will be awarded a weighted score based on whether:–

(i) Minor violations: - the applicant has been convicted of an offence under the MLRA, or the regulations or permit conditions as per the period as determined in the Fishery Sector Specific Policies.

(ii) Minor violations: - the applicant has paid an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions as per the period as determined in the Fishery Sector Specific Policies. These types of violations will result into a minor scoring penalty during comparative balancing phase.

(iii) Minor violations: - an applicant had a fishing right or permit suspended or reduced as per the period defined in the Fisheries Sector Specific Policies.

(iv) Substantive violations: - the applicant has entered into a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions as per the period as determined in the Fishery Sector Specific Policies. These types of violations will result into substantial scoring penalty during comparative balancing phase in the case of a single infraction. In the case of repeat violations of the MLRA by the applicant, the applicant will be excluded.

(v) Substantive violations: - the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets has been seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 as per the period as determined in the Fishery Sector Specific Policies. These types of violations will result in substantial scoring penalty/ies during the comparative balancing phase in the case of a single infraction. In the case of repeat violations of the MLRA by the applicant, the applicant will be excluded.

Applicants with pending legal proceedings will be assessed and evaluated in the same manner as all other applicants. In the event these applicants are successful the rights will be granted but reserved pending finalisation of such proceedings. If the applicant is successful in the legal proceedings, the applicant will be permitted to exercise the right. If the legal proceedings are unsuccessful, the right will be distributed pro-rata among all other successful applicants in the same category.

6.2.3. Fishing Performance: The fishing performance of applicants holding fishing rights in the Hake Deep-Sea Trawl and other fisheries (i.e. Category A and B applicants) will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, proportion of the quota that is landed per annum subsequent submission of catch data and payment of levies for the last 10 years of the right (i.e. 2010-20202020), or a shorter period in the cases of those Right Holders that entered the fishery subsequent to LTRAMP.

6.2.4. Investment in the fishery::

(i) As far as category A applicants are concerned, the Delegated Authority may specifically consider investments in suitable vessels and other fixed assets such as processing and marketing infrastructure in the Hake Deep-Sea Trawl sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding or members' interest will also be considered.

(ii) As far as Category B and C applicants are concerned, the Delegated Authority may consider investments made in other sectors in form of vessels, fixed assets, processing and marketing infrastructure. A clear demonstration of their commitment (and ability) to invest in this sector (i.e., access to a vessel and FPE's) will be considered.

(iii) All Category C applicants are required to demonstrate that they have knowledge, skills and capacity to fish for and process hake.

The Department recognises that the "economic unit" business model is a feature of this fishery, and that such circumstances may 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.

6.2.5. Access to a suitable vessel: An applicant will be required to demonstrate a right of access to a vessel suitable for harvesting of hake in the Hake Deep-Sea Trawl fishery. Access may be 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. If an applicant intends purchasing a vessel, then additional information must be provided to prove a firm and binding offer by the current owner of the vessel to sell the vessel to the applicant. If an applicant intends building a new vessel, then additional information must be provided including vessel plans, the cost to be incurred, a firm and binding commitment by the vessel building company to build the vessel accompanied by evidence of a deposit paid to the building company by the applicant.

A suitable vessel in the hake Deep-Sea Trawl fishery is a vessel that:

(i) Is registered by the South African Maritime Safety Authority (SAMSA) as being suitable for trawl fishing;

(ii) Is compliant with safety at sea and vessel specifications in terms of the Merchant Shipping Act 57 of 1951, the South African Maritime Safety Authority ("SAMSA") Act 5 of 1998, the Marine Traffic Act 2 of 1981 and its Regulations

(iii) Is geared to fish using the trawl fishing method;

(iv) Is fitted with a departmental approved and functioning vessel monitoring system (VMS) (unless exempted by the Department);

(v) Is a South African flagged vessel; and

(vi) Is not listed negatively on any *Regional Fisheries Management Organisations (*RFMO) list and/or Treaties.

The Department recognises that the "economic unit" business model is a feature of this fishery, and that such circumstances may complicate the submission of the required vessel access 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.

The Department is intending to investigate investments made in acquisition and/or long-term leasing of foreign vessels made by South African fishing companies, and the actual ownership by these companies in the vessels concerned.

6.2.6. **Local economic development:** The Delegated Authority will take into consideration the locality of landing and processing sites to promote local economic development in economically depressed areas.

6.2.7. **Multiple sectoral involvement:** Applicants in this sector will not be precluded from applying for or holding commercial rights in other fisheries sectors. However, the number and nature of other sectors in which the applicant already holds rights, as well as the magnitude of those rights, will be taken into consideration when evaluating applications and implementing the Quantum Allocation Methodology.

6.2.8. **Applicants' involvement and relationships with other applicants:**

(i) Entities and their subsidiaries involvement: A company and its subsidiary/ies may not be granted more than one [1] right in the Hake Deep-Sea Trawl fishery, so as to avoid fronts and monopolies and to promote broader access to the hake resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the Hake Deep-Sea Trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in the same fishery, the holding/umbrella/parent company will be preferred with due regard being taken to the Department's transformation objectives.

(ii) Brother-Sister corporations: If two [2] or more entities which are owned and controlled by the same person or persons or shareholders apply for a commercial fishing right in the Hake Deep-Sea Trawl fishery, and qualifying for the allocation of such rights, then the Department may consider:

(a) allocating a fishing right to one of the qualifying entities only; or

(b) dividing the TAC between the qualifying entities.

6.2.9. Broader benefits to SA society

Broad benefits to society or part thereof will be categorised as follows:

(i) The number of shares of the entity held by shareholders shall be considered in evaluating benefits to society. if an entity has paid annual taxes to the South African Revenue Services then that is a benefit to society and it will be scored accordingly

(ii) dividends paid to shareholders as outline in part a) will also be scored accordingly.

6.2.10. Job creation: The Delegated Authority will give preference to Category A and B applicants that have retained or improved employment opportunities. For these purposes the Delegated Authority will consider the quality of the employment opportunities that have been created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's performance in providing their employees with:

(i) permanent employment;

(ii) medical aid or any kind of medical support arrangement;

(iii) pension / provident fund;

(iv) safe working conditions in accordance with the applicable legislative requirements; and

(v) an employee share scheme as a shareholding entity of the right holder, or an employee profit sharing scheme in the case of smaller entities, or a members' interest in a Closed Corporation.

The Department recognises that the "economic unit" business model is a feature of this fishery, and that such circumstances may complicate the submission of the required employment/job creation 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.

6.2.11. Payment of Levies

Applicants that were granted fishing rights in 2005 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

7. Quantum allocation methodology

13.1 Starting principles

Implementation of FRAP2021 in the Hake Deep-sea Trawl sector aims to balance the objectives of broadening access to the fishery through the introduction of new entrants against improving the allocations to the smaller Right Holders (and HDI groups in particular) to facilitate their meaningful participation in the fishery throughout the value chain. This balancing of objectives should attempt to minimise negative economic impacts on the industry (such as a net loss of jobs and/or corporate investments), and should account for any changes to resource and socio-economic dynamics that have occurred in the fishery during the course of the previous Rights (such as progress on transformation and measures to increase job creation such as certification of the fishery by the MSC).

13.2 Method

(a) Apply exclusionary criteria to each applicant's application and flag applicants that the Delegated Authority should consider excluding.

(b) Apply balancing criteria to each applicant's data to generate a score for each applicant (conduct separately for Category A, B and C applicants).

(c) Rank applicants within each category according to their score.

(d) Address small allocation concerns and/or introduction of new entrants to the extent possible.

14 New Entrants

Whilst being mindful of the dynamics of the sector that were established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department. New entrant applicants will have to demonstrate that they have knowledge, skills and capacity to fish and process hake. However it shall be noted that there is limited room to accommodate New Entrants in this fishery.

15 Application and Grant of Right Fee

Applicable fees have been published in the Government Gazette No. 39451, Volume No. 605, 25 November 2015, separately in terms of section 25 of the MLRA.

The application fee is payable upon submission of an application and is non-refundable.

The grant-of-right fee is payable by all successful applicants within 60 days of the granting of the right.

Applicants must pay the Application Fee to the Marine Living Resources Fund before the submission of their Application Form and proof of payment must be submitted with the Application Form when applying for a fishing right. Banking details are as follows:

Account Holder: Marine Living Resources Fund
Bank Name: First National Bank
Account Number: 62123256382
Branch Code: 210554
Reference Number: [Applicant must insert the commercial fishing right application number]

16 Provisional Lists, Representations and Consultations

16.1 The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery sector.

16.2 The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.

16.3 The Delegated Authority may invite representations regarding the assessment of the applications before making final decisions.

17 Appeals

17.1 The Delegated Authority will inform all applicants of the dates set for appeals.

17.2 Any applicant or affected or interested person will have the right to appeal against the decisions of the Delegated Authority. The appeal may be lodged against a refusal to grant a right or against the decision, process, and methodology on quantum.

17.3 The Minister, as the appeal authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing date for applications, that fact will not be taken into account when considering the appeal.

17.4 Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.

17.5 Successful applicants must be aware that initial allocations made during the FRAP2021, prior to the appeals process, may be adjusted subsequent to the appeals process to accommodate successful appellants.

17.6 Appellants must be aware that in the event that their appeal is successful, they will only be permitted to fish at the start of the next fishing season.

17.7 Following the appeals authority's decision, appellants may approach the courts for judicial review within 180 days after the appellant has been informed of the decision of the appellate authority.

18 Management Measures

18.1 Spatial Management

(a) In the area east of 020°E longitude, no fishing shall take place in water depths of less than 110 metres or within 20 nautical miles from the coast, whichever is the greater distance from the coast

(b) In the area west of 020°E longitude, no fishing shall take place within 5 nautical miles of the coast.

(c) During the period 1 September to 31 December, no fishing shall take place within the quadrilateral described by lines joining the following four points: —

A: 34°48'S 024°00'E;
B: 34°38'S 025°00'E;
C: 34°44'S 025°00'E; and
D: 34°57'S 024°00'E.

(d) No fishing may take place outside of the areas defined as the "Hake Trawl Ring Fence" as described in the Department VMS MaxSea file "Trawl Ringfenced 2009 Release V1.ptf". This file is available for incorporation into MaxSea navigational software upon request from the Department".

(e) No fishing may take place in the Marine Protected Areas as proclaimed in the Government Gazette No. 42478 dated 23 May 2019.

18.2 Optimum Utilisation and Promoting Sustainability

Optimum, sustainable utilisation of the SA hake resources has been achieved since 1991 through implementation of an Operational Management Procedure (OMP) approach. An OMP is essentially a combination of pre-specified methods of data collection and analysis, coupled with a set of agreed, simulation-tested decision rules (effectively harvest control rules) that specify exactly how the regulatory mechanism is to be computed each year. In the case of South African hake, the regulatory mechanism (TAC) is calculated from stock-specific monitoring data (commercial CPUE indices and indices of abundance derived from demersal research surveys).

Implicit in this OMP approach is a schedule for OMP revision (every 4 years) to account for updated data sets and possible changes in resource and/or fishery dynamics and management objectives. Such reviews are conducted in consultation with all major stakeholders to ensure that when recommendations based on these pre-agreed formulae are made, there is little justification to deviate from what is accepted as the best scientific advice.

The next such review is scheduled for 2022. The objectives of the current hake OMP are to maintain the spawning biomass of both species of hake fluctuating about or above Maximum Sustainable Yield Level and to avoid the spawning biomass decreasing below the 2007 level estimated by the Reference Set of Operating Models while keeping TACs as high as possible and minimising inter-annual changes in the TAC to facilitate stability in the industry, except in circumstances where catch rates fall below specified threshold levels.

18.3 Observer at Sea and Land Based Monitoring

Successful applicants will be expected to deploy accredited sea going scientific observers as specified by the Department on a user pays basis.

19 Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be co-determined with Right Holder's representative associations as decided annually during Departmental sector-specific Management Working Group meetings. Revision, in consultation with associations (majority Right Holder representatives) may also take place *ad hoc* during the season as and when it may be necessary.

20 Monitoring and Evaluation of the Policy

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years, from the date of finalisation of the appeals.

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

(a) Transformation.
(b) Investment in vessels and gear.
(c) Bycatch mitigation compliance with applicable laws and regulations.

South Africa has not been immune from the negative impacts of climate change on fisheries resources and communities who depend on fisheries for their livelihoods. The impacts of climate change may be addressed through adoption of adaptation and mitigation measures in the fishing sector. Research and ongoing monitoring by both the Department and stakeholders will play an important role in identifying gaps, weaknesses and flaws in existing fisheries policies and management measures.

South Africa has published the National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks) and the National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The NPOA-Sharks and NPOA-Seabirds applies amongst others, to the fisheries that catch and land sharks and seabirds as targeted species or non-targeted species (by-catch). In order to achieve the optimum utilisation and ecological sustainable development of marine living resources, South Africa will implement the NPOA-Sharks of Action in all the identified fisheries to ensure that the ecosystem is protected, and fishing strategies are consistent with the principles of biological sustainability and rational long-term economic use.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met.

21 Contraventions

Contraventions of the following kind:

(a) A successful applicant that fails to utilise their hake deepsea trawl fishing right for any two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;

(b) A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the Right Holder, Directors, Senior Management, Shareholders, Members (with a shareholding and/or members' interest of more than 10%) or skipper;

(c) During the performance measuring exercise, any Rights Holder that has been found to have contravened any condition upon which the right was granted for;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

22 Repeal

This Policy on the Allocation and Management of Commercial Fishing Rights in the Hake Deep-sea Trawl Fishery: 2021 repeals the Policy for the Allocation and Management of Commercial Fishing Rights in the Hake Deep-sea Trawl Fishery: 2005.

~ END ~