



DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

POLICY FOR THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE  
DEMERSAL SHARK 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](http://www.environment.gov.za))

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## 1. INTRODUCTION

This policy for the allocation of fishing rights in the demersal shark fishery is issued by the Minister of Forestry, Fisheries and the Environment (“the Minister”) and shall be referred to as the “**2021: Demersal Shark Fishery Policy**”. This policy must be read in conjunction with the General Policy on the Allocation of Commercial Fishing Rights: 2021 (“the 2021: General Fisheries Policy”) and the Policy for the Transfer of Commercial Fishing Rights (“the Transfer Policy”).

This policy sets out the objectives, criteria and considerations that will guide the allocation of fishing rights in the demersal shark fishery. This policy will guide the delegated authority in taking decisions on applications in this fishery.

The Minister has delegated Section 18 power to allocate 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 of Forestry, Fisheries and the Environment (“the Department”).

## 2. SECTOR PROFILE

### 2.1. Description of the fishery

The demersal shark longline fishery operates in waters generally shallower than 100 m and uses bottom-set longline gear (~1000 hooks per line) to target demersal sharks. The fishery operates nearshore from Cape Town to East London and predominantly catches soupfin *Galeorhinus galeus* and smoothhound sharks *Mustelus mustelus*. Additional species include white-spotted smoothhound *M. palumbes*, Carcharhinus species such as the bronze whaler *C. brachyurus*, dusky sharks *C. obscurus* as well as several skate species.

### 2.2. Research and Monitoring

In 2013 the National Plan of Action for Sharks (“the NPOA-Sharks”) was completed with the goal to move towards effective conservation and management of sharks that occur in the South African EEZ to ensure their optimum, long-term, sustainable use for the benefit of all South Africans, including present and future generations. The NPOA-Sharks recognized the need to determine and implement harvesting strategies consistent with the principles of biological sustainability, attained through scientifically based management and consistent with a Precautionary Approach. Shark research activities are guided by the needs identified in the NPOA for Sharks.

In order to develop appropriate management strategies in line with the NPOA for Sharks, South Africa (2013) for these resources it is vital to understand their biology. Life-history information on growth, maximum age, fecundity and size at maturity, sexual segregation, pupping, mating migrations and the use of nursery grounds of these species will aid the development of these management strategies. Biology and life-history has been investigated for blue sharks and smoothhound sharks while biological data have been collected for a number of other species impacted by fisheries. A gap analysis on the available literature has been conducted on 100 species of chondrichthyes targeted or caught as by-catch in South African Fisheries. Life-history parameters derived from local sampling are available for 15 species, mostly published in grey-literature. Collection of biological samples for the remaining species has been identified as a priority. Protection of chondrichthyes provided by MPAs should be considered through increased research and enforcement of legislation. Research on smoothhound sharks has shown that species uses the habitat within the Langebaan Lagoon MPA for reproduction, feeding and as a nursery ground. These findings indicate that MPAs could provide considerable benefits to the fishery in the form of spill-over if nursery areas are included. Many of the commercially valuable demersal shark species occur within MPAs around South Africa and it therefore likely that MPAs may provide considerable protection for them. Benefits from spill-over of fish from MPAs to neighbouring areas has been shown for many species with a positive overall influence on catches of neighbouring fisheries.

Stock assessments of smoothhound and soupfin sharks show that there is a high probability that current harvest rates across the major fisheries harvesting these species are unsustainable. To allow rebuilding of the stock, total catches would need to be substantially reduced across all sectors catching these species in significant numbers to prevent the stock from declining. It is vital that the size of the resource is considered during the FRAP 2021 process. Both of the main target species in this fishery are overfished and caught by multiple fisheries. Due to the lack of historical performance in this fishery the number of rights allocated should be reconsidered according to performance. Analyses of performance in this fishery suggests that only 4 rights be issued and an increase in effort cannot be allowed for other fisheries targeting the same species (i.e. an increase in effort in the linefishery).

A panel of International Experts were brought together by the Minister in 2020 to review the NPOA 2013 and its internal review. Many recommendations were made to improve on the conservation of chondrichthyes in South Africa. Most importantly, the panel urged DFFE to follow scientific recommendations made on the management of demersal sharks. The most threatened shark species in South Africa – the soupfin shark will be commercially extinct in 20 years at current fishing levels.

Scientific recommendations have been adopted in the Linefishery and the Demersal shark longline fishery. To reduce the probability of commercial extinction, it vital that the 20 tonnes Precautionary Upper Catch limit (PUCL) as recommended by the Linefish Scientific Working Group be implemented for the inshore trawl fishery with immediate effect.

### **2.3. History of the fishery**

After interest in the tuna longline fishery waned in the mid-1960's, longline fishers turned their attention to other more lucrative stocks. Permits for the demersal shark longline fishery were first issued in 1991. The initial incentive to obtain these permits was by exploiting loopholes in the regulations to catch hake by longline, an activity that was discontinued in 1990.

Fishers used longline gear to target hake and kingklip under the guise of shark permits. When the by-catch limits of hake and kingklip were reduced in the shark fishery, fishing effort decreased exponentially. Prior to 1998 more than 30 permits were issued to target shark, but due to poor performance in the fishery, the total applied effort ("TAE") was reduced to 23 permits in 1998. The TAE was further reduced in 2004 and 2006 to 11 and 6 vessels, respectively, due to poor performance. During the past decade, generally no more than 4 vessels have been active at any point in time though there have been 6 rights that were allocated during the previous allocation process in which 2 of those vessels have been dormant.

### **2.4. Resource users**

Prior to 2007, catches of demersal sharks in this fishery were low, although substantial increases in catches have occurred recently. In general, rights holders are only active on a part-time basis, with many rights holders having access to more lucrative rights such as hake longline and tuna pole. With the exception of rights holders active in the Eastern Cape, demersal shark longline rights are activated when catches in other fisheries are low or during off season. This shark resource is harvested by three separate fisheries; demersal shark longline, inshore trawl and commercial line fishery. Consequently, catch reduction, if necessary needs to be applied equally across all three.

It is important to note that these species are targeted or caught as by-catch in high numbers in three fisheries; the inshore trawl fishery, demersal shark longline fishery and commercial linefishery. With the exception of prohibition of retention of hammerhead sharks (*Sphyrna* spp.) and broadnosed sevengill cow sharks *Notorynchus cepedianus* in the demersal shark longline fishery there are currently no species-specific management measures in place to protect demersal sharks. In general, shark fisheries, including the demersal shark longline and commercial linefishery are largely influenced by market trends.

Most shark fisheries are considered data poor, but there is increasing concern that the life-history characteristics of many sharks make them particularly vulnerable to overexploitation, such as long lifespans, complicated migration patterns and low fecundity. These attributes result in low productivity (rates of increase) and low resilience to fishing mortality and they can therefore only withstand modest levels of fishing without depletion and stock collapse.

### **3. 2013 FISHING RIGHTS ALLOCATION PROCESS**

In 2013, the Department allocated 6 demersal fishing rights. The fishing rights authorised a maximum of six fishing vessels access to the fishery. Each Right holder was permitted to use only one vessel. 63% of the rights were allocated to black people or black-owned and controlled entities. In terms of female shareholding, 50% of rights were allocated to females or female-owned and controlled entities. Between 2007 and 2020 an average of 98% (ranging between 88 to 100 %) of the total catch was made by 4 vessels. The Department may consider reducing the number of rights allocated during this process. This may aid in overall reducing the catch of these species in addition to the slot limit added to this fishery (and the commercial linefishery) in 2020.

### **4. 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.

The specific objectives of allocating fishing rights in the demersal shark fishery are:

- (a) aid in the recovery and ecologically sustainable use of the demersal shark resource (which requires a reduction in catches as per stock assessment results).
- (b) improve the quality of jobs through permanent employment, promote transformation and broaden meaningful participation (increase participation, value-creation, and linkage)
- (c) promote the interest of applicants who rely heavily on the demersal shark sector as their main source of income.

## **5. GRANTING OF RIGHTS**

Fishing rights are granted in terms of section 18 of the MLRA. In terms of section 79 of the MLRA the Minister has delegated the power to grant fishing right in each fishery to a Delegated Authority in the Department. Unless otherwise determined by the Minister, only South African persons shall acquire or hold rights in terms of section 18 of MLRA. In this fishery the Minister has not exercised his power to allow persons of other nationalities to acquire rights, meaning that only South African persons can acquire rights in the fishery.

## **6. FORM OF RIGHTS HOLDER**

Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered in the demersal shark fishery:

- (a) Close corporation (legal entity); and
- (b) Company (legal entity).

## **7. DURATION OF RIGHT**

Considering the decline of the demersal shark stocks, and the need to encourage investment, fishing rights in the demersal shark fishery will be granted for the period of 15 years, where after it shall automatically terminate and revert back to the State. The fishery will be monitored for the duration of the rights and appropriate measures put in place where required.

## **8. TRANSFER OF RIGHTS ALLOCATED IN THIS FISHERY**

In terms of Section 21 of the MLRA the Minister may approve the transfer of fishing rights in a 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.

## **9. MULTI SECTOR INVOLVEMENT**

Applicants for the allocation of rights in this fishery will not be precluded from applying for, or holding commercial rights in other local commercial fisheries sectors. Applicants will have to apply separately for a right in the other fisheries sectors. Applicants that are intending to apply for rights in multiple fisheries sectors must consider vessel specification and restrictions in the respective fisheries sectors. Vessels are only permitted to fish for one right at a time.

## **10. EVALUATION CRITERIA**

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

### **10.1 Exclusionary Criteria**

Apart from the criteria described in the General Policy; 2021 pertaining to the lodgement of applications and material defects, the Delegated Authority will exclude applicants that fail to meet the following requirements:

#### **(a) Compliance**

An applicant will be excluded if it or any of its Directors, Senior Management, Shareholders or Members (where such shareholding or members interest exceeds 10%) or Skippers that been convicted of a transgression of the MLRA, the regulations promulgated thereunder and permit conditions (without the option of the payment of a fine).

An applicant will also be excluded if it, or any of its Directors, Senior Management, Shareholders or Members (where such shareholding or members’ interest exceeds 10%) or Skippers has had any fishing right cancelled or revoked in terms of the MLRA.

#### **(b) Paper Quotas**

Applications who are found to be paper quota applicants, as defined in the General Policy

or relevant amendments thereof, will be excluded.

**(c) Fronting**

Applicants who are found to be engaging in Fronting as defined in the General Policy: 2021 will be excluded.

**(d) Non-utilisation**

Applicants that failed to effectively utilise their demersal shark fishing rights between the period 2014 to 2020. Effective utilisation requires that a) a permit be collected, b) the right is actively used (fished) and that c) catch data is provided.

It shall, however, be noted that although excluded applicants will not be allocated a commercial fishing right in this sector, they will be evaluated and assessed against the balancing criteria. This will be done for the purposes of generating scoresheets for such excluded applicants.

## **10.2 Balancing Criteria**

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

**a) Transformation**

- i. Overall transformation (Applicable to Category A Applicants). An improvement of the transformation profile from the previous round of allocations will be considered. The following will be considered positively: Demonstrated increase in right ownership, management, skilled personnel (i.e., skippers, officers, fishing masters, competent crew) of designated groups, in particular Historically Disadvantaged Individuals (HDIs), female, youth and people living with disabilities.
- ii. Overall transformation (Applicable to Category B Applicants). The following will be considered: Transformation levels with respect to ownership, management, skilled personnel (i.e., skippers, officers, fishing masters, competent crew) of designated groups, in particular HDIs, female, youth and people living with disabilities.
- iii. Overall transformation (Applicable to Category C Applicants) with respect to designated groups, in particular HDIs, female, youth and people living with disabilities.

**b) Investment in the fishery**

Investment in the demersal shark fishery related to vessels, processing, and human capital will be considered.

**c) Fishing performance**

The fishing performance of applicants holding fishing rights in the demersal shark fishery will be examined to determine if they have effectively utilised their fishing rights.

Effective utilisation is shown by:

- a) consistent catches for 17 months for a period of 7 years (20%) and
- b) submission of 12 log book catch returns per year inclusive of null returns. Quality of log book information will also be considered. Effective utilisation will be determined according to the Departments records.

Applicants that did not harvest any demersal shark during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

**d) Reliance on demersal shark**

Preference will be given to applicants who heavily rely on the harvesting of demersal shark for a significant portion (>50%) of their gross annual income above applicants deriving income from sources outside the fishery.

**e) Local economic development**

To promote local economic development in economically depressed fishing towns, preference will be given to applicants that elect to land and process their catches at harbours outside metropolitan areas

**f) Job creation and Sustainable Employment**

The Delegated Authority may give preference to any applicant which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated rights in the fishery. For these purposes the Delegated Authority will consider the quality of the employment opportunities which will be created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"), the Merchant Shipping Act 57 of 1951 and the applicant's commitment to provide 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.

#### **g) Payment of levies**

Applicants that were granted fishing rights in 2013 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.

#### **h) Access to a Suitable vessel**

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of demersal shark. Proof in form of ownership, part-ownership or catch agreement, together with the valid South African Maritime Safety Authority (SAMSA) registration certificate and/or a valid SAMSA Safety Certificate and photos of the vessel taken from the port and starboard, back and front needs to be included in the application. If the applicant has entered into a purchase agreement to acquire a suitable vessel on successful application, then proof of the sales contract must be provided. In the case of a new build vessel, the vessel plans, detailed costing from the vessel building company and proof of finance must be provided.

No foreign flagged fishing vessel will be permitted in this fishery. The number of rights active can never exceed the TAE.

A suitable vessel in the demersal shark fishery is a vessel that:

- i) Has a maximum length of 25 meters and has a functioning vessel monitoring system at the time of applying for a vessel licence if the application is successful. Previous vessels that operated in this fishery will be considered if the applicant has been a previous rights holder and can demonstrate performance.
- ii) is registered and certified by SAMSA as being suitable for demersal shark longline fishing; and
- iii) is geared for demersal shark longline fishing.

**i) Applicants' involvement and relationships with other applicants****(i) Entities and their subsidiaries involvement**

A company, close corporation and its subsidiary/ies may not be granted more than one right in the demersal shark fishery, so as to avoid fronts and monopolies and to promote broader access to the demersal shark resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the demersal shark 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 or more entities which are owned and controlled by the same person or persons or shareholders apply for commercial fishing rights in the demersal shark fishery, and qualify for the allocation of such rights, then the Department may consider: allocating a fishing right to one of the qualifying entities only; or dividing the TAE between the qualifying entities.

**11. EFFORT ALLOCATION**

The Department will allocate fishing effort to 4 fishing vessels in this sector. The Delegated Authority may where necessary set aside a portion of the TAE (25%) for appeals. This single right will be allocated to a single successful appellant. The Delegated Authority will inform all applicants of the dates set for appeals.

**12. NEW ENTRANTS**

Whilst being mindful of the dynamics of the sector which has been 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's applicants will have to demonstrate that they have knowledge, skills and capacity to fish and process demersal shark. However it shall be noted that there is limited room to accommodate New Entrants in this fishery.

### 13. PAYMENT OF APPLICATION AND GRANT OF RIGHT FEES

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:

<p><b>Account Holder:</b> Marine Living Resources Fund</p> <p><b>Bank Name:</b> First National Bank</p> <p><b>Account Number:</b> 62123256382</p> <p><b>Branch Code:</b> 210554</p> <p><b>Reference Number:</b> [Applicant must insert the commercial fishing right application number]</p>
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### 14. PROVISIONAL LIST

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

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

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

### 15. ANNOUNCEMENT OF DECISIONS

The Delegated Authority shall after final decisions on the applications inform all applicants of the outcome

of their individual applications giving specific reasons for such decision.

The General Reasons for decisions in a specific fishery will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure outlining the scores obtained by all applicants in the Demersal Shark Longline fishery.

## 16. MANAGEMENT MEASURES

The management measures set out below are a number of the Department's principle post-right allocation management intentions for the Demersal Shark sector. A Fisheries Management Plan will be developed in consultation with rights holders once the rights allocation process has been concluded to ensure the sustainability of the resource.

### 16.1 Spatial Management

- (a) No fishing shall take place east of a line drawn due south of East London Harbour (27°55' E).
- (b) No fishing may take place in the Marine Protected Areas as proclaimed in the Government Gazette No. 42478 dated 23 May 2019.
- (c) Fishing and/or the removal or disturbance of any marine life in the National Parks is prohibited. Fishing in other marine and estuarine areas controlled by the South African National Parks, is subject to regulations promulgated under the National Parks Act, 1976 (Act No. 57 of 1976) as amended.
- (d) No person shall use any fishing equipment within the Bird Island Marine Protected Area, a rectangle around Bird Island in Algoa Bay defined by the latitudes 33°48'0S and 33°52'0S and the longitudes 026°14'5E and 026°20'0E.
- (e) 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.

### 16.2 Observer at Sea and Land Based Monitoring

Successful applicants will be expected to deploy accredited sea going scientific observers as specified by the Department in permit conditions on a user pays basis. Currently 1 trip per quarter

needs to carry an observer. Electronic monitoring as an alternative to physical observers will be developed in consultation with rights holders. The Department will work with right holders and industry associations to enhance and possibly automate at-sea monitoring, offloading (species composition determination) and data capturing through the use of technology (cameras).

## 17. PERMIT CONDITIONS

Permit conditions for this fishery will be issued annually. The permit conditions will be determined annually during Departmental sector specific Management Working Group meetings in accordance with scientific advice. Revision, in consultation with Rights Holders may also take place *ad hoc* during the season as and when it may be necessary.

## 18. 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 Rights Holders will be measured after the allocation of commercial fishing rights - and after consulting with Rights Holders - the following broad performance-related criteria may be used:

- (a) Transformation.
- (b) Investment in vessels and gear.
- (c) Sustainable utilisation.
- (d) Catch performance and utilisation of right
- (e) Compliance with applicable laws and regulations
- (f) Timeous and complete reporting of catches and other information as applicable.

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.

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

## **19. CONTRAVENTIONS**

The Department may institute legal proceedings in terms of Section 28 of the MLRA and/or civil or criminal proceedings against any rights holder that is found to have contravened any condition upon which the right was granted. These contraventions include:

- (a) 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, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (b) A Right Holder who fails to utilise their Demersal Shark Longline fishing right for any two consecutive fishing seasons during the period for which the right has been granted without a reasonable explanation;
- (c) A Right Holder who fails to meet the objectives of this policy, as identified during the performance measuring exercise;

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).

## **20. REPEAL**

This Policy on the Allocation and Management of Commercial Fishing Rights in the Demersal Shark Longline Fishery: 2021 repeals the Policy for the Allocation and Management of Commercial Fishing Rights in the Demersal Shark Longline Fishery: 2013.

**~ END ~**