

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE NETFISH
FISHERY: 2015**

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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

(In case of any inconsistency, the English text prevails)

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1. Introduction

The Department of Agriculture, Forestry and Fisheries (“the Department”) is responsible for administering the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (“the MLRA”), regulations promulgated thereunder and policies issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”), in consultation with the Department.

This policy on the allocation and management of fishing rights in the Netfish fishery (“the netfish fishery”) shall be referred to as the “**Netfish Fishery Policy: 2015**”.

This policy must be read in conjunction with the MLRA and regulations under the MLRA; the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”); other relevant Sector Specific Policies including the Policy for the Small Scale Fisheries Sector in South Africa: 2012; and the Policy for the Transfer of Commercial Fishing Rights: 2009. This policy must be interpreted to be consistent with the MLRA, and all of the other relevant regulations and policies.

This policy sets out objectives, criteria and considerations that will guide the allocation, evaluation, and management of fishing rights in the fishery. This policy will thus guide the Delegated Authority in taking decisions on applications in this fishery.

Only persons issued with permits in terms of the MLRA may harvest netfish, transport netfish catch from a landing site to the permitted Fish Processing Establishment (FPE) and export netfish catch and products thereof.

2. Profile of the fishery

2.1. Brief description of the fishery

The gillnet and beach seine (treknet) fisheries make up the Netfish fishery. These fisheries (gillnet and beach seine (treknet)) operate in the open sea and from the beach. They are distinguished by the methods employed during the respective fishing operations. The species targeted, is *Liza richardsonii* commonly known as harders (mulletts). Other target species includes St Joseph sharks in the West Coast and some linefish species in the Falsebay area. The gillnet fishery fishing operations are restricted between Port Nolloth to Yzerfontein. The treknet fishery operates between Port Nolloth and Gordon’s Bay. As part of the management strategy the fishery is subdivided into areas with discrete effort and species restrictions. The number of nets permitted, the number of operators per area, the fish size limit, the target fish species and the time of fishing are common effort restrictions in the fishery.

It is not uncommon for the gillnet fishery to employ motor driven vessels to operate on open sea, whilst some operators fish in bays and lagoons, like the Langebaan Lagoon, with a limited number of traditional fishermen fishing in the Bergriver estuary (see figure 1). Gillnet fishing in estuaries is detrimental to the resource because it increases juvenile mortality due to fishing. Only rowing boats (non-motorised boats) (see figure 2) may be used in the treknet fishery to deploy nets when fish have been spotted. Blind tows are discouraged in the treknet fishery because non-target fish species are caught.

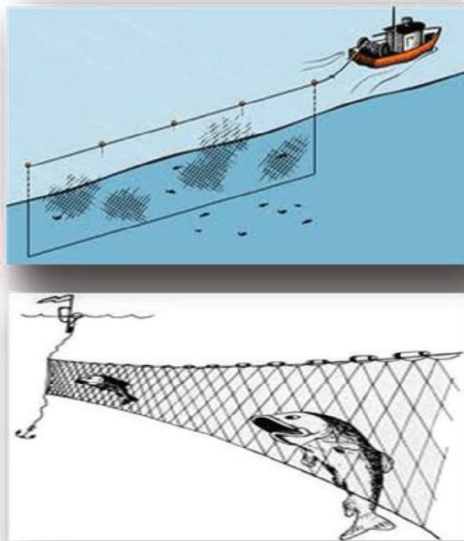


Figure 1: Illustration of a gillnet operation

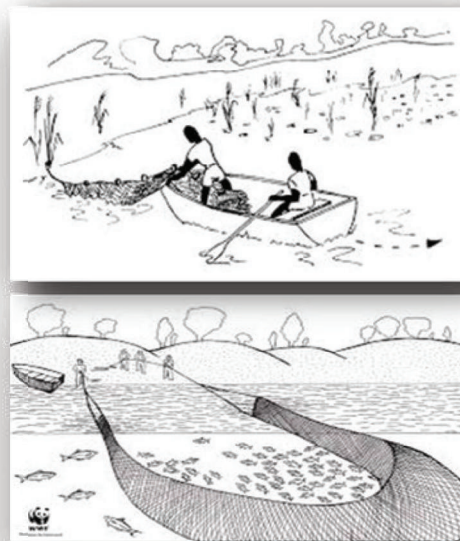


Figure 2 : Illustration of a beach seine (treknet) operation

The resource is currently deemed over exploited but due to limited stock assessment information it is challenging to predict the current levels.

2.2. Current resource users

There are currently 120 right holders in the Netfish fishery sector from Port Nolloth to the west of Cape Hangklip. The area between Draaihoek to Cape Colombine, including Paternoster has the most operators in this sector: eighty (80) gillnet and four (4) beach seine (treknet) operators. The global commercial Total Applied Effort (TAE) is tabulated in Table 1 and the recommended TAE for each Netfish area is tabulated in Table 2 below.

Table 1. Number of Netfish operators (RHs/EHs) by region (2015 TAE)

Net Type	Area	Target species	RH/EH
Beach seine/trek	Western Cape (WC)	Harders and or yellowtail	28
Gill/Drift net	Western Cape (WC)	Harders, St Joseph shark	117
Total			145

Table 2. Recommended TAE (number of Right Holders/Exemption Holders) for each Netfish area. (shaded: areas where effort is not fully allocated/not allocated and interim relief).

Area Name	Locality	Beach-Seine	Gill/Drift	Total	Rights/Exemptions	Interim Relief
A	Port Nolloth	3	4	7	4	0
B	Hondeklipbaai	0	2	2	0	0
C	Doringbaai - Wadrioutsoutpansmond	2	8	10	4	0
D	Wadrioutsoutpansmond - Elandsbaai - Draaihoek	3	6	9	6	0
E	Draaihoek, (Rocheban) -Cape Columbine, including Paternoster	4	80	84	84	0
F	Saldahna	1	5	6	5	0
G	Langebaan Lagoon	0	10	10	10	3
H	Yzerfontein	2	2	4	1	0
I	Bokpunt (Melkbos) – Milnerton	3	0	3	1	0
J	Houtbay beach	2	0	2	0	0
K	Longbeach - Scarborough	3	0	3	1	0
L	Smitswinkel Bay, Simonstown, Fishhoek	2	0	2	2	1
M	Muizenberg - Strandfontein	2	0	2	2	0
N	Strandfontien - Monwabisi	0	0	0	0	0
O	Macassar	1	0	1	1	0
OE	Olifants River Estuary (exemptions).	0	45	45	45	0
BE	Berg River Estuary	0	0	0	0	0
KZN	KwaZulu Natal (Sardine)	35	0	35	24	0
SEC	South East Coast (Struisbaai)	0	0	0	0	1
TOTAL		63	162	225	190	5

3. The 2005/2006 long-term fishing rights allocation process

In the 2005/2006 long-term fishing rights allocation process rights were allocated to a total of 120 operators in this sector, 50% of whom were white, with 97% of them being male¹.

4. Objectives

4.1. The objectives and principles of allocating fishing rights in a fishery are set out in section 2 of the MLRA, inter alia, to:

- (a) promote transformation through allocation of fishing rights to entities owned and/or controlled by historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), and to broaden meaningful participation in a fishery (through increased participation, sharing value-creation opportunities and profits, and forging links);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improved working conditions;
- (d) promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of netfish as a major source of their gross annual income over above applicants deriving income from sources outside the fishery;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks; and
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources.

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 rights 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 this sector. In the netfish 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.

The Delegated Authority shall allocate proportions of TAC and/or TAE to each successful applicant based on the applicable balancing criteria and it will be reflected as a proportion of

Figures as per 2005/6 Long Term Rights Allocation records

the local commercial TAC, TAE or a combination thereof 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 they will automatically terminate and revert back to the State to be reallocated. It should be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the netfish fishery or impose effort restrictions in order to address a state of emergency.

5.1. Form of right holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights.
- (b) Having regard to the nature of operations and resources accessibility, only South African citizens (individual) as defined in terms of the South African Citizenship Act, 1995 (Act 88 of 1995) will be considered in this fishery:

5.2. Duration of right

Having regard to the right allocation process and need to encourage investment the fishery, fishing rights will be granted in the netfish fishery for the maximum period of 15 years.

5.3 Total Allowable Catch and Total Applied Effort

The TAC, TAE or combination thereof are 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, TAE or combination thereof to commercial right holders based on the proportion granted to each successful applicant at the time of the commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of the determined TAC, TAE or combination thereof 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 transfer of fishing rights in whole or in part. However, Netfish rights granted in terms of the MLRA shall not be transferred within the first two (2) years of being granted.

Rights can only be transferred in terms of the Policy for the Transfer of Commercial Fishing Rights (Government Gazette No 32449, 31 July 2009) or relevant amendments thereof.

6. Multi-sector involvement

Applicants for the allocation of rights in the netfish fishery will not be precluded from applying for, or holding commercial fishing rights in other local commercial fisheries sectors.

This shall mean any person can apply for a right in any fishery sector regardless whether the applicant has applied for a right or holds a right in any other fishery sector. In this case, the “applicant” shall mean an individual, a shareholder or Director in a company, or a member in a close corporation applying for a right in any fishery sector. However the Delegated Authority reserves the right to grant a right in any sector.

7. Evaluation criteria

Applications for rights in the netfish fishery 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 a TAC, TAE or combination thereof will be apportioned to successful applicants

7.1. Exclusionary criteria

Apart from the criteria described in the 2013: General Policy pertaining to the lodgement of applications and material defects, the Delegated Authority will exclude applicants that fail to meet the following requirements/criteria:

(a) Compliance

An applicant will be excluded, if it, a member with controlling interest, a director or a controlling shareholder has been convicted of a serious transgression of the MLRA (without the option of the payment of a fine).

An applicant will also be excluded, if it, a member with a controlling interest, a director or controlling shareholder had had any fishing right cancelled or revoked in terms of the MLRA. For these purposes an individual will be treated as having had rights cancelled or revoked if that person was a controlling shareholder, a member with a controlling interest, or a director of an entity which had its rights cancelled or revoked.

Minor infringements, including those in respect of which an admission of guilt fine was paid, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) **Paper quotas**

Applications from paper quota applicants, as defined in the 2013: General Policy will be excluded.

(c) **Non-utilisation**

Applicants which have held a right in the netfish fishery during the period of 2006 to 2014, which was not utilised, shall be excluded.

(d) **Personal involvement in harvesting of the resource**

Individual applicants will be required to demonstrate that they will be personally involved in this fishery. They will be required to actively participate in the harvesting of the resource and the business operations. Only applicants incapable of participating due to a permanent physical disability will be exempted from this requirement. Consideration will be given to female applicants who may not be personally involved in the harvesting of the resource but who are dependent on the netfish fishery for their livelihood.

7.2. **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**

When assessing and scoring applications, and when allocating portions of the TAC, TAE or combinations thereof to successful applicants, the Delegated Authority may prefer applicants based on transformation criteria. When attributing a score for transformation criteria, or allocating portions of the TAC, the Delegated Authority may have regard to: census statistics or other information provided by Statistics South Africa regarding the composition of the population of South Africa, and the percentage of that population made up by different demographic groups; the need to ensure the recognition and meaningful participation in the fishing industry, of Historically Disadvantaged Individuals (HDIs) and the codes of good practice under the Broad Based Economic Empowerment Amended Act

Applicants, depending on the form of applicant, will be assessed and scored on the following transformation criteria:

- (i) Affirmative procurement;

- (ii) Corporate social investment.

(b) **Fishing performance**

The historical fishing performance of applicants who have held fishing rights in the netfish fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the right and subsequent catch data submission for at least five (5) years during the period 2007-2014. Applicants should submit this information with their application forms.

(c) **Local economic development**

- (i) In order to promote local economic development the Delegated Authority will give preference to applications who will land catches at harbours situated outside the metropolitan areas.
- (ii) The Delegated Authority may, in order to ensure that all fishing communities share in the marine living resources, use the locality of landing sites and fishing processing establishments as scoring or tie-breaking criteria. For these purposes the Delegated Authority may give preference to applicants, with the aim of ensuring an equitable distribution of opportunities to communities along the coastline.

(d) **Job creation**

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"); 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;.

(e) **Access to a suitable vessel**

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting in the fishery, where applicable as some methods of netfish harvesting does not require the use of a vessel, e.g. in beach cast kelp harvesting. Access may be in the form of ownership, part-ownership, a catch agreement, a charter agreement, or a bank guarantee for 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 and a purchase agreement must be provided. If an applicant intends building a new vessel then additional information must be provided including the vessel plans, the cost to be incurred and a firm and binding commitment by a vessel building company to build the vessel.

A suitable vessel in the Netfish fishery is a vessel that:

- (i) is either a ski boat or traditional rowboat (only row boats are applicable for beach seine/trek netting operations); and
- (ii) it has been certified by the South African Maritime Safety Authority (SAMSA) as safe for fishing.

(f) Applicant's involvement and relationship with other applicants

(i) Same household involvement

The same household may not be granted more than one right in the netfish fishery so as to avoid fronts and monopolies and to broaden access to the netfish resource. Applicants are required to disclose their relationship to other applicants in the netfish fishery as well as in other commercial fisheries. If more than one member of the same household applies for a right, the Department will determine who the preferred right holder will be with due regard being taken to the Department's transformation objectives.

(g) Residing adjacent to Fishing zones or areas

Applicants who reside adjacent to fishing zones or fishing areas will be preferred over other applicants. Fishing areas in the Netfish fishery are listed in the table 3 (list of commercial areas only)

Table 3: Fishing areas in the Commercial Netfish fishery sector

Area Name	Description and boundaries
Area A	Port Nolloth: The area between the border of the State's alluvial mining areas just north of Port Nolloth and the northern border of the farm Oubeep, south of Mc Douglas Bay, excluding the areas where the permit-holder may only operate with the permission of the relevant authorities
Area B	Hondeklipbaai: The area between Kleinsee and the security fence at Mitchell's Bay nearby the mouth of the Spoeg River.
Area C	Doringbaai / Lambert's Bay: The area between the mouth of the Olifants River and mouth of the Wadrifsoutpan
Area D	Elandsbaai: The area between the mouth of the Wadrifsoutpan and a beacon marked MO 1 directly opposite the farm Draaihoek
Area E	Draaihoek to Cape Columbine The area between the beacon marked MO 1 directly opposite the farm Draaihoek and Cape Columbine
Area F	Saldanha Bay: North of Salamander Point to Leentjiesklip No. 4 (excluding the Harbour area under the jurisdiction of the Ports Authority.
Area G	Langebaan: Langebaan Lagoon in the areas stipulated by the authority of South African National Parks
Area H	Yzerfontein: The area between the beacon marked YF approximately 11 km north of Yzerfontein and the northern border fence of the Koeberg Nuclear Power Station but excluding a 500 m exclusion zone around Dassen Island bounded by the latitudes 33°24.420'S and 33°26.289'S and longitudes 18°04.161'E and 18°06.317'E.
Area I	Milnerton to Bokpunt: Between the Milnerton Lighthouse and Bokpunt
Area J	Hout Bay beach
Area K	Longbeach-Kommetjie-Scarborough
Area L	Smitwinkel Bay-Simonstown-Fishhoek
Area M	Muizenberg-Strandfontein: Neptunes Corner to Strandfontein Pavillion
Area N	Strandfontein: Strandfontein to Pavillion-Swartklip (zero TAE area)
Area O	Macassar: Monwabisi tidal pool to the western boundary fence of the AECI security area

8. Provisional lists, representations and consultations

- 8.1. The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery/sector.
- 8.2. The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received make its final decision.

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

9. Announcement of decisions

The Delegated Authority shall after making final decisions on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision.

Further General Reasons for decisions in a specific fishery sector 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 application in the netfish sector.

10. Payment of application and grant of right fees

- 10.1 The application fees will be determined having regard to:

- (a) The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- (b) The value of the fish being allocated over the duration of the right.

- 10.2. The non –refundable application fee shall be payable on or before the submission of the application form and only proof of payment shall be brought to the receipting centre.

- 10.3 The grant of right fee is payable by all successful applicants upon the granting of rights.

11. Management measures

The management measures discussed below reflects a number of the Department's principal post- right allocation management intentions for this fishery.

11.1. Ecosystem approach to fisheries

A fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems. An EAF strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and

human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.

11.2. **Observer Programme**

- (a) The right holder of a commercial netfish fishing right shall accommodate an observer on board the right holder's nominated vessel when required to do so by the Department or its agent.
- (b) The right holder may bear the costs of the observer deployment when so required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and to test compliance with permit conditions and all applicable laws.
- (d) Should the Department reasonably believe that an Observer is being prevented from carrying out his or her obligations in any way, or threatened in any way while on board the right holders' vessel; the Department may implement proceedings under section 28 of the MLRA.

11.3. **Performance measuring**

Successful applicants will be subjected to a number of performance measuring exercises for the duration of their fishing right. The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

11.4. **Offences**

A successful applicant that fails to utilise its netfish fishing right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subject to proceedings under section 28 of the MLRA.

12. **Permit conditions**

Permit conditions for the netfish fishery will be issued annually. The permit conditions will be determined after consultation with successful applicants in the netfish fishery and will be subject to revision as and when it may be necessary.

13. Glossary of Terms

- 13.1. "Historically disadvantaged person" means a person who belongs to a group of persons who suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.2. "Legal entity" means a close corporation or company.
- 13.3. "MLRA" means the Marine Living Resources Act (Act No. 18 of 1998).
- 13.4. "Race, gender and disability" means race, gender and disability as defined in the Employment Equity Act (Act No. 55 of 1998).
- 13.5. "Right Holder" means a person or a legal entity that was previously granted or lawfully acquired a fishing right or which will be granted a right in the allocation process envisaged in this Policy.
- 13.6. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.7. "Same household" means a group of two or more persons living in a residential dwelling unit (which includes a house, semi-detached dwelling, separate outbuildings, an apartment, or any other independent structure) who are dependent on each other, or dependent on one or more members of that group. This includes, but is not limited to, spouses or persons in a long-term relationship, and their dependent children; guardians and their dependent wards; and any other dependent relationship. Persons living at the same address or in the same residential unit, and who are not dependent on any other person at that address or residential unit, do not constitute the same household.
- 13.8. "South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995).
- 13.9. "Subsidiary company" is a company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.
- 13.10. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.11. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.

13.12. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.

13.13. "Total Allowable Catch" (TAC) means the maximum quantity of fish of individual species or group of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.

13.14. "Total Applied Effort" (TAE) means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish for individual species or groups of species.