



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
OYSTER FISHERY: 2013**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION
AND MANAGEMENT OF FISHING RIGHTS: 2013**

(available at www.daff.gov.za)

This document is also available in Afrikaans, isiXhosa and isiZulu
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(In the case of any inconsistency, the English text prevails)

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1. Introduction

This policy on the allocation and management of fishing rights in the Oyster fishery (“the fishery”) is issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”) and shall be referred to as the “**2013: Oyster Fishery Policy**”. This policy must be read together with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”).

The Minister intends to delegate the section 18 powers to allocate fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to an official of the Department of Agriculture, Forestry and Fisheries (“the Department”).

This policy sets out the objectives, criteria and considerations that will guide the evaluation, allocation and management of fishing rights in the Oyster fishery. 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 Cape Rock oyster (*Striostrea margaritacea*) which is targeted in this fishery has an extensive geographic distribution occurring on rocky reefs from Cape Agulhas to Mozambique. These oysters are found in the intertidal zone and up to about 6m water depths. The Cape Rock oyster is found naturally and is sold as “wild Oysters” in South Africa’s restaurants.

Oysters along the KwaZulu-Natal coast have been found to take 33 months (almost 3 years) to reach marketable size of 60 mm right valve length. Oysters are broadcast spawners. Oysters along the KwaZulu-Natal coast spawn throughout the year with peaks during spring and summer.

2.2. The Management of the oyster fishery

- (a) Harvesting of oysters takes place during spring low tides and traditionally was restricted to the intertidal zone, however in over the years there has been a gradual expansion of the harvesting depth towards the fringes of the subtidal zone. This is due to a decline in the oyster density in the intertidal zone and a gradual increase in gear efficiency (“*creeping effort*”). Oysters are dislodged from rocks by means of a pointed steel crowbar or harvesting iron.
- (b) The oyster fishery was previously managed as two separate fisheries related to their areas of operation, namely the KwaZulu-Natal (KZN) coast and the Southern Cape coast. Since 2002, the oyster fishery has been managed as a single oyster fishery. In terms of the new management system, four oyster harvesting areas are recognised, namely, KZN North, KZN South, Port Elizabeth and the Southern Cape.
- (c) In the KZN North and South coasts, the following management system applies. The areas are managed by way of a system of effort limitation in terms of which the numbers of pickers are restricted and a daily bag limit of 190 oysters per picker per day are imposed. The KZN North and South coasts are further subdivided into four zones each which in turn are harvested on a rotational basis. This entails that zones must remain fallow for at least three years at a time which is the optimal length of time required for oyster recruits to reach marketable size. This measure allows for the recovery of the oyster stock. The management system applies to the commercial and recreational oyster fishing sectors.
- (d) The oyster fishery along the Southern Cape coast is not managed by rotational harvesting but by means of limiting the number of pickers with an unlimited daily bag limit. Recreational fishers, however, are subject to a daily bag limit. No assistant pickers are allowed. The effort has been split across areas in accordance with the extent of the accessible oyster reef.
- (e) In Port Elizabeth oyster fishery no harvesting of the oyster beds is allowed and only washed-up oysters may be collected.

(f) The total applied effort (TAE) for the fishery for the period 2005 to 2013 has determined at 145 pickers and apportioned as follows:

- (i) KZN North, 25 pickers;
- (ii) KZN South, 15 pickers;
- (iii) Southern Cape, 102 pickers; and
- (iv) Port Elizabeth, 3 pickers.

(h) The TAE for the Southern Cape coast is, based on the extent of the accessible oyster reef, apportioned as follows:

- (i) Heidelberg ("Witsands"), 10 pickers;
- (ii) Riversdale/Mossel Bay, 58 pickers; and
- (iii) George/Knysna, 34 pickers.

(g) Successful applicants will only be allowed to use the following gear for the harvesting of oysters:

- (i) wetsuits;
- (ii) weight-belts;
- (iii) masks;
- (iv) snorkels;
- (v) crowbar or harvesting iron;
- (vi) floating marker for crowbar or harvesting iron; and
- (vii) collection bag.

(h) Successful applicants will not be allowed to use the following gear for the harvesting of oysters:

- (i) fins;
- (ii) artificial breathing apparatus; and
- (iii) floating devices.

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

3.1. In 2005 commercial oyster fishing rights were granted to 106 individual successful applicants in the following areas:

- (a) KZN North, 23;

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- (b) KZN South, 8;
- (c) Southern Cape, 71; and
- (d) Port Elizabeth, 4.

3.2. In the Southern Cape, the 71 rights were allocated in the following areas:

- (a) Heidelberg ("Witsands"), 9;
- (b) Riverside/Mossel Bay, 52 holders; and
- (c) George/Knysna, 10.

3.3. The 2005/2006 successful Right Holders in the oyster fishery comprised of 50% black males, 25% black females, 20% white males and 5% white females.

4. Objectives

4.1. The objectives of allocating fishing rights in the Oyster fishery are to:

- (a) promote transformation, broaden meaningful participation (increase participation, value-creation, and linkage) and growth;
- (b) improve the quality of jobs through the promotion of permanent employment and allocation of rights to SMMEs owned by historically disadvantaged persons
- (c) promote adherence to fair labour practices;
- (d) to promote food security and poverty alleviation;
- (e) allocate rights to applicants reliant on oysters as their main source of income;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks;
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources; and
- (h) promote youth and female ownership and development.

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5. Granting of fishing rights

Fishing rights are granted in terms of section 18 of the MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, whereafter it shall automatically terminate and revert back to the State.

5.1. Form of the right holder

Applications will only be considered from South African natural persons.

5.2. Duration of rights

Fishing rights will be granted in the oyster fishery for a period not exceeding 15 years. The duration of rights will be determined by the Minister or delegated authority taking in to account amongst other things, the level of transformation in the fishery, the capital intensity of the fishery, the need to encourage further investment and economic growth, the current knowledge of the biological status of the target species and the performance of participants in the fishery.

6. 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.

6.1 Exclusionary criteria

In addition to 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:

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(a) **Compliance**

Applicants that have been convicted of a serious transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants 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, 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 General Policy, will be excluded.

(c) **Non-utilisation**

Applicants that failed to effectively utilise their oyster fishing right between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Personal involvement**

Applicants will be required to demonstrate that they will be personally involved in the 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 fishery for their livelihood.

(e) **Multi-sector involvement**

In general, it is not a policy objective to preclude or discourage the holding of rights in more than one fishery.

6.2. Balancing criteria

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

(a) Transformation

- (i) The percentage of black and women ownership and black and women representation at top salary and management levels;
- (ii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iii) Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also give regard to the wage differentials between the highest and lowest paid employees;
- (iv) Compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA). Applicants that comply with the BCEA will score more points than applicants not complying.
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of blacks and youth and participation in learnership programmes; and
- (vii) Corporate social investment.

(b) Investment in the fishery

Investment in the oyster fishery related to gear, processing, and human capital will be taken into consideration.

(c) **Fishing performance**

- (i) The fishing/harvesting performance of applicants holding fishing rights or exemptions between 2007 and 2013 in the oyster fishery will be examined to determine if they have effectively utilised their fishing rights or exemptions.
- (ii) Applicants that did not harvest any oysters 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 oysters**

Preference will be given to applicants who rely on the harvesting of oysters for a significant proportion of their gross annual income above applicants deriving an income from sources outside the fishery.

(e) **Local economic development**

- (i) The delegated authority will take into consideration the landing of catches in fishing harbours outside the metropolitan areas to promote local economic development.
- (ii) The delegated authority may, in order to ensure that all fishing communities share in the marine living resources, use landing sites/fishing harbours as scoring or tie-breaking criteria.
- (iii) Applicants are encouraged to land or process fish in harbours and fishing communities that are economically depressed.

(f) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be taken into consideration, and in particular, in respect of applicants that have provided their employees with –

- (i) permanent employment;
- (ii) medical aid and pension;
- (iii) safe working conditions; and
- (iv) an employee share scheme.

7. Application fees

No application fees will payable for applications in this fishery.

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 this fishery.
- 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 a final decision.
- 8.3. The delegated authorities may invite representations regarding the assessment of the applications in this before making final decisions.

9. Management measures

9.1. Ecosystems approach to fisheries

This 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.

9.2. Performance measuring

Successful applicants will be subjected to a number of performance measuring exercises for the duration of the fishing rights. 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.

9.3 Utilisation of fishing right

Successful applicants that fail to utilise their oyster fishing right for one season without any reasonable explanation, will have their rights cancelled or revoked in terms of the provisions of the MLRA.

9.4 Grant-of-right fees

All successful applicants may be required to pay a grant-of-right fee. The Department will determine the applicable grant of right fee payable for each fishery after consultation with the successful applicants in each fishery. The grant-of-right fee for each fishery will be subject to the approval of the Minister and the Minister of Finance.

10. Permit conditions

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

11. Glossary of terms

11.1. "Applicants holding fishing rights" means a natural person that has been granted a fishing or harvesting right in terms of section 18 of the MLRA during the period 2005 – 2006 in the oyster fishery.

- 11.2. "Application period" means the period which commences with the publication of an invitation to interested parties to apply for a fishing or harvesting right in the fishery to the date on which the appeals authority finally decides on the appeals in the fishery.
- 11.3. CPUJE" means catch per unit effort.
- 11.4. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.5. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.7. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 11.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.9. "Total allowable catch" means the maximum quantity of fish of individual species or groups 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.
- 11.10. "Total applied effort" 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 individual species or groups of species.