



AUDITOR - GENERAL
SOUTH AFRICA

**REPORT OF THE AUDITOR-GENERAL
TO PARLIAMENT ON**

**a performance audit of the
handling of confiscated abalone at
the Department of Environmental
Affairs and Tourism**

June 2009

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REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON A PERFORMANCE AUDIT OF THE HANDLING OF CONFISCATED ABALONE AT THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

1. EXECUTIVE SUMMARY

- 1.1 On 18 March 2008 the Auditor-General engaged with the accounting officer (AO) of the Department Environmental Affairs and Tourism (DEAT) to perform a performance audit on the handling of confiscated abalone. The audit was requested by the Standing Committee on Public Accounts (SCOPA).
- 1.2 Various factors such as a lack of a formal policy and/or guidelines regulating the receiving, storage, processing and disposal of confiscated abalone were identified. This report demonstrates that measures were not in place to ensure the timely awarding of tenders for the processing of confiscated abalone; that uniform tariffs were not applied for the processing, marketing, selling and exporting of abalone; and that the non-rotation of the processing of abalone between the service providers resulted in the use of an additional monitoring team.
- 1.3 The AO of the DEAT has indicated various steps that had been taken to address the shortcomings listed in this report which included, amongst others, that a revised policy document will be developed and implemented in the 2009-10 financial year and further efforts will be made to inform other organs of state with regard to the requirements to deal with confiscated abalone.

2. PURPOSE AND CONTENT OF THE REPORT

- 2.1 The performance audit was conducted on the handling of confiscated abalone at the DEAT: Branch Marine and Coastal management in terms of section 188(4) of the Constitution of the Republic of South Africa, 1996, read in conjunction with sections 5(3) and 20(3) of the Public Audit Act, 2004 (Act No. 25 of 2004). The purpose of this report is to facilitate public accountability by bringing to the attention of the executive authority and Parliament the findings of the performance audit.
- 2.2 Audit work was performed to provide sufficient audit evidence for the findings set out herein. Where deemed appropriate, comments received from management have been reflected in the report.
- 2.3 It is expected that this report, which reflects the comments of the AO, will give rise to corrective steps that would contribute constructively to the establishment and implementation of appropriate management measures and controls and, consequently, to improved value for money.
- 2.4 The responsibility for instituting these management measures rests with management. The primary objective of performance auditing is to confirm independently that these measures do

exist and are effective and to provide management, Parliament and other legislative bodies with information, by means of a structured reporting process, on shortcomings in management measures and examples of the effects thereof. The Auditor-General's function is not to question policy. It is, however, his responsibility to audit the effect of policy and the management measures that lead to policy decisions.

3. AUDIT PROCESS

- 3.1 Performance audits are conducted in accordance with *the Guidelines for the planning, execution, reporting and follow-up of performance audits conducted in the public sector*.
- 3.2 After consensus was reached on the factual correctness of the findings in the management report during the steering committee meeting, the findings were brought to the attention of the AO.
- 3.3 The responses of the AO dated 15 January 2009 and 3 June 2009 have been incorporated into the report.

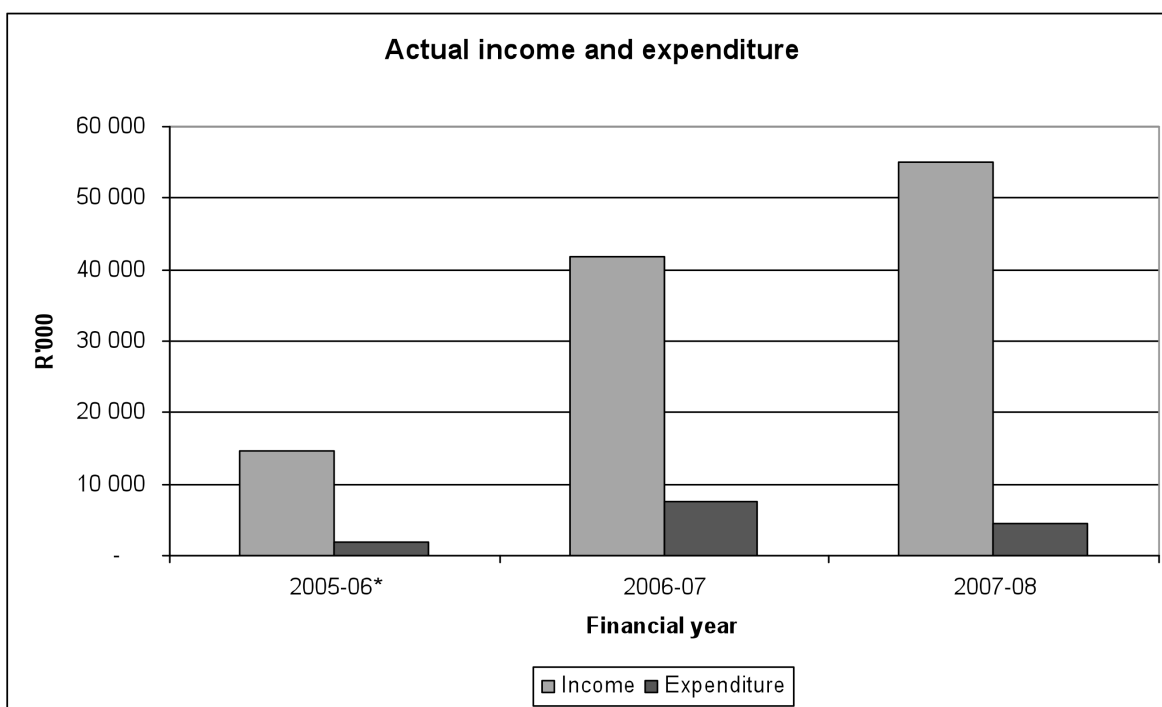
4. AUDITING SCOPE

- 4.1 Owing to the shortcomings identified regarding the managing and policing of the abalone industry, as well as the ineffective handling of confiscated abalone, the SCOPA recommended that the Auditor-General do a cost-benefit audit of the abalone industry.
- 4.2 On 18 March 2008 the engagement letter with the DEAT was signed for a performance audit on the handling of confiscated abalone.

5. OVERVIEW

- 5.1 The Branch Marine and Coastal Management (MCM) of the DEAT is tasked with managing the development, sustainable use and orderly exploitation of our marine and coastal resources, as well as protecting the integrity and quality of our marine and coastal ecosystems. The MCM's activities are governed by the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (MLRA), and the MCM's operations are funded through the Marine Living Resource Fund (MLRF). The MLRF was established in terms of the MLRA.
- 5.2 The MLRF's basic aim is to finance, amongst others, activities related to the management, sustainable utilisation and conservation of marine living and coastal resources as well as the preservation of biodiversity and minimisation of marine pollution. Socio-economic objectives include broadening of access and the achievement of equity and economic growth.
- 5.3 The MRLF is financed from own revenue as provided for in section 10 of the MLRA as well as funds appropriated from Parliament. Own revenue is primarily derived from levies on fish and fish products, application and fishing permits and licences, harbour fees, proceeds from the sale of confiscated fish and fish products, and fines.

- 5.4 The MCM has identified the combating of illegal harvesting of abalone as a key objective in terms of its mandate. The MCM discharges this objective via the monitoring, control and surveillance subprogramme, which is responsible for ensuring compliance with environmental laws and regulations.
- 5.5 In order to deal effectively with the threat of poaching, the DEAT has entered into cooperation arrangements with South African Police Service (SAPS), local authorities, the Directorate of Special Operations, South African Revenue Service (SARS), border units, the National Prosecuting Authority, the National Port Authorities and the Asset Forfeiture Unit.
- 5.6 During 2006 the MCM issued a tender for the processing, marketing and selling of confiscated abalone. The MCM awarded the contract to three service providers (the processors) on a rotational basis. The contracts were awarded for an initial period of two years and could be renewed at the discretion of the MCM. The contract in respect of one of the service providers was terminated during June 2007 because the service provider had not ensured that confiscated abalone was processed according to the relevant protocols, guidelines and specifications stipulated by the MCM.
- 5.7 MCM, furthermore, appointed an independent project monitoring team (PMT) to facilitate the project management in respect of monitoring, control, inspection and verification related to the tasks assigned to the processors. The cost of the PMT's appointment was capped at R5,3 million over the contract period.
- 5.8 Income from the sale of confiscated abalone and expenditure relating to the service providers appointed for the processing and monitoring of confiscated abalone for the 2005-06, 2006-07 and 2007-08 financial years were as follows:



* The low income and expenditure can be attributed to the delay in awarding new tenders for the processing and monitoring of confiscated abalone.

6. FINDINGS, RECOMMENDATIONS BY THE AUDITOR-GENERAL AS WELL AS RESPONSE FROM THE ACCOUNTING OFFICER

6.1 Formal policy and guidelines regarding the handling of confiscated abalone

6.1.1 Finding

A formal policy and/or guidelines regulating the receiving, storage, processing and disposal (handling) of confiscated abalone did not exist. A draft policy was compiled during June 2007, but as at June 2008 it had not been approved or communicated to all the role players involved in the handling of confiscated abalone. Furthermore, the draft policy was not comprehensive as it, amongst others, did not specify the following:

- The process to be followed by the government agencies to ensure that the quality of the confiscated abalone is not compromised during the period from confiscation to the time it is handed over to MCM officials. Furthermore, no training interventions and/or information brochures were issued to government agencies regarding the process to be followed until the confiscated abalone is handed over to MCM officials.
- The requirement that service level agreements (SLAs) be concluded between the MCM and the other government agencies involved in the handling of confiscated abalone. Therefore, the sharing of communication and information between the MCM and other government agencies was not structured.
- The monitoring activities or management information that need to be maintained regarding the handling of confiscated abalone as well as the functions that should be performed by the MCM and the PMT.
- The norms and standards for the processing of abalone (for example, the acceptable weight loss during processing).
- The acceptable selling methods (for example, through the appointed service provider or on auction) and the circumstances under which each selling method should be used.

6.1.2 Recommendations by the Auditor-General

- (a) A policy for the handling, storage, processing and disposal of confiscated abalone, which supports the achievement of the MCM's objectives and complies with all legislation, should be approved and implemented.
- (b) Norms and standards should be developed for the handling of confiscated abalone.
- (c) The coordination and communication between the DEAT and other government agencies, as well as external agencies, should be formalised and structured.

6.1.3 Response from the AO

- (a) The department indicated that the current PMT and processors conduct their activities in

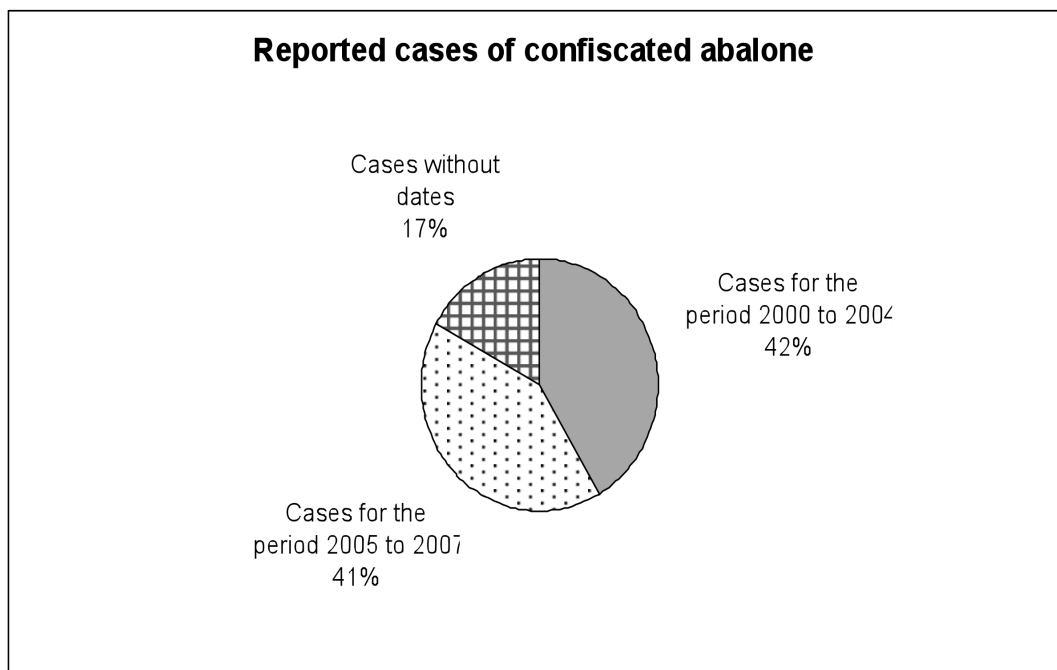
terms of a protocol document that forms part of their SLA. A revised policy document will be developed and implemented in the 2009-10 financial year incorporating the Auditor-General's recommendations.

- (b) Throughout discussions with various organs of state, the department has communicated the contact points for these institutions where they are involved with confiscated abalone. When joint operations do take place, staff from the department are normally present and can direct the operations when abalone is confiscated. Efforts were made to collaborate with other organs of state through the signing of formal agreements with SARS on 2 July 2008 and numerous meetings with SAPS in order to acquaint them with the requirements to deal with confiscated assets, fish and fish products and specifically those relating to the disposal of perishables.

6.2 Status of court cases relating to confiscated abalone

6.2.1 Findings

- (a) The DEAT did not monitor the progress of court cases relating to abalone that had been confiscated. The DEAT therefore did not know which court cases had been finalised and whether the samples kept for court purposes could be released for processing. A review of the DEAT's records (as at 31 July 2007) of samples held for court cases indicated that 2 471 kg of samples with an estimated value of R1,1 million were being held for 1 473 court cases. The court cases emanated from December 2000 and 613 (42%) of these court cases were in respect of the period 2000 to 2004, while the dates for 251 (17%) court cases could not be determined.



- Furthermore, the DEAT's records of samples of confiscated abalone kept for court purposes (as at 31 July 2007) were incomplete. Details regarding the

police investigations were not maintained for some of the samples of confiscated abalone, which could complicate the monitoring and follow-up of court cases. A total of 416 cases (28%) were identified without SAP13 (confiscation record number) and Case Administration System (CAS) numbers, which amounted to approximately 866 kg (35%) of the volume of confiscated abalone samples.

6.2.2 Recommendations by the Auditor-General

- (a) Control measures should be implemented to ensure that the reported cases of confiscated abalone are timeously followed up and reported.
- (b) Coordination and communication between the DEAT, other government departments as well as external organisations regarding the handling of confiscated abalone should be formalised and structured.
- (c) Record keeping of samples retained for court purposes should be improved to enable follow-up on the progress of court cases.

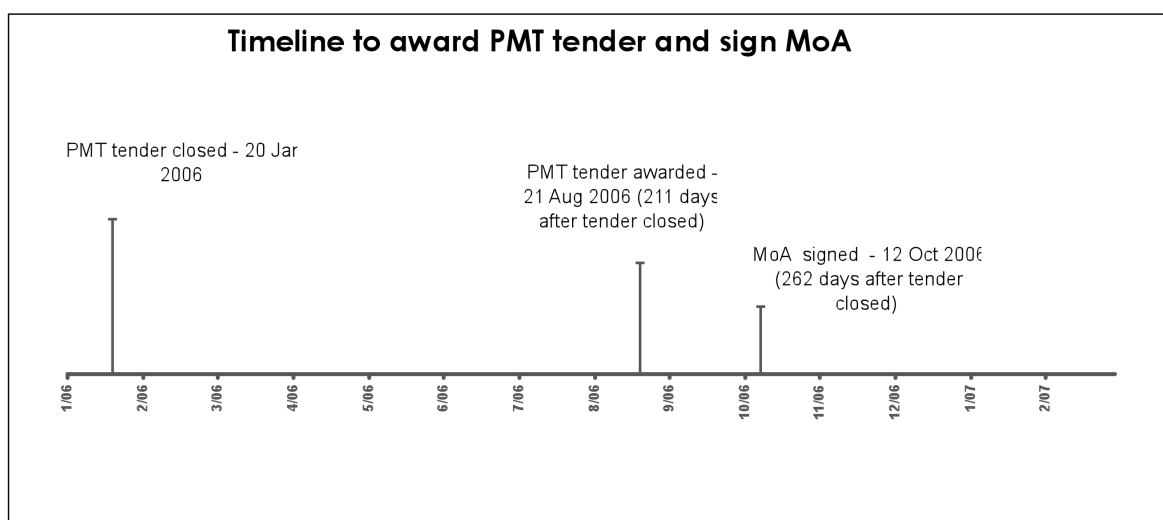
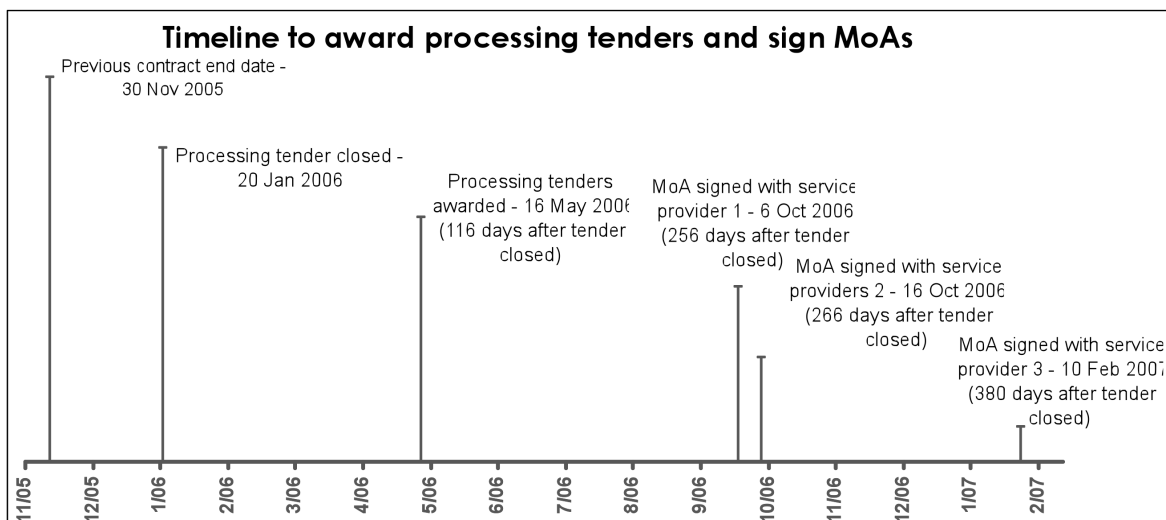
6.2.3 Response from the AO

Officials of the chief directorate: Monitoring, Control and Surveillance, who represent and assist the department during court cases, reported on the status of the outstanding cases on a regular basis as from September 2008 to ensure that the abalone samples for cases that had been finalised (968) could be prepared for processing.

6.3 Awarding of tenders

6.3.1 Finding

There was a delay in the awarding of the tenders for the processing of confiscated abalone (MLRF 050) and monitoring of the processing function (MLRF 049) as well as the signing of memorandums of agreement (MoAs) with the successful service providers after the previous processing contract ended on 30 November 2005. Therefore, confiscated abalone could not be processed and was stockpiled. Abalone was only released for processing with effect from 17 October 2006. The above delays and stockpiling contributed to the cash-flow problems experienced by the MLRF during the 2005-06 financial year, while the service provider appointed for monitoring purposes increased its tender price amount by R748 132. The timelines below reflect the delays in awarding and signing the MoAs for the tender contracts:



6.3.2 Recommendation by the Auditor-General

The MCM should ensure that tender contracts are timeously renewed or awarded to prevent unnecessary delays in the processing of confiscated abalone and the resultant loss of potential income to the MLRF.

6.3.3 Response from the AO

The department has reviewed the members appointed to the MLRF bid adjudication committee. Most members, together with the secretariat, attended the prescribed bid adjudication committee training offered by the Public Administration Leadership and Management Academy on 24 and 25 June 2008, which has greatly enhanced the performance, understanding as well as functioning of this body. The processing of bids received by the department and the final adjudication thereof are monitored in order to minimise delays.

6.4 Tariff structures for the processing, marketing, selling and exporting of abalone

6.4.1 Finding

The MCM awarded tenders for the processing, marketing, selling and exporting of abalone to three service providers at different tariffs. During the period October 2006 to August 2007, the total actual cost (as invoiced by the three service providers) for processing, marketing, selling and exporting 173 794 kg of wet abalone amounted to R7,1 million. If all the costs and invoices were based on the cost structure as per the MoA with the service provider who had the lowest tariff structure, the total cost would have been R5,3 million.

6.4.2 Recommendation by the Auditor-General

A costing methodology should be investigated and the prices of service providers/processing plants should be standardised in accordance with the adopted costing methodology.

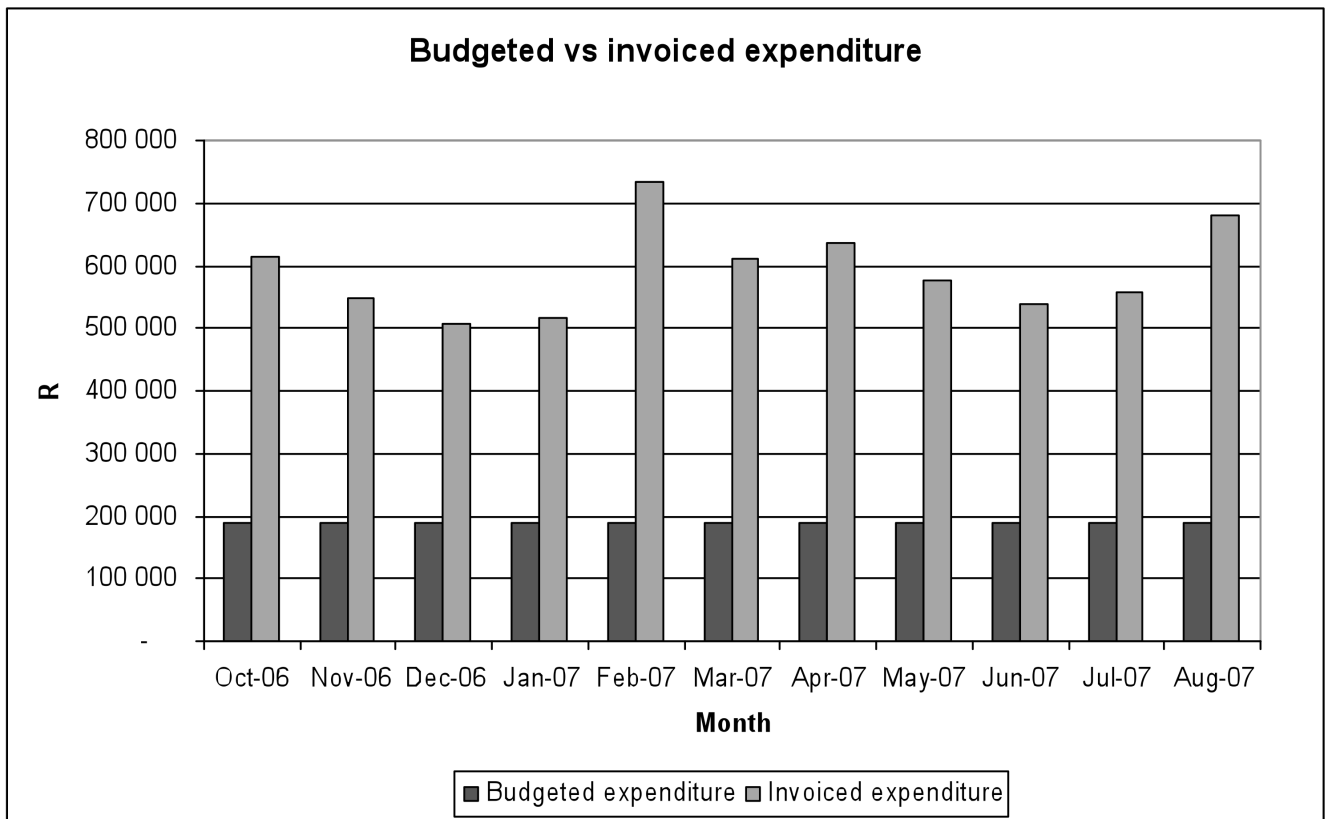
6.4.3 Response from the AO

- (a) Prior to the appointment of the service providers, the MLRF bid adjudication committee approved the appointment of three processors. This action did not include a review of the cost of production, as had been the case during the previous bid process. Thereafter, the SLAs were concluded, which included the costing schedule of each individual service provider. Once the project commenced, it was difficult to negotiate a reduction in the cost of production to that of the lowest one. During the period leading up to 30 June 2007, efforts were made by the project manager to reduce the cost of production of a service provider who had originally threatened legal action. On 23 June 2007, the service provider agreed to reduce their cost of production. In addition, during this same period, the services of another service provider were terminated due to inferior processing and because continuation could have resulted in further losses to the department. A further effort to set a uniform cost of production is currently underway and, once finalised, the outcome thereof will be communicated to the Auditor-General.
- (b) With hindsight, it has been to the department's benefit that two processors are still processing, marketing and selling the confiscated abalone, which allows the department, through the PMT, to benchmark prices and force service providers to offer better prices than had been previously accepted. Efforts to facilitate uniform cost of production have been successful and this process also entailed the review of the processing protocol to include aspects such as the weight used to calculate the cost of the service for each activity. With effect from 1 October 2008, a uniformed processing cost tariff is applied.

6.5 Payments to the PMT

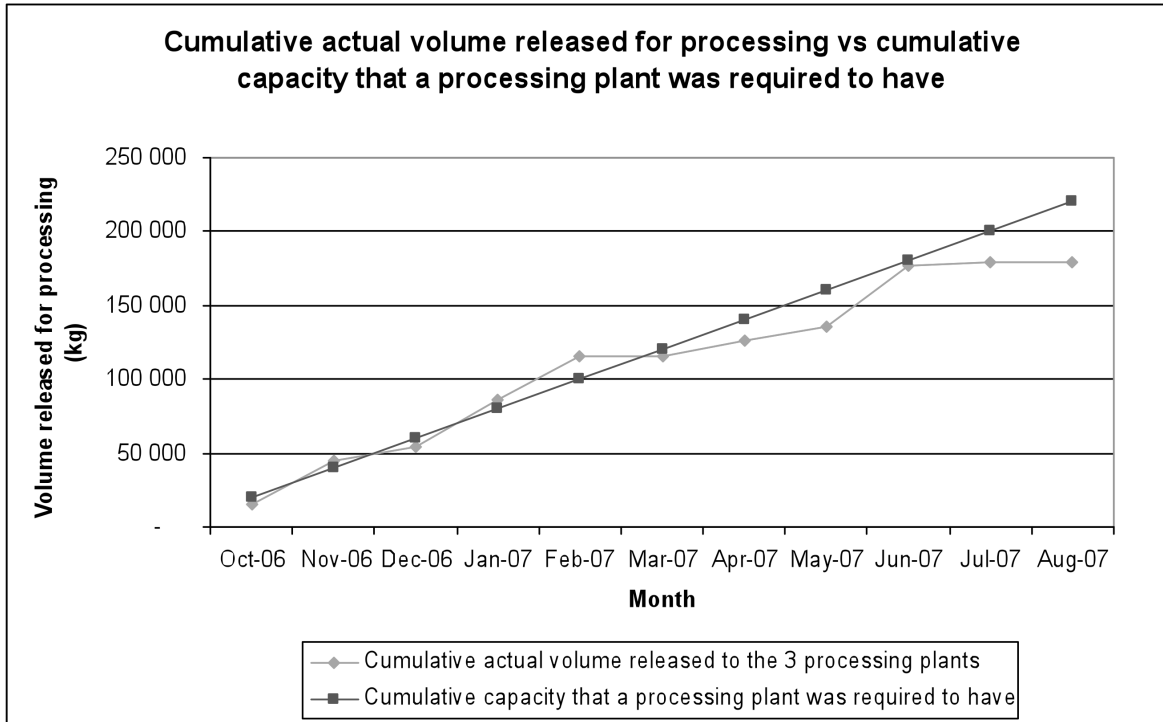
6.5.1 Findings

- (a) Invoices received from the PMT for services rendered during the 11-month period from October 2006 to August 2007 amounted to R6,5 million (inclusive of VAT and disbursements), which is R23 426 (0,4%) more than the budget allocated for the 24-month period and R1,2 million (23%) more than the approved ceiling price of the contract. Payments for three invoices totalling R1 875 615 and dated 16 May 2007, 20 August 2007 and 6 September 2007 were delayed until approval was obtained on 27 November 2007 from the director-general to increase the bid amount by R4,8 million. Payment was made on 7 December 2007. If the amount of the invoices received is extrapolated for a period of 24 months, an amount of R14,2 million will be paid to the PMT, which is R7,7 million (119%) more than the allocated budget and R8,9 million (167%) more than the approved ceiling price of the contract. The diagram below reflects the budgeted expenditure versus invoiced expenditure (exclusive of VAT) per month for the period October 2006 to August 2007:



- (b) According to paragraph 5.1 of the MoAs, the processing of abalone should have taken place on a rotational basis between the three service providers. No record exists that rotation had occurred during the tenure of the existing service contracts up to August 2007. It is estimated that the additional cost owing to the non-rotation of the processing of abalone between service providers during the corresponding period amounted to

R1,4 million. The average quantity of abalone released for processing per month did not exceed the capacity of 20 000 kg per processor and therefore there was no need to rotate the service providers. The graph illustrates that the required cumulative capacity of a processing plant was higher than the cumulative actual volume released for processing.



- (c) On seven of the 11 invoices (63%) analysed for the period October 2006 to August 2007, the PMT made use of additional staff or staff were used for more hours than indicated in the tender bid document. The total cost paid by the DEAT for the additional PMT staff amounted to R1,8 million for the period October 2006 to August 2007.
- (d) Furthermore, the review of the invoices from the PMT for the period October 2006 to August 2007 indicated the following:
- Subsistence and travel expenditure to the amount of R94 249,51 was invoiced by the PMT and paid by the MCM, despite it not being indicated that the purpose of the expenditure was in respect of travel between Hermanus and Gansbaai or between the DEAT's storage facility and the service provider's fish processing plants, which are the only travel costs to be paid at the discretion of the MCM as per paragraph 2.4 of the MoA.
 - Other expenses to the amount of R50 635,88, which included equipment, project fees and legal fees, were invoiced by the PMT and paid by the MCM. These payments were contrary to paragraph 5(d) and 5(e) of the bid specification for bid MLRF 049, which specified that the MCM would not be responsible for any costs other than the hourly rate.

6.5.2 Recommendations by the Auditor-General

- (a) The MCM should take effective and appropriate steps to prevent irregular expenditure. Only expenditure as agreed and approved in terms of the bid specifications and MoAs should be paid by the DEAT.
- (b) The MCM should review the appointment of more than one service provider where no economic benefit could be derived.

6.5.3 Response from the AO

- (a) After the commencement of this project in 2005, the MLRF experienced severe shortage of cash and every effort had to be made to urgently generate as much revenue as possible. The impact of the MLRF bid adjudication committee's decision to appoint three processors and the severe financial problems experienced, led the chief financial officer: MLRF to instruct the PMT to appoint a second monitoring team. The impact of these decisions was as follows:
 - The monthly monitoring costs more than doubled (the budgeted monitoring cost was R225 855 per month).
 - The monitoring team incurred additional unbudgeted travel expenses to monitor the second processor in Gansbaai. The original bid specifications called for one processor in a single location instead of three processors in two locations.
 - No provision had been made to sell confiscated dried abalone among the processors at ad hoc sales and auctions.
- (b) With effect from 1 September 2007, the second monitoring team was withdrawn and processing rotated between the two remaining processors. On 27 November 2007, the director-general granted approval to increase the bid amount by R4,8 million in order for the service to continue in terms of the SLA.
- (c) The additional costs reflected in the report represented those costs associated with the ad hoc sales and auctions of dried abalone without any processing by the processors. Over the period noted above, 17 863 kg dried abalone was sorted and graded at a cost of R700 704 while realising R24,7 million. Through auctioning the abalone the department realised an additional R6 million. The addendum to the SLAs of the PMT and processors will be amended to include the costs of ad hoc sales and auctions.

7. APPRECIATION

The assistance rendered by the staff of the DEAT during the audit is sincerely appreciated.

Auditor - General

Pretoria

17 June 2009



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