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## GOVERNMENT NOTICES

### DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

No. 494

12 June 2015

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES  
Marine Living Resources Act, 1998 (Act No. 18 of 1998)

I, Senzeni Zokwana, Minister of Agriculture, Forestry and Fisheries, hereby publishes for comment the Draft sector specific Policies for the allocation of fishing rights in the Abalone, Hake Inshore-Trawl, Horse Mackerel, Kwazulu-Natal Sardine Beach seine, Large Pelagics, Netfish, Patagonian Toothfish, Seaweed, West Coast Rock Lobster Nearshore, West Coast Rock Lobster Offshore, the Fish Processing Establishment sectors and Application Forms as set out in schedule A. I further publish for comment the draft fees payable in respect of applications and grant of rights as set out in schedule B.

Interested and affected parties may submit written comments to the Department of Agriculture, Forestry and Fisheries within 30 days after date of publication of this notice either by mail, by hand, e-mail, or telefax transmission. Please note that comments received after the closing date may be disregarded.

**Comments in respect of sector policies and application forms should be directed to:**

<u>By mail</u>	<u>By Hand</u>	<u>By e-mail</u>
Department of Agriculture, Forestry and Fisheries Branch: Fisheries Management Customer Service Centre Private Bag X2 Roggebaai 8012	Department of Agriculture, Forestry and Fisheries Branch: Fisheries Management Customer Service Centre Ground Floor Foretrust Building Martin Hammerschlagh way Foreshore Cape Town, 8000	FRAPPolicies2015@daff.gov.za  <u>By Telephone</u> Qayiso Mketsu 021 402 3098  <u>By Telefax</u> 0867662021

**Comments in respect of draft fees payable for application and grant of rights should be directed to:**

<u>Per Facsimile</u>	<u>Per Post</u>	<u>Per E-mail</u>	<u>Per Hand</u>
Fax Number 086 613 6256  Director: Revenue Management Attention: Mr. Wickness Rooifontein	Department of Agriculture, Forestry and Fisheries Branch: Fisheries Private Bag X2 Roggebaai Cape Town 8001  Attention: Director: Revenue Management, Mr. Wickness Rooifontein	Attention: Mr. Wickness Rooifontein  E-mail: MLRFaccounts@daff.gov.za	Director: Revenue Management Attention: Mr. Wickness Rooifontein Foretrust Building, Martin Hammerschlagh Way, Cape Town, 8000

  
Senzeni Zokwana

Minister of Agriculture, Forestry and Fisheries

05-06-2015

**No. 495**

**12 June 2015**

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE  
LARGE PELAGIC (TUNA AND SWORDFISH LONGLINE) FISHERY: 2015**

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

**(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
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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

This policy on the allocation and management of fishing rights in the Large Pelagic (Tuna and Swordfish longline) ("the Large Pelagic") fishery is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to as the "**2015: Large Pelagic Policy**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 ("the 2013: General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of commercial fishing Right.

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

## 2. Profile of the fishery

### 2.1 Background

South African participation in the Large Pelagic fishery is fairly new. The harvesting of tuna and swordfish by longline has historically been undertaken by Japanese and Taiwanese fleets fishing in South African waters under bilateral licensing agreements. Participation by South African fishers in the Large Pelagic fishery was made possible by the decision of the Minister of Environmental Affairs and Tourism ("the DEAT") not to renew the international fishing licenses of Japanese and Taiwanese longline vessels to catch tuna and swordfish in South African waters. These agreements terminated at the end of January 2003.

The availability of tuna and swordfish stocks in South African waters, coupled with a renewed interest in the longlining tuna by South Africans convinced the DEAT in 1997 to grant experimental permits for the longlining of tuna. Participants in the experimental fishery at the time consisted of 20 existing tuna pole quota holders and 10 "new" tuna pole quota holders.

### 2.2 Current status of the fishery

Tuna and tuna-like resources are targeted by the Large Pelagic fishery, the tuna pole-line fishery and the recreational fishery. Other fisheries, which would catch tuna as by-catch are the traditional linefish fishery and the small-scale fishery.

Tuna and tuna-like resources include all tuna species (bigeye, yellowfin, albacore, skipjack, and southern bluefin), billfish species (swordfish, marlins, sailfish, spearfish) and pelagic sharks (shortfin mako and blue sharks).

All tuna and tuna-like resources are highly migratory with the same stock being fished by many different fishing nations. Consequently, inter-governmental Regional Fisheries Management Organisations ("RFMOs") are primarily responsible for the management of these resources. Countries that co-operate or which are members of an RFMO are required to adhere to all the conservation and management measures adopted by the respective RFMO. South Africa is a member of the International Commission for the Conservation of Atlantic Tuna ("ICCAT") and is a co-operating Party of the Indian Ocean Tuna Commission ("IOTC") and the Commission for the Conservation of Southern Bluefin Tuna ("CCSBT"). The Large Pelagic fishery is thus dependent upon country allocations from the relevant RFMOs.

### 2.3 **Biology of the resource**

South Africa's geographical position has made it possible for the fishery to target tropical (yellowfin), temperate (albacore and southern bluefin) and intermediate (bigeye) tunas. Southern bluefin (160 – 200 cm total length, TL), bigeye tuna (70 – 180 cm TL) and yellowfin tuna (60 – 150 cm TL) are on the larger size scale followed by the smaller albacore tuna (40 – 100 cm TL). These tunas are pelagic oceanic migrants found in all oceans except the Arctic, and the southern bluefin tuna is confined to the southern regions of the Indian, Atlantic and Pacific Oceans. The billfishes are also widely distributed throughout the oceans in which they occur. Swordfish (115 – 190 cm lower jaw fork length, LJFL) is cosmopolitan and all other *Istiophoridae* are confined to the Atlantic, Indian or Pacific Oceans. Scombrids and billfishes are distributed in epipelagic (skipjack, yellowfin, swordfish, billfish, juvenile tunas) and mesopelagic (albacore, bigeye, southern bluefin, yellowfin, swordfish) depth ranges. Environmental factors that affect the distribution of tunas includes sea surface temperature, vertical thermal structure and the thermocline, dissolved oxygen, salinity, oceanic fronts and food availability. The temperate and intermediate tunas and billfishes make seasonal migrations over long distances between temperate and subtropical feeding grounds (e.g. off South Africa) and tropical spawning grounds. Tunas and billfish are designed to swim long distances (with red muscle) and at bursts of speed (with white muscle) to fulfil oxygen and feeding demands. Tunas and billfishes are opportunistic feeders preying on a variety of fish, crustaceans and cephalopods.

The fishing areas around South Africa straddle two recognised stocks, the Indian Ocean and the Atlantic Ocean, for yellowfin tuna, bigeye tuna, albacore and swordfish. The degree of movement and mixture between the two stocks is being investigated through multifaceted studies such as movement (tagging), feeding, genetics etc. Resolving stock structure is important for the RFMOs to conduct accurate stock assessments and to provide the best management advice.

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

The Large Pelagic fishery is a relatively new fishery with the first commercial fishing rights allocated in 2005. Initially, 18 swordfish-directed fishing rights (18 vessels) and 26 tuna-directed fishing rights (26 vessels) were allocated during the 2005/2006 long-term rights allocation management process.

The pelagic shark longline fishery was terminated on the 31<sup>st</sup> of December 2005 and nine exemptions were granted for pelagic shark longline fishing. During the 2011 allocation which was used to include the pelagic shark vessels within the Large Pelagic fishery, the Large Pelagic fishery sector was increased to 21 swordfish-directed rights (21 vessels) and 29 tuna-directed rights (29 vessels). The Large Pelagic fishing rights expired on the 28<sup>th</sup> of February 2015.

## **4. OBJECTIVES**

4.1 The objectives of allocating fishing rights in the Large Pelagic fishery are to:

- (i) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, woman and people with disabilities) broaden meaningful participation (increase participation, value-creation, and linkage).
- (ii) ensure sustainable livelihoods through the promotion of fair employment;
- (iii) promote adherence to fair labour practices and improved working conditions;
- (iv) to promote food security and poverty alleviation;
- (v) prefer applicants who rely on the harvesting of Large Pelagic for a significant portion of their gross annual income above applicants deriving income from sources outside the Large Pelagic fishery;
- (vi) facilitate the recovery of over-exploited and collapsed fish stocks; and
- (vii) 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 Marine Living Resources Act (Act No. 18 of 1998) ("the MLRA"). Unless otherwise determined by the Minister, only South African person shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

### 5.1 Form of right holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights.
- (b) With regard to the nature of operations and resource accessibility in the Large Pelagic fishery, only the following South African persons will be considered for a Right in the Large Pelagic fishery:
  - (i) close corporations;
  - (ii) companies; and
  - (iii) co-operatives.

### 5.2 Duration of right

With regard to the right allocation process, status of the fishery and the need to encourage investment, fishing Rights in the Large Pelagic Fishery will be granted for the maximum period of 15 years.

### 5.3 Total Applied Effort allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate rights to a maximum of 51 vessels.

### 5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, Large Pelagic rights in terms of this Policy shall not be transferred within the two years except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any

permits, declare any catches during the first two years shall result in an automatic cancellation of the right by Minister.

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 in the Large Pelagic fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for a right in any fishery sector regardless of the fact that the applicant has applied for a right or holds 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 Large Pelagic fishing rights 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.

### 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:

#### (a) Compliance

Applicants, including their members, directors or controlling shareholders that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders that have had any fishing right cancelled or revoked in terms of the MLRA, will also be excluded. Minor infringements of the MLRA, including 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 2013: General Policy, will be excluded.

(c) **Non-utilisation**

Applicants that held a Large Pelagic Right within the period 2006 to 2014 and did not harvest any Large Pelagic during the entire duration of that Right shall be excluded.

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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on –

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official 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 representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
- (iv) Affirmative procurement;
- (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vi) Corporate social investment.

(b) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the Large Pelagic fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.

(c) **Local economic development**

- (i) The Delegated Authority will take into consideration the landing and processing outside the metropolitan areas to promote local economic development.
- (ii) The Delegated Authority shall, 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.

(d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded, and in particular compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing employees with: –

- (i) permanent employment;
- (ii) medical aid and pension or provident fund;
- (iii) safe working conditions in accordance with the applicable legislative requirements; and
- (iv) an employee share scheme as a shareholding entity of the Right Holder.

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

Applicants will be required to demonstrate a right of access to a vessel suitable for the harvesting of Large Pelagic. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

(f) **Applicant involvements and relationship with other applicants**

(i) **Entity and their subsidiaries involvement**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Large Pelagic fishery, the Department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this

sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Large Pelagic fishery.

(ii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Abalone fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Abalone fishery.

7.3 **Suitable vessels in the Large Pelagic fishery**

(a) South African flagged fishing vessels

Rights will only be granted to suitable applicants who demonstrate ownership of or right of access to a suitable vessel. The suitability of vessels will be determined having regard to, *inter alia*, vessel length (including the performance record of vessels), the ability to monitor and control the vessel and nationality of the vessel.

Applicants that intend to target tuna will have to demonstrate ownership of or right of access to a vessel with a minimum South African Maritime Safety Authority ("SAMSA") registered length of approximately 24m. Preference will be given to vessels that have onboard freezing facilities.

Applicants that intend to target swordfish will have to demonstrate ownership of or right of access to a vessel with a minimum SAMSA registered length of approximately 18m. Vessels with lengths less than 18m may be considered having regard to their performance record.

Applicants that intend to target Large Pelagic will have to demonstrate ownership of or right of access to a vessel with a minimum South African Maritime Safety Authority ("SAMSA") registered length of approximately 18m. Vessels with lengths less than 18m may be considered having regard to their performance record.

Preference will be given to vessels that have onboard freezing facilities.



Applicants must take cognisance of certain vessel length limitations as stipulated in relevant RFMOs.

Further, the nominated vessel must:

- (i) have a functioning INMARSAT based Vessel Monitoring System ("VMS") installed; and
- (ii) not be a vessel that is listed on the official negative vessel lists of ICCAT, the IOTC or the CCSBT.

(b) Foreign flagged fishing vessels (tuna longline fishing)

The Department recognises that, because of a lack of suitable South African vessels and South Africa's limited experience in the tuna longlining, as such joint ventures with non-South Africans may be a necessity. Notwithstanding this, joint ventures between South Africans and non-South Africans must be majority owned by South Africans (i.e. must be South African persons) and managed by South Africans. Evidence of fronting of South Africans will adversely affect an application. Accordingly, preference will be given to applicants who demonstrate right of access to or ownership of a suitable vessel with the intention of developing skills to South Africa.

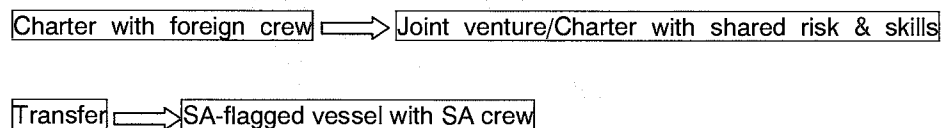
Experience subsequent to the long-term rights allocation process of 2005 has shown that the reflagging process could be both lengthy and costly. The reflagging process is dependent on the economic profitability of the Large Pelagic fishery, including access to international markets, especially the Japanese sashimi market.

Therefore, foreign-flagged fishing vessels will be considered for the tuna longline fishing provided that the foreign-flagged fishing vessel adheres to the following:

- (i) has an initial one-year trial period to determine the feasibility of the joint venture and the reflagging process. Thereafter, the foreign fishing vessel shall reflag within the first three years when operating as a joint venture;
- (ii) prior to commencing the second year of fishing the Right Holder must present the Department with a reflagging and skills transfer schedule indicating targets and timelines;
- (iii) The Department will monitor this process very closely through quarterly reporting on progress by the Right Holder;

- (iv) carries, at the cost of the Right Holder, observers nominated by the Department on all fishing trips; the Observers shall be responsible for collecting fisheries and shall monitor all fishing operations and record any transgressions of the MLRA;
- (v) in terms of section 39 of the MLRA, be authorised by the relevant authority of the Flag State, in writing, that all catches of large pelagic species, whether harvested on the high seas or in South Africa's Exclusive Economic Zone ("EEZ"), shall accrue to South Africa for the duration of the charter or joint venture agreement; and
- (vi) owners and operators submit in writing that the vessel shall be subject to laws that govern in the territory of the Republic of South Africa for the duration of the charter or joint venture agreement.

Below is a schematic flow diagram of the desired approach for reflagging vessels in tuna longline:



Further, nominated foreign-flagged vessel must:

- (i) have a functioning INMARSAT C-based vessel monitoring system ("VMS") installed; and
- (ii) not be a vessel that is listed on the official negative vessel lists of ICCAT, the IOTC or the CCSBT.

#### 7.4 Use of a vessel by two or more Right Holders

Right Holders in the Large Pelagic fishery will not be precluded from jointly using one vessel, provided that when the vessel is going out to sea, only one Right Holder's catch permit will be onboard the vessel.

### 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 a 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 a final decision 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 referred to as decision sheet outlining all applicant scores in the Large Pelagic sector.

**10. Payment of application and grant of right fees**

- 10.1 The fees for this fishery 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 before submitting 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. Termination of pelagic shark longline exemptions**

Pelagic shark longline fishery was terminated on the 31<sup>st</sup> of December 2005. This was followed by granting of exemptions to the operators that held fishing rights in the sector. The exemption holders were incorporated in to the Large Pelagic fishery in 2008 and were allowed to operate in the sector with an Upper Precautionary Catch Limit ("UPCL") of 2000t as a bycatch of the Large Pelagic fishery. In line with the 2008 Policy for Large Pelagic, the targeting of pelagics sharks in the Large Pelagic fishery by exemption holders is terminated. Any fishing practices that promote the targeting of pelagic sharks such as the use of wire tracers will be prohibited.

The Department encourages the existing exemption holders to adjust their fishing models and reduce their reliance on sharks as pelagic sharks will be considered to be bycatch. The fishing performance of the current exemption holders that were targeting pelagic sharks will be considered as effective utilization of their exemptions. Effective

utilisation shall mean activation of the catch permit and subsequent catch data submission for at least five years during the period 2007-2014.

## 12. Management measures

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

### 12.1 Ecosystem 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.

### 12.2 Observer Programme

- (a) The right holder of a commercial Large Pelagic 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding under section 28 of the MLRA.

### 12.3 Performance measuring

Successful applicants will be subjected to performance measuring 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.

### 12.4 Offences

- (a) Successful applicants that fail to utilise their Large Pelagic fishing right for one season without any reasonable explanation or that contravenes the provisions of the MLRA, will be subjected to proceedings of s28 of the MLRA.

**13. 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 revised as and when it may be necessary.

**14. Glossary of Terms**

- 14.1 "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 14.2 The MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998) . ), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 14.3 "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 14.4 "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 14.5 "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 and 2011 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 14.6 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 14.7 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 14.8 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 14.9 "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 14.10 "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.
- 14.11 "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.

- 14.12 "Ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.

**No. 496**

**12 June 2015**

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE  
HAKE INSHORE TRAWL FISHERY: 2015**

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

**(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

**(In 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 Hake Inshore Trawl fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Department”) (“the Minister”) and shall be referred to as the “**2015: Hake Inshore Trawl Policy**”. This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”) and all other Sector Specific Policies including Policy for Small Scale Fisheries in South Africa and the Policy for the Transfers of Commercial Fishing Rights.

This policy sets out objectives, criteria and considerations that will guide the application, evaluation, allocation and management of fishing rights in the Hake Inshore Trawl fishery (“the 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 South African hake resource comprises of two species, the shallow-water Cape hake (*Merluccius capensis*) and the deep-water Cape hake (*M. paradoxus*). Cape hakes are targeted by four fishery sectors: deepsea and inshore demersal trawl and hake longline and hake handline sectors. Since 2013, an apportionment of Total Allowable Catch (TAC) for small scale fishing was reserved and currently there is no targeting of hake by this sector as no fishing rights have been allocated yet. The inshore trawl and handline sectors operate only on the South Coast, while the deepsea trawl and longline fleets operate on both the West and South Coasts. Although the demersal trawl fisheries also target sole and horse mackerel, hake is the largest and most commercially important component of the catch of all four of the sectors, which collectively provide the basis for some 30 000 jobs and a landed value in excess of R2.5 billion.

There are currently 16 Right Holders operating in the Hake Inshore Trawl sector and the fishery sustains some 1 100 direct jobs. Black people occupy more than 90 percent of these jobs, while women hold 42 percent. Working conditions in the inshore trawl fishery are generally considered to be better than those that prevail in other fisheries. The majority of employees are employed on a full-time, year round basis, with fixed salaries and employment benefits. The average annual income of sea-going crew is R35 000.

The inshore trawl fishery is not as capital intensive as the deep-sea trawl fishery, but significant investments in the form of vessels, processing and marketing infrastructure have

nevertheless been made by the existing participants. The total value of the assets in the fishery is estimated to be more than R100 million. The market value of catch landed is worth approximately R60 million annually.

## 2.2 History of the fishery

Commencing in the 1890s, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa's most important fishery and, for the last decade, it has accounted for more than one half of the wealth generated from commercial fisheries. Although the inshore trawl fishery was pioneered at the start of the twentieth century, it was only in the 1950's that the fishery took on a commercial face when smaller trawlers entered the fishery to target hakes and the more valuable Agulhas sole (*Austroglossus pectoralis*). The inshore trawl fishery continues as a "dual quota" fishery targeting both shallow-water hake (*Merluccius capensis*) and Agulhas sole.

As was the case with the deep-sea trawl fishery, prior to 1978, the inshore trawl fishery was largely unregulated and participants were not restricted to a maximum catch limit. In 1978, the demersal fishery was formally separated into inshore and offshore sectors, a global annual total allowable catch ("TAC") was introduced and was divided between the sectors. An annual sole TAC was also set. Individual quotas were introduced in 1982. Since then, an annual TAC has been set for both the Cape hakes and for Agulhas sole. The inshore trawl fishery has been managed in terms of a sole TAC and a portion of the hake TAC. The sectoral allocation of the global hake TAC has remained remarkably stable at around 6 percent.

The Cape hakes became subject to increasing levels of exploitation after the First World War. The incursion of foreign fleets during the 1960s culminated in a peak catch of close to 300 000 tons in the early 1970s. After the declaration of the 200 nautical mile Exclusive Fishing Zone (EFZ) in 1977, South Africa implemented a relatively conservative management strategy by imposing Total Allowable Catches (TACs) in order to rebuild the hake stocks, and annual catches have subsequently remained relatively stable in the 120 000 – 160 000 tons range. The TACs were recommended on the basis of assessments of the resources using first steady-state, then dynamic and then age-structured production models. Since 1991, the South African hake resource has been managed using Operational Management Procedures (OMPs). An OMP is essentially a combination of pre-specified methods of data collection and analysis, coupled with a set of simulation-tested decision rules which specifies exactly how the regulatory mechanism is to be computed each year. In the case of South African hake, the regulatory mechanism is a

TAC, the value of which is calculated from stock-specific monitoring data (commercial CPUE indices and indices of abundance derived from demersal research surveys). Implicit in the OMP approach is a schedule of OMP revision (every 4 years) to account for updated data sets and possible changes in resource and fishery dynamics.

An important consideration in the development of the recent hake OMPs (OMP-2006, OMP-2010 and now OMP-2014) has been the certification of the South African hake trawl fishery (incorporating both the deepsea and inshore trawl sectors) by the Marine Stewardship Council (MSC). The fishery first obtained this prestigious eco-label in 2006, and was the first (and currently the only) fishery in Africa to be MSC certified. The fishery was successfully re-certified in 2010, and is currently undergoing assessment for its second re-certification. MSC certification has provided substantial socio-economic benefits to the fishery through enabling access to international markets that are increasingly demanding that seafood products that are eco-labelled.

### 2.3 The Management of the fishery

The Department manages the inshore trawl fishery as part of a "hake collective". In terms of the MLRA, a "global" TAC for all hakes (both species combined) is set annually by the Minister of Agriculture, Forestry and Fisheries. Of the global hake TAC a reserve to cover bycatch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing was set aside prior to distribution among the hake fishing sectors. Currently the Global Hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake longline, hake handline fishery and small scale fishing sectors without regard to the hake species split in the respective fishery sectors. The Minister determines the Global Hake TAC apportionment amongst sectors within this fishery. However, a sectoral allocation procedure that takes cognisance of the species taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species. In terms of such a procedure, the sectoral allocation of hake to the Inshore Trawl Fishery would be determined only by the status of the shallow-water hake resource. Sole allocation will also be determined in order to match Sole exploitation to productivity. Sole TAC apportionment will be proportional to the percentage of Hake allocation as this fishery operates as a "dual quota" fishery targeting both shallow-water hake (*Merluccius capensis*) and Agulhas Sole

Inshore trawl grounds are located between Cape Agulhas in the west and the Great Kei River in the east. Vessels operating in the inshore fishery may not exceed 35m and may not use heavy trawl gear. In addition, vessels fishing on deep-sea trawl permits may not

operate in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast. However, inshore vessels are not restricted from fishing deeper than 110m. Trawling for hake occurs throughout the traditional "inshore" area i.e. in waters shallower than the 110m isobath and on the two offshore fishing grounds. Trawling for Agulhas sole is in water depths of 50-80m, mainly between Mossel Bay and Struisbaai, in areas where the substrate consists of mud/shale. Most of the bays on the South coast are closed to trawling.

### **3. The 2005/2006 long term rights allocation process**

In the 2005/2006 long-term fishing rights allocation process, rights were allocated to a total of 16 right holders in the Hake Inshore Trawl sector with an average black ownership percentage of 37%.

### **4. Objectives**

#### **4.1. The objectives of allocating fishing rights in the hake inshore trawl fishery are to:**

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities) and broaden meaningful participation (increase participation, value-creation, and linkage);
- (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 Hake Inshore Trawl for a significant portion of their gross annual income above applicants deriving income from sources outside the Hake Inshore Trawl;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks;
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources; and
- (i) promote investments in processing and marketing infrastructure in areas outside the metropolitan areas which are economically depressed;

### **5. Granting of rights**

Fishing rights are granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA"). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights 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, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial

Total Allowable Catch (TAC), Total Applied Effort (TAE) or combination thereof. It shall be further noted that in terms of Section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency. However, when the Hake stocks are in danger, the Minister may suspend all or any of the fishing in this fishery in terms of Section 16 of MLRA.

#### 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 resource accessibility, only the following South African persons will be considered in the Hake Inshore Trawl fishery:
  - (i) a company;
  - (ii) close corporations and
  - (iii) co-operatives.

#### 5.2 Duration of right

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

#### 5.3 Total Allowable Catch allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery, the Delegated Authority will only allocate an initial maximum of 9057.186 tons which shall not be exceeded for the right duration. It shall be anticipated that individual allocations may decrease and annual approved TAC decrease. However, 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 allocation in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, Hake Inshore Trawl rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure in activate or apply for any permits, declare any catches during the first five years shall result to an automatic cancellation of the right by Minister.

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 in the Hake Inshore Trawl fishery will not be precluded from holding commercial rights in the local commercial fishing sectors. This shall mean any person can only apply for right in any fishery sector regardless of the fact that the applicant has applied for a right or holds a right in any fishery sector. However, the Delegated Authority reserves the right to grant a right to the applicant in any sector.

## 7. Evaluation criteria

Applications for Hake Inshore Trawl 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.

### 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:

#### (a) Compliance

Applicants that have been convicted of a serious offence n 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 of the MLRA, including 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 2013: General Policy, will be excluded.

#### (c) Non-utilization

Applicants that had a Hake Inshore Trawl right and did not harvest hake during the period of 2006 to 2014 shall be excluded.

### 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

The South African population percentage composition of demographic groups

(79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official 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 representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
  - (iv) Affirmative procurement;
  - (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
  - (vi) Corporate social investment.
- (b) **Fishing performance**
- (i) The fishing performance of applicants holding fishing rights in the Hake Inshore Trawl fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.
- (c) **Local economic development**
- (i) The Delegated Authority will take into consideration the landing and processing of catches outside the metropolitan areas to promote local economic development. 80% of hake inshore trawl TAC shall be landed and processed in the South Coast.
  - (ii) The Delegated Authority shall, in order to ensure that all fishing communities shares in the marine living resources, use locality of landing sites and fish processing establishment as scoring or tie-breaking criteria.
- (d) **Job creation**
- Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with:



- (i) permanent employment;
  - (ii) medical aid and pension / provident fund;
  - (iii) safe working conditions in accordance with the applicable legislative requirements; and
  - (iv) an employee share scheme as a shareholding entity of the right holder.
- (c) **Access to a suitable vessel**
- An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of hake inshore trawl. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (d) **Applicants involvements and relationship with other applicants**
- (i) **Entity and their subsidiaries involvement**
- An entity and its subsidiary may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the Hake Inshore Trawl resource. Applicants may be required to disclose their relationship to applicants in the hake inshore trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in this sector, the entity (not subsidiary) will be preferred.
- (ii) **Brother-Sister Corporations**
- If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Hake Inshore Trawl fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Hake Inshore Trawl fishery.

### 7.3. Suitable vessel

- (a) A suitable vessel in the Hake Inshore Trawl fishery is a vessel that:
  - (i) has a maximum South African Maritime Safety (SAMSA) registered length not exceeding 35 metres;
  - (ii) has a maximum horsepower of 900; and
  - (iii) is geared to target hake and sole.
  - (iv) Upon allocation of fishing right such a vessel shall be fitted with a functioning Vessel Monitoring System (VMS);

**8. Provisional lists, consultation and representations**

- 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 a final decision.
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### 11.2 Observer programme

- (a) The right holder of a commercial Hake Inshore Trawl 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding under section 28 of the MLRA.

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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.

### 11.4 Offences

Successful applicants that fail to utilise their Hake Inshore Trawl right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

## 12. 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

## 13. Glossary of Terms

- 13.1 "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.2 "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.3 "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.4 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.

- 13.5 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.6 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.7 "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.
- 13.8 "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 for individual species or groups of species.
- 13.9 "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.10 "legal entity" means a close corporation, South African company or trust, other than a processing factory.
- 13.11 "ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.

No. 497

12 June 2015

**POLICY ON THE ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL  
FISHING RIGHTS IN THE HORSE MACKEREL FISHERY: 2015**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND  
MANAGEMENT OF FISHING RIGHTS: 2013  
(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

**(In 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 Horse Mackerel fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Department”) (“the Minister”) and shall be referred to as the “**2015: Horse Mackerel Policy**”. This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”) and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out the objectives, criteria and considerations that will guide the allocation and management of fishing rights in the horse mackerel fishery (“the fishery”). This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

## 2. Profile of the Fishery

### 2.1. Distribution and status of the resource

The South African Mackerel (*Trachurus trachurus capensis*) is found along the entire South African coast, but the largest concentrations of adult fish are found on the Agulhas Bank, near the continental shelf break. Juveniles occur inshore, mainly on the west coast. It is important to note that the Cape Horse Mackerel is highly nomadic, local availability is therefore variable and dependent on environmental conditions.

The South African Horse Mackerel stock is comparatively small by world standards. In 2011, the stock assessment of Horse Mackerel was updated using recent catch data and abundance estimates. The results showed that in the past five years Horse Mackerel abundance increased by 20% although long-term mathematical model projections showed no changes in future catches. However, since then Horse Mackerel catch rates has substantially decreased on the South Coast.

### 2.2. Resource users

Horse Mackerel is mainly harvested by targeted mid-water trawling; however, its semi-pelagic nature brings it into contact with three different fishing sectors, namely, the near-surface pelagic purse-seine fleet that catches juveniles as by-catch; the mid-water trawl fleet that targets adult Horse Mackerel on the South Coast and the hake trawl fleet that catches adults as by-catch on both the West and South Coasts. The majority of Horse Mackerel is exported without landing or processing to West Africa.

### 2.3. Management

The Horse Mackerel fishery has been managed using Precautionary Maximum Catch Limit (“PMCL”) since 2002. A portion of the Horse Mackerel allocation is annually set aside as a

by-catch reserve in the hake trawl sectors and some is reserved as by-catch in the small pelagic purse seine fishery.

An adaptive control rule in the form of Total Allowable Catch ("TAC") was introduced in 2013. Effectively, the rule determines that if recent abundance indices are high compared to averages over a fixed past period, the TAC is increased; conversely, if recent abundance indices are correspondingly low, the TAC is decreased.

Furthermore, a fishing Capacity Management regime has also been implemented to regulate overcapacity in the Horse Mackerel sector since 2012.

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

In the 2005/2006 long-term fishing rights allocation process Horse Mackerel fishing rights were allocated to a total of 18 Right Holders, with an average black shareholding of 48%.

### **4. Objectives**

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

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
- (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 Horse Mackerel for a significant portion of their gross annual income above applicants deriving income from sources outside the Horse Mackerel fishery;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks;
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources.
- (h) promote investments in processing and marketing infrastructure in areas outside the metropolitan areas which are economically depressed;
- (i) promote landing, processing and marketing of Horse Mackerel in South Africa;
- (j) reward those applicants that undertake to land and process Horse Mackerel in areas outside the metropolitan areas which are economically depressed;
- (k) promote competition in the Horse Mackerel sector and bring more players in the sector and guard against monopolies in the economy; and
- (l) promote local consumption of Horse Mackerel and establishment of local distribution networks to create jobs and promote fish consumption in the country.



## 5. Granting of rights

Fishing rights are granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA"). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

### 5.1. Form of right holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights in the Horse Mackerel fishery.
- (b) Having regard to the nature of operators only the following will be considered in the Horse Mackerel fishery:
  - (i) a company;
  - (ii) close corporations; and
  - (iii) cooperatives
- (c) Preference will be given to applicants who rely on the harvesting of Horse Mackerel for a significant portion of their gross annual income above applicants deriving income from sources outside the fishery.
- (d) Right-holders will be required to specify which of the following options they intend exercising:
  - (i) The Department will recognise two types of Horse Mackerel directed effort. Firstly, there will be those right holders that target Horse Mackerel using a dedicated mid-water trawler. These right-holders may only use a mid-water trawl net and all hake harvested will be regarded as a by-catch. The hake by-catch limitations will apply in this regard.
  - (ii) Secondly, those right-holders that hold a hake deep-sea trawl right in addition to a Horse Mackerel right may carry both deep water and mid-water trawl nets. All hake caught in this instance will be deducted from the right-holder's hake allocation and all Horse Mackerel from the right holder's Horse Mackerel allocation. The right-holder will have to specify the trawl net (midwater or demersal) used for taking each catch.

### 5.2. Duration of right

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

### 5.3. Total Allowable Catch allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated authority will only allocate an initial maximum of 54 427 tons which shall not be exceeded for the right duration. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decreases. However in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister.

### 5.4. Transfer of rights allocated in terms of this policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However Horse Mackerel rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition failure to activate or apply for any permits, declare any catches during the five years shall result in an automatic cancellation of the right by Minister.

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 in the Horse Mackerel fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for right in any fishery sector regardless of the fact that the applicant has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right to the applicant in any sector.

## 7. Evaluation criteria

Applications for Horse Mackerel rights 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.

### 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:

#### (a) Compliance

Applicants that have been convicted of a serious offence 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 of the MLRA, including payment of admission of guilty 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 2013: General Policy, will be excluded.

(c) **Non-utilization**

Applicants that had a Horse Mackerel right and did not harvest any Horse Mackerel during the period of 2006 to 2014 shall be excluded.

## 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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on –

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official 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 representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at various levels of employment below senior official and management level;
- (iv) Affirmative procurement; and
- (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vi) Corporate social investment.

(b) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the Horse Mackerel fishery will be examined to determine if they have effectively utilized their fishing rights.

- (ii) Effective utilization shall mean activation of the catch permit, landing of fish and subsequent submission of catch data for at least five years during the period 2007-2014.
- (c) **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 shall 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.
- (d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded, and in particular compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing employees with:-

  - (i) permanent employment;
  - (ii) medical aid and pension or provident fund;
  - (iii) safe working conditions; and
  - (iv) an employee share scheme as a shareholding entity of the right holder
- (e) **Access to a suitable vessel**

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of Horse Mackerel. Access may be in the form of ownership, part-ownership, vessel access agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (f) **Applicants involvements and relationship with other applicants**
  - (i) **Entity and their subsidiaries involvement**

An umbrella company and its subsidiary may not be granted more than one right Hake Inshore Trawl resource so as to avoid fronts and monopolies and to broaden access to the Hake Inshore Trawl resource. Applicants will be required to disclose their relationship to applicants in the hake inshore trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for rights in this sector, the umbrella company (not subsidiary) will be preferred.
  - (ii) **Brother-Sister corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Horse Mackerel fishery, the Department will consider allocating fishing rights to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The Department may also consider dividing one fishing right (TAC and/or

TAE) to the brother-sister companies if they all qualify for a fishing right in the Horse Mackerel fishery.

(g) **Value-adding, local marketing and enterprise development**

The Delegated Authority may have regard to enterprise development and the ability of applicants to add or who intend to add value to Horse Mackerel by processing fish products for local and international markets. The Delegated Authority will reward the landing and selling of Horse Mackerel in South Africa.

(h) **By-catch**

The impact of trawling for Horse Mackerel on dolphins, pelagic sharks and sunfish is a concern. Applicants able to demonstrate steps taken to reduce the impact of mid-water trawling on these species will be positively scored.

Prospective applicants will be required to demonstrate what by-catch mitigation and reduction measures they have been implementing or - if new applicants - would invest in to ensure adherence to existing by-catch limitations.

(i) **Compliance**

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be penalised.

### 7.3. **Suitable vessels**

A suitable vessel in the Horse Mackerel fishery is a vessel that:

- (i) either a mid-water directed vessel geared for mid-water trawling or a suitable hake deep-sea trawl vessel that is capable of carrying a mid-water trawl net;
- (ii) is South African Maritime Safety (SAMSA) certified; and
- (iii) Upon allocation of fishing right such a vessel shall be fitted with a functioning Vessel Monitoring System (VMS).

### 8. **Provisional lists, consultation and representations**

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

### 9. **Announcement of decisions**

The Delegated Authority shall after making a final decision 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 referred to as decision sheet outlining all applicant scores in the Horse Mackerel sector.

#### **10. Payment of application and grant of right fees**

10.1. The fees for this fishery 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 before submitting and only payment proof 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**

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.

##### **11.2. Observer Programme**

- (a) The right holder of a commercial Horse Mackerel 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding under section 28 of the MLRA.

##### **11.3 Performance measuring**

Successful applicants will be subjected to performance measuring 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.

#### 11.4. **Offences**

Successful applicants that fail to utilize their Horse Mackerel fishing right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

#### 12. **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 revised as and when it may be necessary.

#### 13 **Glossary of terms**

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa".
- 13.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10. "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.

- 13.11. "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.12. "legal entity" means a close corporation, South African company or trust, other than a processing factory.
- 13.13. "ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.



**No. 498**

**12 June 2015**

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE  
KWAZULU NATAL SARDINE BEACH SEINE FISHERY: 2015**

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

**(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

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## 1. Introduction

This policy on the allocation and management of fishing rights in the KwaZulu Natal (KZN) Sardine Beach Seine Fishery is issued by the Minister of Agriculture, Forestry and Fisheries ("the Minister") and shall be referred to as the "**2015: KZN Sardine Beach Seine Fishery Policy**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 ("the 2013: General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out the objectives criteria and considerations that will guide the allocation and management of fishing rights in the KwaZulu Natal Sardine Beach Seine Fishery ("the fishery"). This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

## 2. Profile of the fishery

### 2.1. Brief description of the fishery

The KwaZulu Natal Sardine Beach Seine Fishery is an opportunistic fishery operation where migrating sardines stranded in the shallow waters off KwaZulu Natal beaches are targeted. These sardines are a spill off from the spawning grounds in the Agulhas bank and the south east coast around Algoa bay). These fish are known to have followed inshore cooler counter currents in massive numbers and migrate east and northwards along the former Transkei coast into KwaZulu Natal, a phenomenon called the **Natal Sardine Run** ("the run"). Some recorded sardine schools measured 15km long and 40 metres deep and three kilometres wide. The sardine run has been popular to predators (which include sharks, dolphins and seals), tourist, fishers and local public.

As the fish migrate northwards the continental narrows along the KwaZulu Natal Coast and the fish get stranded onto beaches, most commonly in the area from Port Shepstone to areas around Durban. The sardine run is a very seasonal and periodical occurrence as it happens only during winter months and does not always happen annually. Moreover the duration and magnitude of the run vary in each instance it happens. Some runs are longer with more fish and some shorter with less fish although there are instances where longer runs occur with very few and scattered fish.

The KZN Sardine Beach Seine Fishery solely depends on the **Sardine Run**. The dynamics associated with the run makes operations very challenging as there are no guarantees that there will be a run in a given year and also it is not known how much fish will be in the run. Further when the run occur there is competition with predators, general public and tourist making it rather impractical to make viable catches. However there are times when much viable catches and sales

are made with the average landings estimated at 500 tons with a value of approximately R2million.

## 2.2. Current resource users

Whilst the Total Applied Effort is set at 35 operators, there are currently 25 operators operating in the KwaZulu Natal seashore. The operators are not restricted to any area or beach and thus allowing them to follow the sardines and net when and where ever the opportunity comes. Due to seasonality of the fishery the operators are participating in other industries other than the fishing industry to counter for the times that the fishery is dormant. With limited opportunities these operators alternatively partake in the Traditional Linefish industry either crew or commercial right holders.

## 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 24 operators, 67% of which was white and 90% were males.

## 4. Objectives

- 4.1. The objectives of allocating fishing rights in the KwaZulu Natal Sardine Beach Seine Fishery are to:
- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
  - (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 KZN Sardine Beach Seine for a significant portion of their gross annual income above applicants deriving income from sources outside the KZN Sardine Beach Seine 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 Marine Living Resources Act, 1998 (Act No. 18 of 1998 ("the MLRA")). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the

MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

**5.1. Form of right holder**

- (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 resource accessibility, only the following South African persons will be considered in the KwaZulu Natal Sardine Beach Seine Fishery:
  - (i) South African natural persons (individual) who permanently residing adjacent to KwaZulu Natal Province sea-shore only.

**5.2. Duration of right**

Having regard to the right allocation process and need to encourage investment in the KwaZulu Natal Sardine Beach Seine Fishery, Fishing rights will be granted in the KwaZulu Natal Sardine Beach Seine fishery for the maximum period of 15 years.

**5.3 Total Applied Effort allocation**

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate rights to a maximum of 35 applicants.

**5.4 Transfer of rights allocated in terms of this policy**

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However KwaZulu Natal Sardine Beach Seine rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two (2) years shall result in an automatic cancellation of the right by Minister.

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 in the KwaZulu Natal Sardine Beach Seine fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for right in any fishery sector regardless of the fact that the applicant has applied for a right or

holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right to the applicant in any sector.

## **7. Evaluation criteria**

Applications for KZN Sardine Beach Seine rights 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.

### **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:

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

Applicants that have been convicted of a serious offence 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 payment of admission of guilty 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 2013: General Policy, will be excluded.

#### **(c) Non-utilisation**

Applicants that had a KwaZulu Natal Sardine Beach Seine right and did not harvest any Sardines during period of 2006 to 2014 shall be excluded.

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

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.

### **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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on –

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official and management levels;
- (ii) Compliance with the Employment Equity Act 55 of 1998 and the representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
- (iii) Affirmative procurement;
- (iv) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (v) Corporate social investment.

(b) **Fishing performance**

The fishing performance of applicants holding fishing rights in the KZN Sardine Beach Seine fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.

(c) **Local economic development**

- (i) The Delegated Authority will take into consideration the landing and processing of catches outside the metropolitan areas to promote local economic development.
- (ii) The Delegated Authority shall, in order to ensure that all fishing communities share in the marine living resources, use locality of landing sites and fish processing establishments as scoring or tie-breaking criteria.

(d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with –

- (i) permanent employment;
- (ii) medical aid and pension / provident fund; and
- (iii) 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 of KZN Sardine Beach Seine. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

(f) **Applicants involvements and relationship with other applicants**

(i) **Same household involvement**

A household (comprising a couple, their parents and their children) may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the KZN Sardine Beach Seine resource. Applicants may be required to disclose their relationship to applicants in KZN Sardine Beach Seine as well as in other commercial fisheries. If more than one member of a household applies for a right, the head of family will be preferred.

(ii) **Entity and their subsidiaries involvement**

An entity and its subsidiary may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the Abalone resource. Applicants may be required to disclose their relationship to applicants in the abalone fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for fishing rights in this sector, the entity (not subsidiary) will be preferred.

(iii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Abalone fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Abalone fishery.

(iv) **Individuals with shareholding in legal entity**

If a South African natural person applied and qualified for a fishing right in the Abalone sector as an individual and as a shareholder in a legal entity the department will only consider allocating Abalone fishing right to that South African natural person as a shareholder of the legal entity so as to broaden participation in the Abalone fishery.



### 7.3. Suitable vessels/nets

- (a) A suitable vessel in the KZN Sardine Beach Seine fishery is a vessel that:
- (i) is either a skiboat or traditional rowboat (only row boats are applicable for beach seine/trek netting operations); and
  - (ii) is certified by South African Maritime Safety Authority SAMSA as being safe for Netfishing.
  - (iii) Upon allocation of fishing right such vessel shall be fitted with a functional VMS except for vessels under 5meters in length.

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

## 9. Announcement of decisions

The Delegated Authority shall after making a final decision 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 referred to as decision sheet outlining all applicant scores in the KZN Sardine Beach Seine sector.

## 10. Payment of application and grant of right fees

- 10.1 The fees for this fishery 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 before submitting 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**

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.

**11.2. Observer Programme**

- (a) The right holder of a commercial KZN Sardine Beach Seine 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding under section 28 of the MLRA.

**11.3. Performance measuring**

Successful applicants will be subjected to performance measuring 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.

**11.4. Offences**

Successful applicants that fail to utilise their abalone fishing right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

**12. 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 revised as and when it may be necessary.

**13. Glossary of terms**

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 13.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10. "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.

**No. 499**

**12 June 2015**

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

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND  
MANAGEMENT OF FISHING RIGHTS: 2013  
(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

**(In 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 Netfish fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Department”) (“the Minister”) and shall be referred to as the “**2015: Netfish Fishery Policy**”. This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”) and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out the objectives criteria and considerations that will guide the allocation and management of fishing rights in the Netfish fishery (“the fishery”). This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

## 2. Profile of the fishery

### 2.1. Brief description of the fishery

The Netfish fishery comprises of two distinct fisheries differing in the methods employed during fishing operations. These fisheries are the gillnet fishery and the beach seine (treknet) fishery operating relatively in the open sea and the beach respectively. Although there are some other species targeted, the main target species is *Liza richardsonii* commonly known as harders (mulletts). Other target specie include St Joseph sharks in the west coast and some linefish species in the Falsebay area. The gillnet fishery is restricted from Port Nolloth to Yzerfontein whereas the beach-seine fishery is stretched up to Gordon's Bay. As part of the management strategy he 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.

The gillnet fishery commonly employs motor driven vessels operating in open sea with some operators fishing in bays and lagoons (in this case Langebaan Lagoon) notwithstanding fishing in the Bergriver estuary by a limited number of traditional fishermen (see figure 1). Gillnet fishing in estuaries is detrimental to the resource as it results in increased juvenile mortality as a result of fishing. The beach seine fishery is restricted to non-motorised vessels (row boats) (see fig 2) which are mainly used to deploy the nets when fish has been spotted. Blind tows are discouraged in the beach seine fishery as they usually result in non-target fish catches.



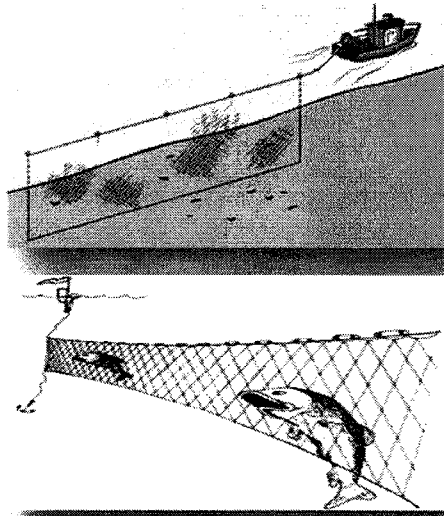


Figure 1: Illustration of a gillnet operation

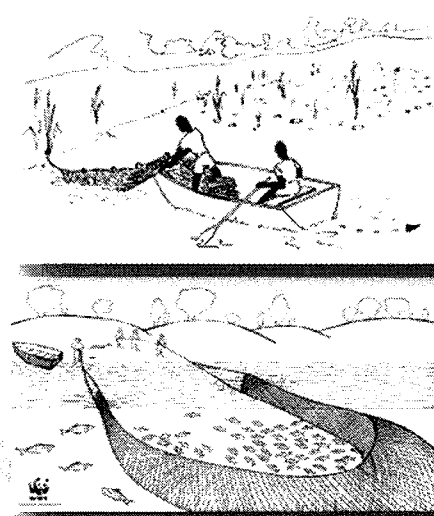


Figure 2 : Illustration of a beach seine operation

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 fishery operation from Port Nolloth to the west of Cape Hangklip. The area Draaihoek to Cape Colombine, including Paternoster has the most operators in the sector with a total of 80 gillnets and four (4) beach seine. The global commercial TAE is summarised below and detailed TAE distribution appears in Table 2.

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
<b>Total</b>			<b>145</b>

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, Fishoek	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
	<b>TOTAL</b>	<b>63</b>	<b>162</b>	<b>225</b>	<b>190</b>	<b>5</b>

### 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, 50% of which was white and 97% were males.

### 4. Objectives

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

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

- (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 for a significant portion of their gross annual income above applicants deriving income from sources outside the Netfish 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 Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("MLRA"). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

### 5.1. Form of right holder

- (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 resource accessibility, only the following South African persons will be considered in the Netfish Fishery:
  - (i) South African natural persons (individual).

### 5.2. Duration of right

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

### 5.3 Total Applied Effort allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate rights to a maximum of 120 applicants.

### 5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However Netfish rights in terms of this Policy shall not be transferred within the first two

(2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two (2) years shall result in an automatic cancellation of the right by Minister.

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 in the Netfish fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for right in any fishery sector regardless the applicant has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right to an applicant in any sector.

**7. Evaluation criteria**

Applications for Netfish rights 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.

**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:

**(a) Compliance**

Applicants that have been convicted of a serious offence 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 of the MLRA, including payment of admission of guilty 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 2013: General Policy, will be excluded.

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Applicants that had a Netfish right and did not harvest any Netfish during the period of 2006 to 2014 shall be excluded.

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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.

## 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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

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The fishing performance of applicants holding 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 catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.

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Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with:

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An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of traditional linefish. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
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A household which shall include individuals who are married or that is co-habiting, their parents and their children may not be granted more than one right so as to avoid fronting and monopolies and to broaden access to the netfish resource. Applicants may be required to disclose their relationship to applicants in Beach Seine/treknet and gillnet fishery as well as in other commercial fisheries. If more than one member of a household applies for a right, the main head of the family will be preferred.

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Successful applicants will be subjected to performance measuring 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.

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Successful applicants that fail to utilise their Netfish fishing right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA

#### 12. Permit conditions

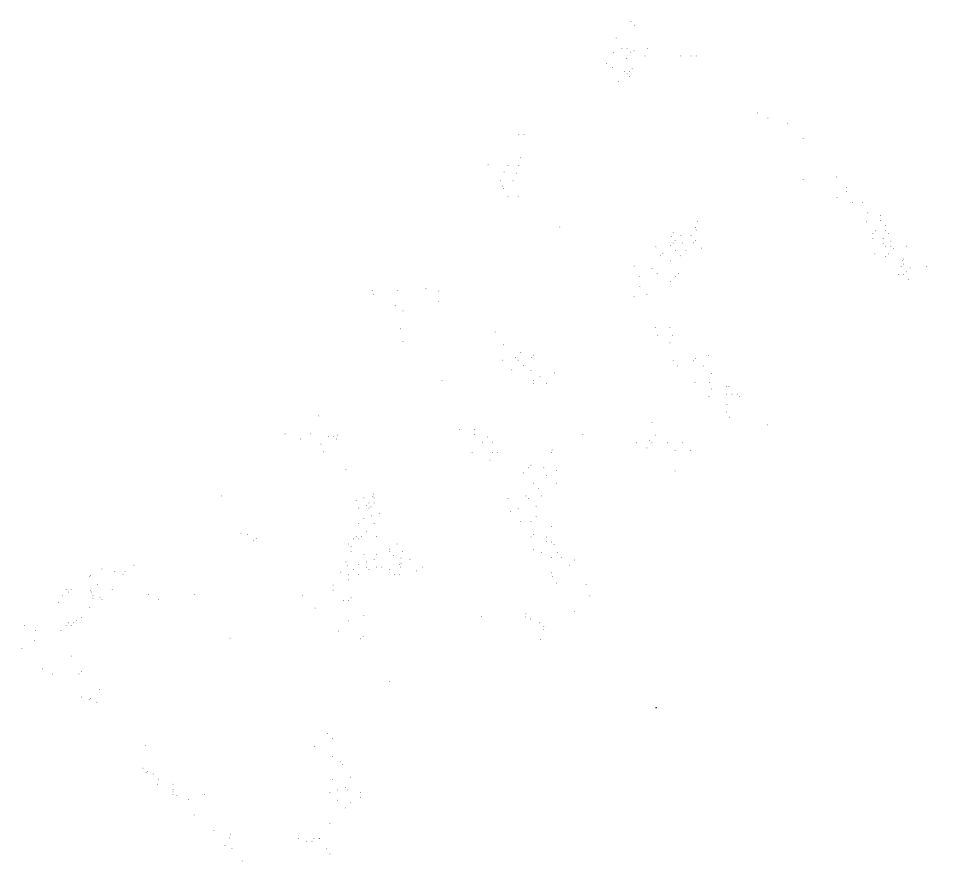
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- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 13.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10. "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.



**No. 500**

**12 June 2015**

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

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND  
MANAGEMENT OF FISHING RIGHTS: 2013  
(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa no lwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa no lwesiZulu**

**(In 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 Patagonian Toothfish sector is issued by the Minister of Agriculture, Forestry and Fisheries (“the Department”) (“the Minister”) and shall be referred to as the “**2015: Patagonian Toothfish Policy**”. This policy must be read together in conjunction with the 2013: General Policy on the Allocation and Management of Fishing Rights (“2013: General Policy”) and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out objectives, criteria and, considerations that will guide the application, allocation and management of fishing Rights in the Patagonian Toothfish fishery sector (“the fishery”). This policy will also guide the Delegated Authority in taking decisions on applications in this fishery.

## 2. Profile of the fishery

### 2.1 Description of the fishery

Patagonian Toothfish, also known as Chilean sea bass, is a deep-water, demersal species which is found on sub-Antarctic continental shelves down to 3 000 metres. Several countries can lay claim to Patagonian Toothfish, which occur within the exclusive economic zones (“EEZ’s”) of Chile, Argentina and other countries with sovereignty over the southern Ocean islands. South Africa’s EEZ around the Prince Edward Islands (“PEI”) is a prime fishing ground for Patagonian Toothfish. Much of the range of Patagonian Toothfish, however, falls within the high seas.

The Prince Edward Islands are situated within the Convention area of the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”). CCAMLR is the regional fishery management organisation tasked with, among other roles, monitoring catches of Patagonian Toothfish in the Southern Ocean.

Patagonian Toothfish live for longer than 50 years and reach a length of over two metres. Maturity is attained between six and nine years of age, equivalent to a length range of 70 to 95 centimetres. Spawning occurs on continental shelves in winter, but eggs only hatch in spring.

Global catches of Patagonian Toothfish have declined sharply since the origins of the fishery in the late 1980s. A combination of its high value, late maturity and occurrence in

the high seas has caused the near-collapse of the fishery, which has seen unprecedented levels of illegal, unregulated and unreported ("IUU") fishing. South Africa's waters around the Prince Edward Islands were extensively targeted and CCAMLR estimates that as much as 32 000 tons of toothfish, with a value of US\$100 million was illegally fished from the PEI-EEZ between 1996 and 1998.

There has been no indication of IUU fishing in the PEI-EEZ since 2004, however IUU vessels are active on the nearby fishing grounds of Ob and Lena Banks and an IUU vessel was sighted close to the PEI-EEZ in 2015. Therefore there is a concern that, as the resource in the PEI-EEZ recovers, IUU fishing could once again become an issue. The fishery remains commercially sustainable, according to the scientific advice provided by the relevant Department's Scientific Working Group. The Minister has decided to re-allocate long-term commercial fishing Rights in this fishery.

The harvesting of Patagonian Toothfish within the South African EEZ around the Prince Edward Islands (PEI-EEZ) started in 1996 as an experimental fishery until the end of 2005.

## 2.2 Resource users

Currently, there are five South African Right Holders operating in the PEI-EEZ .The Department has set annual Total Allowable Catch (TAC) limits for this fishery over the period 2001 to 2015.

Fishing Year	Legal			Illegal	TOTAL	TAC
	Longline	Pot	Trotline			
1997	2754.9			21350.0	24104.9	
1998	1224.6			1808.0	3032.6	
1999	945.1			1014.0	1959.1	
2000	1577.8			1210.0	2787.8	
2001	267.8			352.0	619.8	2250
2002	237.3			306.0	543.3	600
2003	251.1			256.0	507.1	500
2004	182.5	34.3		156.0	372.8	500
2005	142.6	141.9			284.5	450
2006	169.1				169.1	450
2007	245.0				245.0	450
2008	88.8		56.4		145.2	450
2009	41.8		30.7		72.5	450
2010	49.2		174.6		223.8	450
2011	1.0		323.9		324.9	400
2012	70.7		205.5		276.2	320
2013	50.0		215.3		265.3	320
2014*	0.0		400.0		400.0	450

\* The total catch for 2014 is the *expected* catch for the year as the fishing season is still ongoing, and is assumed to be entirely caught with trotlines

The Patagonian Toothfish fishery is a high-risk and extremely capital-intensive fishery that requires Right Holders to make substantial investments in vessels, gear, research and marketing. Start-up costs would require a capital investment of several million rand and operational costs are substantial.

### 3. The 2005/2006 long term rights allocation process

Five experimental permits were issued for the fishing of Patagonian Toothfish in 1996. In order to improve the economic gains from the fishery, the experimental permit-holders consolidated costs and effort by reducing the number of vessels in the fishery from three to two. Four of the operators concluded a joint venture agreement to operate one vessel and effectively pooled their resources. Long-term commercial fishing Rights were allocated to five Right Holders for the first time in 2006. The Patagonian Toothfish fishing Rights will be expiring on the 31<sup>st</sup> of October 2015.

#### 4. Objectives

- 4.1 The objectives of allocating fishing rights in the Patagonian Toothfish fishery are to:
- (a) promote transformation through allocation of fishing Rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
  - (b) ensure sustainable livelihoods through the promotion of fair permanent 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 Patagonian Toothfish for a significant portion of their gross annual income above applicants deriving income from sources outside the Patagonian Toothfish 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 FISHING RIGHTS

Fishing Rights are granted in terms of section 18 of the Marine Living Resources Act (Act No. 18 of 1998) ("the MLRA"). Unless otherwise determined by the Minister, only South African persons shall acquire or hold Rights in terms of section 18 of MLRA. All Rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after the Rights shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch limits (TAC), Total Applied Effort (TAE), or combinations thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

##### 5.1 Form of Right Holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing Rights.
- (b) With regard to the nature of operations and resource accessibility in the Patagonian Toothfish fishery, only the following South African persons will be considered for a right in the fishery:
  - (i) close corporation; and
  - (ii) company;



## 5.2 Duration of right

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

## 5.3 Total Allowable Catch allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery, the Delegated Authority will only allocate an initial maximum of 575 tons. It shall be anticipated that individual allocations may decrease should the annual approved TAC decrease. However in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases to more than the initial maximum, the mass of the increase shall be available for allocation by the Minister.

## 5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, Patagonian Toothfish rights in terms of this Policy shall not be transferred within the two years except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two years shall result in an automatic cancellation of the right by Minister.

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 in the Patagonian Toothfish fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for a Right in any fishery sector regardless of the fact the applicant has applied for a right or holds 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 Patagonian Toothfish fishing rights 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.

#### 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:

(a) **Compliance**

Applicants, including their members, directors or controlling shareholders that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders that have had any fishing Right cancelled or revoked in terms of the MLRA, will also be excluded. Minor infringements of the MLRA, including 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 2013: General Policy, will be excluded.

(c) **Non-utilisation**

(i) Applicants that held a Patagonian Toothfish right within the period 2006 to 2014 and did not harvest any Patagonian Toothfish during the entire duration of that right shall be excluded.

#### 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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing Rights and Rights Holder’s apportionment of the TAC and/or Total Applied Effort (“TAE”) is being considered.

Applicants will be assessed and scored on –

(i) The percentage of ownership and representation of black, youth and women at top salary, board of directors, members and senior official 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 representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
  - (iv) Affirmative procurement;
  - (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons, youth, women, including people with disabilities, and participation in learnership programmes; and
  - (vi) Corporate social investment.
- (b) **Fishing performance**
- (i) The fishing performance of applicants holding fishing rights in the Patagonian Toothfish fishery will be examined to determine if they have effectively utilised their fishing Rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.
- (c) **Local economic development**
- (i) The Delegated Authority will take into consideration the landing and processing of catches in fishing harbours outside the metropolitan areas to promote local economic development.
  - (ii) The Delegated Authority shall, 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.
- (d) **Job creation**
- Job creation and increases in jobs as a result of the allocation of long-term fishing Rights will be rewarded, and in particular compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing employees with: –
- (i) permanent employment;
  - (ii) medical aid, pension / provident fund;

- (iii) safe working conditions in accordance with the applicable legislative requirements; and
  - (iv) an employee share scheme as a shareholding entity of the Right Holder.
- (e) **Access to a suitable vessel**
- Applicants will be required to demonstrate a right of access to a vessel suitable for the harvesting of Patagonian Toothfish. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (f) **Applicant's involvement and relationship with other applicants**
- (i) **Entity and their subsidiaries involvement**
- If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Large Pelagic fishery, the Department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Large Pelagic fishery.
- (ii) **Brother-Sister Corporations**
- If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Abalone fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Abalone fishery.

### 7.3 **Suitable vessels in the Patagonian Toothfish fishery**

- (a) A suitable vessel in the Patagonian Toothfish fishery is a vessel that has a minimum South African Maritime Safety Authority ("SAMSA") registered length of 30 metres, must be over 400GT and is equipped for Patagonian Toothfish fishing using the longline method.

- (b) The Department will require each vessel owner to invest in an acceptable Vessel Monitoring System (“VMS”) after the allocation of fishing rights and also that the vessel shall be fitted with such a VMS at all times for the entire duration of the fishing right. The VMS shall be functional at all times during fishing operations.

## **8. Provisional lists, consultations and representations**

- 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 a 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 a final decision 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 referred to as decision sheet outlining all applicant scores in the Patagonian Toothfish sector.

## **10. Payment of application and grant of right fees**

- 10.1 The fees for this fishery 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 before submitting the application form and only proof of payment shall be brought to the receipting center.
- 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**

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.

#### 11.2 **Observer Programme**

- (a) The right holder of a commercial Patagonian Toothfish 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding 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 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.

#### 11.4 **Offences**

- (a) Successful applicants that fail to utilise their Patagonian Toothfish fishing Right for one season without any reasonable explanation or that contravenes the provisions of the MLRA, will be subjected to proceedings of section 28 of the MLRA.

#### 12. **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.

**13. Glossary of terms**

- 13.1 "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting Right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2 "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 13.3 "Rights" means fishing or harvesting Rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.4 "Right Holder" means a person that was granted a fishing Right during the period 2005 – 2006 in a specific fishery, or became a Right Holder in a fishery by way of an approved transfer of a fishing Right.
- 13.5 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.6 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.7 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.8 "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.9 "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.
- 13.10 "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.

- 13.11 "Ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.



No. 501

12 June 2015

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING  
RIGHTS IN THE WEST COAST ROCK LOBSTER (OFFSHORE) FISHERY: 2015**

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

(available at [www.daff.gov.za](http://www.daff.gov.za))

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie document is ook in Afrikaans, isiXhosa en isiZulu beskikbaar  
Lencwadi iyafumaneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
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## 1. Introduction

This policy on the allocation and management of fishing rights in the West Coast rock lobster offshore fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Department”)(“the Minister”) and shall be referred to as the “**2015: West Coast Rock Lobster Offshore Policy**”. This Policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“2013: General Policy”) and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out objectives, criteria and, considerations that will guide the allocation and management of fishing rights in the West Coast rock lobster offshore fishery sector (“the 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

West Coast rock lobsters (*Jasus lalandii*) are slow-growing, long-lived animals. Female size at maturity varies and ranges from 57 millimetres carapace length (CL) to 66 millimetres CL. Male lobsters attain a larger size and grow faster than females. As a result of the size limit of 75 mm CL that is imposed on commercial fishers, male lobsters make up 90 to 99 percent of the catch. West Coast rock lobster occurs inside the 200m depth contour from just from Orange River in Northern Cape to East London. Commercial exploitation occurs from about 25°S in Namibia to Gansbaai on the Cape south coast. However, recreational fishing extends further eastwards to Mossel Bay.

### 2.2. History of the fishery

Commercial fishing began in the 1880's. The commercial fishery expanded rapidly in the early part of the 20<sup>th</sup> century. Although catch records prior to 1940 are sparse, catches appear to have peaked in the period 1950 to 1965, when between 13 000 and 16 000 tons were landed annually.

Prior to 1946, the commercial fishery was unregulated. In that year, a tail-mass production quota was imposed to control exports. This formed the basis of the “output-controlled” management philosophy that is still employed in the management of the west coast rock lobster resource today.

From 1946 onwards, annual quotas were granted, based primarily on the performance of the fishery in the preceding season. Until the mid-1960's, catches were directly controlled by these quotas. In the 1967/68 fishing season, catch rates began to decline and quotas

could not be filled. Decreases in the Total Allowable Catch ("TAC") to between 4 000 and 6 000 tons restored some balance in the period 1970/71 to 1989/90.

The tail-mass production quota was replaced by a whole lobster (landed mass) quota, and management by means of a TAC was introduced in the early 1980's. Area or zonal allocations were introduced at the same time. Other management measures that were enforced early on were size limits and a closed season. Catches of berried or soft-shelled lobsters were banned. The 1990/91 season again saw the catch rates drop and, in the ensuing years, the commercial TAC was gradually reduced, reaching 1 500 tons in the 1995/96 season. Since then, there has been a slow recovery, with the commercial TAC being set at 3 527 tons for the 2004/2005 season.

Prior to the introduction of lobster traps in the 1960's, the commercial fishery depended almost exclusively on hand-hauled, hoopnets, which are light and easy to deploy from small boats in shallow waters. Hoopnets are seldom used at depths exceeding 30 metres. Hoopnet dinghies may either operate independently from the shore by means of an outboard motor or oars, or be transported to the fishing grounds by means of a motorized mother vessel (deckboat).

The WCRL (offshore) fishery is permitted to catch rock lobster in traps. In the medium-term rights allocation process, right-holders in this fishery were granted allocations of more than two tons each.

Right-holders in the WCRL (offshore) fishery use larger, more sophisticated vessels than right-holders in the WCRL (nearshore) fishery, which is restricted to using hoopnets in shallow water. The WCRL (offshore) fishery also employs larger numbers of crew.

The WCRL (nearshore) fishery replaced the subsistence fishery in 2001 in keeping with the recommendations of an independent review of subsistence fishing in South Africa. The review recommended that high-value subsistence fisheries such as west coast rock lobster, traditional linefish and abalone should be commercialised. The commercialisation of these fisheries has permitted fishers to sell and market their products.

The Department allocates 20 percent of the commercial west coast rock lobster TAC to the nearshore fishery and 80 percent to the offshore fishery. The reason for this split is that approximately 20 percent of the resource is located in the inshore region, while 80 percent is located offshore in deeper waters.

The offshore fishery supports some 5 500 employees, 95 percent of whom are black. Of these, more than 2 500 are sea-going personnel, with the remainder employed in

processing and marketing operations on land. West Coast rock lobster fishing takes place between November and July and the average annual income over this period is R26 500. The annual value of West Coast rock lobster catches is approximately R200 million. The approximate value of vessels in this fishery is R130 million.

The west coast rock lobster fishery has been particularly well managed and, since 1997, it has seen steady increases in the total allowable catch. In 2003, the Minister declared a total allowable catch for the commercial harvesting of rock lobster in the area east of Cape Hangklip. The Department continues to manage this fishery in terms of precautionary management principles.

### 2.3. **Biological state of the resource**

The current harvestable biomass is estimated at around eight percent of the pre-exploitation levels and spawning biomass at approximately 21 percent. This decline is largely a result of two effects: large unsustainable catches taken particularly during the first half of the 20<sup>th</sup> century and a substantial reduction in the somatic growth rate during the 1990's.

### 2.4. **Current resource users**

The West Coast rock lobster fishery is made up of three distinct sectors: a commercial fishery; small scale fishery (formerly interim relief) and a recreational fishery. Recreational users may only fish using hoopnets from a boat or the shore, or practice breath-hold diving or poling from the shore. Recreational fishers may not sell their catch.

## 3. **The 2005/2006 Long-Term Rights Allocation Process**

In 2005/2006, the Department allocated 237 full commercial West Coast rock lobster fishing rights for the offshore sector. An additional 825 nearshore commercial fishing rights were allocated. Of the rights allocated in the full commercial fishery, 66 percent were granted to blacks and black-owned entities. The representation of blacks at senior management level in the full commercial fishery is, however, only 34 percent.

Of the rights allocated in the limited commercial fishery, 91.5 percent were allocated to blacks; predominantly black-owned micro enterprises. This means that approximately 70 percent of the west coast rock lobster fishery is controlled by blacks.

In 1992, 39 predominantly white right-holders controlled the west coast rock lobster TAC. In contrast, by the end of 2003, the Department had allocated 1 019 commercial rock lobster fishing rights. Of these, more than 785 were allocated to former subsistence fishers. To accommodate the larger number of right-holders, the average allocation in 2002 was 6.8 tons, compared with an average allocation of 56 tons in 1992. However, the difference

between largest and smallest right-holders also decreased substantially over the past 10 years. In 1992, there was a 200-fold difference between the highest (199 tons) and the lowest (one ton) allocations; in 2002, there was a 66-fold difference between the highest (95.6 tons) and the lowest (1.5 tons) allocations.

#### **4. Objectives**

4.1. The objectives of allocating fishing rights in the West Coast rock lobster offshore fishery are to:

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
- (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 West Coast rock lobster offshore for a significant portion of their gross annual income above applicants deriving income from sources outside the West Coast rock lobster offshore 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 fishing rights**

Fishing rights are granted in terms of section 18 of the Marine Living Resource Act (Act No.18 of 1998 ("MLRA")). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

##### **5.1. Form of right holder**

- (a) Section 18 of the MLRA provides that only South Africans persons may hold a fishing right
- (b) Having regard to the nature of operations and resource accessibility. Only the following South African persons will be considered in the west coast rock lobster offshore fishery.
  - (i) company (legal entity);

- (ii) close corporations (legal entity); and
- (iii) co-operations (legal entity)

#### 5.2. Duration of right

Having regard to the right allocation process and need to encourage investment the West Coast rock lobster Offshore Fishery, Fishing rights will be granted in the West Coast rock lobster offshore fishery for the maximum period of 15 years.

#### 5.3 Total Allowable Catch

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate an initial maximum of 1120.25 tons which shall not be exceeded for the right duration. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decreases. However in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister.

#### 5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of rights in whole or in part. However West Coast rock lobster offshore rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two (2) years shall result to an automatic cancellation of the right by Minister.

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 in the West Coast rock lobster offshore fishery (including their controlling shareholders and members of their executive management team) will not be precluded from holding commercial fishing rights in other fishing sectors. This shall mean any person can apply for a right in any fishery sector regardless of the fact that the applicant has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to the applicant grant a right in any sector.

#### 7. Evaluation criteria

Applications for West Coast rock lobster offshore 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 effort will be allocated to each successful applicant.

#### 7.1. Exclusionary criteria

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

(a) **Compliance**

Applicants, including their members, directors or controlling shareholders that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including payment of admission of guilty 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 2013: General Policy, will be excluded.

(c) **Non-utilisation**

(i) Applicants that had West Coast rock lobster (offshore) right and did not harvest any West Coast rock lobster nearshore during the period duration of 2006 to 2015 shall be excluded.

#### 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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder’s apportionment of the Total Allowable Catch (TAC) is being considered.

Applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and historically disadvantaged individuals (HDIs) representation at top salary, board of directors, members and senior official 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 demographic representativity of blacks and women at the various levels of employment below senior official and management level;
  - (iv) Affirmative procurement;
  - (v) Compliance with legislation on skills development and the amounts spent on the training of black persons and youth and participation in learnership programmes; and
  - (vi) Corporate social investment.
- (b) **Fishing performance**
- The fishing performance of applicants holding fishing rights in the West Coast rock lobster offshore fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit and subsequent catch data submission for at least five years during the period 2007-2014.
- (c) **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.
- (d) **Job creation**
- Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded, and in particular, in respect of applicants that have provided their employees with:
- (i) permanent employment;
  - (ii) medical aid and pension / provident fund;
  - (iii) safe working conditions in accordance with the applicable legislative requirements; and
  - (iv) an employee share scheme as a shareholding entity of the right holder.
- (e) **Access to a suitable vessel**
- Applicants will be required to demonstrate a right of access to a vessel suitable for the harvesting of West Coast rock lobster offshore. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided.

If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

(f) **Applicants involvements and relationship with other applicants**

(i) **Entity and their subsidiaries involvement**

An umbrella company and its subsidiary may not be granted more than one right West Coast rock lobster offshore resource so as to avoid fronts and monopolies and to broaden access to the West Coast rock lobster offshore resource. Applicants will be required to disclose their relationship to applicants in the hake inshore trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for rights in this sector, the umbrella company (not subsidiary) will be preferred.

(ii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the West Coast rock lobster offshore fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in West Coast rock lobster fishery.

7.3. **Suitable vessels**

- (a) A suitable vessel in the West Coast rock lobster offshore fishery is a large fishing vessel that:
- (i) has a South African Maritime Safety Authority (SAMSA) registered length of approximately 30 metres and a minimum length of approximately 8 metres;
  - (ii) has a functioning Vessel Monitoring System (VMS); and
  - (iii) is geared for either trap or hoop net fishing; and does not operate in another fishery
- (b) In order to verify if the vessel meets the suitable vessel criteria, applicants would need to submit photos of the vessel as well as copies of the SAMSA registration certificate.

8. **Provisional lists, consultations and representations**

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

**9. Announcement of decisions**

The Delegated Authority shall after making a final decision 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 referred to as decision sheet outlining all applicant scores in the West Coast rock lobster sector.

**10. Payment of application and grant of right fees**

10.1 The application fee for this fishery 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 application fee shall be payable on or before the submission of the application form. All successful applicants will 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.

**11. Management measures**

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

**11.1. Ecosystem Approach to Fisheries Management**

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.

**11.2. Observer programme**

- (a) The right holder of a commercial West Coast rock lobster offshore 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding under section 28 of the MLRA.

### 11.3. **Vessels and fishing effort**

As many right-holders do not own the vessels they use, the Department anticipates that many right-holders will seek to introduce further vessels after the allocation of long-term fishing rights. Current effort levels are optimal and the Department will therefore carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort far in excess of their allocations.

### 11.4. **Performance measuring**

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

### 11.5. **Offences**

Successful applicants that fail to utilise their West Coast rock lobster offshore fishing right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

## 12. **Permit conditions**

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

## 13. **Glossary of terms**

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to and ending on the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998)
- 13.3. "Race, gender and disability" means to race, gender and disability as defined in the Employment Equity Act 55 of 1998.

- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.6. "SMME" means Small, Medium and Micro-sized Enterprises.
- 13.7. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.8. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.9. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.10. "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.
- 13.11. "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 for individual species or groups of species.

**No. 502**

**12 June 2015**

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

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION  
AND MANAGEMENT OF FISHING RIGHTS: 2013  
(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

**(In 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 Seaweed fishery is issued by the Minister of Agriculture, Forestry and Fisheries (the Department) ("the Minister") and shall be referred to as the "**2015: Seaweed Fishery Policy**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 ("the 2013: General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out objectives, criteria and considerations that will guide the allocation and management of fishing rights in the Seaweed fishery ("the 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

Seaweed harvesting in South Africa is primarily directed at two species of large brown seaweeds (kelp), *Ecklonia maxima* and *Laminaria pallida*. These seaweeds are abundant in the cool, temperate waters between Cape Agulhas and Namibia. The South African coastline is, however, also home to a number of other species of seaweed. These include *Gelidium* and *Gracilaria*. Beach-cast kelp of both species, *Ecklonia maxima* and *Laminaria pallida*, have been collected since at least 1953 in quantities that fluctuate with market demand, but reached a maximum of about 5 000 tons (dry weight) in 1977. Since then, an average of 1 312 dry weight tons have been collected with low yields between 1993 and 1995 reflecting strong international competition from Chinese alginate producers. Beach-cast kelp is sun-dried, milled and exported mainly for the extraction of alginate. No commercial extraction occurs in South Africa due to strong international competition. Laboratory tests on South African kelps indicate alginate yields of between 22 percent and 40 percent. Recently, powdered kelp has been exported to Japan for use in formulated fish-feed. Fresh kelp has been harvested since 1979 in relatively small quantities for the production of a liquid plant-growth stimulant (Kelpak). The product contains cytokinins that have been shown to improve the growth and quality of various food and horticultural crops.

The recent growth of the abalone farming industry has created further demand for freshly harvested kelp. Commercially viable quantities of *Gracilaria gracilis* occur in Saldanha Bay and *Gracilariopsis* occurs in St Helena Bay. Commercially viable quantities of *Gelidium* have been harvested in the Eastern Cape since at least 1957. Four species (*G. pristoides*, *G. abbottiorum*, *G. pteridifolium* and possibly some *G. capense*) are capable of being harvested from the intertidal and shallow subtidal zones of concession areas 1, 20, 21, 22 and 23. An attempt was made to extract agar in the Eastern Cape from 1978-1982 but this proved uneconomical. The present levels and



methods of exploitation have a negligible ecological effect. Exploitation levels are essentially controlled by limiting effort to only one commercial operator per concession area and yields are monitored. Furthermore, this species is difficult to fully remove by picking.

The seaweed sector is managed in terms of both a total applied effort ("TAE") and a total allowable catch ("TAC"). However, the principal management tool is effort control and the number of right-holders in each seaweed harvesting area is restricted. Essentially, each concession area is limited to one right-holder. In addition, in certain areas limitations are placed on the amounts that may be harvested. Seaweed is harvested on a per area basis. The Department has divided the South African coastline (between Port Nolloth and Port St Johns) into 23 harvesting areas. Very few right-holders harvest seaweed and add value to it. Currently, many right-holders harvest seaweed for feed for abalone farms. In terms of value adding, seaweed is used in specialised "*health-food*" products, fertilizers, as part of aromatherapy products and for cosmetic products.

The seaweed sector nevertheless employs over 1 700 people (313 on a permanent basis and 1 450 on a seasonal basis). Average annual salaries are R38 500 in this sector. Of these jobs, 92 percent are held by historically disadvantaged persons. The majority of workers are women. The start-up costs for a new entrant may range from approximately R250 000 to R10 million. The operations are labour intensive and wage costs for the various right-holders range from R50 000 per annum to R1 783 000 per annum. Certain right-holders also invest in research and development and these investments range from R60 000 to R600 000 per annum.

## 2.2 Current resource users

In the previous rights allocation process rights were allocated to 14 commercial entities. These 14 entities harvest the seaweed in various ways depending on what part of the seaweed is required by the right holder. Right holders harvest the seaweed fronds only and or the whole seaweed. Some of these right holders collect the seaweed that has been washed by the sea to the sand.

## 3. The 2005/2006 long term rights allocation process

During the 2005/2006 Long-Term Fishing Rights Allocation Process, 14 commercial seaweed harvesting rights were allocated to 14 entities were granted fishing rights. In 1997, the commercial seaweed sector was dominated by white-owned and managed entities. Today, six out of 14 right-holders are black-owned and managed. Accordingly, 42.8 percent of right-holders are black. Of the 14 right-holders, seven (or 50 percent) are small- and medium-sized enterprises. Of the 23 commercial areas, seaweed in

areas 2, 3, 20 and 22 are currently not exploited at all. A map of the concession areas is attached as part of **Appendix A**.

#### 4. Objectives

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

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
- (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 Seaweed for a significant portion of their gross annual income above applicants deriving income from sources outside the Seaweed 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 fishing rights

Fishing rights are granted in terms of section 18 of the Marine Living Resources Act (Act No. 18 of 1998) ("MLRA"). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

##### 5.1 Form of Right Holder

- (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 the following South African persons will be considered in the seaweed fishery:
  - (i) South African natural persons (individual);
  - (ii) a company; and
  - (iii) a close corporation.

## 5.2 Duration of Right

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

## 5.3 Total Applied Effort and/or Total Allowable Catch allocation

### (a) TAE allocation

Considering the history, current resource users, the sustainable operations and the viability of the Seaweed fishery the Delegated Authority will only allocate rights to a maximum of 14 applicants.

### (b) TAC allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate the initial amount of TAC. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decreases. However in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister

## 5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However Seaweed rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the two (2) years shall result in an automatic cancellation of the right by Minister.

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 in the Seaweed fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for right in any fishery sector regardless of the fact that he or she or it has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right to an applicant in any sector.

## 7. Evaluation criteria

Applications for Seaweed rights 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.

### 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:

#### (a) Compliance

Applicants, including their members, directors or controlling shareholders that have been convicted of a serious offence in terms of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders that have had any fishing right cancelled or revoked in terms of the MLRA, will also be excluded. Minor infringements of the MLRA, including 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 2013: General Policy will be excluded.

#### (c) Non-utilisation

Applicants that had Seaweed right and did not harvest any Seaweed during the period of 2007 to 2014 shall be excluded.

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

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.

### 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

The south african population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation

of fishing rights and Rights Holder's apportionment of the TAC and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official and management levels;
- (ii) Whether employees (other than top salary earners) benefit from an employee share scheme in case of an entity;
- (iii) Compliance with the Employment Equity Act 55 of 1998, demographic representation of designated groups and HDIs at the various levels of employment below senior official and management level;
- (iv) Affirmative procurement;
- (v) Compliance with legislation on skills development and the amounts spent on the training of Black person, youth, women, including people with disabilities, and participation in learnership programmes; and
- (vi) Corporate social investment.

(b) **Fishing performance**

The fishing performance of applicants holding fishing rights in the seaweed sector will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit and subsequent catch data submission for at least five years during the period 2007-2014.

(c) **Local economic development**

- (i) The Delegated Authority will take into consideration the landing and/or processing of catches outside the metropolitan areas to promote local economic development.
- (ii) The Delegated Authority shall, in order to ensure that all fishing communities share in the marine living resources, use locality of landing sites and fishing processing as scoring or tie-breaking criteria.

(d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded, and in particular, Compliance with Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing employees with:

- (i) permanent employment;
- (ii) medical aid and pension / provident fund;
- (iii) safe working conditions; and
- (iv) an employee share scheme as a shareholding entity of the right holder.

(e) **Access to suitable vessel**

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of seaweed. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

(f) **Applicants involvement and relationship with other applicants**

(i) **Same household involvement**

A household which shall include individuals who are married or that are co-habiting and their children may not be granted more than one right so as to avoid fronting and monopolies and to broaden access to the Seaweed resource. Applicants may be required to disclose their relationship to applicants in Seaweed fishery as well as in other commercial fisheries. If more than one member of a household applies for a right, the main head of the family will be preferred.

(ii) **Entity and their subsidiaries involvement**

An umbrella company and its subsidiary may not be granted more than one right Seaweed resource so as to avoid fronts and monopolies and to broaden access to the Seaweed resource. Applicants will be required to disclose their relationship to applicants in the hake inshore trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for rights in this sector, the umbrella company (not subsidiary) will be preferred.

(iii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Seaweed fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Seaweed fishery.

7.3. **Suitable vessels**

A suitable vessel in the Seaweed fishery is a vessel that

- (i) is certified by South African Maritime Safety Authority ("SAMSA") as being safety for seaweed fishing; and
- (ii) upon allocation of fishing right such vessel shall be fitted with a functional Vessel Monitoring System ("VMS").

**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 or 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 a 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 a final decision 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 referred to as decision sheet outlining all applicant scores in the Seaweed sector.

**10. Payment of application and grant of right fees**

- 10.1. The fees for this fishery 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 before submitting 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 reflect a number of the Department's principal post-right allocation management intentions for this fishery.

**11.1 Ecosystem 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.

**11.2 Observer Programme**

- (a) The right holder of a commercial Seaweed 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding 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 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.

#### 11.4 **Offences**

Successful applicants that fail to utilise their Seaweed fishing right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

#### 12. **Permit conditions**

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



**13. Glossary of Terms**

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to and ending on the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998)
- 13.3. "Race, gender and disability" means to race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10. "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 for individual species or groups of species.

## APPENDIX A

## CONCESSION AREA MAP

**Area 1 (*Gelidium* rights)**

1. Boundaries of Concession Area:  
Kei River (32° 40' 28" S, 28° 23' 00" E) to Cape Seal (34° 01' 12" S, 23° 24' 48" E).

2. Functional group/genus/species:  
*Gelidium pristoides*, *G. abbottiorum*, *G. amansii*, *G. pteridifolium*  
("G. cartilagineum/G. versicolor")

3. Harvesting/collecting method:  
By hand (picking).

4. Maximum Yield:  
Not applicable (effort-controlled).

**Area 2 (*Gelidium* rights)**

1. Boundaries of Concession Area:  
Cape Seal (34° 01' 12" S, 23° 24' 48" E) to Cape St Blaize (34° 10' 16" S, 22° 05' 30" E).

2. Functional group/genus/species:  
*Gelidium pristoides*, *G. abbottiorum*, *G. amansii*, *G. pteridifolium*  
("G. cartilagineum/G. versicolor")

3. Harvesting/collecting method:  
By hand (picking).

4. Maximum Yield:  
Not applicable (effort-controlled).

**Area 3 (*Gelidium* rights)**

1. Boundaries of Concession Area:  
Cape St Blaize (34° 10' 16" S, 22° 05' 30" E) to the eastern bank of the Breede River River  
(34° 24' 00" S, 20° 50' 00" E).

2. Functional group/genus/species:  
*Gelidium pristoides*, *G. abbottiorum*, *G. amansii*, *G. pteridifolium*  
("G. cartilagineum/G. versicolor")

3. Harvesting/collecting method:  
By hand (picking).

4. Maximum Yield:  
Not applicable (effort-control)

**Area 4: Mixed beach-cast seaweeds**

1. Boundaries of Concession Area:  
Western bank of the Breede River River (34° 24' 40" S, 20° 50' 00" E) to Cape Agulhas (34°  
49' 40" S, 20° 00' 40" E).

**2. Functional group/genus/species:**

Mixed beach-cast seaweeds (all species including kelp).

**3. Harvesting/collecting method:**

Beach-cast seaweeds: all or any parts of beach-cast plants may be collected by hand, shovel, rakes, etc.

No attached seaweeds may be picked.

**4. Maximum Yield:**

Not applicable (effort-controlled).

**Area 5 (kelp rights)****1. Boundaries of Concession Area:**

Cape Agulhas (34° 49' 40" S, 20° 00' 40" E) to the eastern bank of the Uilenkraal River (34° 36' 24" S, 19° 24' 36" E).

Harvesting exclusion zones. Note that no kelp harvesting is permitted in the following areas: From Oubaai (34° 47' 00" S, 19° 39' 30" E) to Cape Agulhas; from Sandy Point (34° 39' 20" S, 19° 27' 06" E) to the eastern bank of the Uilenkraal River.

**2. Functional group/genus/species:**

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

**3. Harvesting/collecting method:**

3.a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3.b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

**4. Maximum Yield:**

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 2625 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): a maximum of 0 tonnes per year.

**5. Additional conditions:**

Harvesters may not use, or be in possession of, underwater breathing apparatus.

**Area 5: mixed beach-cast seaweeds only (excluding kelp)****1. Boundaries of Concession Area:**

Cape Agulhas (34° 49' 40" S, 20° 00' 40" E) to the eastern bank of the Uilenkraal River (34° 36' 24" S, 19° 24' 36" E).

**2. Functional group/genus/species**

Mixed beach-cast seaweeds, all species excluding kelp.

**3. Harvesting/collecting method:**

Beach-cast seaweeds: all or any parts of beach-cast plants may be collected by hand, shovel, rakes, etc.

No attached seaweeds may be picked.

**4. Maximum Yield:**

Not applicable: effort-controlled.

**5. Additional conditions:**

Harvesters may not use, or be in possession of, underwater breathing apparatus.

**Area 6 (kelp rights)**

## 1. Boundaries of Concession Area:

Western bank of the Uilenkraal River (34° 36' 24" S, 19° 24' 36" E) to the eastern bank of the Mossel River (34° 24' 30" S, 19° 16' 24" E) on the mainland and Dyer Island and its neighbouring reefs.

Harvesting exclusion zones. Note that no kelp harvesting is permitted in the following areas:  
From Stanford's Cove (34° 34' 06" S, 19° 21' 20" E) to Voorsteklip (34° 31' 00" S, 19° 22' 20" E); from Blousloep (34° 36' 50" S, 19° 23' 18" E) to the western bank of the Uilenkraal River; within 500m of Dyer Island.

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3.a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3.b. Harvesting of live (fresh) kelp: In Area 6, only non-lethal harvesting of kelp fronds is permitted. Harvesting of fronds must be done by hand, using a knife or sickle. The secondary blades (fronds) must be cut at least 25 cm from their junction with the primary blade. No cutting of the stipe, bulb or primary blade is permitted.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 4592 tonnes fresh weight of kelp fronds may be harvested in one year, comprising 3504 tonnes from mainland kelp beds, and 1088 tonnes from Dyer Island and associated reefs.

## 5. Additional conditions:

Harvesters may not use, or be in possession of, underwater breathing apparatus.

**Area 7 (kelp rights)**

## 1. Boundaries of Concession Area:

Western bank of the Mossel River (34° 24' 30" S, 19° 16' 24" E) to the eastern bank of the Bot River estuary mouth (34° 22' 00" S, 19° 06' 00" E).

Harvesting exclusion zones.

Note that no kelp harvesting is permitted in the following areas:  
From the Hermanus New Harbour (34° 26' 00" S, 19° 13' 30" E) to the western bank of the Mossel River (34° 24' 30" S, 19° 16' 24" E); from Skulphoek (34° 26' 10" S, 19° 12' 14" E) to a point in line with the Sandbaai main road (34° 25' 40" S, 19° 11' 37" E) (i.e. within Sandbaai).

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3.a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3.b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 710 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 1421 tonnes of whole kelp may be harvested in one year.

5. Additional conditions:

Harvesters may not use, or be in possession of, underwater breathing apparatus.

**Area 8 (kelp rights)**

1. Boundaries of Concession Area:

Western bank of the bank of the Bot River estuary mouth (34° 22' 00" S, 19° 06' 00" E) to Swartklip (34° 04' 29" S, 18° 41' 12" E).

Harvesting exclusion zones.

Note that no kelp harvesting is permitted in the following areas:

In the Bettys' Bay Marine Reserve i.e. from Stony Point (34° 22' 28" S, 18° 53' 45" E) to Beacon B4 on the eastern side of Jock Se Baai (Dawidskraal) (34° 21' 24" S, 18° 56' 17" E).

2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 1 024 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 2 048 tonnes of whole kelp may be harvested in one year.

5. Additional conditions:

Harvesters may not use, or be in possession of, underwater breathing apparatus.

**Area 9 (kelp rights)**

1. Boundaries of Concession Area:

From Simonstown municipal border at Rocklands (34° 13' 00" S, 18° 28' 00" E) to Klein Koeelbaai near Bakoven (33° 57' 38" S, 18° 22' 20" E).

Permitted harvesting zone:

Kelp harvesting is permitted in the Soetwater/Kommetjie area.

2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

4. Maximum Yield from Soetwater area.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 1 030 tonnes fresh weight of kelp fronds may be harvested in one year OR

Whole kelp plants (fronds plus stipes): A maximum of 2 060 tonnes of whole kelp may be harvested in one year.

#### Area 10 (kelp rights)

##### 1. Boundaries of Concession Area:

South Head, Saldanha (33° 06' 18" S, 17° 57' 18" E) to CCC boundary south of Blouberg (33° 48' 48" S, 18° 28' 00" E).

##### Harvesting exclusion zone

Note that **no kelp harvesting** is permitted in the following areas:

South Head (33° 06' 18" S, 17° 57' 18" E) to Black Rock (33° 09' 44" S, 18° 01' 20" E), off Dassen Island, off Robben Island.

##### 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

##### 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

##### 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 94 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 188 tonnes of whole kelp may be harvested in one year.

##### 5. Additional conditions:

Harvesters may not use, or be in possession of, underwater breathing apparatus.

#### Area 11 (Kelp rights)

##### 1. Boundaries of Concession Area:

North Head (Schooner Rock), Saldanha (33° 03' 05" S, 17° 54' 36" E) to the southern bank of the Berg River (32° 46' 12" S, 18° 08' 42" E).

##### 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

##### 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

##### 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 1543 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 3085 tonnes of whole kelp may be harvested in one year.

**Area 11 (*Gracilaria* rights)**

## 1. Boundaries of Concession Area:

North Head (Schooner Rock), Saldanha (33° 03' 05" S, 17° 54' 36" E) to the southern bank of the Berg River (32° 46' 12" S, 18° 08' 42" E).

## 2. Functional group/genus/species:

Beach-cast *Gracilaria*

## 3. Harvesting/collecting method:

Beach-cast *Gracilaria* only: all or any parts of beach-cast plants may be collected by hand, rakes, etc.

No harvesting of live (fresh) material by diver is permitted.

## 4. Maximum Yield.

Not applicable.

**Area 12 (kelp rights)**

## 1. Boundaries of Concession Area:

North bank of the Berg River ( 32° 46' 06" S, 18° 08' 48" E) to the southern border of Lambert's Bay (32° 06' 00" S, 18° 18' 12" E) .

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 25 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 50 tonnes of whole kelp may be harvested in one year.

**Area 12 *Ulva* and *Porphyra* only**

## 1. Boundaries of Concession Area:

North bank of the Berg River ( 32° 46' 06" S, 18° 08' 48" E) to the southern border of Lambert's Bay (32° 06' 00" S, 18° 18' 12" E) .

## 2. Functional group/species

*Ulva* species, *Porphyra* species

## 3. Harvesting/collecting method:

Picking by hand

## 4. Maximum yield

A maximum of 1.5 tonnes fresh weight of *Ulva* spp. and 1.5 tonnes of *Porphyra* spp. may be harvested in one year.

**Area 12 *Gracilaria/Gracilariopsis***

## 1. Boundaries of Concession Area:

North bank of the Berg River (32° 46' 06" S, 18° 08' 48" E) to the southern border of Lambert's Bay (32° 06' 00" S, 18° 18' 12" E).

## 2. Functional group/species

*Gracilaria/Gracilariopsis* species – beach-cast material only

## 3. Harvesting/collecting method:

By hand, rakes, forks, mechanical means, etc.

No harvesting of attached *Gracilaria/Gracilariopsis* from the subtidal zone is permitted.

## 4. Maximum Yield.

No limit.

**Area 13 (kelp rights)**

## 1. Boundaries of Concession Area:

Groothoek Bay (31° 54' 36" S, 18° 16' 22" E) to the southern bank of the Olifant's River (31° 42' 36" S, 18° 11' 15" E).

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 57 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 113 tonnes of whole kelp may be harvested in one year.

**Area 14 (kelp rights)**

## 1. Boundaries of Concession Area:

Northern bank of the Olifant's River (31° 42' 04" S, 18° 11' 15" E) to the southern bank of the Groen River (30° 51' 00" S, 17° 34' 36" E).

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 310 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 620 tonnes of whole kelp may be harvested in one year.



**Area 15 (kelp rights)**

## 1. Boundaries of Concession Area:

Security fence at Mitchell's Bay near the mouth of the Spoeg River (30° 27' 54" S, 17° 21' 22" E) to the angling club slipway at Kleinzee (29° 42' 48" S, 17° 03' 24" E).

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 1100 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 2200 tonnes of whole kelp may be harvested in one year

**Area 16 (kelp rights)**

## 1. Boundaries of Concession Area:

Northern border of the farm Oubeep south of McDougall's Bay (29° 19' 45" S, 16° 54' 38" E) to the border of the proclaimed State Alluvial Diggings just north of Port Nolloth (29° 13' 56" S, 16° 51' 15" E).

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3. a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3. b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 310 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 620 tonnes of whole kelp may be harvested in one year.

**Area 16 *Ulva* and *Porphyra* only**

## 1. Boundaries of Concession Area:

North bank of the Berg River (32° 46' 06" S, 18° 08' 48" E) to the southern border of Lambert's Bay (32° 06' 00" S, 18° 18' 12" E) .

## 2. Functional group/species

*Ulva* species, *Porphyra* species

## 3. Harvesting/collecting method:

Picking by hand

## 4. Maximum yield

A maximum of 2 tonnes fresh weight of *Ulva* spp. and 2 tonnes of *Porphyra* spp. may be harvested in one year.

**Area 17 (*Gracilaria*)**

1. Boundaries of Concession Area:

South Head (33° 06' 18" S, 17° 57' 18" E) to the North Head (Schooner Rock) of Saldanha Bay (33° 03' 05" S, 17° 54' 36" E), including Saldanha Bay but excluding Langebaan Lagoon.

2. Functional group/genus/species:

Beach-cast *Gracilaria*

3. Harvesting/collecting method:

By hand, rakes, forks, mechanical means, etc.

No harvesting of attached *Gracilaria* from the subtidal zone is permitted.

4. Maximum Yield.

No limit.

**Area 17 beach-cast kelp rights**

1. Boundaries of Concession Area:

South Head (33° 06' 18" S, 17° 57' 18" E) to the North Head (Schooner Rock) of Saldanha Bay (33° 03' 05" S, 17° 54' 36" E), including Saldanha Bay but excluding Langebaan Lagoon.

2. Functional group/genus/species:

Beach-cast kelp only

3. Harvesting/collecting method:

By hand.

No harvesting of attached kelp is permitted

4. Maximum Yield.

No limit.

**Area 18 (kelp rights)**

1. Boundaries of Concession Area:

From the slipway at the angling club at Kleinzee (29° 42' 48" S, 17° 03' 24" E) to the northern border of the farm Oubeep, south of McDougall's Bay (29° 19' 45" S, 16° 54' 38" E).

2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

3. Harvesting/collecting method:

3.a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3.b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 1464 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 2928 tonnes of whole kelp may be harvested in one year.

**Area 19 (kelp rights)**

## 1. Boundaries of Concession Area:

From the border of the proclaimed State Alluvial Diggings just north of Port Nolloth (29° 13' 56" S, 16° 51' 15" E) to the southern bank of the Orange River (28° 38' 18" S, 16° 27' 42" E).

## 2. Functional group/genus/species:

Kelp (*Ecklonia maxima* and *Laminaria pallida*)

## 3. Harvesting/collecting method:

3.a. Beach-cast kelp: all or any parts of beach-cast plants may be collected by hand.

3.b. Harvesting of live (fresh) kelp: by hand, using a knife or sickle, using a diver or from a boat or the shore. No kelp plants with a stipe less than 50cm long may be cut or harmed.

## 4. Maximum Yield.

Beach-cast kelp: no limit.

Kelp fronds: A maximum of 383 tonnes fresh weight of kelp fronds may be harvested in one year, OR

Whole kelp plants (fronds plus stipes): A maximum of 765 tonnes of whole kelp may be harvested in one year.

**Area 20: *Gelidium* rights**

## 1. Boundaries of Concession Area:

Kei River (32° 40' 28" S, 28° 23' 00" E) to Qora River (32° 27' 00" S, 28° 40' 24" E)

## 2. Functional group/genus/species:

*Gelidium pristoides*, *G. abbotiorum*, *G. amansii*, *G. pteridifolium* (*G. cartilagineum*/*G. versicolor*)

## 3. Harvesting/collecting method:

By hand (picking) and purchase of material collected from casual pickers.

## 4. Maximum Yield:

Not applicable (effort-controlled).

**Area 21 *Gelidium* rights**

## 1. Boundaries of Concession Area:

Qora River (32° 27' 00" S, 28° 40' 24" E) to Mbashe River (32° 14' 54" S, 28° 54' 00" E).

## 2. Functional group/genus/species:

*Gelidium pristoides*, *G. abbotiorum*, *G. amansii*, *G. pteridifolium* (*G. cartilagineum*/*G. versicolor*)

## 3. Harvesting/collecting method:

By hand (picking) and purchase of material collected from casual pickers.

## 4. Maximum Yield:

Not applicable (effort-controlled).

**Area 22 *Gelidium* rights**

## 1. Boundaries of Concession Area:

Mbashe River (32° 14' 54" S, 28° 54' 00" E) to Mnenu River (31° 48' 24" S, 29° 19' 46" E).

## 2. Functional group/genus/species:

*Gelidium pristoides*, *G. abbottiorum*, *G. amansii*, *G. pteridifolium* (*G. cartilagineum*/*G. versicolor*)

3. Harvesting/collecting method:

By hand (picking) and purchase of material collected from casual pickers.

4. Maximum Yield:

Not applicable (effort-controlled).

**Area 23 *Gelidium* rights**

1. Boundaries of Concession Area:

Mnenu River (31° 48' 24" S, 29° 19' 46" E) to Mtamvuna River (31° 04' 50" S, 30° 11' 42" E).

2. Functional group/genus/species:

*Gelidium pristoides*, *G. abbottiorum*, *G. amansii*, *G. pteridifolium* (*G. cartilagineum*/*G. versicolor*)

3. Harvesting/collecting method:

By hand (picking) and purchase of material collected from casual pickers.

4. Maximum Yield:

Not applicable (effort-controlled).

No. 503

12 June 2015

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE WEST  
COAST ROCK LOBSTER COMMERCIAL (NEARSHORE) FISHERY: 2015

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

(Available at [www.daff.gov.za](http://www.daff.gov.za))

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Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu

(In 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 west coast rock lobster commercial (nearshore) fishery is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to "**2015: West Coast Rock Lobster nearshore**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2013 ("the General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

The policy sets out the objectives criteria and considerations that will guide the, allocation and management of fishing rights in the west coast rock lobster fishery ("the fishery").

## 2. Profile of the fishery

### 2.1 Description of the fishery

West coast rock lobster (*Jasus lalandii*) is slow-growing long-lived animals. Female size at maturity varies and ranges from 57 millimetres carapace length (CL) to 66 millimetres CL. Male lobsters attain a larger size and grow faster than females. As a result of the size limit of 75 mm CL that is imposed on commercial fishers, male lobsters make up 90 to 99 percent of the catch.

West coast rock lobster occur inshore (<200m depth) from Orange River in Northern Cape to East London. Commercial exploitation occurs from about 25°S in Namibia to Gansbaai. However, recreational fishing extends further eastwards to Mossel Bay.

Prior to the introduction of lobster traps in the 1960's, the commercial fishery depended almost exclusively on hand-hauled, hoopnets, which are light and easy to deploy from small boats in shallow waters. Hoopnets are seldom used at depths exceeding 30 metres. Hoopnet dinghies may either operate independently from the shore by means of an outboard motor or oars, or be transported to the fishing grounds by means of a motorised mother vessel (deckboat). The commercial sector consists of large-scale offshore operators (right allocations of more than 1.5 tons) and a more limited nearshore component (right allocations of less than 1.5 tons). In the nearshore sector, right-holders may only use hoopnets and may not move between areas.

The nearshore commercial sector (or limited commercial fishery) replaced the subsistence fishery in 2001 as a result of the findings and recommendations of an independent review of subsistence fishing in South Africa. The review recommended that high-value subsistence fisheries such as west coast rock lobster, traditional linefish and abalone should be commercialised. The commercialisation of these fisheries has permitted fishers to sell and market their products.

The Department allocates 20 percent of the west coast rock lobster TAC to the nearshore fishery and 80 percent to the offshore fishery. The reason for this split is that approximately 20 percent of the resource is located in the inshore region, while 80 percent is located offshore in deeper waters.

The offshore fishery supports some 5 500 employees, 95 percent of whom are black. Of these, more than 2 500 are sea-going personnel, with the remainder employed in processing and marketing operations on land. West coast rock lobster fishing takes place between November and July and the average annual income over this period is R26 500. The annual value of west coast rock lobster catches is approximately R200 million. The approximate value of vessels in this fishery is R130 million.

## 2.2 Current resource users

The west coast rock lobster fishery is made up of three distinct sectors: a commercial fishery, small scale fishery (formerly Interim Relief) and a recreational fishery. Recreational users may only fish using hoopnets from a boat or the shore, or practice breath-hold diving or poling from the shore. Recreational fishers may not sell their catch.

### 2.2.1 Biological State of the Resource

The current harvestable biomass is estimated at around eight percent of the -exploitation levels and spawning biomass at approximately 21 percent. This decline is largely a result of two effects: large unsustainable catches taken particularly during the first half of the 20th century and a substantial reduction in the somatic growth rate during the 1990's. (Please check 2014/2015 Scientific Recommendation, Research to provide input)

## 3. The 2005/2006 Long Term Rights Allocation Process

In 2005/2006, the Department allocated 237 full commercial west coast rock lobster fishing rights for the offshore sector. An additional 825 nearshore commercial fishing rights were allocated of the rights allocated in the full commercial fishery, 66 percent were granted to blacks and black-owned entities. The representation of blacks at senior management level in the full commercial fishery is, however, only 34 percent. Of the rights allocated in the limited commercial fishery, 91.5 percent were allocated to blacks; predominantly black-owned micro enterprises. This means that approximately 70 percent of the west coast rock lobster fishery is controlled by blacks.

In 1992, 39 predominantly white right-holders controlled the west coast rock lobster TAC. In contrast, by the end of 2003, the Department had allocated 1 019 commercial rock lobster fishing rights. Of these, more than 785 were allocated to former subsistence fishers. To accommodate the larger number of right-holders, the average allocation in 2002 was 6.8 tons, compared with an average allocation of 56 tons in 1992. However, the difference between largest and smallest right-holders also decreased substantially over the past 10 years. In





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1992, there was a 200-fold difference between the highest (199 tons) and the lowest (one ton) allocations; in 2002, there was a 66-fold difference between the highest (95.6 tons) and the lowest (1.5 tons) allocations.

#### 4. Objectives

4.1. The objectives of allocating fishing rights in the West Coast rock lobster (nearshore) fishery are to:

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improve working conditions;
- (d) to promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of west coast rock lobster for a significant portion of their gross annual income above applicants deriving income from sources outside the west coast rock lobster 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 granted in terms of section 18 of the Marine Living Resource Act 18 of 1998 (Act No. 18 of 1998) ("MLRA"). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

##### 5.1 Form of right holder

- (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 resource accessibility. Only the following South African persons will be considered in the west coast rock lobster nearshore fishery.
  - (i) South African natural persons

##### 5.2 Duration of right

Having regard to the right allocation process and need to encourage investment the West Coast rock lobster nearshore Fishery, Fishing rights will be granted in the West Coast rock lobster nearshore fishery for the maximum period of 15 years.

### 5.3 **Total Allowable Catch**

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate an initial maximum of 376.10 tons which shall not be exceeded for the right duration. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decrease. However 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 allocation in terms of this policy**

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part in terms of this Policy shall not be transferred within the first of two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two (2) years shall result to an automatic cancellation of the right by Minister.

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 in the west coast rock lobster fishery will not preclude from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for a right in any fishery sector regardless of the fact that the applicant has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to the applicant grant a right in any sector.

## 7. **Evaluation criteria**

Application for west coast rock lobster rights 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.

### 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.

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

Applicants that have been convicted of a serious offence 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 payment of admission of guilty fines, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) **Paper Quota**

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

(c) **Non-Utilisation**

(i) Applicants that had west coast rock lobster (nearshore) right and did not harvest any West Coast rock lobster nearshore during the period duration of 2006 to 2015 shall be excluded.

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

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 applications 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 personally be involved in the harvesting of the resource but who are dependent on the fishery for their livelihood.

(e) **Resident in fishing zone**

Applicants who do not live adjacent to the fishing zone where they have applied for rights will be excluded. Applicants will be required to demonstrate that they have been permanently resident adjacent to the fishing zone for at least four years. Right-holders in the WCRL (nearshore) fishery will be restricted to fishing in the designated fishing zones or areas.

## 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**

The South African population percentage composition of demographic groups (79.6%, 9% Coloured, 8.9% White and 2.5% Asian) may amongst other transformation criteria be used to prefer applications from other when allocation of fishing rights and right holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered

Applicants will be assessed and scored on:

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

- (ii) Compliance with the Employment Equity Act 55 of 1998, the demographic representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level.
  - (iii) Affirmative procurement;
  - (iv) Compliance with legislation on skills development and the amounts spent on the training of black persons and youth and participation in learnership programmes; and
  - (v) Corporate social investment.
- (b) **Fishing performance**

The fishing performance of applicants holding fishing rights in the west coast rock lobster (nearshore) fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.
- (c) **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 shall, 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.
- (d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with-

  - (i) permanent employment:
  - (ii) medical aid and pension / provident fund
  - (iii) safe working conditions in accordance with the applicable legislative requirements; and
- (e) **Access to a suitable vessel**

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of west coast rock lobster (nearshore). Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

(f) **Applicants involvement and relationship with other applicants**

(i) **Same household involvement**

A household which shall include individuals who are married or that is co-habiting, their parents and their children may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the west coast rock lobster (nearshore) resource. Applicants may be required to disclose their relationship to applicants in west coast rock lobster fishery as well as in other commercial fisheries. If more than one member of a household applies for a right, the main breadwinner of the family will be preferred.

7.3 **Suitable vessels**

- (a) A suitable vessel in the WCRL (nearshore) fishery is a vessel that:
- (i) is geared to fish for WCRL using hoop nets only
  - (ii) is certified by South African Maritime Safety Authority (SAMSA) as being safe for WCRL
  - (iii) is geared for WCRL fishing; and
  - (iv) has a functioning Vessel Monitoring System (VMS) at the time of applying for a vessel licence if the application is successful.
  - (v) On allocation of the fishing right such a vessel shall be fitted with a functional VMS Except for vessels under 5 meter length.
- (b) Right Holders in the west coast rock lobster fishery will not be precluded from jointly using one vessel, provided that when the vessel is going out to sea, only one right holder's permit will be on board the vessel.
- (c) **Access to Snoek**  
Right holders in the West coast rock lobster (nearshore) fishery will be entitled to fish for snoek, provided that the vessel nominated and used for west coast rock lobster is a bakkie. A bakkie is a non-motorised row boat, which is 6m or less in length.
- (d) Right holders in this fishery will be entitled to catch as many snoek as is considered viable in terms of line fish regulations and the Traditional Line Fishery Management Manual.

8. **Provisional lists, representations and consultations**

- 8.1 The Delegated Authority may issue provisional lists for comment on any aspects relating to an application in any fishery/sector.
- 8.2 The Delegated Authority may request comments 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 before making final decisions.

**9. Announcement of decisions**

The Delegated Authority shall after making a final decision on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such a decision. Further General Reasons for decision for decisions in 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 referred to as decision sheet outlining all applicants' scores in the west coast rock lobster fishery.

**10. Payment of application and grant of right fees**

10.1 The application fees for this fishery 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 before submission 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

10.4 All successful applicants will 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.

**11. Management measures**

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

**11.1 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 and integrated policy which recognises that fishing and associated land-based activities impacts on the broader marine environment. This part of the WCRL (nearshore) fishing policy does not attempt to provide a policy statement on EAF in the WCRL fishery.

11.2 The WCRL (nearshore) fishery will be managed using a number of controls, including minimum size limits, closed seasons, gear restrictions, area and time restrictions, marine protected areas and limitations on retention of berried females and soft-shelled lobster. These restrictions are contained in the permit conditions.

**11.3 Observer programme**

- (a) The right holder of a commercial west coast rock lobster (nearshore) 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 required by the Department.

- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activities and 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 Department may implement proceeding under section 28 of the MLRA

#### 11.4 Performance measuring

Successful applicants will be subjected to performance measuring 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.

#### 11.5 Offences

- (a) Successful applicants that fail to utilise their west coast rock lobster nearshore right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA. in section 28 proceedings instituted against the right holder.

### 12. Permit conditions

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

### 13. Glossary of terms

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 13.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.



- 
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7 "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10 "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.

**No. 504**

**12 June 2015**

**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES**

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

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

**(available at [www.daff.gov.za](http://www.daff.gov.za))**

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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

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## 1. Introduction

This policy on the allocation and management of fishing rights in the Abalone sector is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to as the "**2015: Abalone Policy**". The *Abalone Policy: 2015* must be read in conjunction with the 2013: General Policy on the Allocation and Management of Fishing Rights ("2013: General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

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

## 2. Profile of the fishery

### 2.1. Species description

The targeted commercial species of abalone in South Africa is *Haliotis midae*, which is locally called perlemoen. Abalone, *Haliotis midae*, is herbivorous gastropod that feed on seaweed and algae.

*Haliotis midae* has a flattened, ear-shaped shell, with irregular corrugation, a wide opening at the base and a row of small holes through which water escapes after aerating the gills. The shell covers the dorsal part of the body leaving some fleshy parts protruding from the side. *Haliotis midae*, has a muscular foot running along the wide open base.

Abalones are dioecious broadcast spawners in that they reproduce by releasing their gametes into the surrounding water for external fertilization to occur. Therefore, groups of adult male and female are necessary to increase chances of successful external fertilization. Like many gastropods, *Haliotis midae* have a complex life cycle involving larval stages. External fertilization is followed by development of larvae that eventually change into the adult form, which settle from the plankton into a hard substrate. The larvae may spend 2 to 14 days in the water column before settling into a hard substrate. *Haliotis midae* takes about eight years to reach sexual maturity or between six to twelve years for their shells to grow to the minimum legal size limit of 114 millimetres shell width.

### 2.2. Habitat

Abalone, *Haliotis midae*, which is long-lived species that can survive for at least 30 years, live in rocky ocean waters habitat that is interspersed with sand channels. Sand channels may be important for the movement, and concentration of drift macroalgae and red algae, upon which *Haliotis midae* are known to also feed. *Haliotis midae* is found in shallow waters, with greatest densities occurring in waters less than 10 metres deep. Abalone, *Haliotis midae*, juveniles are

known to shelter under the sea urchin spines canopy. Abalone shells provide an alternative, secondary habitat for a host of organisms such as algae and small invertebrates.

### 2.3. **Distribution of population and status of the fishery**

The South African Abalone Fishery extends from St Helena Bay to the North of Port St Johns. However, the commercial fishing grounds are located from Cape of Columbine in the west to Cape Agulhas in the east. The commercial harvesting area is divided into seven primary zones (Zones A-G) which are further subdivided into secondary zones A1, A2, A3 (excluding Dyer Island); B1, B2; C1, C2; D1, D2; E1, E2; F1 G1, G2 and G3 as depicted in Figure 1 and Figure 2 below respectively. The purpose of splitting the zones into smaller secondary zones is to assist with compliance and monitoring and to instill a sense of "ownership" amongst right holder over the secondary zone and abalone in that zone. However, the splitting of the commercial fishery into primary and secondary zones has its own complications in that the populations of abalone in zones differ and may not be enough to recommend commercial fishing. This in turn has resulted in permitting abalone right holders allocated in zones where there is zero or not enough abalone Total Allowable Catch (TAC) to zones where there is recommended TAC or more than enough to accommodate more right holders after the proportional split of the global TAC. Permitting of the right holders to harvest their portions of abalone allocations ("Quota") was never a smooth process given the promise to instill a sense of "ownership." There was some resistance by some of the right holders in areas where there is recommended abalone when the right holders in primary or secondary zones with zero TAC or zonal TAC that was not enough were permitted to harvest portions of their abalone allocations in other zones where there was enough TAC to accommodate them. This cross movement also resulted in court cases, which assisted in legally resolving the matter in that the Minister has got the right to deviate from the policy when necessary but he/she does not have the right to deviate from the law.

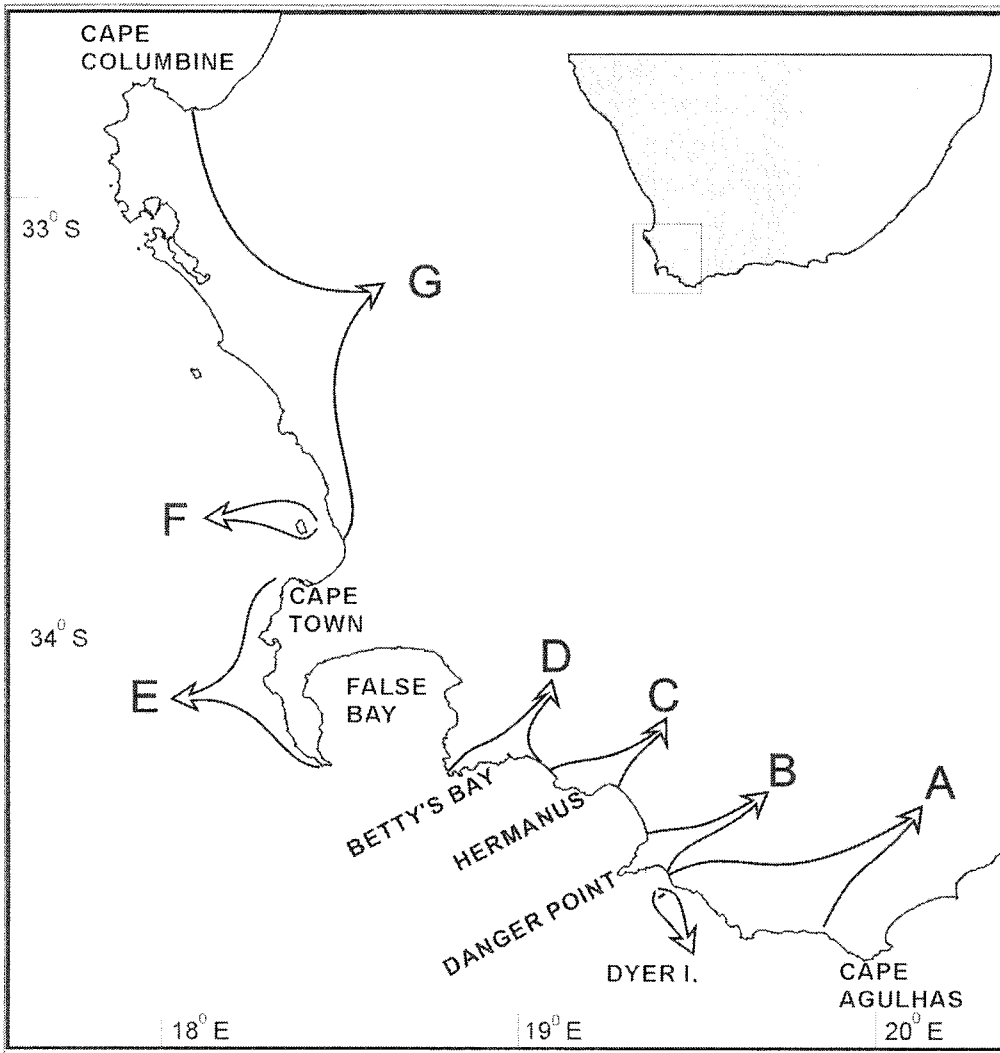


Figure 1: Map depicting the abalone primary harvesting zones.

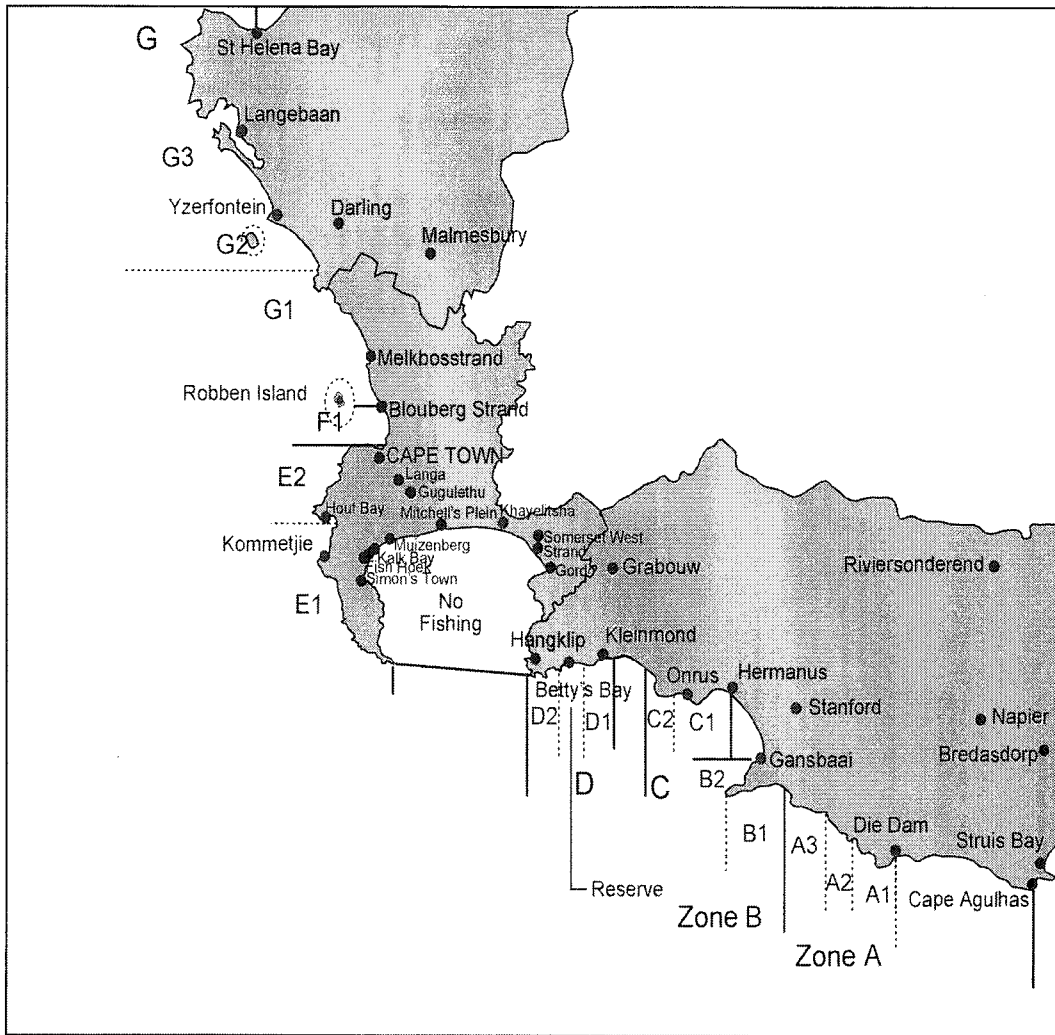


Figure 2: Map depicting the abalone secondary harvesting zones:

- Zone A Secondary Zones: A1, A2 and A3 (excluding Dyer Island)
- Zone B Secondary Zones: B1 and B2
- Zone C Secondary Zones: C1 and C2
- Zone D Secondary Zones: D1 and D2
- Betty's Bay Marine Protected Area between Secondary Zones D1 and D2
- No abalone harvesting in the False Bay Area
- Zone E Secondary Zones: E1 and E2
- Zone F: Robben Island ("F1")
- Zone G Secondary Zones: Secondary Zones G1, G2 (Dassen Island) and G3

The South African abalone commercial fishery which started in 1949 is a limited entry fishery. The abalone fishing seasons is from 1 November of year one to 31 July of the following year. In each fishing season the right holders will be given a certain TAC that they must harvest. The abalone fishery is primarily a day fishery. Vessel launching and landing of catch occurs

between 8AM and 3PM, launching can be done an hour early in summer. The designated landing or launching sites are as depicted in Table 1 below. The right or permit holders are only allowed to utilize a "hookah system" (surface air supply) for the harvesting of abalone. Only the use of an air-hose not exceeding 60 meters in length, which is attached to the vessel, is permitted when undertaking commercial fishing of abalone. Most of the abalone caught is exported to Asian countries and a small portion is sold locally. The abalone catch is exported, frozen, canned, dried and live.

**Table 1: Abalone designated landing or launching sites**

No.	Landing or launching sites
1.	Buffeljagsbaai slipway
2.	Cape Town (Oceana Power Boat Club) slipway
3.	Gansbaai harbor
4.	Hout Bay harbor
5.	Kleinbaai slipway
6.	Kleinmond slipway
7.	Kommetjie slipway
8.	Miller's Point slipway
9.	Saldanha Bay harbour (Allowed to launch at Jacobsbaai but must land at Saldanha Bay Harbour)
10.	St Helena Bay harbor
11.	Witsands slipway
12.	Yzerfontein harbor

Prior to the 1998-1999 abalone fishing season, the commercial fishery was divided into two components, namely: entitlement holders (approximately 50 licenced divers) and quota holders (about five "packers"). The entitlement holders owned the right to dive (using hookah equipment only) and deliver a fixed percentage of the annual TAC. The quota holders owned the receiving, processing, and marketing rights to a fixed percentage of the annual TAC.

Commercial fishing of the resource has been managed on the basis of annual revised area specific TACs since the 1985-1986 fishing season. The TAC in 1986-1987 to 1988-1989 fishing seasons was 640 tons and has decreased in recent years, reaching 75 tons in the 2007/08 fishing season and 96 tons in the 2013/2014 and 2014/2015 fishing seasons. The abalone fishery was closed in February 2008. Then the fishery was reopened in July 2010 upon the decision taken by Cabinet and hence there was zero abalone TAC in 2008/2009 fishing season.

The decrease in TAC has been associated with amongst others the effects of poaching and the collapse of sea urchin population in some commercial fishing zones. The collapse in the



urchin population is as due to increased predation by west coast rock lobster, *Jasus lalandii*. Juvenile abalone shelter under the sea urchin spines canopy, therefore, the collapse in urchin populations resulted in high mortality of juvenile abalone recruits.

Illegal harvest is considered to be the most significant threat to abalone in South Africa. The abalone, *Haliotis midae*, in South Africa is especially vulnerable to harvest because it has a patchy distribution, short larval period, is slow growing, relatively long-lived, has low or sporadic recruitment, and mature individuals, which tend to accumulate in shallow water, are easily accessible to harvesters. The sale of abalone yields high economic returns and hence it has attracted the interest of many including poachers. The high economic return from the abalone fishery has been found to be associated with a sharply declining South African Rand to US Dollar exchange. Poachers are non-selective with regard to the size of the abalone that they poach, and today, more than 60% of the abalone is below the minimum legal size of 114 mm shell breadth (137 mm shell length).

Low recruitment in various protected areas, further threatens the abalone population by not replenishing the reproductive adults that have died from natural causes or illegal and legal harvest. While low recruitment caused by unfavourable environmental and biotic factors usually cannot be predicted nor controlled, ensuring that there are sufficient adult abalones to reproduce each year will allow recruitment to occur when environmental conditions are favourable. Future threats may include habitat loss in localized areas to works or developments on, in and under the water in the event they are unregulated and predation by west coast rock lobster.

#### 2.4. Overview of legislation impacting on management of the fishery

The abalone fishery is managed in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA"), Regulations promulgated thereunder and the policy on allocation and management of the fishing rights in the abalone fishery as well as other related legislations or guidelines.

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

The Department of Agriculture, Forestry and Fisheries is responsible for administering of the MLRA, Regulations promulgated thereunder, the policy on allocation and management of the fishing rights in the abalone fishery as well as issuing of permits together with permit conditions to right holders or exemption holders.

### 3. The 2003/2004 long-term rights allocation process

During 2003 long term fishing rights valid for ten years were allocated to Divers and Legal Entities, and three year rights were allocated to five Abalone Processing Factories (APFs) in terms of the Marine Living Resources Act 1998 (Act No. 18 of 1998) and Regulations promulgated thereunder. The total number of right holders was 304 (264 individuals and 40 legal entities). However 1 individual right holder returned his abalone fishing right to the Department and 5 abalone fishing rights of individual right holders were revoked by the Minister in 2012. The number of abalone right holders at the expiry of the abalone fishing rights on 30 July 2015 was 298 (258 individual right holders and 40 legal entities). The split of the 298 abalone right holders per zone was as follows:

- Zone A = 28 (25 divers plus 3 legal entities)
- Zone B = 32 (27 divers plus 5 legal entities)
- Zone C = 165 (151 divers plus 14 legal entities)
- Zone D = 18 (15 divers plus 3 legal entities)
- Zone E = 46 (37 divers plus 9 legal entities)
- Zone G = 9 (3 divers plus 6 legal entities)

### 4. Objectives

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

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improved working conditions;
- (d) to promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of Abalone for a significant portion of their gross annual income above applicants deriving income from sources outside the Abalone 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 fishing Rights

Fishing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial TAC, TAE or combination thereof. It shall be further noted that in terms

of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

**5.1. Form of Right Holder**

- (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 resource accessibility, only the following South African persons will be considered in the Abalone Fishery:
- (i) South African natural persons (individuals/divers);
  - (ii) a company (legal entity); and
  - (iii) a close corporation (legal entity).

**5.2. Duration of Right**

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

**5.3. Total Allowable Catch**

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate a determined TAC at the time of fishing rights allocation process. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decreases. However in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases, the mass of the increase shall be available for allocation by the Minister.

**5.4. Transfer of rights allocated in terms of this policy**

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However Abalone rights in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two (2) years shall result in an automatic cancellation of the right by Minister.

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 in the Abalone fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for right in any fishery sector regardless of the fact that the applicant has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right to the applicant in any sector.

## 7. Evaluation Criteria

Applications for Abalone rights 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.

### 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:

(a) **Compliance**

Applicants that have been convicted of a serious offence 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 payment of admission of guilty 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 2013: General Policy, will be excluded.

(c) **Non-utilisation**

Applicants that had a Abalone right and did not harvest any Abalone during period of 2006 to 2014 shall be excluded.

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

Individual applicants will be required to demonstrate that they (or a member of the close corporation, shareholder of the company or a member of the co-operative) will be involved on a full-time basis in the abalone 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.

### 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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and

Rights Holder's apportionment of the TAC and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on –

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official and management levels;
- (ii) Whether employees (other than top salary earners) benefit from an employee share scheme in case of an entity;
- (iii) Compliance with the Employment Equity Act 55 of 1998 and the representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
- (iv) Affirmative procurement;
- (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vi) Corporate social investment.

(b) **Fishing performance**

The fishing performance of applicants holding fishing rights in the abalone fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilization shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2005 to 2013.

(c) **Local economic development**

- (i) the Delegated Authority will take into consideration the landing and processing of catches outside the metropolitan areas to promote local economic development.
- (ii) the Delegated Authority shall, in order to ensure that all fishing communities share in the marine living resources, use locality of landing sites and fishing processing as scoring or tie-breaking criteria.

(d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded, and in particular compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing employees with –

- (i) permanent employment;
- (ii) medical aid and pension or provident fund;
- (iii) safe working conditions; and
- (iv) an employee share scheme as a shareholding entity of the right holder.

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

An applicant will be required to demonstrate a right of access to a vessel suitable for

the harvesting of abalone. Access may be in the form of ownership, part-ownership, vessel access agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

(f) **Applicants involvements and relationship with other applicants**

(i) **Same household involvement**

A household (comprising a couple, their parents and their children) may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the abalone resource. Applicants will be required to disclose their relationship to applicants in abalone fishery as well as in other commercial fisheries. If more than one member of a household applies for a right, the head of family will be preferred.

(ii) **Entity and their subsidiaries involvement**

An entity and its subsidiary may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the Abalone resource. Applicants may be required to disclose their relationship to applicants in the abalone fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for fishing rights in this sector, the entity (not subsidiary) will be preferred.

(iii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Abalone fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Abalone fishery.

(iv) **Individuals with shareholding in legal entity**

If a South African natural person applied and qualified for a fishing right in the Abalone sector as an individual and as a shareholder in a legal entity the department will only consider allocating Abalone fishing right to that South African natural person as a shareholder of the legal entity so as to broaden participation in the Abalone fishery.

7.3. **Suitable vessels**

(a) A suitable vessel in the abalone fishery is a vessel that:

- (i) has a maximum overall length of 8m ("loa" as set out in the certificate of safety issued by the South African Maritime Safety Authority (SAMSA));
- (i) has a valid safety certificates issued by SAMSA;

- (ii) is geared for abalone fishing; and
  - (iii) has a functioning vessel monitoring system (VMS) at the time of applying for a vessel licence if the application is successful;
  - (iv) has a pole extending 2m above the deck of the vessel displaying the vessel and area numbers at the time of applying for a vessel licence if the application is successful.
  - (v) has a vessel and area numbers clearly marked on the bow section of the vessel. All identification numbers and letters must be 20cm in height and 2cm in thickness and must be white on black.
- (b) For the purposes of ensuring effective enforcement, a suitable vessel will exclude all:
- (i) inflatable boats;
  - (ii) semi-rigid inflatable boats; and
  - (iii) vessels equipped with outboard motors will not be permitted to utilise motors of more than 90 hp each;
- (c) In order to verify if the vessel meets the suitable vessel criteria, applicants would need to submit photos of the vessel as well as copies of the SAMSA registration certificate.

#### 7.4. Divers

- (a) Preference will be given to allocating rights to natural persons who are *divers* and who reside in the coastal community adjacent to the secondary zone in which abalone rights are to be allocated. A natural person applicant must clearly demonstrate that he or she:
- (i) is a qualified diver and is certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993 to be a certified commercial diver;
  - (ii) has an historical involvement in the harvesting of abalone (ie. that he or she has a history of diving legally for abalone) and who will use assistants experienced in abalone harvesting and who are members of the communities adjacent to the secondary zone applied for;
  - (iii) is substantially reliant on the abalone resource for 75% or more of his or her annual income;
  - (iv) has been permanently resident for the past two years in the coastal community adjacent to the secondary zone that is applied for;
  - (v) is registered as a tax payer with the South African Receiver of Revenue and all taxes have been paid; and
  - (vi) has not been convicted of an offence related to the poaching of abalone during the last two years.
- (b) Divers that are historically disadvantaged persons will be given preference. Preference will be given to divers who are not shareholders or directors of abalone

processing factories.

#### 7.5. Legal entities

- (a) The Department will allow legal entities (only South African companies and trusts and close corporations) to apply. However, a right will only be granted to a legal entity—
- (i) that demonstrates that it is capable of catching its own allocation;
  - (ii) that demonstrates a track-record of involvement in abalone catching or processing and marketing;
  - (iii) that held a medium-term commercial abalone right (2001-2003 abalone fishing seasons);
  - (iv) that has invested in *suitable vessels*, gear and other applicable equipment. Investment in a vessel does not only mean sole ownership of the vessel but includes joint ownership or part ownership;
  - (v) that demonstrates significant transformation in both ownership and management (i.e. is more than 66% owned and managed by historically disadvantaged persons);
  - (vi) that demonstrates that 75% or more of its annual turnover is derived from the harvesting and / or marketing of abalone;
  - (vii) that is a registered VAT vendor (if applicable) and is registered with the South African Revenue Services and whose taxes have been fully paid up;
  - (viii) whose registered place of business for the past two abalone fishing seasons has been in the coastal area adjacent to the zone that is applied for; and
  - (ix) that has historically complied with the Act.

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

#### 9. Announcement of decisions

the Delegated Authority shall after making a final decision 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 referred to as decision sheet outlining all applicant scores in the Abalone sector.

#### **10. Payment of application and grant of right fees**

- 10.1. The fees for this fishery 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;
  - (b) The value of the fish being allocated over the duration of the right.
- 10.2. The non-refundable application fee shall be payable before submitting the application form and only proof of payment shall be brought to the receipting centre.
- 10.3. All 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**

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.

##### **11.2. Observer Programme**

- (a) The right holder of a commercial Abalone 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 required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and 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 Department may implement proceeding under section 28 of the MLRA.

##### **11.3. Performance measuring**

Successful applicants will be subjected to performance measuring 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.

#### 11.4. **Offences**

Successful applicants that fail to utilise their abalone fishing right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

#### 11.5. **Marine Protected Areas**

The marine protected area at Betty's Bay will be closed to all abalone harvesting. No right holder shall be permitted to enter this protected area for the purposes of diving for abalone.

#### 11.6. **Dyer Island**

- (a) The closure of Dyer Island for the purposes of making it a sanctuary is part of a strategy to protect the abalone species. The Bettys Bay Marine Protected Area is no longer considered as being sufficient to provide the only protection to abalone.
- (b) It is the Department's view that the abalone species should be afforded further protection in one other "no-take" refuge. This should be a discrete identifiable, population site, and Dyer Island suits this requirement well.

#### 11.7. **Gear and equipment**

- (a) The Department will only permit the utilisation of the "hookah system" for the harvesting of abalone. The generator that will be used on board the vessel must at all times carry an official Department "abalone generator" tag, which shall be provided by the Department.
- (b) Each *diver* will only be permitted one wetsuit or drysuit on board the *suitable vessel*. No assistant may wear or carry a wet suit on board the *suitable vessel*. Each *diver* will be provided with one tag for their wetsuit,

#### 11.8. **Landing site**

- (a) Right holders shall only be entitled to land catches at the landing site located nearest to the secondary zone in which they are permitted to harvest abalone. The landing sites for abalone are listed in Table 1. These landing sites / boat launching sites (other than those within proclaimed harbours or ports) will however only be capable of use if licenced in accordance with regulation 7 of GN Regulation 1399 of 21 December 2001.

- (b) Permits allocated will stipulate the harbour or landing site at right holders must launch from and at which all catches must be landed. All catches will be weighed at the harbour or landing site. The weight at the landing site will be the recorded weight for the purposes of quantum control.

#### 11.9. Processing, transporting and selling abalone

- (a) Only fish processing establishments that hold a fish processing establishment permitted in terms of the MLRA to process abalone in wild form shall process abalone.
- (b) Harvested abalone must be transported from the landing site and delivered to a permitted fish processing establishment by a person(s) permitted to transport abalone. A certified true copy of the catch permit and the catch statistics book (landing book) for the permit holder whose abalone is being transported must be kept in the vehicle transporting the harvested abalone. Should any fish processing establishment purchase abalone that has already been shucked, such a fish processing establishment could have its right suspended, revoked or cancelled.
- (c) The landed mass of the abalone must be recorded by the right holder. The Department will only allow for a maximum of 3% loss of weight from landing site to the fish processing establishment.
- (d) Who may market and sell the abalone shall be for the right holder to determine.

#### 12. Permit Conditions

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

**13. Glossary of Terms**

- 13.1. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.2. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.3. "Right holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.4. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.5. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.6. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.7. "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.
- 13.8. "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 licenses 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.
- 13.9. "divers" means an individual who is qualified to dive commercially for abalone and who is so certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993.
- 13.10. "Essential requirements" means a requirement that must be satisfied and in the abalone fishery means that applicants must demonstrate — (i) ownership of or a right of access to a suitable vessel; (ii) that he/she owns or has a right of access to the appropriate equipment and gear in order to harvest abalone.
- 13.11. "Historically disadvantaged person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.12. "Legal entity" means a close corporation, South African company or trust, other than an abalone processing factory.

- 13.13. "Ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.

No. 505

12 June 2015



agriculture,  
forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

### BRANCH: FISHERIES MANAGEMENT

**FISH PROCESSING  
ESTABLISHMENT**

APPLICATION NUMBER  
IDENTIFICATION NUMBER  
OR  
REGISTRATION NUMBER

### Application form

Fishing Rights Allocation Process 2015/2016

### FRAP 2015/2016

#### SECTIONS OF THE APPLICATION FORM TO BE COMPLETED BY APPLICANT "MARKED WITH YES"

		INDIVIDUA L	ENTITY
SECTION 1	Applicant's details (individual)	YES	YES
SECTION 2	Form of applicant (individual)	YES	YES
SECTION 3	Applicant's details (entity)	YES	YES
SECTION 4	Form of applicant (entity)	YES	YES
SECTION 5	Compliance	YES	YES
SECTION 6	Access to a suitable vessel/premises	YES	YES
SECTION 7	Fishing Processing Performance	YES	YES
SECTION 8	Transformation	YES	YES
SECTION 9	Job Creation	YES	YES
SECTION 10	Application declaration	YES	YES

## IMPORTANT INFORMATION

1. This form must be completed and signed by a South African person as defined in the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
2. Please read these notes carefully before completing the application form. Make sure that you read every section and that the information you provide is accurate.
3. When completing the application form, applicants are advised to read carefully the General Policy on the Allocation and Management of Fishing Rights: 2013 and the 2015 Netfish Fishery Specific Policy. These policies are available at [www.daff.gov.za](http://www.daff.gov.za) and at the distribution centre where this application form was collected. These policies will guide the Minister or his/her delegate when considering the application.
4. You may request a departmental official at the application centre to assist you with the understanding of the application form. Should you have any queries regarding the completion of the application form, you may ask an official to assist you with the query. Queries may also be addressed during office hours to the RAP Operations Centre Helpline at 021 402 0000
5. You or your representative may not communicate with the Minister, the delegated authority, or officials in the Department regarding your application other than at the application centre. Moreover, no reliance may be placed on any information given or obtained in any other manner.
6. The applicant must complete all sections of the application form. If any particular section does not apply to the applicant, the section may be marked "N/A." If an applicant cannot answer a section, it may be marked "Unknown." The applicant must respond in the spaces provided in the application form. Information may not be submitted by way of annexures except where applicants are specifically required to do so.
7. This application form must be completed by hand and submitted together with the required annexures. If the application is submitted in any other form, the application will be refused. Do not use a pencil. Preferably use a pen.
8. The declaration must be signed and attested before a Commissioner of Oaths by the applicant or the applicant's authorised representative. If the declaration is not signed and attested, the application will be refused.
9. One copy of the application must be made. This copy must be punched, divided and filed in the same manner as the original. The copy does not have to be certified as a true copy of the original, but it will be assumed to be the same as the original. Any discrepancy may invalidate the application.
10. The application and the copy of the application must be hand delivered at the distribution and receiving centers.
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12. Improperly lodged applications will be refused. An application is improperly lodged if:
  - 12.1 it is received late; or
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13. Applications that are materially defective will be refused. An application is materially defective if:
  - 13.1 the declaration is not signed and attested by the applicant's authorised representative; or
  - 13.2 more than one application is received for a right in the same sector; or
  - 13.3 the applicant provides false information or documents, fails to disclose material information or attempt to influence the Minister or the delegated authority regarding this application.
14. Proof of payment of the application fee shall be submitted when returning the application form. Applications that are unpaid will be refused.

**IMPORTANT INFORMATION**

IF YOU CANNOT PROVIDE THE DOCUMENTS OR INFORMATION REQUESTED IN ANY OF THE SCHEDULES BELOW, YOU MAY SUBMIT AN EXPLANATION FOR THIS IN PLACE OF THAT ANNEXURE			Tick block if required documents are attached	
Sub Section	Documents or Information Required	Annexure	Applicant	Official
1.1 - 1.5	Certified true copy of first page (with photo) of the applicant's identity document.	1A-1		
1.6	Original valid South African Revenue Services (SARS) Tax Clearance Certificate.	1A-2		
1.11 - 1.14	Copy of one of the following: (a) a utility bill (water, electricity, telephone), (b) a rent agreement for a house or flat, (c) a bond agreement with a bank or (d) bank statements, e) an affidavit from a third party.	1C		
1.19	Provide a description of all your fishing activities, including involvement in other sectors and experience in the fishing industry. New entrants should demonstrate that they have the necessary skill, knowledge and ability to participate in the fish processing sector.	1E		
2.1	Provide records of fish processing permits issued from 2002 to 2014.	2A-1		
2.6	If "Yes," provide proof of shareholding/members interest in other entities that applied for fishing right during FRAP2015/16.	2A-2		
3.1 - 3.4	Provide company registration documents.	3A-1		
3.5	Original valid South African Revenue Services (SARS) Tax Clearance Certificate.	3A-2		
3.11 - 3.17	Please attach letter of authorisation from the applicant.	3C		
3.18 - 3.21	Copy of one of the following: (a) a utility bill (water, electricity, telephone), (b) a lease agreement, (c) a bond agreement with a bank or (d) bank statements, e) an affidavit from a third party.	3D		
4.1	Provide records of catch permits issued from 2007 to 2014.	4A-1		
4.4	Provide proof of entity ownership.	4A-2		
4.5 - 4.6	If "Yes," provide proof of shareholding/members interest in other entities that applied for a fishing right during FRAP2015/16.	4A-3		
4.7	Please provide financial statements for all sources.	4A-4		
5.1	If "Yes", provide details and any documentation regarding the offence including information regarding the conduct giving rise to the charge and the outcome of the criminal proceedings.	5A-1		
5.2	If "Yes", provide details and any documentation regarding the plea bargain arrangement entered into, including the conduct giving rise to the plea bargain, the dates and specifics of the plea bargain.	5A-2		
5.3	If "Yes," provide details and documentation regarding the conduct of the applicant, the date(s) of conviction, and the penalties imposed.	5A-3		
5.4	If "Yes", provide details and any documentation regarding the admission of guilt fine paid, including information regarding the conduct giving rise to the fine, the date of the offence and rand amount paid.	5A-4		
5.5	If "Yes", provide details regarding the detention, arrest or seizure, including information regarding the conduct giving rise to the proceedings, and whether a final confiscation or forfeiture order was granted under the Prevention of Organised Crime Act or the MLRA.	5A-5		
5.6	If "Yes", provide details and any documentation including the conduct of the individuals giving rise to the Section 28 proceedings.	5A-6		
6.1 - 6.3	Provide proof of vessel ownership detailing shareholding in the vessel.	6A-1		
6.4	Provide copy of vessel access agreement.	6A-2		
6.5	Provide South African Maritime Safety Authority (SAMSA) certificate and vessel specification documents.	6A-3		
8.1 - 8.2	If turnover greater than R10 million, provide BBBEE certificate. If turnover less than R10 million, provide confirmation of black ownership from registered auditors.	8A-1		
8.3	Attach the most recent employment equity profile provided to the Department of Labour, if available.	8A-2		
8.4	Provide proof in writing confirming board of directors from registered auditors.	8A-3		
8.5	If "Yes", provide proof.	8A-4		
8.6	If "Yes", provide net percentage of the total procurement for the last two years.	8A-5		
9.1 - 9.3	Provide applicant's employees Payroll.	9A-1		
9.5	If "Yes", provide proof.	9A-2		

**Disclaimer: A tick by the receiving official does not confirm the authenticity of the information submitted with the application.**



## Section 1

### Applicant's details (Individual)

1A. Identification Details											
1.1	Surname										
1.2	First Name(s)										
1.3	Are you a South African citizen?										Y/N
1.4	Identity Number						Age		Gender (M/F)		
1.5	Mark with "X" in respect of your race			Black		White		Coloured		Asian	
1.6	Income Tax number										

1B. Contact Details											
1.7	Telephone number										
1.8	Cellphone number										
1.9	Fax number										
1.10	Email address										

1C. Residential Address											
1.11	Street number										
1.12	Street name										
1.13	Suburb										
1.14	Town/City						Postal Code				
1.15	How many years have you lived and / or worked in the area?										

1D. Postal Address											
1.16	Street number/PO Box										
1.17	Suburb										
1.18	Town/City						Postal Code				

1E. Fishing processing experience											
1.19	How many years have you been involved in the fishing processing sector?										
1.20	What work did you do before you became involved in fish processing? (enter details below)										



APPLICATION NUMBER

**Section 2**

**Form of application (individual)**

**2A. Right allocation records**

2.1	Were you awarded a fish processing right during the Medium Term Rights Allocation and Management Process: 2001?	Y/N		
2.2	Have you applied for any other fishing rights during the Fishing Rights Allocation Process: 2015/16 (FRAP 2015/16)?	Y/N		
2.3	If "Yes," in "2.2" complete the table below for all fishing rights applied for (including this application ) in order of preference:			
	Name of Applicant for other right	Fishery	Application Number	
2.4	Is there any other family member in the same household who has applied for any fishing right?	Y/N		
2.5	If "Yes," in "2.4" complete the table below in respect of family member applicant:			
	Name of Applicant for other right applied for	Application number	Relationship to you (i.e. wife, husband, brother, cousin, mother, etc)	Fishery
2.6	Are you a member, director or shareholder of a company or close corporation that applied for a fishing right in any other fishing sector during FRAP 2015/16?	Y/N		
2.7	If "Yes," in "2.6" complete the table below for all fishing rights applied for (including this application) in order of preference			
	Name of a company or close corporation or co-operative or trust	Application number	Applicants percentage shareholding or Membership interests	Fishery



**APPLICATION NUMBER**

**Section 3**

**Application Details (entity)**

<b>3A. Identification Details</b>									
3.1	Registered Name								
3.2	Trading Name								
3.3	Type of entity (mark with an "X")	Company		Close corporation		Co-operatives		Trust	
3.4	Registration Number:								
3.6	Percentage Black ownership			%					
3.5	Income Tax number								

<b>3B. Contact Details</b>									
3.7	Telephone number								
3.8	Cellphone number								
3.9	Fax number								
3.10	Email address								

<b>3C. Details of Authorised contact person</b>									
3.11	Contact Name								
3.12	Identity number								
3.13	Work telephone number								
3.14	Cellphone number								
3.15	Fax number								
3.16	Email address								
3.17	Position held/relation to applicant								

<b>3D. Physical Address</b>									
3.18	Street number								
3.19	Street name								
3.20	Suburb								
3.21	Town/City					Postal Code			
3.22	How many years have the entity operated in the area?								



**APPLICATION NUMBER**

**Section 3**

Application details (entity)

**3E. Postal Address**

3.23	Street number/PO Box				
3.24	Suburb				
3.25	Town/City			Postal Code	

**Section 4**

Form of applicant (entity)

**4A. Right allocation records**

4.1	Were you awarded a fish processing right during the Medium Term Rights Allocation and Management Process: 2001?	Y/N	
4.2	Have you applied for any other fishing rights during the Fishing Rights Allocation Process: 2015/16 (FRAP 2015/16)?	Y/N	
4.3	If "Yes," in "4.2" complete the table below for all fishing rights applied for (including this application ) in order of preference:	Y/N	

Name of Applicant for other right	Fishery	Application Number

4.4	Is the applicant more than 50% South African owned?	Y/N	
4.5	Does the applicant hold any share(s) /membership interest in any other legal entity that is applying for a fish processing right? If "Yes", complete table below	Y/N	

Name of applicant	Fishery	Applicant's percentage shareholding or membership interests	Application number



**APPLICATION NUMBER**

**Section 4**

**Form of applicant (entity)**

4.6	Does the applicant hold any share(s)/ membership interest in any legal entity that is applying for a fishing right in any other sector? If yes complete table below			Y/N
	Name of applicant	Fishery	Applicant's percentage shareholding or membership interests	Application number
4.7	Do you derive income from any other sources? If "Yes," complete the table below			Y/N
	Source of income			Annual Income Derived

**Section 5**

**Compliance**

5.1	Have you been charged with an offence under the MLRA, or the regulations or permit conditions during the medium term right period?	Y/N
5.2	Have you entered into a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions during the medium term right period?	Y/N
5.3	Have you been convicted of a contravention of the MLRA, or the regulations, or permit conditions during the medium term right period?	Y/N
5.4	Have you paid an admission of guilt fine for a contravention of the MLRA, the regulations, or the permit conditions during the medium term right period?	Y/N
5.5	Has your fishing vessel, motor vehicle, premises or any of your assets been detained, arrested or seized under the MLRA or restrained, preserved, confiscated or forfeited under the Prevention of Organised Crime Act 121 of 1998 during the medium term right period?	Y/N
5.6	Was your right or permit suspended, revoked, cancelled, reduced or altered under section 28 of the MLRA during the medium term right period?	Y/N



**APPLICATION NUMBER**

## Section 6

## LAND BASED FISH PROCESSING PREMISES

6.1	Do you own a suitable vessel (>50% ownership)?		Y/N
6.2	Do you have a 50% ownership in a suitable vessel?		Y/N
6.3	Do you have part-ownership in a suitable vessel (<50%)?		Y/N
6.4	Do you have an access agreement in a suitable vessel (e.g. catching agreement, credit guarantees, sponsorship etc.)?		Y/N
6.5	Do you own or have a 50% ownership or part-ownership or an access agreement in a suitable vessel (e.g. catching agreement, credit guarantees, sponsorship etc.)?		Y/N
6.6	Vessel Details (complete vessel details below)		
If answered "No" in above (6.5), please stipulate the number of years operating as a fish processing establishment			
Is the proposed or existing activity vessel based or land based?			
<p><b>NOTE: Full details regarding the vessel(s) to be utilised by the Applicant in engaging in fish processing are to be submitted. Where more than one vessel is to be utilised, the required details must be provided in respect of each vessel separately. This section must be answered even if the vessel is not owned by the Applicant.</b></p>			
Name of vessel:		Area Number:	
Official Number (SAMSA)		Year of build:	
Registered Owner:		ID Number of Vessel Owner:	
Registered length as per Safety Certificate:		Registered Tonnage as per Safety Certificate if >25 tons	
Number of crew as per Safety Certificate:		Shaft Power KW:	
Hold capacity tons:		Radio Call Sign:	
6.7	Please tick category below of product currently being processed or intended for processing.	Indicate with a ✓	Please specify species and common name below of product intended for processing or being processed.
	Shellfish		
	Finfish		
	Crustaceans		
	Seaweeds		
6.8	Do you have a NCRS (SABS) establishment number for your each of your vessels and land based premises? If "Yes", please provide proof thereof.		Y/N
6.9	Do you own or have a 50% ownership or part-ownership or an access agreement to a suitable land based premises (e.g. lease agreement, credit guarantees, sponsorship etc.)?		Y/N
6.10	Do you have access to a legal supply of fish and fish products to sustain the land based fish processing establishment.		Y/N
<p><b>Note: An applicant applying for a right to operate a land based processing establishment must provide proof of ownership of site or lease of site, environmental authorization, water quality reports, coastal waters discharge permit and details of waters discharges, supply and processing agreements, where applicable.</b></p>			

**Section 7**

**Fishing Performance**

7.1	Did you utilise your fish processing right for at least five years during the period 2002 to 2014?						Y/N
7.2	Complete the table below in relation to your fish processing records						
Year	Fish processing permit applied for? (Y/N)	Right Number (e.g. FPE)	Name(s) of vessel(s)	Number of crew allocated	Individual TAC (Right holder quantum)	Did you process any fish? (Y/N)	Actual mass of fish processed in kilograms
2002							
2003							
2004							
2005							
2006							
2007							
2008							
2009							
2010							
2011							
2012							
2013							
2014							

**Section 8**

**Transformation**

<b>8A. Management and Employment Equity</b>			
8.1	Complete the table below in respect of shareholding/membership interest held by black persons		
Year	Percentage shareholding/ Membership interest held by black persons	Percentage Voting Rights Held by Black Persons	Percentage of Dividends Black Shareholders are Entitled To
2001 (as in 2001 application form)			
2015 (at date of application)			



**APPLICATION NUMBER**

## Section 8

Transformation

8.2	Complete the table below in respect of the applicant's transformation profile.											
	%Black shareholding in 2005			%Black shareholding in 2014				%Black shareholding at application date				
8.3	Complete the following table in relation to the applicant's most recent employment equity profile.											
	B=Black, C=Coloured, A=Asians, W=White and F=Females										Total	
	Occupational Levels	Gender	B No.	B%	C No.	C%	A No.	A%	W No.	W%	BC A%	F %
	Top management	Male										
		Female										
	Senior management	Male										
		Female										
	Professionally qualified and experienced specialists and mid-management	Male										
		Female										
	Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	Male										
		Female										
	Semi-skilled and discretionary decision making	Male										
		Female										
	Unskilled and defined decision making	Male										
		Female										
	TOTAL EMPLOYEES (add females and males)	Permanent										
		Temporal										
	NOTE: For the purpose of this part "historically disadvantaged persons" ("HDP") means those persons or categories of persons, who prior to the new democratic dispensation marked by the adoption and coming into force of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), were disadvantaged by unfair discrimination on the basis of their race and includes juristic persons or associations owned and controlled by such persons.											
	<b>Ownership profile of applicant:</b>											
	Category	Numbers				Asset value in Rands						
		Total	HDP's			Total	HDP's part					
	Owners											
	Directors											
	Shareholders											
	Members											
	Beneficiaries											
8.4	Complete the table below in respect of the applicant's board of director's (if a company) or members (if a close corporation) as at date of application.											
	Director / Member Name (Initial & Surname)	Years of Service	Black (Y/N)	Gender (M/F)	Age	Disability (Y/N)	Identity Number					
	1											



2																				
3																				
4																				
5																				
6																				
7																				
8																				
9																				
10																				
8.4.1	Does the Applicant conform to the Broad Based Black Economic Empowerment(BBBEE) Codes (If no, state reasons in the space provided below)																Y/N			
8.4.2	Which of the following BBBEE codes are adhered to? (Indicate percentages)																			
<b>(a) Direct Empowerment</b>																				
Equity Ownership:																				%
Management:																				%
<b>(b) Indirect Empowerment</b>																				
Employment Equity:																				%
Skills Development:																				%
Preferential Procurement:																				%
Enterprise Development:																				%
Residual Element/Corporate Social Investment:																				%

<b>8B. Corporate social investment</b>	
8.5	Does the applicant make donations of the annual taxable income which qualify for deduction in terms of section 18A of the Income Tax Act 58 of 1962? <span style="float: right;">Y/N</span>

<b>8C. Affirmative procurement</b>	
8.6	Does the applicant procure goods / services from majority black owned company (ies)? <span style="float: right;">Y/N</span>

<b>8D. Local Economic Development</b>				
8.7	Complete the table below in respect to harbours where catch has been landed and processed			
Year	Harbour name	Quantity landed (kilograms)	Factory name	Quantity processed (kilograms)
2010				



APPLICATION NUMBER

2011				
2012				
2013				
2014				
8.8	Complete the table below in respect to harbours where catch is to be landed and processed <b>Rank by order of usage from 1 – 3 (3 being the highest)</b>			
Harbour Name	Frequency of usage	Factory name	Frequency of usage	

## Section 9

### Job creation

9.1	Do you provide permanent employment? If "Yes" please indicate the percentage permanent, temporary, seasonal below (must add up to 100%).	Y/N	
9.1(a)	Percentage permanent employees	%	
9.1(b)	Percentage temporary employees	%	
9.1(c)	Percentage seasonal employees	%	
9.2	Do you contribute towards medical aid for more than 50% of your employees?	Y/N	
9.3	Do you contribute towards pension/provident fund for more than 50% of your employees?	Y/N	
9.4	Do you provide all your employees with safe working conditions at sea?	Y/N	
9.5	Do you provide an employee share scheme for your employees?	Y/N	

**Section 10**

I, the undersigned, do hereby make oath and declare that:

- (a) I have read the instructions set out in this application form.
- (b) the information submitted with and in this Application is true and correct and complete.
- (c) I accept that if any information in this Application is not true or complete, or if false information is provided, or material information is not disclosed, this may lead to the Application being refused, or to the revocation, suspension, cancellation, alteration or reduction of any right, license or permit granted on the strength of this Application, in terms of Section 28 of the Marine Living Resources Act 18 of 1998.
- (d) In order to allow for the proper verification of information submitted I hereby authorise any institution, organ of state, person or body, who possesses or acquires any information relevant to my application, to disclose or make the information available to the Minister, his/her delegate or an official of the Department of Agriculture Forestry and Fisheries or the Fishing Rights Verification Team.
- (e) I undertake to co-operate with any investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with investigators, by answering questions satisfactorily at such meetings and where necessary, by granting investigators access to premises, vessels and documents. I accept that failure to co-operate in this regard will constitute an independent ground for refusing an application.
- (f) I accept that any attempt to influence the decision of the delegated authority or appellant authority on the allocation of a right or quantum or effort, in any manner other than provided for in the relevant Sector Specific Policy or in this application form, will result in the application being refused

**Signed at :** \_\_\_\_\_

**This** \_\_\_\_\_ **day of** \_\_\_\_\_ **2015**  
**Signature of applicant:** \_\_\_\_\_

**Applicant's full name** \_\_\_\_\_

The deponent declares that he/she knows and understands the contents and implications of the above declaration.

**Commissioner of Oaths** \_\_\_\_\_

**Full name** \_\_\_\_\_

**Designation** \_\_\_\_\_

**Physical Address** \_\_\_\_\_

If the application is prepared or compiled by, or in consultation with or on the advice of any person or entity the following information must be provided:

Why was the application prepared by a person or entity other than the Applicant or why was someone consulted for advice? What fee or other remuneration was paid, or was promised for the assistance?

If assisted, please provide full details of the consultant / advisor that prepared this application

**Details of the person who completed the form.**

Contact Name										
Identity number										
Work telephone number										
Cellphone number										
Fax number										
Email address										
Position held/relation to applicant										



**APPLICATION NUMBER**

No. 506

12 June 2015



agriculture,  
forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

## BRANCH: FISHERIES MANAGEMENT

<b>SECTOR NAME</b>	<b>APPLICATION NUMBER</b>	
	<b>IDENTIFICATION NUMBER OR REGISTRATION NUMBER</b>	

### Application form

Fishing Rights Allocation Process 2015/2016

### FRAP 2015/2016

#### SECTIONS OF THE APPLICATION FORM TO BE COMPLETED BY APPLICANT "MARKED WITH YES"

		INDIVIDUAL	ENTITY
<b>SECTION 1</b>	<b>Applicant's details (individual)</b>	<b>YES</b>	<b>NO</b>
<b>SECTION 2</b>	<b>Form of applicant (individual)</b>	<b>YES</b>	<b>YES</b>
<b>SECTION 3</b>	<b>Applicant's details (entity)</b>	<b>NO</b>	<b>YES</b>
<b>SECTION 4</b>	<b>Form of applicant (entity)</b>	<b>NO</b>	<b>YES</b>
<b>SECTION 5</b>	<b>Compliance</b>	<b>YES</b>	<b>YES</b>
<b>SECTION 6</b>	<b>Access to a suitable vessel</b>	<b>YES</b>	<b>YES</b>
<b>SECTION 7</b>	<b>Fishing Performance</b>	<b>YES</b>	<b>YES</b>
<b>SECTION 8</b>	<b>Transformation</b>	<b>YES</b> (8.5 to 8.8 only)	<b>YES</b> (8.1 to 8.8)
<b>SECTION 9</b>	<b>Job Creation</b>	<b>YES</b>	<b>YES</b>
<b>SECTION 10</b>	<b>Application declaration</b>	<b>YES</b>	<b>YES</b>



agriculture,  
forestry & fisheries  
Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

APPLICATION NUMBER

## IMPORTANT INFORMATION

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1.1 - 1.5	Certified true copy of first page (with photo) of the applicant's identity document.	1A-1		
1.6	Original valid South African Revenue Services (SARS) Tax Clearance Certificate.	1A-2		
1.11 - 1.14	Copy of one of the following: (a) a utility bill (water, electricity, telephone), (b) a rent agreement for a house or flat, (c) a bond agreement with a bank or (d) bank statements, e) an affidavit from a third party.	1C		
1.19	Provide a description of all your fishing activities, including involvement in other sectors and experience in the fishing industry. New entrants should demonstrate that they have the necessary skill, knowledge and ability to participate in the line fishery.	1E		
2.1	Provide records of catch permits issued from 2007 to 2014.	2A-1		
2.6	If "Yes," provide proof of shareholding/members interest in other entities that applied for fishing right during FRAP2015/16.	2A-2		
3.1 - 3.4	Provide company registration documents.	3A-1		
3.5	Original valid South African Revenue Services (SARS) Tax Clearance Certificate.	3A-2		
3.11 - 3.17	Please attach letter of authorisation from the applicant.	3C		
3.18 - 3.21	Copy of one of the following: (a) a utility bill (water, electricity, telephone), (b) a lease agreement, (c) a bond agreement with a bank or (d) bank statements, e) an affidavit from a third party.	3D		
4.1	Provide records of catch permits issued from 2007 to 2014.	4A-1		
4.4	Provide proof of entity ownership.	4A-2		
4.5 - 4.6	If "Yes," provide proof of shareholding/members interest in other entities that applied for a fishing right during FRAP2015/16.	4A-3		
4.7	Please provide financial statements for all sources.	4A-4		
5.1	If "Yes", provide details and any documentation regarding the offence including information regarding the conduct giving rise to the charge and the outcome of the criminal proceedings.	5A-1		
5.2	If "Yes", provide details and any documentation regarding the plea bargain arrangement entered into, including the conduct giving rise to the plea bargain, the dates and specifics of the plea bargain.	5A-2		
5.3	If "Yes," provide details and documentation regarding the conduct of the applicant, the date(s) of conviction, and the penalties imposed.	5A-3		
5.4	If "Yes", provide details and any documentation regarding the admission of guilt fine paid, including information regarding the conduct giving rise to the fine, the date of the offence and rand amount paid.	5A-4		
5.5	If "Yes", provide details regarding the detention, arrest or seizure, including information regarding the conduct giving rise to the proceedings, and whether a final confiscation or forfeiture order was granted under the Prevention of Organised Crime Act or the MLRA.	5A-5		
5.6	If "Yes", provide details and any documentation including the conduct of the individuals giving rise to the Section 28 proceedings.	5A-6		
6.1 - 6.3	Provide proof of vessel ownership detailing shareholding in the vessel.	6A-1		
6.4	Provide copy of vessel access agreement.	6A-2		
6.5	Provide South African Maritime Safety Authority (SAMSA) certificate and vessel specification documents.	6A-3		
8.1 - 8.2	If turnover greater than R10 million, provide BBBEE certificate. If turnover less than R10 million, provide confirmation of black ownership from registered auditors.	8A-1		
8.3	Attach the most recent employment equity profile provided to the Department of Labour, if available.	8A-2		
8.4	Provide proof in writing confirming board of directors from registered auditors.	8A-3		
8.5	If "Yes", provide proof.	8A-4		
8.6	If "Yes", provide net percentage of the total procurement for the last two years.	8A-5		
9.1 - 9.3	Provide applicant's employees Payroll.	9A-1		
9.5	If "Yes", provide proof.	9A-2		

**Disclaimer: Tick by the receiving official does not confirm the authenticity of the information submitted with the application.**

**Section 1**

**Applicant's details (individual)**

1A. Identification Details												
1.1	Surname											
1.2	First Name(s)											
1.3	Are you a South African citizen?										Y/N	
1.4	Identity Number										Age	Gender (M/F)
1.5	Mark with "X" in respect of your race		Black		White		Coloured		Asian			
1.6	Income Tax number											

1B. Contact Details											
1.7	Telephone number										
1.8	Cellphone number										
1.9	Fax number										
1.10	Email address										

1C. Residential Address											
1.11	Street number										
1.12	Street name										
1.13	Suburb										
1.14	Town/City							Postal Code			
1.15	How many years have you lived and / or worked in the area?										

1D. Postal Address											
1.16	Street number/PO Box										
1.17	Suburb										
1.18	Town/City							Postal Code			

1E. Fishing experience											
1.19	How many years have you been involved in the fishing industry?										
1.20	What work did you do before you became involved in fishing? (enter details below)										



APPLICATION NUMBER

**Section 2**

**Form of application: (Individual)**

<b>2A. Right allocation records</b>			
2.1	Were you awarded a fishing right during Long Term Rights Allocation and Management Process: 2005 (LTRAMP: 2005/6) and Fishing Right Allocation Process: 2013 (FRAP: 2013)?		Y/N
2.2	Have you applied for any other fishing rights during the Fishing Rights Allocation Process: 2015/16 (FRAP 2015/16)?		Y/N
2.3	If "Yes," in "2.2" complete the table below for all fishing rights applied for (including this application) in order of preference:		
	Name of Applicant for other right	Fishery	Application Number
2.4	Is there any other family member in the same household who has applied for any fishing right during the Fishing Rights Allocation Process: 2015/16 (FRAP 2015/16)?		Y/N
2.5	If "Yes," in "2.4" complete the table below in respect of family member applicant:		
	Name of Applicant for other right applied for	Application number	Relationship to you (i.e. wife, husband, brother, cousin, mother etc)
			Fishery
2.6	Are you a member, director or shareholder of a company or close corporation that applied for a fishing right in any other fishing sector during FRAP 2015/16?		Y/N
2.7	If "Yes," in "2.6" complete the table below for all fishing rights applied for (including this application) in order of preference (excluding Fish Processing Establishment)		
	Name of a company or close corporation	Application number	Applicants percentage shareholding or Membership interests
			Fishery
01			
02			
03			
04			
05			
06			
07			
08			
09			
10			



**APPLICATION NUMBER**



**Section 3**

**Application details (entity)**

3A. Identification Details									
3.1	Registered Name								
3.2	Trading Name								
3.3	Type of entity (mark with an "X")	Company		Close corporation		Co-operatives			
3.4	Registration Number:								
3.6	Percentage Black ownership			%					
3.5	Income Tax number								

3B. Contact Details									
3.7	Telephone number								
3.8	Cellphone number								
3.9	Fax number								
3.10	Email address								

3C. Details of Authorised contact person									
3.11	Contact Name								
3.12	Identity number								
3.13	Work telephone number								
3.14	Cellphone number								
3.15	Fax number								
3.16	Email address								
3.17	Position held/relation to applicant								

3D. Physical Address									
3.18	Street number								
3.19	Street name								
3.20	Suburb								
3.21	Town/City					Postal Code			
3.22	How many years have the entity operated in the area?								



APPLICATION NUMBER

**Section 3**

**Application details (entity)**

**3E. Postal Address**

3.23	Street number/PO Box						
3.24	Suburb						
3.25	Town/City				Postal Code		

**Section 4**

**Form of applicant (entity)**

**4A. Right allocation records**

4.1	Were you awarded a fishing right during Long Term Rights Allocation and Management Process: 2005 (2005/6 LTRAMP) in this sector and Fishing Right Allocation Process: 2013 (FRAP: 2013)?	Y/N
4.2	Have you applied for any other fishing rights during the Fishing Rights Allocation Process: 2015/16 (FRAP 2015/16)?	Y/N
4.3	If "Yes," in "4.2" complete the table below for all fishing rights applied for (including this application) in order of preference (exclude Fish Processing Establishment: (FPE))	Y/N

Name of Applicant for other right	Fishery	Application Number
01		
02		
03		
04		
05		
06		
07		
08		
09		
10		



**APPLICATION NUMBER**

**Section 4**

**Form of application (entity)**

4.4	Is the applicant more than 50% South African owned?			Y/N
4.5	Does the applicant hold any share(s) /membership interest in any other legal entity that is applying for a fishing right in this sector? If yes complete table below			Y/N
Name of applicant		Fishery	Applicants percentage shareholding or Membership interests	Application number
4.6	Does the applicant hold any share(s)/ membership interest in any legal entity that is applying for a fishing right in any other sector? If yes complete table below.			Y/N
Name of applicant		Fishery	Applicants percentage shareholding or Membership interests	Application number
4.7	Do you derive income from any other sources? If "Yes," complete the table below.			Y/N
Source of income				Annual Income Derived



**APPLICATION NUMBER**

**Section 5**

**Compliance**

5.1	Have you been charged with an offence under the MLRA, or the regulations or permit conditions during the long-term right period?	Y/N	
5.2	Have you entered into a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions during LTRAMP period?	Y/N	
5.3	Have you been convicted of a contravention of the MLRA, or the regulations, or permit conditions during the long-term right period?	Y/N	
5.4	Have you paid an admission of guilt fine for a contravention of the MLRA, the regulations, or the permit conditions during the long-term right period?	Y/N	
5.5	Has your fishing vessel, motor vehicle, premises or any of your assets been detained, arrested or seized under the MLRA or restrained, preserved, confiscated or forfeited under the Prevention of Organised Crime Act 121 of 1998 during the long-term right period?	Y/N	
5.6	Was your right or permit suspended, revoked, cancelled, reduced or altered under section 28 of the MLRA during the long-term right period?	Y/N	

**Section 6**

**Access to a suitable vessel**

6.1	Do you own a suitable vessel (>50% ownership)?	Y/N	
6.2	Do you have a 50% ownership in a suitable vessel?	Y/N	
6.3	Do you have part-ownership in a suitable vessel (<50%)?	Y/N	
6.4	Do you have an access agreement in a suitable vessel (e.g. catching agreement, credit guarantees, sponsorship etc.)?	Y/N	
6.5	Vessel Details (complete vessel details below)		
Vessel name		Gross tonnage (gt)	Vessel length (m)
Vessel type		Vessel horse power (kw)	Number of crew



**APPLICATION NUMBER**

**Section 7**

**Fishing Performance**

7.1	Did you utilise your fishing right for at least five years during the period 2007 to 2014?						Y/N
7.2	Complete the table below in relation to your catch records in the sector applying for						
Year	Catch permit applied for? (Y/N)	Right Number (e.g. NETM)	Name(s) of vessel(s)	Number of crew allocated	Individual TAC (Right holder quantum)	Did you land any fish? (Y/N)	Actual amount landed in kilograms
2007							
2008							
2009							
2010							
2011							
2012							
2013							
2014							

**Section 8**

**Transformation**

<b>8A. Management and Employment Equity</b>			
8.1	Complete the table below in respect of shareholding/membership interest held by black persons		
Year	Percentage shareholding / Membership interest held by black persons	Percentage Voting Rights Held by Black Persons	Percentage of Dividends Black Shareholders are Entitled To
2005 (as in 2005 application form)			
2015 (at date of application)			



**APPLICATION NUMBER**

**Section 8**

**Transformation**

**8.2 Complete the table below in respect of the applicant's transformation profile.**

%Black shareholding in 2005	%Black shareholding in 2014	%Black shareholding at application date

**8.3 Complete the following table in relation to the applicant's most recent employment equity profile.**

B=Black, C=Coloured, A=Asians, W=White and F=Females

Occupational Levels	Gender	B No.	B%	C No.	C%	A No.	A%	W No.	W%	Total	
										BCA %	F%
Top management	Male										
	Female										
Senior management	Male										
	Female										
Professionally qualified and experienced specialists and mid-management	Male										
	Female										
Skilled technical and academically qualified workers, junior management, supervisors, foremen, and superintendents	Male										
	Female										
Semi-skilled and discretionary decision making	Male										
	Female										
Unskilled and defined decision making	Male										
	Female										
TOTAL EMPLOYEES (add females and males)	Permanent										
	Temporal										

**8.4 Complete the table below in respect of the applicant's board of director's (if a company) or members (if a close corporation) as at date of application.**

	Director / Member Name (Initial & Surname)	Years of Service	Black (Y/N)	Gender (M/F)	Age	Disability (Y/N)	Identity Number
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							



**APPLICATION NUMBER**

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**Section 8**

**Transformation**

**8B. Cooperate social investment**

8.5	Does the applicant make donations of the annual taxable income which qualify for deduction in terms of section 18A of the Income Tax Act 58 of 1962?	Y/N
-----	--	-----

**8C. Affirmative procurement**

8.6	Does the applicant procure goods / services from majority black owned company (ies)?	Y/N
-----	--	-----

**8D. Local Economic Development**

8.7 Complete the table below in respect to harbours where catch has been landed and processed

Year	Harbour name	Quantity landed (kilograms)	Factory name	Quantity processed (kilograms)
2010				
2011				
2012				
2013				
2014				

8.8 Complete the table below in respect to harbours where catch is to be landed and processed  
**Rank by order of usage from 1 – 3 (3 being the highest)**

Harbour Name	Frequency of usage	Factory name	Frequency of usage

**Section 9**

**Job creation**

9.1	Do you provide permanent employment?	Y/N
9.2	Do you contribute towards medical aid for more than 50% of your employees?	Y/N
9.3	Do you contribute towards pension/provident fund for more than 50% of your employees?	Y/N
9.4	Do you provide all your employees with safe working conditions at sea?	Y/N
9.5	Do you provide any other kinds of benefits for your employees (e.g. employee share scheme)?	Y/N

**Section 10**



APPLICATION NUMBER

**Application Declaration**

I, the undersigned, do hereby make oath and declare that:

- (a) I have read the instructions set out in this application form.
- (b) the information submitted with and in this Application is true and correct and complete.
- (c) I accept that if any information in this Application is not true or complete, or if false information is provided, or material information is not disclosed, this may lead to the Application being refused, or to the revocation, suspension, cancellation, alteration or reduction of any right, license or permit granted on the strength of this Application, in terms of Section 28 of the Marine Living Resources Act 18 of 1998.
- (d) In order to allow for the proper verification of information submitted I hereby authorise any institution, organ of state, person or body, who possesses or acquires any information relevant to my application, to disclose or make the information available to the Minister, his/her delegate or an official of the Department of Agriculture Forestry and Fisheries or the Fishing Rights Verification Team.
- (e) I undertake to co-operate with any investigators by timeously submitting responses to written requests for information or explanations, by attending meetings with investigators, by answering questions satisfactorily at such meetings and where necessary, by granting investigators access to premises, vessels and documents. I accept that failure to co-operate in this regard will constitute an independent ground for refusing an application.
- (f) I accept that any attempt to influence the decision of the delegated authority or appellant authority on the allocation of a right or quantum or effort, in any manner other than provided for in the relevant Sector Specific Policy or in this application form, will result in the application being refused

**Signed at :** \_\_\_\_\_  
**This** \_\_\_\_\_ **day of** \_\_\_\_\_ **2015**

**Signature of applicant:** \_\_\_\_\_  
**Applicant's full name** \_\_\_\_\_

The deponent declares that he/she knows and understands the contents and implications of the above declaration.

**Commissioner of Oaths** \_\_\_\_\_  
**Full name** \_\_\_\_\_  
**Designation** \_\_\_\_\_  
**Physical Address** \_\_\_\_\_

If the application is prepared or compiled by, or in consultation with or on the advice of any person or entity the following information must be provided:

**Why was the application prepared by a person or entity other than the Applicant or why was someone consulted for advice? What fee or other remuneration was paid, or was promised for the assistance?**

\_\_\_\_\_

**If assisted, please provide full details of the consultant / advisor that prepared this application**

\_\_\_\_\_

**Details of the person who completed the form.**

Contact Name										
Identity number										
Work telephone number										
Cellphone number										
Fax number										
Email address										
Position held/relation to applicant										



**APPLICATION NUMBER**



## Schedule B of fees determined in terms of section 25(1) and (2) of the Marine Living Resources Act, 18 of 1998

Fisheries	Past fee (rand)	Application fee (rand)	Quota (grant of right) fee payable by successful applicants (rand)			
			Per ton	Per crew member	Per vessel	Per area
Hake Deep Sea Trawl	32,400	40,986	68.31			
Hake Inshore Trawl (hake)	8,800	11,132	68.31			
Hake Inshore Trawl (sole)	2,000	2,530	170.775			
Horse Mackerel	21,900	27;703.5	41.745			
Small Pelagics (Pilchard)	6,400	8;096	8.096			
Small Pelagics (Anchovy)	2,000	2;530	4.68			
Patagonian Toothfish	21,000	26;565	826.045			
South Coast Rock Lobster(wholmass)	8,800	11;132	996.82			
KZN Prawn Trawl	7,700	9;740.5			19;481	
West Coast Rock Lobster (Off Shore)	2,000	2;530	683.1			
Hake Long Line	2,500	3;162.5	204.93			
Squid	5,200	6,578		889.295		
Tuna Pole	1,300	1;644.5		142.945		
Seaweed	1,900	2;403.5				4,301
Longline Demersal Shark	500	6325.5			474.375	
Linefish Traditional	400	505		258.06		
Handline Hake	1300	1;644.5		1,033.505		
West Coast Rock Lobster (near shore)	300	379.5				
Oysters	100	126.5				
White Mussels	100	126.5				
Net Fishing (small nets/gill nets/beach seine/trek)	200	253				
Large Pelagics	6,700	8, 475.5			17,250	
Abalone		1,725				
KZN Seine/Sardine		253				

**No. 508**

**12 June 2015**

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISH PROCESSING RIGHTS: 2015**

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

**(available at [www.daff.gov.za](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
Lencwadi iyafumeneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu  
Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

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

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## 1. Introduction

This policy on the allocation and management of fish processing establishment rights is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to as the "**2015: Fish Processing Establishment Policy**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 ("the 2013: General Policy") and all other current sector-specific Policies including the Policy for the Small-Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out the objectives, criteria and considerations that will guide the allocation and management of fish processing rights. This policy will guide the delegated authority in taking decisions on applications in this sector.

## 2. Profile of the sector

### 2.1. Brief description of the sector

Section 1 of the Marine Living Resources Act (Act No. 18 of 1998) ("MLRA") defines fish processing as the act of producing any substance or article from fish by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving of fish, or canning, packing, drying, gutting, salting, icing, chilling, freezing or otherwise processing for sale in or outside the territory of the Republic. The reason for the wide definition is to curb the processing of fish that was caught in contravention of the MLRA.

The wide definition has led to many unintended consequences and caused difficulties with the enforcement thereof. It is therefore proposed that fishmongers, restaurants, fish shops, supermarkets, large chain stores, the drying of legally caught and purchased fish, the cleaning, gilling and tailing of fish on board an authorised fishing vessel and authorised fishing vessels that only pack fish in crates or use ice to land fresh fish be exempted in terms of section 81 of the MLRA from the provisions of sections 1, 18 and 13 of the MLRA insofar as it relates to fish processing. These exemptions must be monitored to ensure that it does not lead to increased illegal, unregulated and unreported fishing.

In terms of section 18 of the MLRA, no person shall undertake commercial fishing or subsistence fishing, engage in mariculture or operate a fish processing establishment (FPE), unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.

It is commonly accepted that fish processing establishment rights allocated in terms of section 18 of the MLRA are not property rights, but statutory permissions to process fish for a specified

period of time. Accordingly, the cancellation or revocation of a fish processing establishment right does not constitute the expropriation of a property right within the meaning of section 25 of the Constitution of the Republic of South Africa, 1996 or the Expropriation Act 63 of 1975. This is clear from section 18(6) of the MLRA, which provides that a FPE right is valid for the period determined by the Minister (or his delegate) where after it automatically reverts back to the State.

Section 13 of the MLRA stipulates that no person shall exercise any right granted in terms of section 18 or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity.

Any person processing fish is therefore required to have a right to operate a fish processing establishment and be in possession of a valid permit issued in terms of section 13 of the MLRA to undertake such activity.

On 27 July 2001, the Department in terms of Government Gazette No. 22517 of 27 July 2011 ("the Gazette"), invited applicants for a period of two weeks to apply for rights to operate FPE's. The applications were received, evaluated and rights were granted for a period of fifteen (15) years. These rights will expire in 2016. The Gazette indicated that an opportunity will again be granted in 2002 for additional applicants to apply for rights to operate FPE's. This opportunity never materialized. In 2005 the General Policy for the Allocation of Long Term Fishing Rights (LTRAMP), stated that a separate policy will be adopted dealing specifically with fish processing establishments.

Since 2001 a vast number of fishing companies have been formed and a number of fishing vessels built which were authorized to fish in various fishing sectors. In order for these land and sea-based establishments to be compliant with the MLRA and to participate meaningfully in the economy as part of the fishing industry, the Department exempted them in term of section 81 of the MLRA from the provisions of section 18. Once exempted, they had to apply for permits in terms of section 13 of the MLRA.

A FPE right is granted to a specific person or entity and in terms of section 21 of the MLRA, the right may not be transferred without the approval of the Minister or his delegate. Upon the death, sequestration, or liquidation of the right holder, the right vests respectively in the executor, trustee or liquidator and the right may continue to be utilized for the period of time permitted by the applicable legal provisions. However, any transfer of a fish processing establishment right to a third party requires the Minister's approval.

## 2.2. **Current resource users**

There are currently 892 (521 land-based and 371 vessel-based) right/exemption holders in the sector operating from Port Nolloth to the west of Cape Hangklip.

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

On 27 July 2001, the Department in terms of Government Gazette No. 22517 of 27 July 2011, invited applicants for a period of two weeks to apply for rights to operate FPE's. The applications were received, evaluated and rights were granted for a period of fifteen (15) years. These rights will expire in 2016. The Gazette indicated that an opportunity will again be granted in 2002 for additional applicants to apply for rights to operate FPE's. This opportunity never materialized. In 2005 the General Policy for the Allocation of Long Term Fishing Rights (LTRAMP), stated that a separate policy will be adopted dealing specifically with fish processing establishments.

Since 2001 a vast number of fishing companies have been formed and a number of fishing vessels built which were authorized to fish in various fishing sectors. In order for these land and sea-based establishments to be compliant with the MLRA and to participate meaningfully in the economy as part of the fishing industry, the Department exempted them in term of section 81 of the MLRA from the provisions of section 18. Once exempted, they had to apply for permits in terms of section 13 of the MLRA

In 2005/2006 no long-term fish processing rights were allocated.

## 4. **Objectives**

4.1. The objectives of allocating fish processing rights are to:

- (a) promote transformation through the allocation of rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities) and to broaden meaningful participation (increase participation, value-creation, and linkage);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improved working conditions;
- (d) to promote food security and poverty alleviation; and
- (e) achieve optimum utilisation and ecologically sustainable development of marine living resources.

## 5. **Granting of rights**

Fish processing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister, only South African persons shall acquire or hold rights in terms of section 18 of the MLRA All rights granted shall be valid from the date of allocation for a period not

exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. It shall be further noted that in terms of section 16 of the MLRA, the Minister may suspend any fishing in any 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 the following South African persons will be considered in the fish processing establishment sector:
  - (i) a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
  - (ii) a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), of which the majority of shareholders, as prescribed by the Minister, are South African persons;
  - (iii) a close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), of which the majority of members are South African persons;
  - (iv) a trust in which the majority of trustees having the controlling power at any given time are South African citizens or a majority of the beneficial interests are held by South African citizens; and
  - (v) a co-operative registered in terms of the Co-operatives Act, 2005 (Act no. 14 of 2005), of which all the members are South African citizens but, where any member is a juristic person, such person's principal place of business must be in the Republic.

#### 5.2. **Duration of right**

Rights to operate fish processing establishments will be granted for a period of 15 years.

#### 5.3 **Transfer of Rights Allocated in terms of this Policy**

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, fish processing rights in terms of this Policy shall not be transferred within the first two (2) years allocation except in the case of death, sequestration, or liquidation of the right holder occurring after the right has been allocated. In addition, failure to activate or apply for any permits, or to submit fish processing data as required during the first two (2) years shall result in an automatic cancellation of the right by Minister.

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 in the fish processing sector will not be precluded from holding commercial fishing rights in other fishing sectors. This shall mean any person can apply for right in any fishery sector regardless he or she or it has applied for a right or holds 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 fish processing rights will be screened in terms of a set of "exclusionary criteria.

### 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 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 or processing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including payment of admission of guilty fines, may be taken into account and may also adversely affect an application.

### 7.2. Criteria for evaluation of an applicant

Applicants will be evaluated in terms of the following criteria:

#### (a) Transformation

The Broad-Based Black Economic Empowerment Act 53 of 2003 (the BBBEE Act) as amended, gives effect to this constitutional imperative. Due to the nature of the fish processing sector, the weighting and benchmarks set in the codes relating to ownership and management will be used in the assessment of the transformation profile of the applicants. An applicant will be required to submit a BBBEE Certificate as proof of the transformation status of the applicant.

Applicants will be assessed on:

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official 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 representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
- (iv) Affirmative procurement;
- (v) Compliance with legislation on skills development and the amounts spent on the



training of blacks and youth and participation in learnership programmes; and

(vi) Corporate social investment.

(b) **Fish processing performance**

The performance of applicants holding fish processing rights will be examined to determine if they have effectively utilised their rights. Effective utilisation shall mean activation of the fish processing permit and subsequent processing data submission for at least five years during the period 2002-2015.

(c) **Local economic development**

The Delegated Authority will take into consideration the processing of fish outside the metropolitan areas to promote local economic development.

(d) **Job creation**

Job creation and increases in jobs will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with:

- (i) permanent employment;
- (ii) medical aid, pension/ provident fund;
- (iii) safe working conditions in accordance with the applicable legislative requirements; and
- (iv) an employee share scheme.

(e) **Access to a suitable fish processing establishment**

- (i) An applicant for a vessel-based fish processing establishment will be required to demonstrate a right of access to a vessel suitable for the processing fish. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (ii) An applicant for a vessel-based fish processing establishment will be required to demonstrate access to a suitable premises by means of a valid lease agreement or title deed. An applicant will be required to provide a sitemap with coordinates of the site locality. All land based activities need approval from the local authority (e.g. Municipality). This approval, however, does not exempt an applicant from undergoing a thorough Public Participation Process, which will ensure that all interested and affected Parties are informed and well aware of the activities around them. The approval must be in writing and submitted with the application.

(f) **Business plan**

An applicant will be required to submit a detailed business plan including the following information:

- (i) Company profile and shareholding structure.
- (ii) Product category to be processed e.g. shellfish, finfish, crustaceans, seaweeds etc.
- (iii) If imported species are being considered, the measures to be taken to avoid the spread and introduction of exotic commensals, parasites and pathogens.
- (iv) A detailed description of processing methods and operational plan including:
  - (a) Design and Technology;
  - (b) Water Quality Monitoring;
  - (c) Effluent Discharge;
  - (d) Quality Control Measures;
  - (e) Sanitary and Hygiene Measures; and
  - (f) Hazard Critical Analysis Control Points (HACCP).
- (v) The use of any kind of chemicals, disinfectants, therapeutants and anesthetics, that may be used or result from the operation. Methods of application that are being considered for use must also be outlined in the proposal.
- (vi) The product destination or marketing strategy.
- (vii) A detailed financial plan projecting capital, expenditure and income over a minimum period of 2 years should be included.
- (viii) Facilities and employment opportunities that will be created should be highlighted in the business plan.  
Information on how the facility will minimize and prevent potential negative environmental impacts.

(g) **Environmental authorisation**

The Minister of Environmental Affairs published regulations that list activities which require a Basic Assessment or scoping and environmental impact reporting. These regulations were published on 18 June 2010 and commenced on 2 August 2010. Environmental authorisation may be required before the establishment of an FPE as certain activities are listed under the National Environmental Management Act, 1998 (Act No. 107 of 1998), Environmental Impact Assessment (EIA) regulations.

If an applicant in the Aquaculture sector or wild capture fisheries is advised that an environmental authorisation is required for the activity, such applicant must register the Department of Agriculture, Forestry and Fisheries, Aquaculture Management Section as an interested and affected party and should forward all environmental impact reports for comments to the Department of Agriculture Forestry and Fisheries, Aquaculture Management Section, Tel. 021 430 7052, Fax. (021) 434 2889 and email [FatimaS@daff.gov.za](mailto:FatimaS@daff.gov.za).

(h) **Certificate of Acceptability for Fish Factories and other Fish Handling and Processing Establishments**

Regulations published under Government Notice No. R918 of 1999 as corrected by Government Notice No. 723 of 12 July 2002 promulgated in terms of the Health Act, 1977 (Act No. 63 of 1977) sets out certain general hygiene requirements for food premises and the transport for food. In terms of these Regulations, a Certificate of Acceptability for food premises of food is required before a person can be allowed to handle food on food premises. An applicant should apply in writing to the local Municipalities' Health Services section in whose area of jurisdiction the food premises are situated for a Certificate of Acceptability. An applicant will be required to submit a Certificate of Acceptability.

(i) **Coastal Waters Discharge Permit**

The National Environmental Management: Integrated Coastal Management (ICM) Act, 2008 (Act No. 24 of 2008) addresses a number of issues relating to coastal pollution including the discharge of effluent into coastal waters. In terms of provisions of Chapter 8 of the ICM Act, particularly Section 69 which regulates the discharge of effluent into coastal waters from any source on land. Such activities, in addition to any other permit or authorisation which may be required by any other law, an applicant will require a Coastal Waters Discharge Permit obtained from the Department of Environmental Affairs (DEA). For further details an applicant may contact the Department of Environmental Affairs (DEA), Marine and Coastal Pollution Management, Tel. (021) 819 2452 and e-mail [Marinepollution@environment.gov.za](mailto:Marinepollution@environment.gov.za) or Tel. (021) 819 2457 and e-mail [Feroza@environment.gov.za](mailto:Feroza@environment.gov.za).

(j) **Supplier Agreements**

An applicant will be required to submit all supplier agreements for wild capture fisheries or aquaculture products to be processed and to provide documentation to clearly identify all signatories to the supplier agreements.

(k) **Valid SARS Tax Clearance Certificate**

An applicant will be required to declare the financial status of the business with the South African Revenue Services (SARS). A valid SARS Tax Clearance Certificate must accompany the application.

8. **Announcement of decisions**

The Delegated Authority shall after making a final decision 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 referred to as decision sheet outlining all applicant scores in the FPE sector.

**9. Payment of application and grant of right fees**

The fees for this sector will be determined having regard to:

- 9.1 The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- 9.2 The non-refundable application fee of R9123.00 shall be payable before submitting and only payment proof shall be brought to the receipting centre.
- 9.3 The grant of right fee is payable by all successful applicants upon the granting of rights.

**10. Management measures**

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

**10.1. Ecosystem approach to fisheries**

This sector 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.

**10.2. Performance measuring**

Successful applicants will be subjected to performance measuring for the duration of the fish processing rights. The purpose of performance measuring will be to ensure that the objectives of the sector are being met and that management methodologies and procedures remain current and suitable for the sector.

**10.3 Offences**

Successful applicants that fail to utilise their fish processing right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings in terms of section 28 of the MLRA.

**11. Permit conditions**

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

## 12. Glossary of terms

- 12.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right or a fish processing right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 12.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 12.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 12.4. "Rights" means fishing or harvesting rights or rights to operate fish processing establishment granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 12.5. "Right Holder" means a person that was granted a fishing right or right to operate a fish processing establishment during the period 2001–2015 in a specific fishery or sector, or became a right holder in a fishery or sector by way of an approved transfer of a fishing right or right to operate a fish processing establishment.
- 12.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 12.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 12.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.





# IMPORTANT

## Information

### from Government Printing Works

Dear Valued Customers,

Government Printing Works has implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submits your notice request.

Please take note of these guidelines when completing your form.



#### GPW Business Rules

1. No hand written notices will be accepted for processing, this includes Adobe forms which have been completed by hand.
2. Notices can only be submitted in Adobe electronic form format to the email submission address [submit.egazette@gpw.gov.za](mailto:submit.egazette@gpw.gov.za). This means that any notice submissions not on an Adobe electronic form that are submitted to this mailbox will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
3. Notices brought into GPW by "walk-in" customers on electronic media can only be submitted in Adobe electronic form format. This means that any notice submissions not on an Adobe electronic form that are submitted by the customer on electronic media will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
4. All customers who walk in to GPW that wish to submit a notice that is not on an electronic Adobe form will be routed to the Contact Centre where the customer will be taken through the completion of the form by a GPW representative. Where a customer walks into GPW with a stack of hard copy notices delivered by a messenger on behalf of a newspaper the messenger must be referred back to the sender as the submission does not adhere to the submission rules.
5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
6. The current cut-off of all Gazette's remains unchanged for all channels. (Refer to the GPW website for submission deadlines – [www.gpwonline.co.za](http://www.gpwonline.co.za))
7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email [info.egazette@gpw.gov.za](mailto:info.egazette@gpw.gov.za))
8. All re-submissions by customers will be subject to the above cut-off times.
9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address [submit.egazette@gpw.gov.za](mailto:submit.egazette@gpw.gov.za).



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