
GENERAL NOTICES

NOTICE 750 OF 2013

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

The Minister of the Department of Agriculture, Forestry and Fisheries hereby publishes the final:

- (i) General Policy on the Allocation and Management of Fishing Rights: 2013 (Schedule A); and
- (ii) 2013 Fishery Specific Policies for Demersal Shark, Hake Handline, Kwazulu-Natal Prawn Trawl, Oyster, Squid, Traditional Linefish, Tuna Pole-Line and White Mussel (Schedule B),

for general information.

SCHEDULE A

GENERAL POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS: 2013



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

**GENERAL POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS:
2013**

**THIS POLICY MUST BE READ WITH THE APPLICABLE FISHERY SPECIFIC POLICY
(available at 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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PART A: INTRODUCTION AND BACKGROUND

1. Introduction

1.1 This **General Policy on the Allocation and Management of Fishing Rights: 2013** is issued by the Minister of Agriculture, Forestry and Fisheries and will be referred to as the "**2013: General Policy**". The 2013: General Policy must be read in conjunction with policies that will be referred to as the "**Fishery Specific Policies**" or "**Sector Specific Policies**" that have been adopted for each fishery. In the 2013: General Policy, a number of issues are dealt with that are relevant to all the fisheries listed in paragraph 2.1(a) below. These cross-cutting policy considerations also inform the contents of the Fishery Specific Policies. Potential applicants for fishing rights and interested parties should read this 2013: General Policy in conjunction with the applicable Fishery Specific Policy.

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

2. Application of the 2013: General Policy

2.1 The 2013: General Policy applies to:

- (a) The allocation and management of rights in the following fishing sectors: Hake Deep Sea Trawl, Hake Inshore Trawl, Horse Mackerel, Small Pelagics, Patagonian Toothfish, South Coast Rock Lobster, KwaZulu-Natal Prawn Trawl, Hake Longline, West Coast Rock Lobster (Offshore), Squid, Tuna Pole-Line, Seaweed, Large Pelagics (Tuna & Swordfish Longline), Demersal Shark Longline, Hake Handline, West Coast Rock Lobster (Nearshore), Oysters, White Mussels, Netfishing (Trek- and Gillnets and Beach Seine), KwaZulu-Natal Beach Seine, Traditional Linefish, and Abalone
- (b) The allocation of rights to operate Fish Processing Establishments.

3. Purpose and objectives

3.1 The purpose and objectives of the 2013: General Policy, together with the Fishery Specific Policies are to:

- (a) achieve optimum utilisation and ecologically sustainable development of marine living resources;
- (b) conserve marine living resources for both present and future generations;
- (c) apply precautionary approaches in respect of the management and development of marine living resources;
- (d) utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;
- (e) protect the ecosystem as a whole, including species which are not targeted for exploitation;
- (f) preserve marine biodiversity;
- (g) minimise marine pollution;
- (h) achieve to the extent practicable broad and accountable participation in the decision-making processes provided for in the Marine Living Resources Act, 1998 (Act No. 18 of 1998);
- (i) give effect to any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law;
- (j) restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry;

- (k) promote equitable access to and involvement in all aspects of the fishing industry, and in particular take note of past prejudice against women and other marginalised groups;
- (l) recognise approaches to fisheries management which contribute to food security, socio-economic development and the alleviation of poverty; and
- (m) recognise that marine living resources may be allocated through a multi-species approach.

4. Key government policies

4.1 The General and Fishery Specific Policies are informed by key government policies, such as the National Development Plan (NDP), the Integrated Growth and Development Plan (IGDP) for Agriculture, Forestry and Fisheries, New Growth Path (NGP), the Industrial Policy Action Plan (IPAP) and the Comprehensive Rural Development Programme (CRDP).

4.1.1 The National Development Plan (NDP)

The National Development Plan (NDP) offers a long-term perspective. It defines a desired destination and identifies the role different sectors of society need to play in reaching that goal. The NDP aims, *inter alia*, to eliminate poverty and reduce inequality by 2030. According to the NDP, South Africa can realise these goals by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the state, and promoting leadership and partnerships throughout the country.

4.1.2 The Integrated Growth and Development Plan (IGDP) for Agriculture, Forestry and Fisheries

The Integrated Growth and Development Plan (IGDP) for Agriculture, Forestry and Fisheries provides a structural view of the fishing sector's current

circumstances and the challenges it faces. It further describes the goals and the actions needed to achieve South Africa's vision for fisheries management and in so doing ensuring a productive and sustainable sector.

4.1.3 The New Growth Path (NGP)

The New Growth Path (NGP) provides bold, imaginative and effective strategies to create the millions of new jobs South Africa needs. It also lays out a dynamic vision on the collective achievement of a more developed, democratic, cohesive and equitable economy and society over the medium term, in the context of sustained growth. The strategy sets out critical markers for employment creation and growth and identifies where viable changes in the structure and character of production can generate a more inclusive and greener economy over the medium to long term.

4.1.4 The 2012 Industrial Policy Action Plan (IPAP)

Government interventions set out in the National Development Plan Vision 2030, the NGP and other policy documents seek to ensure that critical steps in support of the restructuring of the economy are secured to set it on a more value-adding and labour-intensive growth path. The 2012 Industrial Policy Action Plan (IPAP) is framed by and constitutes a key pillar of such interventions.

4.1.5 The Comprehensive Rural Development Programme (CRDP)

- (a) The Comprehensive Rural Development Programme (CRDP) is a strategic priority in government's Medium Term Strategic Framework (MTSF). The design of the programme is predicated on lessons learnt from pilot sites selected through socio-economic profiling, community participatory processes and intergovernmental cooperation.
- (b) The CRDP is different from past government strategies in rural areas because it is premised on a proactive, participatory, community-based, planning approach rather than an interventionist approach to rural

development. It is aimed at being an effective response to poverty and food insecurity by maximising the use and management of natural resources to create vibrant, equitable and sustainable rural communities.

- (c) The CRDP must improve the standards of living and welfare and rectify past injustices through rights-based interventions and by addressing skewed patterns of distribution and ownership of wealth and assets.
- (d) The strategic objective of the CRDP is therefore to facilitate integrated development and social cohesion through participatory approaches in partnership with all sectors of society.

PART B: ALLOCATION METHODOLOGY AND PROCESS

5. The Allocation of Fishing Rights

5.1 The Marine Living Resources Act 18 of 1998

5.1.1 The transformation of the fishing industry is a constitutional and legislative imperative. The primary vehicle for the promotion of the transformation of the South African fishing industry is the Marine Living Resources Act 18 of 1998 (MLRA).

5.1.2 Another important purpose of the MLRA is to provide for the orderly utilisation of marine living resources, and 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.

5.2 The legal nature of the fishing right

5.2.1 The “*fishing rights*” allocated under the MLRA are **not property rights** and should be understood as statutory permission to harvest a marine living resource for a specified period of time. Accordingly, cancellation or revocation

does not constitute the expropriation of a property right within the meaning of section 25 of the Constitution or the Expropriation Act 63 of 1975. This is clear from section 18(6) of the MLRA, which provides that a fishing right is valid for the period determined by the Minister (or his/her delegate), whereafter it automatically reverts back to the State.

5.2.2 A fishing 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/her delegate. Upon the death, sequestration or liquidation of a right holder, the right vests respectively in the executor, trustee or liquidator and the right may, with the approval of the Minister or his/her delegate, continue to be exploited for the period of time permitted by the applicable legal provisions. However, the transfer of the fishing right or controlling shareholding are subject to the approval of the Minister or his/her delegate.

5.2.3 Any transfer of the fishing right to a third party or the sale of shares/member's interest resulting in change of control of the company/close corporation or resulting in the company/close corporation not being as transformed as at date of allocation of the fishing right requires prior written approval of the Minister or his/her delegate.

5.3 **Core allocation and management considerations**

This 2013: General Policy and the Fishery Specific Policies are based on the following principles that guide the allocation and the management of fishing rights. They are:

5.3.1 **Transformation**

- (a) The MLRA requires decision-makers to give regard to the need to restructure the fishing industry in order to address historical imbalances and to achieve equity within all the sectors of the fishing industry. Transformation is also a constitutional imperative in South Africa.

- (b) The Broad-Based Black Economic Empowerment Act 53 of 2003 (the BBBEE Act) is one of a number of statutory instruments giving effect to this constitutional imperative. The BBBEE Act provides that the Minister of Trade and Industry may, by notice in the Gazette, issue codes of good practice on black economic empowerment. The codes provide for a balanced scorecard to measure progress and status within enterprises as well as the adoption of transformation charters for specific sectors of the economy by the major stakeholders in those sectors.
- (c) The BBBEE Act and the codes were considered in the development of this Policy and the Fishery Specific Policies. Due to the nature of the fishing rights allocation process and also because there is no code that can be identified in relation to the granting of statutory authorisations to catch fish, the Minister of Agriculture, Forestry and Fisheries has not adopted the weighting and benchmarks set in the codes relating to ownership and management. When allocating fishing rights, the delegated authority is called upon to compare applicants with each other, rather than against an external benchmark.
- (d) Transformation is an extremely important consideration in this comparative balancing process. The process is competitive and no benchmarks can be set in advance. In a fishery that is not sufficiently transformed, applicants with higher transformation scores than others will stand a better chance of being allocated a right or a larger proportion of the available TAC or TAE. Within such a competitive and comparative process, the adoption of benchmarks is not always the appropriate vehicle to further transformation, but it may in fact cause the decrease of transformation in the fishing industry.
- (e) The policy seeks to further transformation and to improve on the levels of transformation already achieved in the fishing industry. Only quality transformation will be recognised, that is, transformation which results in real benefits to historically disadvantaged persons as defined in the National Empowerment Fund Act 105 of 1998 (NEFA). In terms of the

NEFA “historically disadvantaged persons” 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.

- (f) Persons were historically disadvantaged in the fishing industry on account of their race and gender, particularly with regard to access to fishing rights. It is accordingly necessary to promote the participation of such historically disadvantaged persons within all branches in the fishing industry. It is also necessary to address historical imbalances and achieve equity within the fishing industry.
- (g) In the rights allocation process the race, gender and age of applicants, and in the case of juristic persons, the race, gender and age of the applicant’s shareholders or members, management, suppliers and workforce, will also be taken into account. In addition, corporate social investment will be taken into account.
- (h) Only beneficial ownership of applicants by historically disadvantaged persons, in the form of unrestricted voting rights and economic interest associated with equity ownership, will be assessed and taken into consideration. In determining whether voting rights and economic interest is “*unrestricted*”, the delegated authority may give regard to Code 100 of the BBBEE Act.
- (i) Points will be allocated to applicants that have succeeded in empowering their employees through employee ownership schemes, provided that applicants can demonstrate that the employees derived real benefits (such as dividends and joint management) from the scheme and that such benefits can be verified.

- (j) The number of historically disadvantaged persons in the senior or executive management of an applicant will be taken into account. Senior or executive management generally describes those persons responsible for guiding the strategic activities of the company and who report directly to either the managing director or the Board.
- (k) For purposes of the rights allocation process, the management of an applicant will be assessed as follows:
 - (i) the data submitted in employment equity reports, if available, will be considered. If not available, applicants will be requested to submit similar data that can be verified.
 - (ii) the composition of the board of directors will be taken into account.
 - (iii) an applicant will be required to submit data concerning the top salary earners of the applicant.
- (l) All information submitted by applicants will be verified to ensure compliance with the BBBEE Act in order to detect and eradicate fronting.

5.3.2 **Socio-economic and economic considerations**

The socio-economic impact of fishing right allocations on fishing communities, workers and consumers will be considered, in particular those communities and individuals dependent on marine living resources for their livelihood.

The delegated authority will take into consideration the nature and value of investments in fixed assets, marketing and processing, fishing capacity and the need to enhance the global competitiveness of the fishing industry. Measures and mechanisms will be introduced to prevent anti-competitiveness in the fishing industry.

5.3.3 **Biological considerations**

The impact on the target species must be considered. This is primarily done through the setting of a Total Allowable Catch (TAC), a Total Applied Effort (TAE), or Upper Precautionary Catch Limit (UPCL) or a combination thereof.

5.3.4 **Ecosystem Approach to Fisheries (EAF)**

EAF is based on two main principles, i.e. maintaining and enhancing ecosystem health, and balancing diverse societal needs and values. According to the FAO Technical Guidelines on the ecosystem approach to fisheries (FAO 2003), EAF is defined as an approach to fisheries management that strives to balance diverse societal objectives by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions, and applying an integrated approach to fisheries within ecologically meaningful boundaries.

5.3.5 **Performance or potential to perform**

Economic growth and development, job creation, food security, rural development, sustainable use of natural resources, value adding, enterprise development, as well as compliance with the MLRA, the Regulations, permit conditions and other legal requirements, will be considered.

5.3.6 **Communication with regard to applications submitted**

During the application period officials of the Department, the delegated authority and the Minister will not communicate with individual applicants or their representatives regarding their applications, other than in the manner described in this 2013: General Policy. Attempts to influence a decision of the delegated authority on the allocation of a right or quantum or effort in any other manner will constitute an independent ground for refusing an application.

5.4. **Allocation process determined by clusters**

5.4.1 The fishing sectors are grouped together in four clusters for the assessment of applications for fishing rights. The purpose of clustering fisheries together is

administrative, procedural and, to a lesser extent, substantive. However, different criteria and weighting may be applied to sectors falling within the same cluster.

5.4.2 Due to the difference in the manner in which rights will be allocated to fish processing establishments and the small-scale fishing sector, these sectors will be dealt with separately and are not included in any of the four clusters.

5.4.3 The clusters are: **Clusters A, B, C and D.**

Cluster A	Cluster B	Cluster C	Cluster D
Hake Deep Sea Trawl	Hake Longline	Hake Handline	Net Fish (trek- and gillnets, beach seine)
Hake Inshore Trawl	West Coast Rock Lobster (Offshore)	West Coast Rock Lobster (Nearshore)	KZN Beach Seine
Horse Mackerel	Squid	Traditional Linefish	White Mussels
Small Pelagics	Seaweed	Abalone	Oysters
Patagonian Toothfish	Tuna Pole-Line		
South Coast Rock Lobster	Demersal Shark		
KwaZulu-Natal Prawn Trawl			
Large Pelagics (Tuna & Swordfish Longline)			

5.4.4 The following principles will be applied in the allocation of quantum or effort to successful applicants in the cluster fisheries:

- (a) It is government policy to support small, micro and medium enterprises (SMMEs) and broad-based black economic empowerment. The delegated authority must allocate a reasonable quantum/effort of the TAC/TAE in the cluster fisheries to SMMEs. In determining the quantum or effort to be allocated to successful SMMEs, the delegated authority must have regard to the nature of the fishery and the level of transformation achieved in the fishery.

- (b) In fisheries that are capital intensive in nature, the delegated authority must ensure that large companies must compete with and be compared against large companies, and that SMMEs must compete with and be compared against SMMEs.

5.5 **Provisional lists, representations and consultations**

- 5.5.1 The delegated authority may issue provisional lists for comment on any aspect relating to an application in any fishery/sector.
- 5.5.2 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.
- 5.5.3 The delegated authority may invite representations regarding the assessment of the applications before making final decisions.
- 5.5.4 The delegated authority may consult with interested and affected parties on the method of allocating quantum or effort before taking these decisions.

5.6 **Multi-sector involvement**

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

5.7 **Participation of applicants**

It will be a requirement that applicants be directly involved in at least one element of the value chain of the fishery. However, in some fisheries applicants will specifically be required to be personally involved in the harvesting of the resources.

5.8 Design of criteria and weighting

Information submitted by applicants will be captured on a database. The policies, the database and information submitted by way of annexures, will then be used for the development of detailed weighting criteria for each fishery for the purposes of assessing the applications and, thereafter, the allocation of quantum or effort.

5.9 Information to be considered

5.9.1 The approach set out below will be adopted by the delegated authority regarding information to be taken into account for assessing the applications.

(a) **Parts of application form not completed**

Unless otherwise indicated, if a part of the application form is not completed, it will be assumed that that part of the form does not apply to the applicant. If the section has positive points associated with the answer, no points will be awarded and if the section has negative points associated with the answer, negative points will be awarded. Information not submitted during the application process will not be considered for appeal purposes.

(b) **Late information**

Information submitted after closing date for applications will not be considered, unless allowed by the delegated authority as part of the rights allocation process.

(c) **Information from external sources**

Prejudicial information about an application received from external sources will not be taken into account by the delegated authority unless the applicant is afforded the opportunity to make representations in respect of that information.

(d) **Use of departmental databases**

The delegated authority may use information contained in the Department's own databases during the rights allocation process, but will do so only to the extent that applicants are afforded the opportunity to make representations concerning the correctness of the data.

(e) **Submission of false information or documents and non-disclosure**

- (i) Applicants or their authorised representatives are required to attest to a declaration before a commissioner of oaths stating, amongst other things, that they have not submitted false information or false documents and that they have not failed to disclose material information.
- (ii) The submission of false information or false documents or the failure to disclose material information will constitute an independent ground for refusing an application. It will be assumed that an applicant has provided false information if there is a material discrepancy between the information provided by the applicant and the information contained in databases and records held by the Department and where both versions cannot be correct. It will further be assumed that an applicant has provided false information when there is a material discrepancy between the initial information provided by the applicant in the original application or information contained in databases and records held by the Department and information provided by the applicant on appeal, where both versions cannot be correct.
- (iii) The making of a false statement in an attested declaration, knowing it to be false, constitutes a criminal offence.

5.10 Calls for further information, investigations and consultation

- 5.10.1 The delegated authority may invite applicants to make oral submissions or to present further information in writing if there is uncertainty concerning a material issue in a substantial number of the applications. If oral hearings are held, legal representatives will be permitted to address the delegated authority.
- 5.10.2 (a) The delegated authority may request the Fishing Rights Verification Team to investigate any matter, including the correctness of information provided.
- (b) Applicants must co-operate with 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 shareholders, employees, premises, vessels and documents. The failure to co-operate will constitute an independent ground for refusing an application.

5.11 Support for delegated authority

- 5.11.1 The delegated authority will be supported by a "Fishing Rights Assessment Panel" comprising professional project managers, consultants and legal practitioners.
- 5.11.2 The Fishing Rights Assessment Panel will assist in the assessment of the applications under the supervision of, and in accordance with, the criteria and weighting determined by the delegated authority.

5.12 Notification of decisions

5.12.1 After the delegated authority has made decisions on the allocation of rights and quantum or effort, the Department will notify all applicants in writing at their registered addresses of business of the decisions in respect of their applications.

5.12.2 In addition, the Department will publish the results electronically and communicate the results through recognised industrial bodies and interest groups.

5.13 Appeals

5.13.1 Every applicant will have the right to appeal against the decisions of the delegated authority. The appeal may be lodged against a refusal to grant a right or against the decision on quantum or effort. Details about the submission of appeals will be contained in the notification letter.

5.13.2 The appellate authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing date for applications that fact will not be taken into account when considering the appeal.

5.13.3 Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.

5.14 Access to information

Requests for access to information relating to the records of the allocation and appeal processes will be dealt with in terms of the procedures and provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

6. Criteria used for decision-making on the allocation of rights

- (a) The policies and the database compiled after the applications have been received will be used to develop the weighting of the criteria for purposes of the assessment of the applications. The weighting that the delegated authority assigns to the criteria is accordingly not released to applicants.
- (b) The Department expects a large number of applications for fishing rights and anticipates that, given the current limits on catch or effort in all the fisheries, not all applicants will be granted rights. Some applicants will be rejected because they do not meet the basic requirements. The rest are ranked according to a set of objective criteria in order to identify the best applicants in terms of the policies and weighted criteria. The process is competitive and the aim is to identify the best applicants.
- (c) Four types of criteria will be used to assess the applications. Applications will be screened in terms of a set of "*exclusionary criteria*", and thereafter ranked in terms of a set of "*weighted balancing criteria*". In addition, and in some sectors, the delegated authority may employ one or more of a number of "*tie-breaking factors*" in order to make a decision if there are too many applicants with the same score. A proportion of the TAC or TAE will then be allocated to each successful applicant in terms of a set of "*quantum or effort criteria*".

6.1 Exclusionary criteria

6.1.1 The following types of exclusionary criteria will be employed:

- (a) an application will be screened to determine whether it was properly lodged. An application is improperly lodged; if it was received late; if the applicant made no payment or short payment or late payment of the application fee in fisheries where an application fee is required; or if it was lodged in a manner contrary to the instructions, such as by fax, or on a form other than the official prescribed application form. The delegated authority has no discretion to condone non-compliance with the lodgement requirements.

- (b) an application will be screened to determine whether it is materially defective. An application is materially defective if the declaration is not signed by the applicant, or if the applicant's declaration was not attested to by a Commissioner of Oaths, or if more than one application was received from the same applicant for a fishing right in the same sector, or if the applicant provided false information or false documents, or failed to disclose material information, or attempted to influence the Minister or the delegated authority other than in the manner provided for in this 2013: General Policy during the application period.
- (c) an application will be screened to determine whether the applicant was subjected to a Section 28 process in terms of the MLRA which resulted in the revocation or cancellation or suspension or alteration of the conditions of a right held by such applicant.
- (d) if the applicant relies on information provided by holding companies or other members of a group of companies or joint venture partners, the authorised representatives of these entities are also required to sign and to attest to a declaration. The application will be also be materially defective if the declaration of the authorised representative of the holding company, member of a group of companies or joint venture partner is not signed and attested. The delegated authority has no discretion to condone non-compliance with the requirements relating to materially defective applications.
- (e) an application will be screened to determine whether an applicant meets the minimum essential requirements for participating in the sector. The delegated authority has no discretion to condone non-compliance with an essential requirement for participating in the sector. The essential requirements differ from fishery to fishery.

6.2 **Balancing criteria**

6.2.1 Applications that were properly lodged, not materially defective and that meet the essential requirements will be scored in terms of a set of balancing criteria (*“the balancing criteria”*).

6.2.2 The balancing criteria will be weighted for purposes of ranking the applicants. Some of the criteria, such as transformation, will apply across all sectors, while others will be sector specific.

6.2.3 Cut-offs will then be determined. All applicants with a score equal to or greater than the cut-off will be allocated rights.

6.3 **Tie-breaking factors**

6.3.1 If there are too many applicants with the same score, the delegated authority may use tie-breaking criteria in order to choose between the applicants with the same score.

6.3.2 The tie-breaking factors may comprise criteria not scored or scored criteria differently weighted.

6.4 **Allocation of quantum or effort**

After the decisions identifying the successful applicants are taken, the delegated authority will decide on the allocation of quantum or effort to each successful applicant.

PART C: CROSS-CUTTING POLICY CONSIDERATIONS FOR THE ALLOCATION OF RIGHTS

7. Cross-cutting policy considerations for the allocation of rights

The following cross-cutting policy considerations will apply to the allocation of rights in all fisheries:

7.1 Duration of right

7.1.1 Fishing rights will be granted in all the sectors for a period not exceeding 15 years.

7.1.2 The duration of rights will be determined by the delegated authority taking into account, amongst other things, the level of transformation in the fishery, the capital intensity of the fishery, the need to encourage further investment and economic growth, the current knowledge of the biological status of the target species and the performance of participants in the fishery.

7.2 Form of right holder

7.2.1 Section 18 of the MLRA provides that only South African persons may hold fishing rights.

7.2.2 The following South African persons will be considered:

- (a) a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- (b) a company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008), of which the majority of shareholders, as prescribed by the Minister, are South African persons;

- (c) 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;
- (d) a trust in which—
 - (i) the majority of trustees having the controlling power at any given time are South African citizens; or
 - (ii) a majority of the beneficial interests are held by South African citizens; and
- (e) a co-operative registered in terms of the South African Co-operatives Act, 2005 (Act No. 14 of 2005) of which all the members are South African persons.

7.3 Employment equity

7.3.1 Applicants who are required by law to comply with the Employment Equity Act, 1998 (Act No. 55 of 1998) (the EE Act) must demonstrate that they are complying.

7.3.2 The number of people defined as designated groups in terms of the EE Act that are employed by the applicant will be a balancing criterion. Applicants employing black people, females, youth and persons with disabilities at the higher end of the applicant's salary bands or in professional and skilled positions will score more points than applicants that employ black people, females, youth and persons with disabilities at the lower end and in unskilled positions. For example, applicants may be required to specify the percentage of females, youth and persons with disabilities in the top 10% of their salary earners, between the top 10% and the top 30%, between the top 30% and the top 50%, and below the top 50%, or to specify the number of black people, females, youth and persons with disabilities appointed in professional and other skilled positions.

7.3.3 Applicants employing black people, females, youth and persons with disabilities in the top earning brackets will score more points than applicants employing black people, females, youth and persons with disabilities at the bottom earning

brackets. Because of the racial structuring of the South African workplace, wage differentials will be taken into account.

7.4 Basic conditions of employment

Applicants will be required to demonstrate that they comply with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA). Applicants that comply with the BCEA will score more points than applicants not complying.

7.5 Skills development

7.5.1 Applicants will be required to demonstrate that they comply with the Skills Development Act, 1998 (Act No. 97 of 1998) and the Skills Development Levies Act, 1999 (Act No. 9 of 1999).

7.5.2 An applicant that participates in learnership programmes or spends proportionately more on the training of black people, females, youth and persons with disabilities will score more points than an applicant that does not participate in learnership programmes or invest in training of black people, females, youth and persons with disabilities.

7.6 Affirmative procurement

Affirmative procurement of goods and services from black-owned companies by applicants will be taken into account.

7.7 Corporate social investment

7.7.1 The percentage of net profit spent by applicants on corporate social investment will be taken into account.

7.7.2 Tax-deductible donations will be considered to be corporate social investment but other donations will also be taken into account.

7.8 Paper quotas

- 7.8.1 The delegated authority will consider an applicant to be a “*paper quota risk*” if it appears from the application that the applicant has no serious intention to share the risk of fully participating in the sector, especially if a danger exists that an applicant has not applied in order to enter the industry but to gain some financial benefit without direct involvement in the main activities associated with exploiting the right that may be granted. In determining whether an applicant poses such a paper quota risk, the applicant’s assets and access to capital and its financial and business planning and commitments will be considered. The delegated authority must endeavour to prevent paper quota applicants from entering the fishing industry because paper quotas undermine and circumvent the objectives of the fishing rights allocation process.
- 7.8.2 The delegated authority must take all reasonable steps to remove paper quota applicants that may have been granted fishing rights. The delegated authority will consider as paper quotas applicants that have been granted fishing rights but who are reflecting weak or non-existent performance records combined with no investment or direct involvement in fishing industry.
- 7.8.3 The delegated authority will also exclude as “*paper quota risk*” applicants considered to be “*fronts*” for other beneficiaries. Fronting occurs when, in order to circumvent a policy objective, an application is made through another compliant entity. An example is an application made by an ostensibly transformed entity with the intention that the main benefits will flow to an untransformed entity or individuals that are not designated persons.
- 7.8.4 The Department will withdraw the rights of right holders who turn out to be paper quota holders.
- 7.8.5 As a rule, the Department will revoke fishing rights held by right holders who fail to utilise their rights in the first year after being granted their rights.

7.9 Financial performance

7.9.1 The financial performance of an applicant will be assessed in terms of a set of financial ratios which lend themselves to benchmarking backed up by audited financial statements.

7.9.2 The financial statements will also be used to determine who the real beneficiaries of the applicant are ("follow-the-buck" principle) and to determine whether the applicant has invested in the industry. The submitted information by applicants will be verified.

7.9.3 Successful applicants will regularly have to provide the Department with financial reports indicating the distribution of dividends and other benefits to their historically disadvantaged shareholders, members and beneficiaries as well as the financial obligations of the historically disadvantaged shareholders, members and beneficiaries to the applicants.

7.10 Payment of levies and grant-of-right fees

7.10.1 Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

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

7.11 Compliance

7.11.1 Applicants convicted for serious infringements of the MLRA, the Regulations, permit conditions and other fishing related offences, will be excluded.

7.11.2 Minor infringements, including the payment of admission of guilt fines, may be taken into account as a balancing criterion and may also adversely affect an application.

7.11.3 Vessels listed on the negative lists of any Regional Fisheries Management Organisation (RFMO) will not be allowed to harvest fish stocks. Applicants who own (wholly or in part) or nominate vessels that are negatively listed may be excluded.

7.12 **Fishing performance**

7.12.1 The fishing performance of applicants holding fishing rights will be examined to determine whether such applicants have effectively harvested their allocations or utilised their fishing rights.

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

7.12.3 Over-catching and under-catching of allocations may be used as balancing criteria.

7.13 **Investment**

7.13.1 Investment in a vessel nominated to harvest the resource and in other fixed assets will be recognised as long as that investment demonstrates a genuine intention to share the risk of participating in the sector.

7.13.2 Shareholding in vessels obtained at minimum or no cost to the applicant, will not be recognised as investment.

7.13.3 The level of investment will be assessed with reference to the quantum or effort held by an applicant by virtue of a fishing right granted in 2005/2006.

7.14 Value-adding

- 7.14.1 *Value-adding* means those activities that add commercial value to fish, with specific reference to value adding attained in South Africa.
- 7.14.2 Value-adding will be taken into account because, amongst other things, it stimulates the creation of jobs and wealth.

7.15 Enterprise development

- 7.15.1 Enterprise development constitutes measures to increase black ownership, management and skills in existing and new enterprises, including investment programmes and access to finance.
- 7.15.2 These measures will be taken into account provided that they do not constitute attempts to circumvent the legislative protection of workers contained in the labour, health and safety laws.

7.16 Job creation

- 7.16.1 An important purpose of allocating fishing rights is to create an environment conducive to job creation, in particular, the creation of more permanent and better quality jobs in the fishing industry.
- 7.16.2 Jobs created by applicants holding fishing rights and increases in jobs as a result of the allocation of fishing rights over time, will be taken into consideration.
- 7.16.3 The creation of permanent employment is preferred over seasonal employment and seasonal employment is preferred over contract employment.

7.17 Local economic development

- 7.17.1 The delegated authority will take into consideration the landing of catches in fishing harbours outside the metropolitan areas to promote local economic development.
- 7.17.2 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.
- 7.17.3 Applicants are encouraged to land or process fish in harbours and fishing communities that are economically depressed.

7.18 Vessels and fishing effort

- 7.18.1 An applicant may be required to demonstrate a right of access to a vessel suitable for the harvesting of a particular fish stock or stocks. 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. In the case of a new build vessel the vessel plans and cost from the vessel building company must be provided.
- 7.18.2 A suitable vessel will be described in the applicable fishery specific policy, but to meet the minimum requirements for any vessel to operate in the South African fishing industry, the vessel must:
- (a) be a South African flagged vessel (unless an exception is made in a fishery specific policy);
 - (b) be fitted with a departmental approved and functioning vessel monitoring system (VMS) (unless exempted by the Department);

- (c) be registered by the South African Maritime Safety Association (SAMSA) as being suitable for fishing; and
 - (d) not be listed on any RFMO negative list.
- 7.18.3 The Department will require all applicants for fishing rights to utilise the nominated vessel for harvesting the resource. Vessel changes will only be allowed in appropriate instances.
- 7.18.4 A key element in the management and conservation of marine resources is the limitation of applied fishing effort to ensure the optimum utilisation of such resources.
- 7.18.5 Vessel overcapacity is regarded as one of the primary threats to South African fish stocks. Vessel overcapacity places additional burdens on the Department, both in respect of monitoring and enforcing compliance and managing the exploitation of the resource. The Department will therefore carefully monitor any increase in vessel capacity/effort.
- 7.18.6 Subject to fishery specific policies, joint and cross-sectoral use of vessels is encouraged, as this will result in more effective and efficient use of vessels throughout the season. It is recognised that ageing vessels must be replaced, *inter alia*, for safety reasons. Modernisation of the fishing fleet will inevitably result in an increase in catch capacity. Where necessary, effort limitations will be introduced to limit capacity/effort.

7.19 Safety of staff and crew

- 7.19.1 Applicants will be required to demonstrate that they have complied with the regulatory requirements of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998) and the regulations promulgated in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951). The manner in which applicants provide for the safety of workers and crew will be taken into consideration.

- 7.19.2 Applicants will be required to show that they comply with the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993). Applicants are further reminded of the Department's directive that they are required to adopt HIV/AIDS policies and may be required to submit such policies with their applications.

PART D: CROSS-CUTTING POLICY CONSIDERATIONS FOR THE ALLOCATION OF QUANTUM OR EFFORT

8. Cross-cutting policy considerations for the allocation of quantum or effort

It should be noted that the decision to allocate quantum or effort is taken separately from the decision, although interlinked, of identifying successful applicants.

PART E: POLICY REVIEW

9. Policy review

- 9.1 The Department is committed to ongoing and continued review of the effectiveness of the 2013: General Policy and Fishery Specific Policies in addressing the socio-economic and economic needs of the fishing industry and affected fishing communities and the ecological sustainability of the resources.
- 9.2 Research and ongoing monitoring by both the Department and stakeholders will play an important role in identifying weaknesses and flaws in the policies and the implementation thereof.
- 9.3 The Department will put in place a monitoring and evaluation system to ensure that useful, reliable and timely feedback on the effectiveness of the policies is provided to the Department and relevant stakeholders.

10. GLOSSARY OF TERMS

- 10.1 "Application period" means the period which commences with the publication of an invitation to interested parties to apply for a fishing right in a fishery to the date on which the appellate authority finally decides on the appeals in the fishery.
- 10.2 "Black people or person" is a generic term which means Africans, Coloured, and Indians who are citizens of the Republic of South Africa by birth or descent or who became citizens of the Republic of South Africa by naturalisation-
- (a) before 27 April 1994; or
 - (b) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but were precluded from doing so by Apartheid policies.
- 10.3 "Codes of Good Practice" means the BEE Codes of Good Practice published by the Minister of Trade and Industry in 2004 in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- 10.4 "Department" means the Department of Agriculture, Forestry and Fisheries.
- 10.5 "Designated Group" means blacks, women and people with disabilities as defined in the Employment Equity Act, 1998 (Act No. 55 of 1998).
- 10.6 "FAO" means the Food and Agricultural Organization of the United Nations.
- 10.7 "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.
- 10.8 "Minister" means the Minister of Agriculture, Forestry and Fisheries.

10.9 "SMME" means Small, Medium and Micro-sized Enterprises.

10.10 "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.

10.11 "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.

SCHEDULE B

FISHERY SPECIFIC POLICIES



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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

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

**This document is also available in Afrikaans, isiXhosa and isiZulu
Hierdie dokument is ook in Afrikaans, isiXhosa en isiZulu beskikbaar
Lencwadi iyafumaneka 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 for the allocation and management of fishing rights in the demersal shark fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”) and shall be referred to as the “**2013: Demersal Shark Fishery Policy**”. This policy must be read with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Fisheries Policy”).

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

This policy sets out the objectives, criteria and considerations that will guide the allocation and management of fishing rights in the demersal shark 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 demersal shark fishery uses bottom-set longline fishing gear to predominantly target soupfin, *Galeorhinus galeus*, smoothhound sharks, *Mustelus mustelus*, some Carcharhinid sharks, skates and rays. The fishery operates in two major areas: the Eastern Cape and Western Cape and operates in waters generally shallower than 100m.

Sharks generally are long-lived species that display low fecundity, slow growth rates and late maturation, which makes them particularly susceptible to overexploitation. Further, sharks are apex predators and the removal of these species could drastically alter marine ecosystems. Shark recruitment is strongly associated with adult biomass, as such, the more adults in a population, the

more productive the fishery.

Landings of sharks in various commercial fisheries, including the demersal shark longline and line fishery, appear to be largely influenced by market trends. The bulk of soupfin and smoothhound shark trunks and fins are exported to Australia for use in the fillet trade.

2.2. History of the fishery

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

Fishers used longline gear to target hake and kingklip under the guise of shark permits. When the by-catch limits of hake and kingklip were reduced in the shark fishery, fishing effort decreased exponentially.

Prior to 1998 more than 30 permits were issued to target shark, but due to poor performance in the fishery, the total applied effort ("TAE") was reduced to 23 permits in 1998. The TAE was further reduced in 2004 and 2006 to 11 and 6 permits, respectively, due to poor performance. Furthermore, as a result of changes in market trends, catches of soupfin and smoothhound sharks only increased in 2006.

2.3. Resource users

Catches of demersal sharks have generally been poor due to right holders only being active on a part-time basis. Many shark right holders have rights in sectors such as hake longline and tuna pole. Consequently, the shark fishery is generally used to keep the vessels busy when not engaged in other sectors.

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

In 2005, the Department allocated 6 demersal fishing rights. The fishing rights authorised a maximum of six fishing vessels access to the fishery. Each Right holder was permitted to use only one vessel. 63% of the rights were allocated to blacks or black-owned and controlled entities. In terms of female shareholding, 50% of rights were allocated to females or female-owned and controlled entities.

4. Objectives

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

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

- (i) Promote youth and female ownership and development.

5. Granting of rights

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

5.1. Form of right holder

Applications will only be considered from South African-owned companies, close corporations and co-operatives.

5.2. Duration of rights

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

6. Evaluation criteria

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

6.1. Exclusionary criteria

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 transgression 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 the payment of admission of guilt fines, may be taken in to 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 failed to effectively utilise their demersal shark fishing rights between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

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

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of demersal shark. 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.

6.2. **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**

Applicants will be assessed and scored on –

- (i) The percentage of black and women ownership and black and women 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 representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also give regard to the wage differentials between the highest and lowest paid employees;
- (iv) Compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA). Applicants that comply with the BCEA will score more points than applicants not complying.
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of blacks and youth and participation in learnership programmes; and

(vii) Corporate social investment.

(b) Investment in the fishery

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

(c) Fishing performance

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

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

(d) Reliance on demersal shark

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

(e) Local economic development

(i) The delegated authority will take into consideration the landing of catches in fishing harbours outside the metropolitan areas to promote local economic development.

(ii) The delegated authority may, in order to ensure that all fishing communities share in the marine living resources, use landing sites/fishing harbours as scoring or tie-breaking criteria.

- (iii) Applicants are encouraged to land or process fish in harbours and fishing communities that are economically depressed.

(f) **Job creation**

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

- (i) permanent employment;
- (ii) medical aid, pension and 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.

(g) **Payment of levies**

Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

6.3. Suitable vessels

- (a) A suitable vessel in the demersal shark fishery is a vessel that:
 - (i) has a minimum South African Maritime Safety Authority (SAMSA) registered length of approximately 10 metres. Smaller vessels may be considered on the basis of their demersal shark fishing performance;
 - (ii) has a functioning vessel monitoring system at the time of applying for

a vessel licence if the application is successful;

(iii) is registered and certified by SAMSA as being suitable for fishing; and

(iv) is geared for demersal shark longline fishing.

(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.

6.4. Multi-sector involvement

Applicants in the demersal shark fishery (including their controlling shareholders and members of their executive management team) are not precluded or discouraged in applying for fishing rights in other fishing sectors.

7. Application fees

No application fees will be payable for applications in this fishery.

8. Provisional lists, representations and consultations

8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in this fishery.

8.2. The delegated authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.

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

9. Management measures

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

9.1. 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.

9.2. Performance measuring

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

9.3 Utilisation of fishing right

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

9.4 Grant-of-right fees

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

of Finance.

10. Permit conditions

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

11. Glossary of terms

- 11.1 “MLRA” means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.2 “Rights” means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.3 “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.
- 11.4 “The 2013: General Policy” means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.5 “The Department” means the Department of Agriculture, Forestry and Fisheries.
- 11.6 “The Minister” means the Minister of Agriculture, Forestry and Fisheries.
- 11.7 “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.



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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

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

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

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1. Introduction

This policy on the allocation and management of fishing rights in the hake handline fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”). This policy must be read with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 3013: General Policy”).

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

This policy sets out the objectives, criteria and considerations that will guide the allocation and management of fishing rights in the hake handline 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 hake handline fishery developed along the southern Cape coast in the late 1980s. The fishery operates in inshore waters targeting shallow water hake, *Merluccius capensis*. During the early 2000s when the markets were lucrative, the hake handline fishery operated out of small fishing harbours and slipways along the southern Cape and Eastern Cape coasts, as far north as Port Alfred.

Since 2006, the fishing activity in the hake handline fishery has decreased significantly as a result of change in distribution of the fish, collapsed international markets and increase in operational costs, emanating mainly from fuel. In addition, the fish has subsequently moved offshore, in areas which make it difficult for small boats to access because of safety reasons. The availability of the hake in the inshore areas where the hake handline boats used to operate is seasonal.

2.2. History of the fishery

In the late 1980s, traditional linefishers began targeting hake as demand for prime quality ("PQ") hake had increased on the international market, particularly in Europe. In that period the fishery was not properly regulated or managed. The lack of a regulatory framework, coupled with increased demand for PQ hake in the late 1990s resulted in a number of persons, including recreational and fishers operating in other fisheries, targeting this fishery to take advantage of the high prices and catches rates which rapidly escalated. By the year 2000, approximately 5000 tons were landed with catches peaking at an estimated 7300 tons in 2001.

In December 2000, the Minister announced an emergency measures in terms of section 16 of the MLRA in the traditional linefish fishery. The Minister also decided to split the management of the handline fisheries into three separate fisheries – the tuna pole, the hake handline and the traditional linefish fisheries with the intention of protecting the dwindling linefish stocks. In that year, the Minister, for the first time, set a total applied effort ("TAE") for the hake handline fishery. The TAE limited the number of crew and vessels that could target hake using a handline to 130 vessels and 785 crew. In addition, a precautionary maximum catch limit ("PMCL") of 5500 tons was set aside under the global hake total allowable catch.

2.3. The Management of the hake handline fishery

The Department manages the hake handline fishery as part of the collective hake fisheries collective. A global total allowable catch ("TAC") for hake is set annually by the Minister. The split of the commercial hake directed TAC is as follows:

- (i) hake handline - 3%
- (ii) hake inshore trawl – 6%.
- (iii) hake longline – 7%
- (iv) hake deepsea trawl – 84%

Hake stocks are currently managed in terms of a recovery strategy and the TAC for hake has improved over the past 3 years (2010-2012). There are clear indications that the recovery strategy is yielding positive results.

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

In 2005, the Department allocated 95 hake handline fishing rights. The fishing rights authorised 95 vessels and 742 crew to target hake using the handline method. This was the second time that fishing rights were allocated in this fishery and the second time that the hake handline fishery was subjected to comprehensive regulations. 75% of the rights were allocated to blacks and black-owned entities and 23 % to females and female-owned entities.

4. Objectives

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

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

- (i) Promote youth and female ownership and development.

5. Granting of rights

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

5.1. Form of right holder

Applications will only be considered from South African natural persons and South African-owned companies, close corporations and co-operatives.

5.2. Duration of right

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

6. Evaluation criteria

Applications for Traditional linefish 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.

6.1. 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 transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including 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 failed to effectively utilise their hake handline fishing rights between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

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

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

(e) **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 handline. 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.

6.2. 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**

Accordingly, applicants will be assessed and scored on –

- (i) The percentage of black and women ownership and black and women 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 representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also give regard to the wage differentials between the highest and lowest paid employees;
- (iv) Compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA). Applicants that comply with the BCEA will score more points

than applicants not complying.

- (v) Affirmative procurement;
 - (vi) Compliance with legislation on skills development and the amounts spent on the training of blacks and youth and participation in learnership programmes; and
 - (vii) Corporate social investment.
- (b) **Investment in the fishery**

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

(c) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the hake handline fishery will be examined to determine if they have effectively utilised their fishing rights.
- (ii) Applicants that did not harvest any hake handline during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Reliance on hake handline**

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

(e) **Local economic development**

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

(f) **Job creation**

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

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

(g) **Payment of levies**

Applicants that have been granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

6.3. Suitable vessels

- (a) A suitable vessel in the hake handline fishery is a vessel that:
- (i) is either a skiboat or traditional deck boat;
 - (ii) has a minimum registered length of 5 metres and a maximum registered length of 20 metres;
 - (iii) is certified by the South African Maritime Safety Authority (SAMSA) as being safe for hake handline fishing;
 - (iv) is geared for hake handline fishing; and
 - (v) has a functioning vessel monitoring system at the time of applying for a vessel licence if the application is successful.
- (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.

6.4. Multi-sector involvement

Applicants in the hake handline 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.

7. Application fees

No application fees will be payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in 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. Management measures

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

9.1. 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.

9.2. Performance measuring

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

9.3 Utilisation of fishing right

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

9.4 Grant-of-right fees

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

10. Permit conditions

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

11. Glossary of terms

11.1 "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).

11.2 "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).

11.3 "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.

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

- 11.5 “The Department” means the Department of Agriculture, Forestry and Fisheries.
- 11.6 “The Minister” means the Minister of Agriculture, Forestry and Fisheries.
- 11.7 “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.
- 11.8 “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.



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
KWAZULU-NATAL PRAWN TRAWL FISHERY: 2013**

**THIS POLICY MUST BE READ WITH THE 2013: GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF FISHING RIGHTS
(available at 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 iyafumaneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu
Lencwadi iyatholakala nangolimi lwesiBhunu, lwesiXhosa nolwesiZulu**

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

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1. Introduction

This policy for the allocation and management of fishing rights in the KwaZulu-Natal Prawn Trawl ('the fishery') is issued by the Minister of Agriculture, Forestry and Fisheries ('the Minister') and shall be referred to as the "**2013: KZN Prawn Trawl Fishery Policy**". The 2013: KZN Prawn Trawl Fishery Policy shall be read together with the 2013: General Policy on the Allocation and Management of Fishing Rights ('2013: General Policy').

The Minister intends delegating the section 18 powers to allocate commercial fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ('the MLRA') to an official of the Department.

This policy sets out objectives, criteria and, considerations that will guide the evaluation and allocation of fishing rights in the KZN prawn trawl 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 KZN prawn trawl fishery is based in KwaZulu-Natal and consists of two components, i.e., an inshore fishery which takes place on the Thukela Bank and at St. Lucia targeting shallow-water (< 50m) penaeid prawns and an offshore deep-water (200-500m) fishery that extends from Cape Vidal in the north to Amanzimtoti in the south, targeting pink prawns (*Haliporoides triarthrus*), langoustines (*Metanephrops mozambicus*), rock lobsters (*Palinurus delagoae*) and deep-water orange crab (*Chaceon macphersoni*).

Up to the 1960s, trawling was sporadic, but thereafter the sector comprised up to 12 companies and 21 vessels, many of which also fished in Mozambique. Regular statistics were collected from 1988 onwards. Catches and catch rates of individual species or groups of species fluctuate widely, sometimes as a result of fishing strategy (targeting of specific species) rather than fluctuations in abundance. The abundance of shallow water prawns depends on rainfall patterns and their effects on the flushing of estuaries where larval and juvenile prawns develop. In general, the last two decades

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have seen declines in the landings of white prawns, pink prawns, langoustines, rock lobster and deep-water orange crab.

The fishery is managed using a total applied effort ("TAE") strategy, which limits the number of vessels permitted to fish on the inshore and offshore fishing grounds. A TAE of eight fishing permits has been maintained for the past decade.

The sector is capital-intensive and its infrastructure, marketing and product distribution are dominated by established companies. The fishery requires specialised trawling vessels and equipment and is suitable for commercial fishing only. Fishing grounds are on the South African continental shelf and no foreign fishing vessels are allowed to partake in this fishery. Vessels are *ex side* trawl vessels trawling over the stern or stern trawlers with a *single net* whereas some vessels fishing in shallow water operates with *booms* with 2, 3 or 4 nets simultaneously. Trawl net sizes range from 25- to 72-metre footrope length, with a minimum of 50mm mesh size measured from knot to knot. Trawling takes place on a 24-hour basis, at speeds of two to three knots and an average drag duration of four hours. Trawlers carry about 15 - 18 crew and can remain at sea for two to three weeks at a time.

Catches (by mass) of the KZN prawn trawl fishery consist of roughly 30 percent target species, 20 percent retained by-catch, and 50 percent discarded by-catch. The retained by-catch includes cephalopods (octopus, squid and cuttlefish), molluscs, and substantial quantities of several fish species. The discarded by-catch (juvenile or small fish, low-value crustaceans, elasmobranches and molluscs) amounts to about 1 000 tons per annum.

The inshore trawling is seasonal due to seasonal variations in abundance of the target species as well as a mandatory closed period, while the offshore trawling takes place all year-round. The boundary between the inshore and offshore fisheries is situated seven nautical miles from the shore between the St. Lucia lighthouse (28° 30.9'S 32° 24.0'E) and Green Point Lighthouse (30°15.0'S 30° 46.8'E).

Catches are species-sorted, size-graded, packed and blast-frozen at sea. Little value is added on land. Modest shore-based infrastructure, including berthing, re-packing, cold-storage and marketing facilities, is situated in Durban. Frozen products are sold on local markets.

2.2. Biology and resource dynamics

White prawns (*Penaeus indicus*), brown prawns (*Metapenaeus monoceros*) and tiger prawns (*Penaeus monodon*) occur on the shallow water mud banks along the north east coast of KwaZulu-Natal. Bamboo prawns (*Penaeus japonicus*) are also occasionally trawled on the St Lucia grounds. These prawn species grow fast and have a life-span of approximately one year. Eggs are carried on the abdomen of females. Larvae hatch during the second half of the year, and are transported by currents into estuaries along the KZN coast, where they remain up to the first quarter of the following year and grow into juveniles. Juvenile prawns move out of estuaries and recruit onto the mud banks, where they grow to maturity and reproduce, thus completing the life cycle.

Deep water species include pink (knife) and red prawns *Haliporoides triarthrus* and *Aristaeomorpha foliacea*, langoustines *Metanephrops mozambicus* and *Nephropsis stewartii*, deep-water orange crab (*Chaceon macphersoni*), and deep-water rock lobster *Palinurus delagoae*. The life cycles of these species are diverse, but some (such as rock lobster) are slow-growing and long-lived, making them more vulnerable to fishing. Little is known about the biology of the deep-water prawns and langoustines.

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

In 2005/2006 fishing rights were allocated for a period of eight years. Rights are currently held by four fishing companies (with a total of seven vessels), of which two right holders (with five vessels) may fish in both the inshore and offshore fisheries, and the other two right holders (with two vessels) are restricted to the offshore fishery only.

The results of 2005/2006 fishing rights allocation process were as follows:

- (a) 50 % of the right holders in the fishery had a greater than 50 % black shareholding;
- (b) The black ownership in the fishery has increased from 30 % to 67 %;
- (c) The average female ownership in the fishery has decreased by 9.65 %;

Policy for the allocation and management of fishing rights in the Kwazulu-Natal Prawn Trawl fishery: 2013

- (d) Only 30 % of the right holders in the fishery had an employee share scheme;
- (e) Black male directorship has increased from below 10 % to 72 %, however, the female directorship has decreased from 17 % to 14.2 % in this fishery; and
- (f) The number of employees in this fishery has decreased from 150 to 80.

4. Objectives

4.1 The objectives of allocating fishing rights in the KZN prawn trawl fishery are to:

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

5. Granting of fishing rights

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

5.1. Form of right holder

Applications will only be considered from South African-owned companies, close corporations and co-operatives.

5.2 Duration of rights

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

6. Evaluation criteria

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

6.1. Exclusionary criteria

In addition to the criteria described in the 2013: General Policy pertaining to the lodgement of 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

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have been convicted of a serious transgression 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 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 failed to effectively utilise their KZN prawn trawl fishing rights between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **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 prawn 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.

6.2. **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**

Applicants will be assessed and scored on –

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

(b) **Investment in the fishery**

Investment in the KZN prawn trawl fishery related to vessels, processing, and human capital will be considered.

(c) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the KZN prawn trawl fishery will be examined to determine if they have effectively utilised their fishing rights.

- (ii) Applicants that did not harvest any KZN prawn trawl during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Reliance on KZN prawn trawl**

Preference will be given to applicants who rely on the harvesting of KZN prawn trawl for a significant portion of their gross annual income above applicants deriving income from sources outside the fishery.

(e) **Local economic development**

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

(f) **Job creation**

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

- (i) permanent employment;
- (ii) medical aid, pension and 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.

(g) **Payment of levies**

Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

6.3. Suitable vessels

- (a) A suitable vessel in the KZN prawn trawl fishery is a large fishing vessel that:
- (i) is rigged to trawl for prawns (bottom trawling with single net stern, or boom-operated twin or triple nets; and
 - (ii) has a functioning vessel monitoring system at the time of applying for a vessel licence if the application is successful;
- (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.

6.4. Multi-sector involvement

Applicants in the KZN prawn trawl 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.

7. Application fees

No application fees will be payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in this fishery.
- 8.2. The delegated authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 8.3. The delegated authorities may invite representations regarding the assessment of the applications before making final decisions.

9. Management measures

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

9.1. 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.

9.2. Performance measuring

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

9.3 Utilisation of fishing right

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

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9.4 Grant-of-right fees

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

10. Permit conditions

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

11. Glossary of terms

- 11.1. "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 appeals authority finally decides the appeals in the sector.
- 11.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 11.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.5. "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.
- 11.6. "SMME" means Small, Medium and Micro-sized Enterprises.

- 11.7 “The 2013: General Policy” means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.8. “The Department” means the Department of Agriculture, Forestry and Fisheries.
- 11.9. “The Minister” means the Minister of Agriculture, Forestry and Fisheries.
- 11.10. “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.
- 11.11 “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



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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

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

(available at www.daff.gov.za)

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

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

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1. Introduction

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

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

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

2. Profile of the fishery

2.1. Description of the fishery

The Cape Rock oyster (*Striostrea margaritacea*) which is targeted in this fishery has an extensive geographic distribution occurring on rocky reefs from Cape Agulhas to Mozambique. These oysters are found in the intertidal zone and up to about 6m water depths. The Cape Rock oyster is found naturally and is sold as “wild Oysters” in South Africa’s restaurants.

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

2.2. The Management of the oyster fishery

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

- (f) The total applied effort (TAE) for the fishery for the period 2005 to 2013 has determined at 145 pickers and apportioned as follows:
- (i) KZN North, 25 pickers;
 - (ii) KZN South, 15 pickers;
 - (iii) Southern Cape, 102 pickers; and
 - (iv) Port Elizabeth, 3 pickers.
- (h) The TAE for the Southern Cape coast is, based on the extent of the accessible oyster reef, apportioned as follows:
- (i) Heidelberg ("Witsands"), 10 pickers;
 - (ii) Riversdale/Mossel Bay, 58 pickers; and
 - (iii) George/Knysna, 34 pickers.
- (g) Successful applicants will only be allowed to use the following gear for the harvesting of oysters:
- (i) wetsuits;
 - (ii) weight-belts;
 - (iii) masks;
 - (iv) snorkels;
 - (v) crowbar or harvesting iron;
 - (vi) floating marker for crowbar or harvesting iron; and
 - (vii) collection bag.
- (h) Successful applicants will not be allowed to use the following gear for the harvesting of oysters:
- (i) fins;
 - (ii) artificial breathing apparatus; and
 - (iii) floating devices.

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

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

- (a) KZN North, 23;

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

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

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

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

4. Objectives

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

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

5. Granting of fishing rights

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

5.1. Form of the right holder

Applications will only be considered from South African natural persons.

5.2. Duration of rights

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

6. Evaluation criteria

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

6.1 Exclusionary criteria

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

(a) **Compliance**

Applicants that have been convicted of a serious transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including the payment of admission of guilt fines, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) **Paper quotas**

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

(c) **Non-utilisation**

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

(d) **Personal involvement**

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

(e) **Multi-sector involvement**

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

6.2. **Balancing criteria**

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

(a) **Transformation**

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

(b) **Investment in the fishery**

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

(c) **Fishing performance**

- (i) The fishing/harvesting performance of applicants holding fishing rights or exemptions between 2007 and 2013 in the oyster fishery will be examined to determine if they have effectively utilised their fishing rights or exemptions.
- (ii) Applicants that did not harvest any oysters during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Reliance on oysters**

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

(e) **Local economic development**

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

(f) **Job creation**

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

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

7. Application fees

No application fees will payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in this fishery.
- 8.2. The delegated authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 8.3. The delegated authorities may invite representations regarding the assessment of the applications in this before making final decisions.

9. Management measures

9.1. Ecosystems approach to fisheries

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

9.2. **Performance measuring**

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

9.3 **Utilisation of fishing right**

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

9.4 **Grant-of-right fees**

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

10. **Permit conditions**

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

11. **Glossary of terms**

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

- 11.2. "Application period" means the period which commences with the publication of an invitation to interested parties to apply for a fishing or harvesting right in the fishery to the date on which the appeals authority finally decides on the appeals in the fishery.
- 11.3. CPUE" means catch per unit effort.
- 11.4. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.5. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.7. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 11.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.9. "Total allowable catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 11.10. "Total applied effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish individual species or groups of species.



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

**POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
SQUID FISHERY: 2013**

**THIS POLICY MUST BE READ WITH THE 2013: GENERAL POLICY ON THE ALLOCATION
AND MANAGEMENT OF FISHING RIGHTS
(available at 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
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(In case of any inconsistency, the English text prevails)

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1. Introduction

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

The Minister intends delegating the section 18 powers to allocate commercial fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to an official of the Department (“the Department”).

This policy sets out objectives, criteria and considerations that will guide the evaluation and allocation of fishing rights in the squid 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 squid fishery is a capital intensive and investments in vessels and fish processing establishments are very important. The fishery is boat-based and predominately operates in the eastern part of the country with most catches in the area between Plettenberg Bay and Port Alfred. The fishery is export-driven as the bulk of, if not all, of the catches are exported to the international market, being mainly southern Europe.

2.2. History of the fishery

Chokka squid (hereafter referred to as “squid”) has been used as bait by linefishers for many years. The species is also landed as by-catch in the demersal trawl fisheries. In the 1960s and 1970s, the squid resource was heavily exploited by foreign fleets. During this period, squid was caught predominantly by trawlers from the Far East. Foreign fishing activity was phased out in the late 1970s and early 1980s. This followed South Africa’s

declaration of an Exclusive Economic Zone ("EEZ"). Squid and other cephalopods, (i.e. other species of squid and octopus), however, continued to be caught by South African trawlers. The squid by-catch in the demersal fishery fluctuates between 200 tons and 600 tons annually.

A dedicated jig fishery for squid was initiated in 1984. The jigs are operated by handlines, making this a particularly labour-intensive fishery. The jig fishery registered its highest catch of approximately 12 000 tons in 2003/2004. Average catches in the 1990s amounted to between 6 000 and 6 500 tons per annum. Squid is frozen at sea, usually in 10 kilogram blocks. It is generally landed at harbours between Plettenberg Bay and Port Alfred and exported whole to Europe.

Between 1986 and 1988 a licensing system was introduced with a view to limiting the number of vessels participating in the fishery. The fishery is currently regulated in terms of a total applied effort ("TAE"). The squid fleet is divided into vessel categories and the maximum crew complement for the vessels in each category is fixed. Since 1988, the fishery has been closed once a year for five weeks to minimise fishing pressure during the peak spawning season in order to maximise spawning and recruitment success. Increases in vessel efficiency and catch technology have led to increases in fishing efficiency. The squid fishery provides employment for approximately 3 000 people, including land-based personnel (approximately 2 400 sea-going). In turn, the squid fishery supports the families of these employees indirectly. The landed catch is worth R300 million to R500 million per year.

The current allocation of effort in the squid fishery is set at a maximum of 136 vessels. This has been the upper limit since 2005 and has translated to 121 rights allocated in 2005/6. During 2008 and after the global financial crisis the markets for squid in Europe collapsed and had a drastic effect on squid operators in South Africa. As a result a number of operators were forced to sell their businesses to economically established companies with available capital. This was achieved through transfers and consolidation of fishing rights, leading to the number of rights holders in the sector decreasing from the original 121.

2.3. Current resource users

In the previous rights allocation process rights were allocated to 121 companies mainly based in the Eastern Cape. Fishing occurs mainly in the inshore waters between Plettenberg Bay and Port Alfred. There is a fair allocation afforded to traditional linefishers where a maximum of 20 squid per person per day is permitted. Squid caught by linefishers is only for personal use and may not be sold. A substantial proportion of squid is landed by the trawl sector as by-catch. Limited recreational catches for squid are permitted where permit holders are restricted to 20 fish per person per day. However, no upper catch limit is set for commercial fishing.

2.4. The biological status of the squid fishery

The squid fishery targets chokka squid (*Loligo reynaudii*), which is the most abundant squid in the South African coastal waters. Squid is found between Namibia in the west and the Wild Coast in the east. Squid completes its lifecycle within one year but lives for up to 18 months. Sexual maturity is attained within one year of hatching. Maximum length is 46 centimetres (male) and 28 centimetres (female). Squid spawn on the seabed, usually in inshore areas, but sometimes in the deep water on the Agulhas Bank. Spawning occurs year round, but is most prolific in the summer months. Squid prey on crustaceans and fish. The abundance of squid fluctuates substantially. The effects of fluctuations in predation, prey availability and the physical environment are acute in squid because their short life span offers little inter-annual continuity. Presently, squid abundance is at near-record low levels.

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

During the 2005/2006 long-term fishing rights allocation process, 121 commercial squid fishing enterprises were granted rights. An upper limit of 2 422 crew to fish for squid on a maximum 136 vessels was set. The results of 2005/2006 fishing rights allocation process were as follows:

- (a) the total black shareholding for the fishery was 35%;

- (b) almost all the rights holders were SMMEs; and
- (c) the vast majority of workers/employees were black.

4. Objectives

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

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

5. Granting of fishing rights

Fishing rights are granted in terms of section 18 of the MLRA. All rights granted shall be

valid from the date of allocation for a period not exceeding 15 years, whereafter they shall automatically terminate and revert back to the State.

5.1. **Form of right holder**

Applications will only be considered from South African-owned companies, close corporations and co-operatives.

5.2. **Duration of rights**

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

6. **Evaluation criteria**

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

6.1. **Exclusionary criteria**

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

(a) **Compliance**

Applicants, including their members, directors or controlling shareholders that have

been convicted of a serious transgression 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 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 failed to effectively utilise their squid fishing right between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation maybe excluded.

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

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of squid. 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.

6.2. **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

Applicants will be assessed and scored on –

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

(b) Investment in the fishery

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

(c) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the squid sector will be examined to determine if they have effectively utilised their fishing rights.
- (ii) Applicants that did not harvest any squid during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Reliance on squid**

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

(e) **Local economic development**

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

(f) **Job creation**

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

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

(g) Payment of levies

Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

6.3. Suitable vessels

- (a) A suitable vessel in the squid fishery is a vessel that has a minimum SAMSA registered length of eight metres and is equipped for squid fishing using the hand jig 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 right. The VMS shall be functional at all times during fishing operations.

6.4. Multi-sector involvement

Applicants in the squid 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.

7. Application fees

No application fees will be payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in 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. Management measures

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

9.1 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.

9.2 Performance measuring

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

ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

9.3 Utilisation of fishing right

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

9.4 Grant-of-right fees

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

10. Permit conditions

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

11. Glossary of terms

- 11.1. "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.
- 11.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998)
- 11.3. "Race, gender and disability" means to race, gender and disability as defined in the

Employment Equity Act 55 of 1998.

- 11.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.5. "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.
- 11.6. "SMME" means Small, Medium and Micro-sized Enterprises.
- 11.7. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.8. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 11.9. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.10. "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.
- 11.11. "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.



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

**POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
TRADITIONAL LINEFISH FISHERY: 2013**

**THIS POLICY MUST BE READ WITH THE 2013: GENERAL POLICY ON THE ALLOCATION
AND MANAGEMENT OF FISHING RIGHTS
(available at 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 Traditional linefish fishery is issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”) and shall be referred to as the “**2013: Traditional Linefish Fishery Policy**”. This policy must be read together with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”).

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

This policy sets out the objectives criteria and considerations that will guide the evaluation, allocation and management of fishing rights in the Traditional linefish 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

Linefishing includes various line fishing methods applied worldwide. The methods utilised are long-lining and simpler methods such as handheld lines or rod and reel with baited hooks. Long-lining employs capital intensive operations which involve larger vessels and sophisticated technology. Longlining operations target high value species, mainly offshore and on the high seas. Targeted species include tuna, swordfish, patagonian toothfish and hake.

Fishing with simple lines (handheld or on rod) with baited hooks is one of the traditional methods applied in the fishery. These methods have changed little over centuries and are common type of harvesting in remote areas. These methods are typical of inshore line fishing and are referred to as traditional, indicating a distinct differentiation from other line fishing methods. This distinction has led to the origin of the fishery, and to further

distinguish between linefishing and longlining, linefishers are restricted to a maximum of 10 hooks per line.

2.2. History of the fishery

The origin of the boat-based line fishery is traced back to fishing activities of the European seafarers in the 1500s. In 1652 restrictions were imposed on the fishery by the Dutch following their colonisation of the Cape. Despite the abundance of fish, the imposed restrictions resulted in the slow development of the fishery. In 1795 the British captured the Cape colony from the Dutch and lifted all restrictions. Subsequently, boat-based line fishing became a thriving industry in the mid-1800s operating from row and sail boats. The next spurt in the growth of the fishery occurred after the Second World War when both fishing effort and line fish catches increased substantially as a result of the simultaneous introduction of motorised vessels, the construction of small boat harbours along the coast and the availability of echo-sounding technology.

First attempts to manage the commercial fishery, dates back to 1940. Notable was the introduction of a management framework in 1985 following a decrease in catch trends during the latter half of the 20th century and an increase in fishing effort. Restrictions and controls included in the 1985 management framework were commercial fishing licenses (fulltime-A category and part-time-B category) and revised minimum size limits equalled to size at maturity. The management framework also provided for a division of the species into categories based on apparent exploitation vulnerability (i.e. more vulnerable reef species and more resilient shoaling species). Bag limits and closed seasons for some species were introduced and the effort was maintained at the 1985 levels.

Despite the imposed restrictions, catch rates of many species have continued to decline and stock assessments indicated that the so-called more resilient migratory species were severely over-exploited. Research surveys revealed that the regulations have failed to provide a substantial measure of resource protection. It is argued that either the restrictions themselves were not limiting or they may have been poorly enforced. As a result of declining stocks and the increasing claim for access to the fishery, a substantial revision of the management procedure became necessary to prevent possible stock collapse. A new fishery management protocol was then introduced.

In response to the reported status of Traditional linefish stocks, and the proposed management protocol, the Minister declared an emergency in the fishery and effort was reduced by 70% to the current 455 vessels and 3450 crew allocated in the Long-Term Rights Allocation and Management Process of 2005/2006 (LTRAMP 2005). Effective enforcement and monitoring became a necessity in order to rebuild diminishing fish stocks.

2.3. The biological status of the traditional linefish fishery

Stock assessments conducted since the mid-1980s have revealed that with the exception of fast growing species, such as snoek and yellowtail, most commercially exploited Traditional linefish stocks have been depleted to dangerously low levels. As a result productivity and the annual catch are much lower than it could be with obvious ramifications for job creation, tourism and conservation. Apart from these losses, the risk of stock collapse and commercial extinction, as has occurred for seventy-four, are extremely high. In response to the poor status of the Traditional linefish resources, the Minister declared an environmental emergency in the Traditional linefish fishery in December 2000. In terms of the emergency, the Minister determined that no more than 3450 persons may fish commercially for Traditional linefish. The TAE allocated to the Traditional linefish fishery is an attempt to stabilise the declining trends in the fishery and then to re-build over-exploited species. Given their long life span and complex life histories and continuing fishing pressures, it is unlikely that significant positive changes will occur within a decade. During the World Summit on Sustainable Development ("WSSD"), countries undertook to maintain or rebuild fish stocks to levels that can produce maximum sustainable yields. The goal is to be achieved on an urgent basis for depleted stocks, and if possible, by not later than 2015.

2.4. Current resource users

The South African linefishery is a multi-user, multi-species fishery consisting of approximately 200 species of which 95 contribute significantly to commercial and recreational catches. The user groups may be broadly divided into recreational, commercial and subsistence components.

The commercial component referred to as the traditional linefish fishery is a boat-based activity and owing to the large number of users, launch sites, species targeted and the operational range, the linefishery is managed in terms of a total applied effort ("TAE"), bag limits for species, closed areas, limitations on the gear used and restraints on the trade of collapsed and over-exploited species. The commercial traditional linefish fishery currently consists of an approved TAE of 455 vessels and 3 450 crew. These vessels range between 4.5m and 15m in length. The crew use handline or rod-and-reel to target approximately 200 species of marine fish of which 50 species may be regarded as economically important. Target species include resident reef-fish, coastal migrants and nomadic species. Annual catches prior to the reduction of the commercial effort were estimated at 16 000 tons for the traditional linefish fishery. Almost all of the Traditional linefish catch is consumed locally. There is recent evidence of exports of some prime species notably yellowtail.

Approximately 82% of the right holders partake (right holders issued with fishing permits) in the fishery in any given year (fishing season) and 5% of the allocated fishing rights were never activated.

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 455 vessels and 3450 crew for a period of eight years. Right holders in the fishery are restricted to the use of one vessel and a determined maximum number of crew. The rights were allocated to 58% whites and 42% blacks (35% Coloured, 6% African and 1% Indian). 98% of the rights were allocated to males and 2 % to females.

4. Objectives

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

- (a) promote transformation, broaden meaningful participation (increase participation,

value-creation, and linkage) and growth;

- (b) improve the quality of jobs through the promotion of permanent employment and allocation of rights to SMMEs owned by historically disadvantaged persons
- (c) promote adherence to fair labour practices;
- (d) to promote food security and poverty alleviation;
- (e) allocate rights to applicants reliant on traditional linefish as their main source of income;
- (f) promote further investment in vessels;
- (g) facilitate the recovery of over-exploited and collapsed fish stocks;
- (h) achieve optimum utilisation and ecologically sustainable development of marine living resources; and
- (i) promote youth and female ownership and development.

5. Granting of rights

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

5.1. Form of right holder

Applications will only be considered from South African natural persons and co-operatives.

5.2. Duration of right

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

6. Evaluation criteria

Applications for Traditional linefish 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.

6.1. 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 transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including 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 failed to effectively utilise their traditional linefish fishing rights between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Personal involvement 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.

(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 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.

6.2. **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**

Applicants will be assessed and scored on –

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

(b) **Investment in the fishery**

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

(c) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the traditional linefish fishery will be examined to determine if they have effectively utilised their fishing rights.
- (ii) Applicants that did not harvest any traditional linefish during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Reliance on traditional linefish**

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

(e) **Local economic development**

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

(f) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing

rights will be rewarded, and in particular, in respect of applicants that have provided their employees with –

- (i) permanent employment;
 - (ii) medical aid, pension and provident fund;
 - (iii) safe working conditions in accordance with the applicable legislative requirements; and
 - (iv) an employee share scheme.
- (g) **Payment of levies**

Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

6.3. Suitable vessels

- (a) A suitable vessel in the Traditional linefish fishery is a vessel that:
- (i) is either a skiboat or traditional deck boat of approximately 10m or less;
 - (ii) is certified by SAMSA as being safe for traditional linefishing;
 - (iii) is geared for traditional linefishing; and
 - (iv) has a functioning vessel monitoring system at the time of applying for a vessel licence if the application is successful;
- (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.

6.4. Multi-sector involvement

Applicants in the traditional linefish fishery will not be precluded from holding commercial fishing rights in other fishing sectors.

7. Application fees

No application fees will be payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in 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. Management measures

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

9.1. 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.

9.2. Performance measuring

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

9.3 Utilisation of fishing right

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

9.4 Grant-of-right fees

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

10. Permit conditions

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

11. Glossary of terms

- 1.1. "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.
- 11.2. "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"
- 11.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 11.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.5. "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.
- 11.6. "SMME" means Small, Medium and Micro-sized Enterprises.
- 11.7. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.8. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 11.9. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.10. "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.

- 11.11. "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.



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
TUNA POLE-LINE FISHERY: 2013**

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

(Available at 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 iyafumaneka nangolwimi lwesiBhulu, lwesiXhosa nolwesiZulu
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(In case of any inconsistency, the English text prevails)

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1. Introduction

This policy for the allocation of fishing rights in the tuna pole-line fishery is issued by the Minister of Agriculture Forestry and Fisheries (“the Minister”) and shall be referred to as the “**2013: Tuna Pole-Line Fishery Policy**”. The fishery name has been changed from “tuna pole” to “tuna pole-line” as this is a better description of all the fishing gear used, namely, pole, rod and reel and trolling. This policy must be read with the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”).

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

This policy sets out the objectives, criteria and considerations that will guide the allocation and management of fishing rights in the tuna pole-line fishery. It should be noted that this fishery is separate to the large pelagic fishery which utilises longline gear to catch tuna and swordfish.

2. Profile of the fishery

2.1 Description of the fishery

The tuna pole fishery was established in 1979 due to a large run of yellowfin, which resulted in approximately 5,000 tonnes landed in that year. When the yellowfin failed to appear the following year the fishery started targeting albacore. The tuna pole fishery uses poling gear to target schooling juvenile albacore in the southeast Atlantic, largely for export to canning markets. Yellowfin in recent years have been increasingly targeted with rod and reel. Yellowfin are largely exported to fresh tuna markets, with limited quantities sold on the domestic market. Other tuna species landed include bigeye and skipjack, but these species make up less than one percent of the annual catch.

South Africa’s catches of albacore has declined over the last two decades, from about 8 000 t per annum in the 1990s to approximately 3 000 t per annum in recent years. One of

the main reasons for this decrease occurred when Namibia declared its independence and consequently access to one of the main fishing areas, namely Tripp Seamount, was no longer available to South African vessels. The removal of this fishing ground also reduced incentives for vessels to search for albacore along the west coast of South Africa. Rising fuel costs also served to constrain fishing activities to fishing grounds which are close to the major tuna pole fishing harbours of Hout Bay and Cape Town.

Other factors that have also contributed to the decline in catches is the manner in which the tuna pole fishers have been limited to a large extent to fish in one sector only with little or no access to rock lobster and traditional linefish species. These species improved the economic viability of the fishing operations, particularly when tuna were not available. In recent years concerns have also been expressed regarding the increased number of seismic surveys conducted along the coast, which is thought to have altered the movement patterns of tuna. In the last decade an increasing number of fishers have diversified their fishing operations to target yellowfin using rod and reel to supplement the revenue derived from reduced catches of albacore. Consequently, yellowfin catches have increased and fluctuates between 500 – 1 000 t per annum.

Both the Indian Ocean Tuna Commission (IOTC) and International Commission for the Conservation of Atlantic Tunas (ICCAT) have expressed concerns regarding the stock status of albacore and yellowfin in the Atlantic and Indian oceans respectively. According to the 2011 ICCAT stock assessment for south Atlantic albacore it indicated that the resource is over-exploited and under-going overfishing. (There was large uncertainty regarding the outcome of this assessment and as a result a new assessment was requested by Member Parties to be brought forward to 2013.) A precautionary approach was adopted to rebuild the southern Atlantic albacore stock, which resulted in ICCAT reducing the Total Allowable Catch, and in so doing has allocated a combined quota of 10 000 t for South Africa and Namibia to manage.

Strict management measures and monitoring procedures are in place to ensure that South Africa does not exceed its allocated quota. Despite declines in albacore catches, South Africa remains the second largest producer of albacore in the South Atlantic Ocean. Other important fishing countries for albacore in the South Atlantic Ocean are Taiwan, Namibia, Brazil and Japan. Currently, South Africa is not limited to a yellowfin tuna quota in the

Atlantic or Indian Ocean.

Over the years, two types of vessels have emerged in this fishery ranging from 10-28 m overall length (LOA), and ranging from R2-15 million in value. The first are large vessels (> 20 m) with onboard freezers, capable of spending 30 days at sea with a crew of 20 or more. The second type is smaller ice vessels that spend approximately 3 – 10 days at sea and carry less than 20 crew members. Many of the vessels currently utilised are old, with an average age of approximately 30 years. This policy therefore takes into account the capital intensiveness of the fishery and the need to retain skilled crew.

Some vessels of less than 10 m in length were allowed into the fishery as they had some tuna performance in the medium term rights allocation period. However, these vessels are not deemed to be suitable for this fishery given the distances of the tuna fishing grounds from shore, the safety aspects and the limited tuna performance and job creation that these vessel types can provide.

2.2. Life history and management of tuna

Sub-adult (8-12 kg) albacore (*Thunnus alalunga*) is the main target of the tuna pole fishery. In recent years the fishing gear used by the tuna pole fishery has diversified to include rod and reel to target large (>50 kg) yellowfin tuna (*T. albacares*) off Cape Point. The diversification occurred to capitalise on increased abundance of yellowfin in some years, which assisted to supplement the income derived from albacore. Albacore prefers cool temperate water and is more abundant along the west coast of South Africa. In contrast, yellowfin prefers warmer water and is more abundant along the south and east coast of South Africa. Both tuna species have wide geographic distributions occurring in all the major ocean basins. They are also highly migratory fish, with the same stocks fished by many different fishing nations.

Consequently, these stocks are managed globally by Regional Fisheries Management Organisations (RFMOs). These are inter-governmental bodies that are responsible for the management of these resources, including stock assessments, allocating country quotas, and adopting conservation and management measures. The RFMO responsible for the management of tuna and tuna-like species in the Atlantic Ocean is the ICCAT and its

counterpart in the Indian Ocean is the IOTC. South Africa is a long-standing member of ICCAT and is in the process of acceding to the IOTC. The albacore currently fished by the fishery is considered to be part of the southern Atlantic albacore stock, which is managed by ICCAT and South Africa's yellowfin catches is thought to be derived from the Indian Ocean stock. The latter is a hypothesis that is currently being investigated by the Department.

Southern Atlantic albacore spawn in the western Atlantic and migrations follow the South Atlantic gyre. During the summer months (October to May) the sub-adult and juvenile component of the resource form surface schools which migrate north along the west coast of South Africa. Impacts of other countries fishing activities and environmental conditions such as food availability, ocean fronts and weather are thought to play a large role in determining the abundance of the migrating schools in South Africa's coastal waters. Yellowfin, in contrast, spawn in tropical waters of both the Atlantic and the Indian Ocean. It is hypothesized that some of the large adult yellowfin in the Indian Ocean use the Mozambique and Agulhas currents to undertake extensive migrations to feeding areas off Cape Point. Like albacore the abundance of the resource in South African waters is highly variable and is thought to be influenced by environmental conditions and fishing pressure on the high seas and in coastal waters of East African countries.

Due to the seasonal nature of the fishery, the tuna pole fishery has been granted additional access to other species such as snoek (unlimited), yellowtail (bag limit of 10 per person per trip), oceanic squid (unlimited), dorado (unlimited) and angel fish (unlimited) during the long-term fishing rights allocation process of 2005/2006.

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

In 2005, the Department allocated 191 commercial tuna pole fishing rights, thereby authorising 198 of 200 vessels and more than 2 600 crew to target tuna using the pole method. This fishery was undersubscribed and all applicants that met the essential requirements in 2005 were allocated a right. 54.06 % of the rights were allocated to blacks or black-owned and controlled entities. In terms of female shareholding, 29.19 % of rights were allocated to females or female-owned and controlled entities.

Policy for the allocation and management of fishing rights in the Tuna pole-line fishery: 2013

Long-term fishing rights were only awarded to legal entities. No rights were allocated to individuals in the fishery. The fishery is operated by entities that can be described as small, medium and micro-sized enterprises (SMMEs). A significant number of right holders have performed poorly during this period with some right holders not applying for permits in some years.

Furthermore, the Department is aware that historically disadvantaged individuals have been approached to improve transformation profiles of entities, but in a number of cases this ownership has not materialized in any benefits to these people. The Department views this as “fronting” and it is not condoned.

4. Objectives

4.1. The objectives of allocating fishing rights in the tuna pole-line fishery are to:

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

living resources;

- (i) promote youth and female ownership and development; and
- (j) Improve RFMO engagement.

5. Granting of fishing rights

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

5.1. Form of right holder

Applications will only be considered from South African-owned companies, close corporations and co-operatives.

5.2. Duration of rights

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

6. Evaluation criteria

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

Policy for the allocation and management of fishing rights in the Tuna pole-line fishery: 2013

6.1. 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 transgression 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 the payment of admission of guilt fines, may be taken in to 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 failed to effectively utilise their tuna pole-line fishing rights between the period 2007 to 2012 or who have not collected a permit for any particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

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

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of tuna pole-line. 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.

6.2. 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

Applicants will be assessed and scored on –

- (i) The percentage of black and women ownership and black and women 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 representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also give regard to the wage differentials between the highest and lowest paid employees;
- (iv) Compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA). Applicants that comply with the BCEA will score more points than applicants not complying.
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of blacks and youth and participation in learnership programmes;

and

(vii) Corporate social investment.

(b) **Investment in the fishery**

Investment in the tuna pole-line fishery related to vessels, processing, and human capital will be considered.

(c) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the tuna pole fishery will be examined to determine if they have effectively utilised their fishing rights.
- (ii) Applicants that did not harvest any tuna pole during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.
- (iii) Applicants with existing rights that targeted tuna pole stocks over tuna or which predominantly fished in Namibia will be penalised.

(d) **Reliance on tuna pole-line**

Preference will be given to applicants who rely on the harvesting of tuna pole-line for a significant portion of their gross annual income above applicants deriving income from sources outside the fishery.

(e) **Local economic development**

- (i) The delegated authority will take into consideration the landing of catches in fishing harbours outside the metropolitan areas to promote local economic development.

- (ii) The delegated authority may, in order to ensure that all fishing communities share in the marine living resources, use landing sites/fishing harbours as scoring or tie-breaking criteria.
 - (iii) Applicants are encouraged to land or process fish in harbours and fishing communities that are economically depressed.
- (f) **Job creation**

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

- (i) permanent employment;
 - (ii) medical aid, pension and 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.
- (g) **Payment of levies**

Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.

6.3. Suitable vessels

- (a) A suitable vessel in the tuna pole-line fishery is a vessel that:
- (i) has a minimum South African Maritime Safety Authority (SAMSA) overall length (LOA) of approximately 10 meters;

Smaller vessels will not be considered even if they have been used to catch tuna in the past;

- (ii) is certified by SAMSA to have a minimum operational range of 40 nautical miles (Category B vessel);
 - (iii) has a functioning vessel monitoring system at the time of applying for a vessel licence if the application is successful;
 - (iv) is equipped with freezer or ice facilities; and
 - (v) is a commercial tuna vessel as opposed to a luxury yacht, recreational vessel or recreational charter vessel.
- (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.

6.4. Multi-sector involvement

Applicants in the tuna pole-line 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.

7. Application fees

No application fees will be payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in this fishery.

- 8.2. The delegated authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 8.3. The delegated authorities may invite representations regarding the assessment of the applications before making final decisions.

9. Management measures

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

9.1. 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.

9.2. Performance measuring

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

9.3 Utilisation of fishing right

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

9.4 Grant-of-right fees

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

10. Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful applicants in this fishery, but subject to the requirements of any applicable regional fishery management organisation and will be revised as and when it may be necessary.

11. Glossary of terms

- 11.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector and ending on the date on which the appeals authority finally decides the appeals in the sector. "Department" means the Department of Agriculture, Forestry and Fisheries.
- 11.2. "ICCAT" means International Commission for the Conservation of Atlantic Tunas.
- 11.3. "IOTC" means Indian Ocean Tuna Commission.
- 11.4. "LOA" means the length overall which is the maximum length of a vessel's hull measured parallel to the waterline.
- 11.5. "Member Parties" means member states that have acceded to an RFMO.
- 11.6. "RFMO" means the Regional Fisheries Management Organisation.

- 11.7. "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.
- 11.8. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.9. "SMME" means Small, Medium and Micro-sized Enterprises.
- 11.10. "The 2013 General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.11. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.12. "Total allowable catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 11.13. "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.



DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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

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

(available at www.daff.gov.za)

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

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

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1. Introduction

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

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

This policy sets out the objectives, criteria and considerations that will guide the evaluation and allocation of fishing rights in the white mussel 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

White mussels (*Donax serra*), which is the targeted species in this fishery, occur between northern Namibia and the Wild Coast. They are present in high numbers on the sandy beaches of the west and south coasts of South Africa. The zonal distribution of the white mussels changes with the tidal cycle. On the west coast, juveniles are found high up on the beach, whereas adults are distributed around and below the mean spring low tide mark. On the east and south coasts, adults are found in the mid-tide region.

White mussels are dominant burrowers on sandy beaches, favouring temperate shores. They are bivalve molluscs that filter-feed and grow to a shell length of 60 millimetres in about five years.

The fishery started in the late 1960s but in 1966 it was negatively affected by a red tide that caused massive mortalities of white Mussels. The recovery of the population

took more than 10 years and led to a dramatic reduction in the catch per unit effort ("CPUE").

The total number of white mussels harvested per year has declined steadily since the 1980s. This has largely been as a result of the sector's lack of economic viability. Surveys conducted in 1988 and 1989 showed that the annual landings amounted to less than one percent of the standing biomass in the relevant areas.

2.2. The management of the white mussel fishery

Harvesting of white mussels is limited to seven areas along the west coast where White mussels are particularly abundant owing to the nutrient rich Benguela Current that washes these shores.

The fishery is managed by means of limiting the number of pickers with no daily bag limits. Furthermore, effort has been split across seven white Mussel harvesting areas.

The total applied effort (TAE) for the fishery for the period 2005 and 2013 was determined at seven Right Holders and 49 pickers.

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

In 2005 rights in the fishery were granted to seven individual applicants. The right holders were limited to a maximum of seven pickers, including the right holder, to fish white mussels in their allocated harvesting areas along the West Coast. Presently, the TAE and the harvesting area restrictions are considered to be the most effective management measures for the fishery. The 2005/2006 successful right holders in the fishery comprised of 43% black males, 43% black females and 14% white females.

4. Objectives

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

- (a) promote transformation, broaden meaningful participation (increase participation, value-creation, and linkage) and growth;

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

5. Granting of fishing rights

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

5.1. Form of right holder

Applications will only be considered from South African natural persons.

5.2 Duration of rights

Fishing rights will be granted in the white mussel fishery for a period not exceeding 15 years. The duration of rights will be determined by the delegated authority taking

in to account amongst other things, the level of transformation in the fishery, the capital intensity of the fishery, the need to encourage further investment and economic growth, the current knowledge of the biological status of the target species and the performance of participants in the fishery.

6. Evaluation criteria

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

6.1. Exclusionary criteria

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

(a) Compliance

Applicants that have been convicted of a serious transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including the payment of admission of guilt fines, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) Paper quotas

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

(c) Non-utilisation

Applicants that failed to effectively utilise their white mussel fishing right between the period 2007 to 2012 or who have not collected a permit for any

particular reason without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Personal Involvement**

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

(e) **Multi-sector involvement**

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

6.2. **Balancing criteria**

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

(a) **Transformation**

Applicants will be assessed and scored on –

- (i) The percentage of black and women ownership and black and women representation at top salary and management levels;
- (ii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iii) Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also

give regard to the wage differentials between the highest and lowest paid employees;

- (iv) Compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA). Applicants that comply with the BCEA will score more points than applicants not complying.
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of blacks and youth and participation in learnership programmes; and
- (vii) Corporate social investment.

(b) **Investment in the fishery**

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

(c) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights or exemptions between 2007 and 2012 in the white mussel fishery will be examined to determine if they have effectively utilised their fishing rights or exemptions.
- (i) Applicants that did not harvest any white mussels during a fishing season or who have not collected a permit for any particular season without providing a reasonable explanation and/or supporting documentation may be excluded.

(d) **Reliance on white mussels**

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

(e) **Local economic development**

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

(f) **Job creation**

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

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

6.3. Multi-sector involvement

Applicants in the white mussel fishery will not be precluded from holding commercial fishing rights in other fishing sectors.

7. Application fees

No application fees will payable for applications in this fishery.

8. Provisional lists, representations and consultations

- 8.1. The delegated authority may issue provisional lists for comment on any aspect relating to an application in this fishery.
- 8.2. The delegated authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 8.3. The delegated authorities may invite representations regarding the assessment of the applications in this before making final decisions.

9. Management measures

9.1. Ecosystems approach to fisheries

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

9.2. Performance measuring

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

9.3 Utilisation of fishing right

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

9.4 **Grant-of-right fees**

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

10. **Permit conditions**

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

11. **Glossary of terms**

- 11.1. "Applicants holding fishing rights" means a natural person that has been granted a fishing or harvesting right in terms of section 18 of the MLRA during the period 2005 – 2006 in the white mussel fishery.
- 11.2. "Application period" means the period which commences with the publication of an invitation to interested parties to apply for a fishing or harvesting right in the fishery to the date on which the appeals authority finally decides on the appeals in the fishery.
- 11.3. "CPUE" means catch per unit effort.
- 11.4. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.5. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.6. "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.

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- 11.7. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.8. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 11.9. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.10. "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.
- 11.11. "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.