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

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

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## 1. Introduction

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

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

## 2. Profile of the fishery

### 2.1 Background

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

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

### 2.2 Current status of the fishery

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

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

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

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

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

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

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

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

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

## **4. OBJECTIVES**

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

- (i) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, woman and people with disabilities) broaden meaningful participation (increase participation, value-creation, and linkage).
- (ii) ensure sustainable livelihoods through the promotion of fair employment;
- (iii) promote adherence to fair labour practices and improved working conditions;
- (iv) to promote food security and poverty alleviation;
- (v) prefer applicants who rely on the harvesting of Large Pelagic for a significant portion of their gross annual income above applicants deriving income from sources outside the Large Pelagic fishery;
- (vi) facilitate the recovery of over-exploited and collapsed fish stocks; and
- (vii) achieve optimum utilisation and ecologically sustainable development of marine living resources.

**5. GRANTING OF RIGHTS**

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

**5.1 Form of right holder**

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

**5.2 Duration of right**

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

**5.3 Total Applied Effort allocation**

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

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

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

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

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

**6. Multi-sector involvement**

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

**7. Evaluation criteria**

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

**7.1 Exclusionary criteria**

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

**(a) Compliance**

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

**(b) Paper quotas**

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

(c) **Non-utilisation**

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

7.2 **Balancing criteria**

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

(a) **Transformation**

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

Applicants will be assessed and scored on –

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

(b) **Fishing performance**

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



(c) **Local economic development**

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

(d) **Job creation**

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

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

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

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

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

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

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

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

(ii) **Brother-Sister Corporations**

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

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

(a) South African flagged fishing vessels

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

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

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

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

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

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

Further, the nominated vessel must:

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

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

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

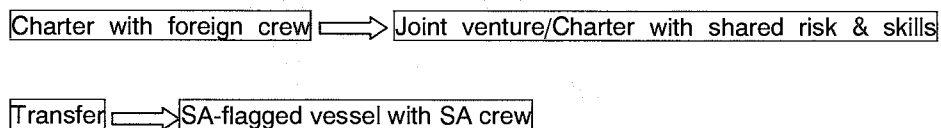
Experience subsequent to the long-term rights allocation process of 2005 has shown that the reflagging process could be both lengthy and costly. The reflagging process is dependent on the economic profitability of the Large Pelagic fishery, including access to international markets, especially the Japanese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

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

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

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

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



Further, nominated foreign-flagged vessel must:

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

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

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

### 8. Provisional lists, representations and consultations

8.1 The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery/sector.

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

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

**9. Announcement of decisions**

The Delegated Authority shall after making a final decision on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision. Further General Reasons for decisions in a specific fishery sector will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure referred to as decision sheet outlining all applicant scores in the Large Pelagic sector.

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

- 10.1 The fees for this fishery will be determined having regard to:

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

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

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

**11. Termination of pelagic shark longline exemptions**

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

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

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

## **12. Management measures**

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

### **12.1 Ecosystem approach to fisheries**

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

### **12.2 Observer Programme**

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

### **12.3 Performance measuring**

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

### **12.4 Offences**

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

**13. Permit conditions**

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

**14. Glossary of Terms**

- 14.1 "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 14.2 The MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998). ), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 14.3 "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 14.4 "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 14.5 "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 and 2011 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 14.6 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 14.7 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 14.8 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 14.9 "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 14.10 "Total Allowable Catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 14.11 "Total Applied Effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the



maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish individual species or groups of species.

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