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

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

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

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

2. Profile of the Fishery

2.1. Distribution and status of the resource

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

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

2.2. Resource users

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

2.3. Management

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

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

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

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

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

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

4. Objectives

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

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

5. Granting of rights

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

5.1. Form of right holder

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

5.2. Duration of right

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

5.3. Total Allowable Catch allocation

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

5.4. Transfer of rights allocated in terms of this policy

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

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

6. Multi-sector involvement

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

7. Evaluation criteria

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

7.1. Exclusionary criteria

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

(a) Compliance

Applicants that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing

right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements of the MLRA, including payment of admission of guilty fines, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) **Paper Quotas**

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

(c) **Non-utilization**

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

7.2. **Balancing criteria**

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

(a) **Transformation**

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

Applicants will be assessed and scored on –

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

(b) **Fishing performance**

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

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

(c) **Local economic development**

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

(d) **Job creation**

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

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

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

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

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

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

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

(ii) **Brother-Sister corporations**

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

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

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

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

(h) **By-catch**

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

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

(i) **Compliance**

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

7.3. **Suitable vessels**

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

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

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

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

9. **Announcement of decisions**

The Delegated Authority shall after making a final decision on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision. Further General Reasons for decisions in a specific fishery sector will be published

informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure referred to as decision sheet outlining all applicant scores in the Horse Mackerel sector.

10. Payment of application and grant of right fees

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

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

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

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

11. Management measures

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

11.1. Ecosystem approach to fisheries

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

11.2. Observer Programme

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

11.3 Performance measuring

Successful applicants will be subjected to performance measuring for the duration of the fishing rights. The purpose of performance measuring will be to ensure that the objectives

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

11.4. **Offences**

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

12. **Permit conditions**

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

13 **Glossary of terms**

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa".
- 13.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "Total allowable catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 13.10. "Total applied effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or

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

13.11. "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.

13.12. "legal entity" means a close corporation, South African company or trust, other than a processing factory.

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