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DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISH PROCESSING RIGHTS: 2015

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

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

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

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1. Introduction

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

This policy sets out the objectives, criteria and considerations that will guide the allocation and management of fish processing rights. This policy will guide the delegated authority in taking decisions on applications in this sector.

2. Profile of the sector

2.1. Brief description of the sector

Section 1 of the Marine Living Resources Act (Act No. 18 of 1998) ("MLRA") defines fish processing as the act of producing any substance or article from fish by any method, including the work of cutting up, dismembering, separating parts of, cleaning, sorting, lining and preserving of fish, or canning, packing, drying, gutting, salting, icing, chilling, freezing or otherwise processing for sale in or outside the territory of the Republic. The reason for the wide definition is to curb the processing of fish that was caught in contravention of the MLRA.

The wide definition has led to many unintended consequences and caused difficulties with the enforcement thereof. It is therefore proposed that fishmongers, restaurants, fish shops, supermarkets, large chain stores, the drying of legally caught and purchased fish, the cleaning, gilling and tailing of fish on board an authorised fishing vessel and authorised fishing vessels that only pack fish in crates or use ice to land fresh fish be exempted in terms of section 81 of the MLRA from the provisions of sections 1, 18 and 13 of the MLRA insofar as it relates to fish processing. These exemptions must be monitored to ensure that it does not lead to increased illegal, unregulated and unreported fishing.

In terms of section 18 of the MLRA, no person shall undertake commercial fishing or subsistence fishing, engage in mariculture or operate a fish processing establishment (FPE), unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.

It is commonly accepted that fish processing establishment rights allocated in terms of section 18 of the MLRA are not property rights, but statutory permissions to process fish for a specified

period of time. Accordingly, the cancellation or revocation of a fish processing establishment right does not constitute the expropriation of a property right within the meaning of section 25 of the Constitution of the Republic of South Africa, 1996 or the Expropriation Act 63 of 1975. This is clear from section 18(6) of the MLRA, which provides that a FPE right is valid for the period determined by the Minister (or his delegate) where after it automatically reverts back to the State.

Section 13 of the MLRA stipulates that no person shall exercise any right granted in terms of section 18 or perform any other activity in terms of this Act unless a permit has been issued by the Minister to such person to exercise that right or perform that activity.

Any person processing fish is therefore required to have a right to operate a fish processing establishment and be in possession of a valid permit issued in terms of section 13 of the MLRA to undertake such activity.

On 27 July 2001, the Department in terms of Government Gazette No. 22517 of 27 July 2011 ("the Gazette"), invited applicants for a period of two weeks to apply for rights to operate FPE's. The applications were received, evaluated and rights were granted for a period of fifteen (15) years. These rights will expire in 2016. The Gazette indicated that an opportunity will again be granted in 2002 for additional applicants to apply for rights to operate FPE's. This opportunity never materialized. In 2005 the General Policy for the Allocation of Long Term Fishing Rights (LTRAMP), stated that a separate policy will be adopted dealing specifically with fish processing establishments.

Since 2001 a vast number of fishing companies have been formed and a number of fishing vessels built which were authorized to fish in various fishing sectors. In order for these land and sea-based establishments to be compliant with the MLRA and to participate meaningfully in the economy as part of the fishing industry, the Department exempted them in term of section 81 of the MLRA from the provisions of section 18. Once exempted, they had to apply for permits in terms of section 13 of the MLRA.

A FPE right is granted to a specific person or entity and in terms of section 21 of the MLRA, the right may not be transferred without the approval of the Minister or his delegate. Upon the death, sequestration, or liquidation of the right holder, the right vests respectively in the executor, trustee or liquidator and the right may continue to be utilized for the period of time permitted by the applicable legal provisions. However, any transfer of a fish processing establishment right to a third party requires the Minister's approval.

2.2. **Current resource users**

There are currently 892 (521 land-based and 371 vessel-based) right/exemption holders in the sector operating from Port Nolloth to the west of Cape Hangklip.

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

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In 2005/2006 no long-term fish processing rights were allocated.

4. **Objectives**

4.1. The objectives of allocating fish processing rights are to:

- (a) promote transformation through the allocation of rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities) and to broaden meaningful participation (increase participation, value-creation, and linkage);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improved working conditions;
- (d) to promote food security and poverty alleviation; and
- (e) achieve optimum utilisation and ecologically sustainable development of marine living resources.

5. **Granting of rights**

Fish processing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister, only South African persons shall acquire or hold rights in terms of section 18 of the MLRA All rights granted shall be valid from the date of allocation for a period not

exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. It shall be further noted that in terms of section 16 of the MLRA, the Minister may suspend any fishing in any fishery or impose effort restrictions in order to address a state of emergency.

5.1. Form of right holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights.
- (b) Having regard to the nature of operations and resources accessibility, only the following South African persons will be considered in the fish processing establishment sector:
 - (i) a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
 - (ii) a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), of which the majority of shareholders, as prescribed by the Minister, are South African persons;
 - (iii) a close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), of which the majority of members are South African persons;
 - (iv) a trust in which the majority of trustees having the controlling power at any given time are South African citizens or a majority of the beneficial interests are held by South African citizens; and
 - (v) a co-operative registered in terms of the Co-operatives Act, 2005 (Act no. 14 of 2005), of which all the members are South African citizens but, where any member is a juristic person, such person's principal place of business must be in the Republic.

5.2. Duration of right

Rights to operate fish processing establishments will be granted for a period of 15 years.

5.3 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, fish processing rights in terms of this Policy shall not be transferred within the first two (2) years allocation except in the case of death, sequestration, or liquidation of the right holder occurring after the right has been allocated. In addition, failure to activate or apply for any permits, or to submit fish processing data as required during the first two (2) years shall result in an automatic cancellation of the right by Minister.

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

6. Multi-sector involvement

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

7. Evaluation criteria

Applications for fish processing rights will be screened in terms of a set of "exclusionary criteria."

7.1. Exclusionary criteria

Apart from the criteria described in the 2013: General Policy pertaining to the lodgement of applications and material defects, the Delegated Authority will exclude applicants that have been convicted of a serious transgression of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing or processing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including payment of admission of guilty fines, may be taken into account and may also adversely affect an application.

7.2. Criteria for evaluation of an applicant

Applicants will be evaluated in terms of the following criteria:

(a) Transformation

The Broad-Based Black Economic Empowerment Act 53 of 2003 (the BBBEE Act) as amended, gives effect to this constitutional imperative. Due to the nature of the fish processing sector, the weighting and benchmarks set in the codes relating to ownership and management will be used in the assessment of the transformation profile of the applicants. An applicant will be required to submit a BBBEE Certificate as proof of the transformation status of the applicant.

Applicants will be assessed on:

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

training of blacks and youth and participation in learnership programmes; and

(vi) Corporate social investment.

(b) **Fish processing performance**

The performance of applicants holding fish processing rights will be examined to determine if they have effectively utilised their rights. Effective utilisation shall mean activation of the fish processing permit and subsequent processing data submission for at least five years during the period 2002-2015.

(c) **Local economic development**

The Delegated Authority will take into consideration the processing of fish outside the metropolitan areas to promote local economic development.

(d) **Job creation**

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

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

(e) **Access to a suitable fish processing establishment**

- (i) An applicant for a vessel-based fish processing establishment will be required to demonstrate a right of access to a vessel suitable for the processing fish. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (ii) An applicant for a vessel-based fish processing establishment will be required to demonstrate access to a suitable premises by means of a valid lease agreement or title deed. An applicant will be required to provide a sitemap with coordinates of the site locality. All land based activities need approval from the local authority (e.g. Municipality). This approval, however, does not exempt an applicant from undergoing a thorough Public Participation Process, which will ensure that all interested and affected Parties are informed and well aware of the activities around them. The approval must be in writing and submitted with the application.

(f) **Business plan**

An applicant will be required to submit a detailed business plan including the following information:

- (i) Company profile and shareholding structure.
- (ii) Product category to be processed e.g. shellfish, finfish, crustaceans, seaweeds etc.
- (iii) If imported species are being considered, the measures to be taken to avoid the spread and introduction of exotic commensals, parasites and pathogens.
- (iv) A detailed description of processing methods and operational plan including:
 - (a) Design and Technology;
 - (b) Water Quality Monitoring;
 - (c) Effluent Discharge;
 - (d) Quality Control Measures;
 - (e) Sanitary and Hygiene Measures; and
 - (f) Hazard Critical Analysis Control Points (HACCP).
- (v) The use of any kind of chemicals, disinfectants, therapeutants and anesthetics, that may be used or result from the operation. Methods of application that are being considered for use must also be outlined in the proposal.
- (vi) The product destination or marketing strategy.
- (vii) A detailed financial plan projecting capital, expenditure and income over a minimum period of 2 years should be included.
- (viii) Facilities and employment opportunities that will be created should be highlighted in the business plan.

Information on how the facility will minimize and prevent potential negative environmental impacts.

(g) **Environmental authorisation**

The Minister of Environmental Affairs published regulations that list activities which require a Basic Assessment or scoping and environmental impact reporting. These regulations were published on 18 June 2010 and commenced on 2 August 2010. Environmental authorisation may be required before the establishment of an FPE as certain activities are listed under the National Environmental Management Act, 1998 (Act No. 107 of 1998), Environmental Impact Assessment (EIA) regulations.

If an applicant in the Aquaculture sector or wild capture fisheries is advised that an environmental authorisation is required for the activity, such applicant must register the Department of Agriculture, Forestry and Fisheries, Aquaculture Management Section as an interested and affected party and should forward all environmental impact reports for comments to the Department of Agriculture Forestry and Fisheries, Aquaculture Management Section, Tel. 021 430 7052, Fax. (021) 434 2889 and email FatimaS@daff.gov.za.

(h) **Certificate of Acceptability for Fish Factories and other Fish Handling and Processing Establishments**

Regulations published under Government Notice No. R918 of 1999 as corrected by Government Notice No. 723 of 12 July 2002 promulgated in terms of the Health Act, 1977 (Act No. 63 of 1977) sets out certain general hygiene requirements for food premises and the transport for food. In terms of these Regulations, a Certificate of Acceptability for food premises of food is required before a person can be allowed to handle food on food premises. An applicant should apply in writing to the local Municipalities' Health Services section in whose area of jurisdiction the food premises are situated for a Certificate of Acceptability. An applicant will be required to submit a Certificate of Acceptability.

(i) **Coastal Waters Discharge Permit**

The National Environmental Management: Integrated Coastal Management (ICM) Act, 2008 (Act No. 24 of 2008) addresses a number of issues relating to coastal pollution including the discharge of effluent into coastal waters. In terms of provisions of Chapter 8 of the ICM Act, particularly Section 69 which regulates the discharge of effluent into coastal waters from any source on land. Such activities, in addition to any other permit or authorisation which may be required by any other law, an applicant will require a Coastal Waters Discharge Permit obtained from the Department of Environmental Affairs (DEA). For further details an applicant may contact the Department of Environmental Affairs (DEA), Marine and Coastal Pollution Management, Tel. (021) 819 2452 and e-mail Marinepollution@environment.gov.za or Tel. (021) 819 2457 and e-mail Feroza@environment.gov.za.

(j) **Supplier Agreements**

An applicant will be required to submit all supplier agreements for wild capture fisheries or aquaculture products to be processed and to provide documentation to clearly identify all signatories to the supplier agreements.

(k) **Valid SARS Tax Clearance Certificate**

An applicant will be required to declare the financial status of the business with the South African Revenue Services (SARS). A valid SARS Tax Clearance Certificate must accompany the application.

8. **Announcement of decisions**

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

9. Payment of application and grant of right fees

The fees for this sector will be determined having regard to:

- 9.1 The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- 9.2 The non-refundable application fee of R9123.00 shall be payable before submitting and only payment proof shall be brought to the receipting centre.
- 9.3 The grant of right fee is payable by all successful applicants upon the granting of rights.

10. Management measures

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

10.1. Ecosystem approach to fisheries

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

10.2. Performance measuring

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

10.3 Offences

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

11. Permit conditions

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

12. Glossary of terms

- 12.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right or a fish processing right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 12.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 12.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 12.4. "Rights" means fishing or harvesting rights or rights to operate fish processing establishment granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 12.5. "Right Holder" means a person that was granted a fishing right or right to operate a fish processing establishment during the period 2001–2015 in a specific fishery or sector, or became a right holder in a fishery or sector by way of an approved transfer of a fishing right or right to operate a fish processing establishment.
- 12.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 12.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 12.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.