



**DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

**POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE  
HAKE LONGLINE FISHERY: 2021**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION OF FISHING  
RIGHTS: 2021 AND THE TRANSFER POLICY ON ALLOCATION OF COMMERCIAL FISHING  
RIGHTS**

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## Definitions

“*Paper quotas*” as defined in the General Policy

“*Group of companies*” is an economic group formed of a set of companies.

“ *Holding company*” is a company that owns a controlling interest in other subsidiary companies.

“*Subsidiary company*” is company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.

The general referral to “companies” and the definitions also include Close Corporations.

“Category A” applicants are applicants who held a right in the fishery for which they are re-applying during the period 2006 to 2020.

“Category B” applicants are applicants who held rights in sectors other than the fishery they are applying for during the period 2006 to 2020...

“Category C” applicants (“new entrant” applicants) are applicants who did not hold commercial fishing rights during the period 2006 to 2020.

## Acronyms

MLRA: Marine Living Resources Act, 1998 (Act No. 18 of 1998)

TAC: Total Allowable Catch

OMP: Operational Management Procedure

LTRAMP: The Long Term Rights Allocation and Management Process

## Preamble

This fishery is managed in terms of MLRA and other relevant legislation.

Recognising the need to utilise marine living resources sustainably and to promote equitable access to marine living resources.

Acknowledging that this fishery will be managed in accordance with the Ecosystems Approach to fisheries management.

Rights will be allocated to successful applicants as proportions (percentages) of the Hake Longline hake TAC apportionment.

POLICY ON THE ALLOCATION AND MANAGEMENT OF HAKE LONGLINE FISHERY: 2021

## 1. Introduction

This policy on the allocation and management of commercial fishing rights in the Hake Longline fishery is issued by the Minister (“the Minister”) of Forestry, Fisheries and the Environment (“the Department”) and shall be referred to as “the Hake Longline Policy: 2021”. This policy must be read in conjunction with the General Policy on the Allocation of Fishing Rights: 2021 (“the t General Policy: 2021”) and all other Sector Specific Policies including the Policy for Small Scale Fisheries Sector in South Africa: 2012 and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out objectives, criteria and considerations that will guide the application, evaluation and allocation of fishing Rights in the Hake Longline fishery (“the fishery”) in 2021.

The Minister delegated the Section 18 power to allocate commercial fishing rights in terms of Section 79 of the Marine Living Resources Act 18 of 1998 (“the MLRA”) to a senior official of the Department. This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

## 2. Sector Profile

### 2.1 Description of the fishery

The South African Hake Longline fishery uses demersal longline gear to target the two species of Cape hakes (shallow-water Cape hake *Merluccius capensis* and deep-water hake *Merluccius paradoxus*), which are also targeted by the Deep-Sea Trawl, Inshore Trawl and Hake Handline fisheries. The Cape hakes are distributed on the continental shelf and upper slope around the coast of southern Africa. *Merluccius paradoxus* are distributed from northern Namibia to southern Moçambique, whereas *M. capensis* are distributed from southern Angola to northern KwaZulu-Natal. As the names suggest, the distributions of the two hake species differ with depth, although there is a substantial overlap in their depth ranges. *Merluccius capensis* are distributed over a depth range of 30 to 500 m with most of the population occurring between 100 and 300 m, whereas *M. paradoxus* are distributed over a depth range of 110 m to deeper than 1 000 m with most of the population occurring in depths of between 200 and 800 m. The sizes of both species increase with depth and large *M. capensis* consequently co-exist with and feed extensively on smaller *M. paradoxus*. Whilst it is difficult to distinguish between the two species in frozen form, and they are generally processed and marketed as a single commodity, fresh products can be identified to species level and marketed as separate commodities. Catches of hake (regulated

through an annual TAC restriction) have ranged between 110 000 and 158 000 tonnes per annum over the past two decades. The Hake Longline fishery typically catches between 5% and 6% of the annual hake total catch, with most of the catches over the past 5 years (more than 95% each year) being made on the SA West Coast. Between 40% and 60% of the annual Hake Longline catch over the past 5 years has been deep-water hake (*M. paradoxus paradoxus*). By-catch species (primarily kingklip and angelfish) contribute about 5% to the total retained longline catch. The fishery operates around the South African coastline from the Port Nolloth area to Port Elizabeth, and provides appreciable economic benefits to several smaller harbours such as Port Nolloth, Saldanha Bay, Hout Bay, Gansbaai and Port St Francis.

The Hake Longline fishery is permitted to operate on both the West and South Coasts of South Africa, but is prohibited from fishing in waters shallower than 110 m, or within 5 nautical miles of the coast (whichever is the greater distance from the coast). Additional spatial restrictions are a prohibition of fishing in Marine Protected Areas, as well as the September – November closure of the area known as the “kingklip box” on the South Coast near Port Elizabeth (closed to protect spawning aggregations of kingklip).

The fishery currently comprises 109 Right Holders, which collectively operate between 40 and 50 vessels ranging in size 40 to 120+ tonne GRT. The vessels are largely “wetfish” vessels that generally fish for about 6 days before returning to port, with their catch kept on crushed ice. Rights in the fishery range between 0.11655% and 6.76217% of the longline apportionment of the hake TAC, with most of the Right Holders in the fishery considered to be SMMEs. It must be recognised that given the relatively small quotas allocated to the Right Holders, many vessels have insufficient quota to operate throughout the year. This has led to about 64% of the vessels operating in the Hake Longline sector also having to operate in other fisheries (primarily the Tuna Pole and Pelagic Longline sectors) to maintain economic viability, as well as the formation of “economic units” where several Right Holders pool their quota in order to realise economic sustainability. The fishery is appreciably transformed, with black ownership per Right Holder ranging between 40% and 100% and overall black shareholding in the fishery being 84.69%. Almost 80% of the longline TAC is consequently “owned” by HDIs. Recent figures indicate that at present, female ownership in the fishery averages 46.2%. The Hake Longline fishery currently contributes more than R 360 million per annum in terms of the value of the landed catch. The fishery directly sustains between 1 500 and 2 000 jobs. The hake longline fishery is a relatively

capital intensive fishery, with the cost of an average size longline vessel being in the region of R 4.5 million. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure, totalling about R 200 million.

## 2.2 History of the fishery

Requests to exploit hake using longline gear were first presented in 1982, and nine experimental permits to target hake using longline gear were issued to existing hake trawl quota-holders in 1983. However, the new fishery quickly found good concentrations of the commercially valuable kingklip (*Genypterus capensis*), a species not regulated by quota at that time, so the target species changed with an additional six permits for kingklip-directed longline fishing being issued to non-hake quota-holders in 1985. However, kingklip catches declined as soon as 1986, prompting the imposition of TACs for the 1989 and 1990 fishing seasons and ultimately leading to that fishery's closure at the end of 1990. An experimental longline fishery targeting hake, with tighter controls, was established in 1994 with the intention of promoting and supporting SMME participation in the hake-directed fishery. Rights for a permanent longline fishery for hake were granted in 1997, but stability was only realised with the granting of medium-term (4 years) fishing rights in 2002 and long-term (15 years) rights in 2006.

## 2.3 Management of the fishery

The Department manages the Hake Longline fishery as part of a "hake collective", with the primary management measure being an annual TAC. In terms of the MLRA the "global" TAC for hakes (both species combined and applied to all hake-directed sectors as a collective) is set annually by the Minister of Forestry, Fisheries and the Environment. A reserve to allow for incidental hake by-catch in the horse mackerel directed midwater trawl fishery is deducted from the global hake TAC before the remainder of the TAC is distributed among the hake-directed fishing sectors; hake deep-sea trawl, hake inshore trawl (hake & sole), hake longline and hake handline. In terms of that arrangement, 83.9268% of the global hake TAC is allocated to deep-sea trawl, 6.179% to inshore trawl, 6.551% to hake long line, 1.8433% to hake handline and 1.5% to small scale fishing. Other management measures include a capacity management system to restrict operational effort (vessels and sea days) to what is required to catch the TAC, spatial and gear restrictions, catch limits on various by-catch species as well as the implementation of measures to reduce seabird mortalities.

Management measures to be considered/implemented during the next Rights cycle (2022 – 2037):

- (a) The Department is considering implementing changes in the hake TAC sectoral apportionment:
  - Longline apportionment increased from 6.551% to 10% of the hake TAC, subject to further investigation on possible impacts on resource dynamics and how the 3.449% of the TAC that would be required for this will be sourced
- (b) Roll overs will be discouraged
- (c) Transfer of hake quota between hake-directed sectors (e.g. from inshore trawl to deepsea trawl) will be discouraged
- (d) Change in the fishing season from the current 1 January – 31 December to 1 March – 28/29 February. The intention is to implement this change in alignment with the new hake OMP that will be developed during 2022 and implemented in 2023.

### **3. The Long-Term Fishing Rights Allocation Process**

In the 2005/2006 Long-Term Fishing Rights Allocation and Management Process (LTRAMP), rights were allocated to a total of 141 right holders in the Hake Longline sector. The structure of the fishery has altered somewhat during the intervening period, largely due to various Rights transfers that have resulted in the fishery now comprising 109 entities with black ownership ranging between 40% and 100%, and an overall black ownership of 80% for the sector as a whole.

### **4. Over-Arching Sectoral Objectives**

This policy recognises the need to ensure the optimal, long-term and justifiable use of marine living resources in order to ensure sustainable development of the fishing sector to achieve inclusive economic growth, to achieve the objectives and principles as listed in Section 2 of the MRLA through the Marine Living Resources Fund (MLRF) and to create sustainable employment consistent with the development objectives of National Government. In terms of the Marine Living Resources Act, 1998, the responsible authorities are obliged to achieve optimum utilisation and ecological sustainable development of marine living resources; conserve marine living resources for both present and future generations; apply precautionary approaches in respect of the management and development of marine resources; utilise marine living resources to achieve economic growth, human resource

development, capacity building within fisheries and mariculture sectors, employment creation and a sound ecological balance consistent with the development objectives of the national government; protect the ecosystem as a whole, including species which are not targeted for exploitation; preserve marine biodiversity, and to minimise marine pollution.

Within the framework of the broader objectives specified in the General Policy, the specific objectives to be fulfilled during the allocation of fishing rights in the Hake Longline Trawl fishery are to:

- 4.1. broaden access to the longline fishery to the extent possible while minimising economic disruption (including employment, and specifically job losses) to the existing fishery;
- 4.2. promote transformation through efficient allocation of fishing rights to historically disadvantaged persons (which shall include the designated groups; black people, youth, women, people with disabilities) and broaden meaningful participation (increase participation, value-creation, and linkage) of these groups;
- 4.3. promote the interests of applicants who rely heavily on the Hake Longline sector;
- 4.4. promote local economic development through encouraging investments in processing and marketing infrastructure in areas that are economically depressed;
- 4.5. promote meaningful participation in the fishery by all Right Holders and eliminate paper quotas through discouraging restrictive catch and/or joint venture agreements (agreements where a third party conducts all catching, processing and marketing over the entire duration of the Right);
- 4.6. promote SMMEs; and
- 4.7. promote job creation and retention.

## **5. Granting of Fishing Rights**

Fishing rights are granted in terms of section 18 of the MLRA. Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. The Delegated Authority shall allocate proportions of the TAC and/or TAE (Total Applied Effort) to each successful applicant based on the balancing criteria and portion of the local commercial TAC, TAE or combination thereof that is available at the time the fishing right is allocated. 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 the fishery or impose effort restriction in order to address a state of emergency.

### **5.1 Form of Right Holder**

Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered for a right in the Hake Longline sector.

- (i) Close Corporations (legal entity); and
- (ii) Companies (legal entities).

### **5.2 Duration of Rights**

Having regard to the right allocation process and need to encourage investment, the Hake Longline fishery, fishing rights will be granted in the Hake Longline fishery for the maximum period of 15 years. Right Holders will be expected to keep their own records of catches, levy payments and fishing effort data. Right Holders will also be expected to ensure that landing declaration forms and distribution of catch per right holder declarations are accurately completed and signed off at the landing site.

### **5.3 Total Allowable Catch and Total Applied Effort allocation**

In terms of section 14 of the MLRA the Minister is empowered to determine a TAC, Total Applied Effort (TAE), or combination thereof to apply in each fishery. This fishery is regulated by the determination of a TAC.

The TAC is determined by the Delegated Authority considering the history, resource users, sustainability of the operations of right holders, and the viability of the fishery. The Delegated Authority will only allocate a local commercial portion of the determined TAC to commercial right holders based on the proportion granted to each successful applicant at the time of commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of determined TAC decrease or increase respectively. 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 a whole or in part. However, rights granted in this fishery in terms of the MLRA shall not be transferred within the first three [3] years of being granted.

Rights can only be transferred in terms of the Policy for the Transfer of Commercial Fishing Rights (“the Transfer Policy”).

Any transfer of shares or members’ interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members’ interest should be dealt with in light of the draft Transfer Policy.

A notification of transfer of shares or members’ interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member’s interest in a right holder are sold or transferred. In addition, the Department’s approval is required for all cases in which the sale or transfer of shares or a member’s interest in a right holder results in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity.

Failure to comply with any provision of the MLRA, the Regulations, the permit conditions, the General Policy and the Transfer Policy shall result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

Right Holders in this fishery should refer to the Transfer Policy 2021 for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this Policy and the Transfer Policy, the provisions of the Transfer Policy shall take precedent.

## 6 Evaluation Criteria

Applicants will be screened in term of set of “exclusionary criteria”, and thereafter assessed in terms of the weighted set of “comparative balancing criteria”. A cut-off score will then be determined to select the successful applicants.

### 6.1 Exclusionary Criteria

Apart from the criteria described in the General Policy on the Allocation of Commercial Fishing Rights: 2021 (“the 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:

- 6.1.1 **Compliance:** an applicant, including any of its Directors, Senior Management, Shareholders or Members (where such shareholding or members interest exceeds 10%) or Skippers that have been convicted of a serious transgression of the MLRA, or its regulations, or relevant permit conditions (without the option of the payment of a fine) will be excluded. Applicants, including their Directors, Senior Management, Shareholders or Members (where such shareholding or members interest exceeds 10%) or Skippers 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 (maximum fine), may be taken into account as a balancing criterion and may also adversely affect an application.
- 6.1.2 **Paper Quotas:** applicants who apply under Fishing Rights Allocation Process: 2021 (FRAP2021) for new rights, and who are found to be paper quota risk as defined in the General Policy will be excluded.
- 6.1.3 **Fronting:** Applicants who apply under FRAP2021 for new rights, and who are found to be engaged in fronting as defined in the General Policy will be excluded.
- 6.1.4 **Non-utilisation:** Applicants that held a Right in the fishery during the previous Right period (LTRAMP, 2006 to 2020)) and did not utilise that Right shall be excluded.

It shall, however, be noted that although excluded applicants will not be allocated a commercial fishing right in this sector, they will be evaluated and assessed against the balancing criteria. This will be done for the purposes of generating scoresheets for such excluded applicants.

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## 6.2 Comparative Balancing Criteria

Applicant will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. Weighting and scoring criteria will be developed and designed for Categories A, B and C applicants.

### 6.2.1. Transformation:

The objective of allocating long-term fishing rights in this sector is to improve the transformation profile (involvement of females, youth and people living with disabilities). In addition to the criteria as stipulated in the General Policy, applicants will be assessed and scored on:

- (i) The percentage of people from designated groups and HDIs representation at top salary, board of directors, members and senior official and management levels;
- (ii) The extent to which an applicant's black ownership and black management transformation credentials have either improved, remained the same, or deteriorated in the period following the granting of rights in the LTRAMP;
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iv) Compliance with the Employment Equity Act 55 of 1998 and the representivity of designated groups and HDIs at the various levels of employment below senior official and management level;
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vii) Corporate social investment.

### 6.2.2 Reliance on the fishery:

Applicants, depending on the form of an applicant, will be awarded a weighted score based on: —

- (i) the percentage (%) income derived from a fishing sector/s within South Africa; and

- (ii) the percentage (%) income derived from a fishing sector/s outside of South Africa.

### 6.2.3 Compliance

Applicants, depending on the form of an applicant, will be awarded a weighted score based on whether–

- (i) Minor violations: - the applicant has been convicted of an offence under the MLRA, or the regulations or permit conditions as per the period as determined in the Fishery Sector Specific Policies.
- (ii) Minor violations: - the applicant has paid an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions as per the period as determined in the Fishery Sector Specific Policies. These types of violations will result into a minor scoring penalty during comparative balancing phase.
- (iii) Minor violations: - an applicant had a fishing right or permit suspended or reduced as per the period defined in the Fisheries Sector Specific Policies.
- (iv) Substantive violations: - the applicant has entered into a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions as per the period as determined in the Fishery Sector Specific Policies. These types of violations will result into substantial scoring penalty during comparative balancing phase in the case of a single infraction. In the case of repeat violations of the MLRA by the applicant, the applicant will be excluded.
- (v) Substantive violations: - the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets has been seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 as per the period as determined in the Fishery Sector Specific Policies. These types of violations will result in substantial scoring penalty/ies during the comparative balancing phase in the case of a single infraction. In the case of repeat violations of the MLRA by the applicant, the applicant will be excluded.

Applicants with pending legal proceedings will be assessed and evaluated in the same manner as all other applicants. In the event these applicants are successful the rights will be granted but reserved pending finalisation of such proceedings. If the applicant is

successful in the legal proceedings, the applicant will be permitted to exercise the right. If the legal proceedings are unsuccessful, the right will be distributed pro-rata among all other successful applicants in the same category.

#### **6.2.4 Fishing Performance:**

The fishing performance of applicants holding fishing rights in the Hake Longline and other fisheries (i.e. Category A and B applicants) will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, proportion of the quota that is landed per annum subsequent submission of catch data and payment of levies for the last 10 years of the Right (i.e. 2010-2019), or a shorter period in the cases of those Right Holders that entered the fishery subsequent to LTRAMP.

#### **6.2.5 Investment in the sector**

As far as category A applicants are concerned, the Delegated Authority may specifically consider:

- (i) Investments in suitable vessels and other fixed assets such as processing and marketing infrastructure in the Hake Longline sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding / members' interest will also be considered.
- (ii) As far as Category B and C applicants are concerned, the Delegated Authority may consider investments made in other sectors in form of vessels, fixed assets, processing and marketing infrastructure. A clear demonstration of their commitment (and ability) to invest in this sector (i.e., access to a vessel and FPE's) will be considered.
- (iii) All Category C applicants are required to demonstrate that they have knowledge, skills and capacity to fish for and process hake.

The Department recognises that the "economic unit" business model is a feature of this fishery, and that such circumstances may complicate the submission of the required investment information by individual entities. In these cases, the applicant should, to the extent possible, provide the information in terms of its proportional involvement in the

economic unit, and any binding agreements/documentation pertinent to the economic unit, as well as financial records, should be submitted as an annexure to enable the Department to properly evaluate the applicant against this criterion.

#### **6.2.6 Access to a suitable vessel**

An applicant will be required to demonstrate a right of access to a vessel suitable for harvesting of hake in the Hake Longline fishery. Access may be in the form of ownership, part ownership, a catch agreement, a charter agreement, or a bank guarantee for a sufficient capital to purchase or build a vessel. If an applicant intends purchasing a vessel, then additional information must be provided to prove a firm and binding offer by the current owner of the vessel to sell the vessel to the applicant. If an applicant intends building a new vessel, then additional information must be provided including vessel plans, the cost to be incurred, a firm and binding commitment by the vessel building company to build the vessel accompanied by evidence of a deposit to the building company paid by the applicant. .

A suitable vessel in the hake Longline fishery is a vessel that:

- (i) Is registered by the South African Maritime Safety Authority (SAMSA) as being suitable for fishing and has a length of about 30m; ;
- (ii) Is compliant with safety at sea and vessel specifications in terms of the Merchant Shipping Act 57 of 1951, the South African Maritime Safety Authority ("SAMSA") Act 5 of 1998, the Marine Traffic Act 2 of 1981 and its Regulations;
- (iii) Is geared to fish using the longline fishing method;
- (iv) Is fitted with a departmental approved and functioning vessel monitoring system (VMS) (unless exempted by the Department);
- (v) Is a South African flagged vessel; and
- (vi) Is not listed negatively on any Regional Fisheries Management Organisations (RFMO) list and/or Treaties.

The Department is intending to investigate investments made in acquisition and/or long-term leasing of foreign vessels made by South African fishing companies, and the actual ownership by these companies in the vessels concerned.

The Department recognises that the “economic unit” business model is a feature of this fishery, and that such circumstances may complicate the submission of the required vessel access information by individual entities. In these cases, the applicant should, to the extent possible, provide the information in terms of its proportional involvement in the economic unit, and any binding agreements/documentation pertinent to the economic unit, as well as financial records, should be submitted as an annexure to enable the Department to properly evaluate the applicant against this criterion.

**6.2.7 Local economic development:**

The Delegated Authority will take into consideration the locality of landing and processing sites to promote local economic development in economically depressed areas.

**6.2.8 Multiple sector involvement:**

Applicants in this sector will not be precluded from applying for or holding commercial rights in other fisheries sectors. However, the number and nature of other sectors in which the applicant already holds Rights, as well as the magnitude of those Rights, will be taken into consideration when evaluating applications and implementing the Quantum Allocation Methodology.

**6.2.9 (i) Applicants involvement and relationship with other applicants**

- (i) Entity and their subsidiaries involvement: A company or a close corporation and its subsidiary/ies may not be granted more than one [1] right in the Hake Longline fishery, so as to avoid fronts and monopolies and to promote broader access to the hake resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the Hake Longline fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in the same fishery, the holding/umbrella/parent company will be preferred with due regard being taken to the Department’s transformation objectives.
- (ii) Brother-Sister Corporations: If two [2] or more entities which are owned and controlled by the same person or persons or shareholders apply for a



commercial fishing right in the Hake Longline fishery, and qualifying for the allocation of such rights, then the Department may consider:

- a) allocating a fishing right to one of the qualifying entities only; or
- b) dividing the TAC between the qualifying entities.

#### **6.2.10 Broader benefits to South African society:**

Broad benefits to society or part thereof will be categorised as follows:

- (i) The number of shares of the entity held by shareholders shall be considered in evaluating benefits to society.
- (ii) if an entity has paid annual taxes to the South African Revenue Services then that is a benefit to society and it will be scored accordingly.
- (iii) dividends or financial benefits paid to shareholders as outline in part a) will also be scored accordingly.

#### **6.2.11 Job creation:**

The Delegated Authority will give preference to Category A and B applicants that have retained or improved employment opportunities. For these purposes the Delegated Authority will consider the quality of the employment opportunities that have been created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's performance in providing their employees with:

- (i) permanent employment;
- (ii) medical aid or any kind of medical support arrangement;
- (iii) pension / provident fund;
- (iv) safe working conditions in accordance with the applicable legislative requirements; and
- (v) an employee share scheme as a shareholding entity of the right holder, or an employee profit sharing scheme in the case of smaller entities or a members interest in the case of a Close Corporation.

The Department recognises that the "economic unit" business model is a feature of this fishery, and that such circumstances may complicate the submission of the required employment/job creation information by individual entities. In these cases, the applicant should, to the extent possible, provide the information in terms of its proportional involvement in the economic unit, and any binding agreements/documentation pertinent

to the economic unit, as well as financial records, should be submitted as an annexure to enable the Department to properly evaluate the applicant against this criterion.

#### **6.2.12 Payment of Levies**

Applicants that were granted fishing rights in 2005 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 Quantum Allocation Methodology**

#### **7.1 Starting principles:**

Implementation of FRAP2021 in the Hake Longline sector aims to balance the objectives of broadening access to the fishery through the introduction of new entrants against improving the allocations to the smaller Right Holders (and HDI groups in particular) to facilitate their meaningful participation in the fishery throughout the value chain. This balancing of objectives should attempt to minimise negative economic impacts on the industry (such as a net loss of jobs and/or corporate investments), and should account for any changes to resource and socio-economic dynamics that have occurred in the fishery during the course of the previous Rights Allocation Process.(such as progress on transformation and measures to increase job creation).

#### **7.2 Method**

- 7.2.1 Apply exclusionary criteria to each applicant's application and flag applicants that the DA should consider excluding.
- 7.2.2 Apply balancing criteria to each applicant's data to generate a score for each applicant (conduct separately for Category A, B and C applicants).
- 7.2.3 Rank applicants within each category according to their score.
- 7.2.4 Address small allocation concerns and/or introduction of new entrants to the extent possible.

### **8 New Entrants**

Whilst being mindful of the dynamics of the sector that were established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department

will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department. New entrant applicants will have to demonstrate that they have knowledge, skills and capacity to fish and process hake. However it shall be noted that there is limited room to accommodate New Entrants in this fishery.

## 9 Application and Grant of Right Fees

Applicable fees have been published in the Government Gazette No. 39451, Volume No. 605, 25 November 2015, separately in terms of section 25 of the MLRA.

The application fee is payable upon submission of an application and is non-refundable.

The grant-of-right fee is payable by all successful applicants within 60 days of the granting of the right. Applicants must pay the Application Fee to the Marine Living Resources Fund before the submission of their Application Form and proof of payment must be submitted with the Application Form when applying for a fishing right. Banking details are as follows:

<p><b>Account Holder:</b> Marine Living Resources Fund</p> <p><b>Bank Name:</b> First National Bank</p> <p><b>Account Number:</b> 62123256382</p> <p><b>Branch Code:</b> 210554</p> <p><b>Reference Number:</b> [Applicant must insert the commercial fishing right application number]</p>
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## 10 Provisional Lists, Representations and Consultations

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

## 11 Appeals

- 11.1 The Delegated Authority will inform all applicants of the dates set for appeals.

- 11.2 Any applicant or affected or interested person 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, process, and methodology on quantum.
- 11.3 The Minister, as the appeal 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.
- 11.4 Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.
- 11.5 Successful applicants must be aware that initial allocations made during the FRAP2021, prior to the appeals process, may be adjusted subsequent to the appeals process to accommodate successful appellants.
- 11.6 Appellants must be aware that in the event that their appeal is successful, they will only be permitted to fish at the start of the next fishing season.
- 11.7 Following the appeals authority's decision, appellants may approach the courts for judicial review within 180 days after the appellant has been informed of the decision of the appellate authority.

## 12 Management Measures

### 12.1 Spatial Management

- (a) No fishing shall take place within False Bay north of a straight line drawn from the lighthouse at Cape Hangklip to the lighthouse at Cape Point.
- (b) No fishing may take place in the Marine Protected Areas as proclaimed in the Government Gazette No. 42478 dated 23 May 2019.
- (c) No fishing shall take place in water depths less than 110 metres or less than 20 nautical miles from the coast, whichever is the greater distance from the coast east of 020° E longitude.
- (d) No person shall use any fishing equipment in the following areas:
- (i) On the landward or northerly side of a straight line joining Cape Vacca and the lighthouse at Cape St Blaize;
  - (ii) On the landward or northerly side of a straight line joining the lighthouse at Cape St Blaize and Gericke Point;
  - (iii) Seaward of the high-water mark in the area bounded by a line (160° true bearing) drawn from the Sunday's River mouth and by a line (048° true bearing) drawn from

- the Donkin reserve lighthouse to its point of intersection with the aforementioned line;
- (iv) Landward of a (084° true bearing) drawn from the lighthouse at Cape Infanta to the beacon marked K2, situated at Cape Barracouta;
  - (v) Within three (3) nautical miles of the coast in the area between Cape Barracouta (34°26'4S, 021°18'1E) and a line drawn 180° (true bearing) from the lighthouse at Ystervarkpunt (34°23'6S, 021°43'7E);
  - (vi) Within three (3) nautical miles of the high-water mark in the area between beacon DH1 at Still Bay Point and beacon DH2 between Rys Point and Skipskop (De Hoop Marine Protected Area);
  - (vii) Within the Tsitsikamma Marine Protected Area, which is defined as the area bounded by a line beginning at the high-water mark at Die Punt, Nature's Valley (33°59'0S, 023°34'561E), and running eastwards along the high-water mark to the right bank of the Groot River (east) (34°03'6S, 024°11'665E), and then running due south to a point three (3) nautical miles off shore (34°06'6S, 024°11'665E), then running along a straight line to a point three (3) nautical miles from the high-water mark (34°01'817S, 023°38'857E) measured along a line running due south from the right bank of the mouth of the Bloukrans River, and then due north to a point 0.5 nautical miles from the high-water mark (33°59'317S, 023°38'857E), and then along a straight line to a point (33°59'5S, 023°34'561E) due south of Die Punt, Nature's Valley, and then due north to the high-water mark at the point of beginning.
  - (viii) Within the Bird Island Marine Protected Area, a rectangle around Bird Island in Algoa Bay defined by the latitudes 33°48'0S and 33°52'0S and the longitudes 026°14'5E and 026°20'0E.
  - (ix) During the period 1 September to 30 November, no fishing may take place within the quadrilateral described by lines joining the following four points:—
    - A:** 34°48'S 024°00'E;
    - B:** 34°38'S 025°00'E;
    - C:** 34°44'S 025°00'E; and
    - D:** 34°57'S 024°00'E.
  - (x) No fishing shall take place within False Bay north of a straight line drawn from the lighthouse at Cape Hangklip to the lighthouse at Cape Point.

#### 12.2 Optimum Utilisation and Promoting Sustainability

Optimum, sustainable utilisation of the SA hake resources has been achieved since 1991 through implementation of an Operational Management Procedure (OMP) approach. An OMP is essentially a combination of pre-specified methods of data collection and analysis, coupled with a set of agreed, simulation-tested decision rules (effectively harvest control rules) that specify exactly how the regulatory mechanism is to be computed each year. In the case of South African hake, the regulatory mechanism (TAC) is calculated from stock-specific monitoring data (commercial CPUE indices and indices of abundance derived from demersal research surveys). Implicit in this OMP approach is a schedule for OMP revision (every 4 years) to account for updated data sets and possible changes in resource and/or fishery dynamics and management objectives. Such reviews are conducted in consultation with all major stakeholders to ensure that when recommendations based on these pre-agreed formulae are made, there is little justification to deviate from what is accepted as the best scientific advice. The next such review is scheduled for 2022. The objectives of the current hake OMP are to maintain the spawning biomass of both species of hake fluctuating about or above Maximum Sustainable Yield Level and to avoid the spawning biomass decreasing below the 2007 level estimated by the Reference Set of Operating Models while keeping TACs as high as possible and minimising interannual changes in the TAC to facilitate stability in the industry, except in circumstances where catch rates fall below specified threshold levels

#### 12.3 Observer at Sea and Land Based Monitoring

Successful applicants will be expected to deploy accredited sea going scientific observers as specified by the Department on a user pays basis.

### 13 Permit Conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be co-determined with Right Holder's representative associations as decided annually during Departmental sector-specific Management Working Group meetings. Revision, in consultation with associations (majority Right Holder representatives) may also take place *ad hoc* during the season as and when it may be necessary.

#### 14 Monitoring and Evaluation of the Policy

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years, from the date of finalisation of the appeals.

Although the Department will finalise the precise criteria against which Right Holders will be measured after the allocation of commercial fishing rights - and after consulting with Right Holders - the following broad performance-related criteria may be used:

- (a) Transformation.
- (b) Investment in vessels and gear.
- (c) Bycatch mitigation compliance with applicable laws and regulations.

South Africa has not been immune from the negative impacts of climate change on fisheries resources and communities who depend on fisheries for their livelihoods. The impacts of climate change may be addressed through adoption of adaptation and mitigation measures in the fishing sector. Research and ongoing monitoring by both the Department and stakeholders will play an important role in identifying gaps, weaknesses and flaws in existing fisheries policies and management measures.

South Africa has published the National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks) and the National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The NPOA-Sharks and NPOA-Seabirds applies amongst others, to the fisheries that catch and land sharks and seabirds as targeted species or non-targeted species (by-catch). In order to achieve the optimum utilisation and ecological sustainable development of marine living resources, South Africa will implement the NPOA-Sharks of Action in all the identified fisheries to ensure that the ecosystem is protected, and fishing strategies are consistent with the principles of biological sustainability and rational long-term economic use.

The purpose of performance measuring will be to ensure that the objectives of this final policy are met. During the performance measuring exercise, any Right Holder that has been found to have contravened any condition upon which the Right was granted for; may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

## 15 Contraventions

Contraventions of the following kind:

- 15.1. A successful applicant that fails to utilise their Hake Longline fishing right for any two consecutive fishing seasons during the period for which the Right has been granted without a reasonable explanation;
- 15.2. A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the Right Holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- 15.3. During the performance measuring exercise, any Rights Holder that has been found to have contravened any condition upon which the right was granted for;

may result in the initiation of legal proceedings (which may include initiation of section 28 proceedings in terms of the MLRA and/or civil or criminal proceedings).

## 16 Repeal

This Policy on the Allocation and Management of Commercial Fishing Rights in the Hake Longline Fishery: 2021 repeals the Policy for the Allocation and Management of Commercial Fishing Rights in the Hake Longline Fishery: 2005.

~ END ~





**DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

**POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE  
SQUID FISHERY: 2021**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION OF  
COMMERCIAL FISHING RIGHTS: 2021 AND THE POLICY FOR THE TRANSFER OF COMMERCIAL  
FISHING RIGHTS.**

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

Policy on the Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2021

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## **PART A: INTRODUCTION**

### **1. Introduction**

- 1.1. This policy for the allocation and management of commercial fishing rights in the squid fishery (“the fishery”) is issued by the Minister of Forestry, Fisheries, and the Environment (“the Minister”) and shall be referred to as the “**Squid Fishery Policy: 2021**”. This Squid policy shall be read together with the General Policy: 2021 on the Allocation of Commercial Fishing Rights (the General Policy: 2021) and the Policy for the Transfer of Commercial Fishing Rights (Transfer Policy).
- 1.2. The Minister has delegated 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 a Senior Official of the Department of Forestry, Fisheries, and the Environment (the Department).
- 1.3. This Policy sets out objectives, criteria and considerations that will guide the allocation and management of Commercial Fishing Rights specific to the Squid Commercial Fishing sector, and serves to 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 Hope squid (*Loligo reynaudii*), locally known as “chokka” squid, is a commonly occurring loligonid that occurs around the Southern African coast from Namibia to the Wild Coast off the Eastern Cape. Chokka is the target of a boat-based, dedicated local commercial jig fishery that operates mainly between the Cape of Good Hope and Port Alfred. The chokka squid fishery is capital intensive and investments in vessels and fish processing establishments are very important. The fishery is fairly stable and provides employment for approximately 3 000 people locally. The fishery is believed to generate in excess of R480 million in a good year and is South Africa’s fourth largest fishery in monetary terms. Chokka are frozen at sea in small blocks. They are landed mainly between Plettenberg Bay and Port Alfred and exported whole to European countries, most notably Italy.

## 2.2. History of the fishery

- 2.2.1. Chokka 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 during 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 trawl fishery fluctuates between 200 tonnes and 800 tonnes annually.
- 2.2.2. A dedicated commercial jig fishery for squid was initiated in 1984. The jigs are operated by handlines, making this a particularly labour-intensive fishery. Catches in the jig fishery fluctuate monthly and annually. In the 1990s catches ranged between 1 900 tonnes and 7 400 tonnes per annum, and in the 2000s between 2 600 tonnes and 13 900 tonnes. In 2004 the squid jig fishery registered its highest catch of just below 14 000 tonnes. Departmental data indicates an increase in jig catches over the period 2001 to 2004, followed by catches stabilizing at approximately 9 000 tonnes between 2005 and 2008, and then increasing again to just over 10 000 tonnes in 2009 and 2010. After 2010, annual catches in both the jig and trawl fisheries declined, reaching an almost record low level in 2013, since the inception of the commercial jig fishery. It is encouraging to note that this declining trend subsequently reversed, increasing to over 13 000 tonnes in 2018. Between 1986 and 1988, a licensing system was introduced with a view to limiting the number of vessels participating in the fishery.
- 2.2.3. The chokka squid fishery is effort-controlled and was historically capped at a maximum of 2 422 crew with the number of vessels commensurate with the number of persons permitted to fish. The approved Squid Total Allowable Effort (TAE) for the 2021/2022 fishing season is 2 422 crew and 295 000 person-days. A mandatory five week closed season (October—November each year) has been implemented since 1988, with the intention of minimising disturbance to spawning squid and improving recruitment the following year. Furthermore, an additional closed season (in the range of three to five months duration) has been implemented since 2014 to guard against the TAE in person-days being exceeded.

2.2.4. The management objective for the chokka squid fishery is to cap effort at a level which secures the greatest catch, on average, in the longer term without exposing the resource to the threat of reduction to levels at which future recruitment success might be impaired or catch rates drop below economically viable levels. Effort in the chokka squid fishery is expressed in terms of person days. This is total number of days fished by all crew members in the fishery during a given fishing season.

### 2.3. Current resource users

During the 2013 rights allocation process rights were allocated to 93 applicants and an additional 8 rights were allocated through the appeal process amounting to a total of 101 Right Holders in the Squid commercial sector. Fishing occurs mostly in the inshore waters off the Eastern Cape, between Plettenberg Bay and Port Alfred. Squid is landed by the hake-directed demersal trawl fishery as by-catch. The resource is also used by recreational fishers, as well as in the commercial traditional linefish, hake-handline and tuna-pole sectors, which allow a maximum of 20 squid per person per day, for personal consumption, and may not be sold. The Small-Scale Fisheries (SSF) sector has also been allocated a portion of the Squid resource TAE. This is an effort managed fishery therefore, no upper catch limit is set for commercial fishing.

### 2.4. The biological status of the squid fishery

2.4.1. Chokka squid are fast growing, and their total lifespan is less than two years. Sexual maturity is attained approximately within one year of hatching or less. The maximum observed mantle lengths are 48 centimetres for males and 28 centimetres for females. Squid reproduce throughout the year with a peak in summer, and areas where reproductive activity occurs are influenced largely by environmental conditions. Spawning occurs on the seabed, mostly in inshore areas of less than 60 m depth, and occasionally in deeper waters. The chief prey items for squid include fish and crustaceans, but they also sometimes feed on other cephalopods, and cannibalism is fairly frequent. The abundance of squid fluctuates widely, mainly due to biological factors such as spawning distribution and survival rates of hatchlings and juveniles, and environmental factors such as temperature, currents, turbidity, and macro-scale events such as *El Niños*.

Policy on the Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2021

2.4.2. Chokka squid is a crucial component of the inshore ecosystem of South Africa as the 4<sup>th</sup> largest fishery in the country. Some adaptive measures to climate change should potentially be incorporated into the management of the fishery (Augustyn et al 2015). The species response to climate change will require specific research locally before we can fully grasp potential impacts of global climate change.

### 3. The 2013 fishing rights allocation process

- 3.1. During the 2005 Long Term Rights Allocation Management Process (LTRAMP), it was noted that the calculation of an effort limitation for the chokka squid fishery had to be expressed in terms of the number of person-days permitted in the fishery. However, the conversion of person-days to a more practical equivalent number of persons (“fishers”), proved problematic. At that time, there were over 2 000 persons actively engaged in the squid fishery and it was noted that if re-allocated Rights amounted to about the same number of crew, then the days spent at sea would also be limited to less than the average (150 days at that time), so as not to exceed the then recommended effort level of 300 000 person-days. However, such a limitation was not formally recommended at the time as it was envisaged that the allocation process would result in fewer rights being granted than was the case. Upon finalisation of LTRAMP, however, it was clear that the reduction in rights was not realised, and the final number of crew allocated amounted to 2 422 fishers.
- 3.2. Prior to the 2013 Fishing Rights Allocation Process (FRAP) in the Squid sector, it was both necessary and important for the process to take place on a self-consistent basis so that the allocations were in line with the appropriate level of fishing effort for the resource as indicated by the then updated assessment results (i.e. a target level of 250 000 person-days). This was particularly important given the intention of the Department to extend Rights allocations to include Small Scale Fishers. A process was required to ensure the Rights allocation was effected in a way that respected the fishing limitations.
- 3.3. In 2013 it was explained that if, for example, all those who are allocated Rights fished for a realistic maximum number of days a year (e.g., 210 days per Right Holder), and Rights continued to be granted to 2 422 fishers, then the effort expended would amount to approximately 509 000 person-days. This would greatly exceed the recommended target effort level of 250 000 person-days, which would have severe adverse long-term consequences for the fishery. Consequently, it was recommended, in the

absence of updated data on the number of persons granted fishing Rights (pending the appeals process), that the then current target effort level of 250 000 person-days translated to 1 190 commercial fishers, based on a realistic maximum number of 210 sea days per Right Holder.

- 3.4. In subsequent amendments to the 2013 assessment, the average number of days spent at sea per squid fishing vessel was calculated at 150 days. It was noted that if an additional closed season of four (4) weeks was introduced, this would likely reduce the number of sea days to about 140. Based on this assumption, an effort level of 250 000 person-days would translate to 1 786 commercial fishers. Furthermore, if Rights were to be allocated on 75:25 ratios to commercial: small scale fishers, accommodating new entrants at the small scale fisheries level would necessitate a reduction in the number of commercial fishers to 1 339. However, on conclusion of the 2013 Rights allocation process, 2 443 commercial fishers were allocated squid fishing Rights and Small-Scale fishers were yet to be accommodated under the Small-Scale Fisheries allocation process.
- 3.5. After having considered all the representations by the public, the Director-General, as the delegated authority in terms of the Marine Living Resources Act, 1998 decided in terms of section 14(2), to apportion fifteen percent (15%) of the Squid Total Allowable Effort to the Small-Scale Fisheries sector and 85% of the Squid Total Allowable Effort to the commercial sector.
- 3.6. The apportionment took effect from the start of the 2021/22 squid fishing season and will be reviewed at the beginning of every fishing season with the view of increasing the apportionment of the Small-Scale Fisheries sector from a minimum of 15% to a maximum not exceeding 25%, without exceeding the recommended target effort level.

#### **4. Objectives**

This policy recognises the need to ensure the optimal, long-term and justifiable use of marine living resources in order to ensure sustainable development of the fishing sector to achieve inclusive economic growth, to achieve the objectives and principles as listed in Section 2 of the MRLA through the Marine Living Resources Fund (MLRF) and to create sustainable employment consistent with the development objectives of National Government. In terms of the Marine Living Resources Act, 1998,

the responsible authorities are obliged to achieve optimum utilisation and ecological sustainable development of marine living resources; conserve marine living resources for both present and future generations; apply precautionary approaches in respect of the management and development of marine resources; utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture sectors, employment creation and a sound ecological balance consistent with the development objectives of the national government; protect the ecosystem as a whole, including species which are not targeted for exploitation; preserve marine biodiversity, and to minimise marine pollution.

The objectives of the Squid Fishery Policy: 2021 are to:

- (a) Set out the criteria for the assessment (exclusionary and balancing criteria) of applications for the allocation of commercial fishing rights in the squid fishery.
- (b) Promote meaningful transformation and growth in the Squid fishery in terms of factory ownership, export, value adding and diversification of squid products, vessel ownership and management, development of skills for skippers, crew and shore personnel.
- (c) Increase of the overall transformation profile of the fishery through consideration of specific demographic groups with a focus on Designated Groups, women and persons with disability in allocation of commercial fishing rights to successful applicants.
- (d) Adherence to Basic Conditions of Employment Act 75 of 1995, Labour Relations Act 66 of 1995 and the Merchant Shipping Act 57 of 1951.
- (e) Ensure sustainable utilisation of the squid resource through:
  - I. allocation of fishing rights who are reliant on squid as their main source of income and employment;
  - II. persons who are prioritised based on National demographics;
  - III. determination of TAE or input control;
  - IV. Permitting;
  - V. Law enforcement and Observer at sea and land-based monitoring; and
  - VI. other provisions provided for by the MLRA, Regulations, the General Policy: 2021, this Policy etc.



## PART B: COMMERCIAL FISHING RIGHTS ALLOCATION PROCESS

### 5. Application for commercial fishing rights

The process of submitting applications for the allocation of commercial fishing rights in the squid fishery is as outlined in the General Policy: 2021.

### 6. EVALUATION CRITERIA

Applications will be screened in terms of a set of “exclusionary criteria”, and thereafter assessed in terms of a weighted set of “comparative balancing criteria”. A cut-off score will then be determined to select the successful applicants.

#### 6.1 Exclusionary criteria

Apart from the criteria described in the General Fisheries 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 Directors, Senior Management, Shareholders or Members (where such shareholding or members’ interest exceeds 10%) or Skippers that have been convicted of an offence in terms of the MLRA, the Regulations or permit conditions will not be allocated a Squid fishing right. This does not include the payment of an admission of guilt fine. Applicants, including their Directors, Senior Management, Shareholders or Members (where such shareholding or members’ interest exceeds 10%) or Skippers that have had a fishing right cancelled, suspended or revoked in terms of the MLRA, or the Regulations or permit conditions, or assets seized under the Prevention of Organised Crime Act 21 of 1998 or the MLRA, will be excluded.
- (b) **Paper Quotas:** Applicants who apply for rights under FRAP 2021, and who are found to be Paper quota holders as defined in the General Fisheries Policy of 2021 will be excluded.
- (c) **Fronting:** Applicants who apply for rights under FRAP 2021, and who are found to be engaged in Fronting as defined in the General Fisheries Policy of 2021 will be excluded.

It shall however be noted that all excluded applicants will be evaluated and assessed further against other remaining balancing criteria though they will not be allocated a commercial fishing right in this sector. This will be done for the purposes of generating scoresheets for such excluded applicants.

## **6.2 Comparative Balancing Criteria**

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Fisheries Policy for further detail. Weighting and scoring criteria will be developed for Categories A, B and C applicants separately and the relative weight of each criterion will differ between Categories. For all categories, investment in the sector and access to infrastructure will be heavily weighted with job creation and sustainable employment, value adding and enterprise development, transformation, and performance also important. Whilst being mindful of the dynamics of the sector which has been established under the previous long-term rights in respect of investment, performance, economic stability and business growth, the Department will consider the inclusion of new entrants to comply with section 2 Objectives and Principles, as well as section 18(5) of the MLRA of the Department.

### **(a) Balancing criteria: Category A / previous right holder applicants**

#### **(i) Compliance**

- (a) The minor violation period regarding the applicant's conviction of an offence under the MLRA, or the regulations or permit conditions referred to in paragraph 7.1.5 (a)(i) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (b) The minor violation period regarding the applicant's payment of an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions referred to in paragraph 7.1.5(a)(ii) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (c) The minor violation period regarding the applicant's fishing right or permit suspension or reduction referred to in paragraph 7.1.5(a)(iii) of the General Policy: 2021 shall be from the year 2014 to 2020.

- (d) The substantive violations period regarding the applicant having entered a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions referred to in paragraph 7.1.5(a)(iv) of the General Policy: 2021 shall be from the year 2014 to 2020.
  
- (e) The substantive violations period regarding the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 referred to in paragraph 7.1.5(a)(v) of the General Policy: 2021 shall be from the year 2014 to 2020.

**(ii) Access to suitable vessel**

(a) A suitable vessel referred to in paragraph 7.1.6 (a) and (b) of the General Policy: 2021 shall in the squid fishery be one that is:

- (1) a commercial fishing vessel that is equipped with gear to catch squid, using the jigging method and has suitable overnight facilities for crew members in terms of SAMSA Merchant Shipping Regulations.
- (2) HACCP compliant and meets the National Regulator for Compulsory Specifications (NRCS) requirements and specifications to store and freeze squid.
- (3) of a minimum SAMSA registered length of eleven (11) metres and a crew capacity of up to 12 crew.
- (4) of a maximum SAMSA registered length of thirty-two (32) metres with a maximum crew capacity of 32 crew.

**(iii) Fishing performance**

In addition to what is prescribed in the General Policy: 2021, an applicant will be awarded a weighted score based on:

- (a) Number of crew utilised out of total crew (TAE) allocated during the validity of the commercial squid right that was allocated in the previous 2013 Fishing Rights Allocation Process.
- (b) Number of person's days utilised out of the total number of person's days (TAE) that were allocated during the validity of the commercial squid right that was allocated in the previous 2013 Fishing Rights Allocation Process.

(b) **Balancing criteria: Category B applicants**

(i) **Compliance**

- (a) The period regarding the applicant's conviction of an offence under the MLRA, or the regulations or permit conditions referred to in paragraph 7.2.5 (a) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (b) The period regarding the applicant having entered a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions referred to in paragraph 7.2.5 (b) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (c) The period regarding the applicant's payment of an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions referred to in paragraph 7.2.5(a)(ii) of the General Policy: 2021 shall be from the year 2014 to 2020.
- (d) The period regarding the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 referred to in paragraph 7.2.5(a)(v) of the General Policy: 2021 shall be from the year 2014 to 2020.

(ii) **Access to suitable vessel**

- (a) A suitable vessel referred to in paragraph 7.2.6 (a) and (b) of the General Policy: 2021 shall in the squid fishery be one that is:
- (1) a commercial fishing vessel that is equipped with gear to catch squid, using the jigging method, equipped with no more than two anchors and has suitable overnight facilities for crew members in terms of SAMSA merchant shipping regulations.
  - (2) HACCP compliant and meets the National Regulator for Compulsory Specifications (NRCS) requirements and specifications to store and freeze squid.

(3) of a minimum SAMSA registered length of eleven (11) metres and a crew capacity of up to 12 crew.

(4) of a maximum SAMSA registered length of thirty-two (32) metres with a maximum crew capacity of 32 crew.

**(c) Balancing criteria: Category C / new entrant applicants**

**(i) Compliance**

(a) The period regarding the applicant's conviction of an offence under the MLRA, or the regulations or permit conditions referred to in paragraph 7.3.4 (a) of the General Policy: 2021 shall be from the year 2014 to 2020.

(b) The period regarding the applicant having entered a plea bargain under the Criminal Procedure Act 51 of 1977, for a contravention of the MLRA, or the regulations, or permit conditions referred to in paragraph 7.3.4 (b) of the General Policy: 2021 shall be from the year 2014 to 2020.

(c) The period regarding the applicant's payment of an admission of guilt fine only for a contravention of the MLRA, the regulations, or the permit conditions referred to in paragraph 7.3.4 (c) of the General Policy: 2021 shall be from the year 2014 to 2020.

(d) The period regarding the applicant's fishing vessel, motor vehicle, premises or any of the applicant's assets seized under the MLRA or forfeited under the Prevention of Organised Crime Act 121 of 1998 referred to in paragraph 7.3.4 (d) of the General Policy: 2021 shall be from the year 2014 to 2020.

**(ii) Access to suitable vessel**

(a) A suitable vessel referred to in paragraph 7.3.6 (a) and (b) of the General Policy: 2021 shall in the squid fishery be one that is:

- (1) a commercial fishing vessel that is equipped with gear to catch squid, using the jigging method, equipped with no more than two anchors has suitable overnight facilities for crew members in terms of SAMSA merchant shipping regulations.
- (2) HACCP compliant and meets the National Regulator for Compulsory Specifications (NRCS) requirements and specifications to store and freeze squid.
- (3) of a minimum SAMSA registered length of eleven (11) metres and a crew capacity of up to 12 crew.
- (4) a maximum SAMSA registered length of thirty-two (32) metres with a maximum crew capacity of 32 crew.

## 7. Granting of Commercial Fishing Rights

Commercial fishing rights in the Squid fishery are granted in terms of Section 18 of the MLRA. Unless otherwise determined by the Minister, only South African persons shall be granted and/or hold Rights in terms of Section 18 of MLRA.

### 7.1. Form of Right Holder in the Squid fishery under the commercial sector

Having regard to the nature of operations and resource accessibility the following South African persons will be considered for a right in the Squid fishery:

- (a) Close Corporations (legal entity).
- (b) Companies (legal entity).

### 7.2. Duration of Rights

Having regard to the Rights Allocation Process, and the need to encourage investment, a Fishing Right in the Squid fishery under the commercial fishing sector will be granted for a period of 15 years, thereafter, it shall automatically terminate and revert back to the State.

**8. Multi-sector involvement**

- 8.1. Right-holders in the Squid fishery under the commercial sector are not precluded from holding rights in any other sectors and is in line with paragraph 7.1.1 (a) and (b) of the General Policy: 2021.

**9. Application and Grant-of-Right fees**

- 9.1. Applicable fees have been published in the Government Gazette No. 39451, Volume No. 605, 25 November 2015, separately in terms of section 25 of the MLRA.
- 9.2. The application fee is payable upon submission of an application and is non-refundable.
- 9.3. The grant-of-right fee is payable by all successful applicants within 60 days of the granting of the right.

**10. Transfer of Commercial Fishing Rights and/or Shares and/or Members' interests in the squid fishery.**

- 10.1. In terms of Section 21 of the MLRA the Minister may approve the transfer of Fishing Rights in whole or in part. However, Rights granted in the fishery in terms of Section 18 or Section 21 of the MLRA shall not be transferred within the first three (3) years of being granted. Rights granted in this fishery shall not be transferred within the last two (2) years before the right expires.
- 10.2. Commercial Right Holders in the Squid fishery shall in transferring their Squid Commercial Fishing Rights or parts thereof (e.g., a portion of their allocated crew and/or apportioned TAE and/or shares and/or members' interests) adhere to the provisions of Section 21 of the MLRA and the Policy for the Transfer of Commercial Fishing Rights or Rights or Parts thereof ("the Transfer Policy").
- 10.3. Any transfer of shares or members' interest resulting in change in control and/or reduction in transformation profile as at the date of allocation of the commercial fishing rights or change in minority shareholding or members' interest should be dealt with in light of the Transfer Policy.



- 10.4. A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred. In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder result in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated, with particular regard to any decrease in black ownership of such entity.
- 10.5. Right Holder in this Fishery should refer to the Transfer Policy for more information. In case there are conflicting provisions relating to the transfer of commercial fishing rights or rights or parts thereof between this Policy and the Transfer Policy, the provisions of the Transfer Policy shall take precedence.

## **11. Management Measures Sustainable utilisation of the squid resource**

### **11.1. TAE or input control**

- (a) The Squid TAE to be allocated to existing fishing sectors thereof shall be determined annually or seasonally in terms of the provisions of Section 14 of the MLRA.
- (b) Ten percent (10%) of the determined portion of the Squid commercial TAE may be reserved for appeals during the rights allocation process.
- (c) Closed season for squid shall be determined annually and set for the squid fishery to prevent the determined TAE from being exceeded, and/or
- (d) The determined portion allocated to the Squid fishery in the commercial fishing sector shall be apportioned proportionally to rights holders allocated commercial fishing rights in the squid fishery.

**11.2. Permitting**

- (a) The successful rights holders in the Squid fishery under the commercial sector will be required to apply for and fish permits in terms of the provisions of Section 13 of the MLRA to exercise commercial Rights granted in terms of the provisions of Section 18 of the MLRA, the General Policy: 2021, this Policy, and the Transfer Policy.
- (b) The vessel owner shall apply for a vessel-based Fish Processing Establishment (FPE) permit in terms of the provisions of Section 13 of the MLRA to exercise their commercial rights granted in terms of the provisions of Section 18 of the MLRA, the General Policy:2021, this Policy, and the Transfer Policy.
- (c) The permit will, in terms of Section 13, be issued together with the permit conditions.

**11.3. Law enforcement**

- (a) The permit holders will be required to adhere to the provisions of the MLRA and its Regulations, the relevant Policies, and the permit conditions in exercising their Rights.

**12. Observer at sea and land-based monitoring**

- 12.1. The Department considers that a shore-based monitoring programme is the most suitable programme to collect data from the fishery. On board observer coverage or electronic monitoring (EM) may become mandatory and successful applicants should be responsible for bearing the related cost. The Department will work with RH's and industry associations to enhance and possibly automate at-sea monitoring, offloading (inspection of any other species landed) and data capturing through the use of technology (cameras).

**13. Contraventions**

- 13.1. Failure to comply with the provisions of the MLRA, the Regulations, the permit conditions, the General Policy: 2021, Squid Policy: 2021 and the Transfer Policy should result in the institution of legal proceedings (civil or criminal), including but not limited to proceedings in terms of section 28 of the MLRA.

Policy on the Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2021

- 13.2. A breach of the provisions of other related acts included in the Permit conditions by the Right Holder, or their employees (whether permanent, full-time or part-time), their contractors, agents or advisers and the skipper of the vessel; may result in the initiation of legal proceedings, (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).
- 13.3. A failure to utilise their Squid commercial Fishing Right for two fishing seasons without any reasonable explanation; may result in the initiation of legal proceedings (which may include initiation of Section 28 proceedings in terms of the MLRA and or criminal proceedings).

#### **14. Monitoring and evaluation of the policy**

- 14.1. The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven (7) years from the date of finalisation of the appeals.
- 14.2. Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights - and after consulting with right-holders - the following broad performance-related criteria may be used:
- (a) Transformation.
  - (b) investment in vessels and gear.
  - (c) bycatch mitigation compliance with applicable laws and regulations.
- 14.3. South Africa has not been immune from the negative impacts of climate change on fisheries resources and communities who depend on fisheries for their livelihoods. The impacts of climate change may be addressed through adoption of adaptation and mitigation measures in the fishing sector. Research and ongoing monitoring by both the Department and stakeholders will play an important role in identifying gaps, weaknesses and flaws in existing fisheries policies and management measures.

- 14.4. South Africa has published the National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks) and the National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The NPOA-Sharks and NPOA-Seabirds applies amongst others, to the fisheries that catch and land sharks and seabirds as targeted species or non-targeted species (by-catch). In order to achieve the optimum utilisation and ecological sustainable development of marine living resources, South Africa will implement the NPOA-Sharks of Action in all the identified fisheries to ensure that the ecosystem is protected, and fishing strategies are consistent with the principles of biological sustainability and rational long-term economic use.
- 14.5. During the performance measuring exercise, any Right Holder that has been found to have contravened any condition upon which the Right was granted for, may result in the initiation of legal proceedings, (which may include initiation of section 28 proceedings in terms of the MLRA and or criminal proceedings).

#### **15. Repeal**

This Policy on the Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2021 repeals the Policy for the Allocation and Management of Commercial Fishing Rights in the Squid Fishery: 2013

~ END ~



**DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT**

**POLICY ON THE ALLOCATION AND MANAGEMENT OF SMALL PELAGIC COMMERCIAL  
FISHING RIGHTS: 2021**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION OF  
COMMERCIAL FISHING RIGHTS: 2021 AND THE POLICY FOR THE TRANSFER OF  
COMMERCIAL FISHING RIGHTS**

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

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## 1. INTRODUCTION

This Policy on the Allocation and Management of Commercial Fishing Rights in the Small Pelagic Sector for directed anchovy and sardine is issued by the Minister of Forestry, Fisheries and the Environment (the Minister). This policy must be read together with the General Policy on the Allocation of Commercial Fishing Rights: 2021 (the General Fisheries Policy) and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out the objectives, criteria and considerations that will guide the allocation of long-term commercial Small Pelagic fishing rights.

The Minister has, in terms of Section 79 of the Marine Living Resources Act 18 of 1998 (the MLRA), delegated the power to grant fishing rights contained in Section 18 of the MLRA, to Senior Officials of the Department of Forestry, Fisheries and the Environment (the Department). This policy document will guide the Delegated Authority in taking decisions on applications in this sector.

## 2. SECTOR PROFILE

The South African fishery for small pelagic fishes is an industrial-scale fishery that was initiated off the West Coast in the late 1940s using purse-seine nets to target adult sardine (*Sardinops sagax*), horse mackerel (*Trachurus capensis*) and chub mackerel (*Scomber japonicus*). Declining catches of these species during the mid-1960s resulted in the fishery switching to smaller meshed nets to target juvenile anchovy (*Engraulis encrasicolus*) off the West Coast, and this species has largely dominated landings since. A third small pelagic fish, West Coast red eye (*Etrumeus whiteheadi*; also known as round herring) has also been targeted since the 1970s. Because both sardine and round herring juveniles form mixed schools with anchovy juveniles, the former two species are taken as bycatch in anchovy fishing operations.

Small quantities of the two mackerel species are currently taken as bycatch in this sector, but these are negligible compared to initial high catches. Whereas sardine catches remained low for three decades after they declined, the population recovered during the 1990s and the fishery began to also target this species off the South Coast. Sardine catches increased to a second peak in the mid-2000s, before declining again to very low levels in recent years. Mesopelagic fish species (Hector's lanternfish *Lampanyctodes*



*hectoris* and lightfish *Maurolicus walvisensis*) are occasionally caught by purse-seiners, sometimes in large quantities.

The Small Pelagic sector is South Africa's largest in terms of catch with average annual catches of around 380 000 tonnes over the period 1950–2020, of which 80% has been anchovy and sardine (directed and bycatch combined). Small pelagic targeting occurs inshore, primarily along the Western Cape's west and south coasts (for anchovy, directed-sardine and red eye) and the South and Eastern Cape coast (for directed-sardine). Sardine are also targeted by a seasonal beach-seine fishery along the KwaZulu-Natal south coast during the annual, winter sardine run, but annual catches in that fishery are small (typically around 200 tonnes and have never exceeded 700 tonnes) in comparison to those taken by purse-seine vessels. The pelagic fleet consists of Glass Reinforced Plastic (GRP) and steel-hulled purse-seine vessels, with only a few wooden vessels remaining active. Vessel length ranges from 15 metres to 39 metres, and the number of vessels actively involved in the sector has consistently declined from 95 in 2006 to 63 in 2020. Sardines are canned for human consumption and pet food, and packed and frozen for bait, with most of the canneries on the West Coast and most of the bait packing facilities on the South and East coasts. The other species (so-called "industrial fish") are reduced to fishmeal, fish oil and fish paste in large factories mostly on the West Coast but with a recently-developed factory on the South Coast. This difference in product type means that one tonne of canned sardine is around 5 times as valuable as one tonne of industrial fish.

Annual anchovy catches ranged between 79 000 tonnes and 307 000 tonnes and had an average value of 214 000 tonnes over the previous rights period of 2006-2020. Annual directed-sardine catches ranged between 2 000 tonnes (in 2019) and 206 000 tonnes (in 2006) and had an average value of 79 000 tonnes over that period but have declined markedly to below 35 000 tonnes in recent years. The current low sardine catches are insufficient for profitable operation of the major canning facilities and the bulk of canned sardine products currently produced in South Africa contain sardine that are sourced from Morocco and elsewhere. Whilst this has enabled the industry to retain market share and to keep their workers employed, current unfavourable exchange rates are affecting profitability and threatening the long-term viability of the canning industry, particularly if directed sardine catches remain at low levels.

The Small Pelagic sector is typically managed through an Operational Management Procedure (OMP); an adaptive management approach that uses a simulation-tested set of rules and pre-specified data, stock assessment methods and harvest control rules to determine and implement management actions. In this sector, management is via the setting of annual Total Allowable Catches (TACs) for sardine and anchovy, and Total Allowable Bycatches (TABs) for juvenile sardine caught in anchovy-directed fishing, and juvenile and adult sardine caught in redeye-directed fishing. However, should input data used for the calculation of TACs and TABs fall outside of the range that was used in simulation-testing of the OMP, Exceptional Circumstances (ECs) are declared and the OMP is not used for setting TACs and TABs and *ad hoc* measures are used instead. Exceptional Circumstances were declared for sardine in 2019 after recording a sardine biomass estimate in 2018 which was below the simulated range, and these ECs have remained since (i.e. during 2020 and 2021) following continued low biomass levels. Exceptional Circumstances were also declared for anchovy in 2020 following lower-than-simulated recruitment, and *ad-hoc* measures have been used to set TACs for this species since. In addition to the TACs and TABs, annual Precautionary Upper Catch Limits (PUCLs) are set for West Coast redeye, mesopelagic fishes, and juvenile horse mackerel bycatch.

Spatial management has been formally applied in the sardine fishery from 2019 onwards as a regulatory measure by restricting the proportion of the directed-sardine TAC that can be caught off the West Coast. This is because (i) the sardine resource is considered to consist of two components, one off the West and the other off the South Coast, respectively, with the western component markedly more productive in terms of generating recruitment; and (ii) the need to rebuild the sardine population in general, but particularly the western component which is depleted at present.

In addition to being the largest of South Africa's fisheries (despite recent low sardine catches), the Small Pelagic sector is the country's second-most important in terms of value, with an estimated wholesale catch value of R2.4 billion in 2014 that is estimated to be around R5.5 billion at present. This sector employs approximately 5800 people. Of these, 4300 are employed on a permanent basis and 1500 on a seasonal basis. Ninety-five percent of workers in this sector are historically disadvantaged persons. The market value of the 63 vessels operating in this sector is more than R1.2 billion (the average vessel is worth R 7 million). The sector is capital intensive, with operators having to invest

in vessels and processing and marketing infrastructure, hence it is not suitable for the Small-Scale Fishery sector. Sixty-four (64) out of 85 (75%) previous Rights Holders (RHs) did not own vessels, hence a proportion of the catch was caught and processed using agreements with independent entities who themselves did not have a Right. Twenty-one out of 85 (25%) previous RHs were also vessel owners. Nineteen of the 63 (30%) active vessels in 2020 were owned by entities which were not RHs in the sector.

In 2020 there were 22 Permitted Fish Processing Establishments (FPEs) associated with the Small Pelagic sector. Of these, five are large, combined fishmeal and canning plants that were owned by previous RHs and one is a cannery only plant not owned by a previous RH. A new fishmeal plant has since been added to the cannery-only plant in Mossel Bay on the South Coast, with current processing capacity of 100 tonnes per day, that is estimated to increase to around 1 000 tonnes per day within the next two to three years. The remaining FPEs are mostly small cold storage facilities that mainly freeze sardine for bait and human consumption, with eight (36%) not owned by previous RHs. At the end of the previous Rights period (2020), 79% of RHs in this sector were black-owned and they collectively controlled 75% of the TAC. Women made up an average of 29% of the shareholding of, and small and medium-sized enterprises made up 85%, of the previous RHs.

### **3. THE LONG-TERM FISHING RIGHTS ALLOCATION PROCESS**

At the end of 2005 and subsequent to all appeals being finalized, the Small Pelagic long-term rights period effectively started on 1 February 2006 and ended on 31 December 2020. An exemption was granted to previous RHs to continue fishing from 1 January 2021 to 31 December 2021. Of the 115 Long-term Rights that were granted in 2005, 76 RHs were granted rights to both sardine and anchovy and 39 were granted Rights to sardine only. By the end of 2020, Rights had been consolidated to 61 holders of both sardine and anchovy rights and 24 holders of sardine rights only.

### **4. OVER-ARCHING SECTORAL OBJECTIVES**

This policy recognises the need to ensure the optimal, long-term and justifiable use of marine living resources in order to ensure sustainable development of the fishing sector to achieve inclusive economic growth, to achieve the objectives and principles as listed in

Section 2 of the MRLA through the Marine Living Resources Fund (MLRF) and to create sustainable employment consistent with the development objectives of National Government. In terms of the Marine Living Resources Act, 1998, the responsible authorities are obliged to achieve optimum utilisation and ecological sustainable development of marine living resources; conserve marine living resources for both present and future generations; apply precautionary approaches in respect of the management and development of marine resources; utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture sectors, employment creation and a sound ecological balance consistent with the development objectives of the national government; protect the ecosystem as a whole, including species which are not targeted for exploitation; preserve marine biodiversity, and to minimise marine pollution.

The over-arching objectives of allocating long-term fishing rights in this sector are to:

- (a) Rebuild the currently depleted sardine resource, in particular the western component.
- (b) Create an environment that attracts investment and stimulates job creation.
- (c) Encourage RHs to invest in suitable vessels; processing and marketing infrastructure.
- (d) Encourage value-adding by RHs through processing some percentage of their industrial fish allocation, i.e., anchovy and round herring, into products other than fishmeal or fish oil (e.g., bait) but preferably for human consumption. The Department also encourages the development of new sardine products for human consumption. Progress in this regard will be determined during regular performance assessments.
- (e) Maintain the current level (~80%) of Black ownership and improve other aspects of the transformation profile specifically the involvement of females, youth and people living with disabilities.
- (f) Reduce bycatches of sardine, horse mackerel and chub mackerel.
- (g) Ensure strict adherence to Environmental Legislation dealing with wastage and pollution (e.g., both air and water effluent).
- (h) Promote viability and environmental sustainability of the sector through an efficient rights Allocation Process.
- (i) Promote adherence to the Basic Conditions of Employment Act 75 of 1995, the Labour Relations Act 66 of 1995 and the Merchant Shipping Act 57 of 1951.

## **5. GRANTING OF FISHING RIGHTS**

Fishing rights are granted in terms of section 18 of the MLRA. Only South African persons as defined in the MRLA shall acquire or hold rights. All Rights granted shall be valid from the date of allocation for a period of 15 years, whereafter they will automatically terminate and revert back to the State.

### **5.1. Form of Right Holder**

Having regard to the capital-intensive nature of fishing and processing operations in this sector and resource accessibility, only the following South African persons will be considered for a right in the Small Pelagic sector:

- (a) Close Corporations (legal entity).
- (b) Companies (legal entity).

### **5.2. Duration of Rights**

Having regard to the rights allocation process, and the need to encourage investment, fishing rights in the Small Pelagic sector will be granted for the maximum 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, rights granted in the fishery in terms of the MLRA shall not be transferred within the first three (3) years of being granted.

## **6. EVALUATION CRITERIA**

Applications will be screened in terms of a set of “exclusionary criteria” to identify those that merit the granting of a commercial right, and thereafter assessed in terms of a weighted set of “comparative balancing criteria”. The purpose of the balancing criteria is to identify successful applicants. All applicants will be required to show that they have the knowledge, skill and capacity to fish for and process/market small pelagic species as well as to demonstrate commitment to investing in this sector.

### 6.1. Exclusionary Criteria

Apart from the criteria described in the General Fisheries 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:** An applicant will be excluded if it or any of its Directors, Senior Management, Shareholders or Members (where such shareholding or members' interest exceeds 10%) or Skippers have been convicted of a transgression of the MLRA, the regulations promulgated thereunder and permit conditions (without the option of the payment of a fine).

An applicant will also be excluded if it, or any of its Directors, Senior Management, Shareholders or Members (where such shareholding or members' interest exceeds 10%) or Skippers has had any fishing right cancelled or revoked in terms of the MLRA.

- (a) **Paper Quotas:** Applicants who apply under FRAP 2021 for a Small Pelagic fishing right, and who are found to present a paper quota risk, as defined in the General Fisheries Policy of 2021, will be excluded.
- (b) **Fronting:** Applicants who apply under FRAP 2021 for a Small Pelagic fishing right, and who are found to present a fronting risk, as defined in the General Fisheries Policy: 2021, will be excluded.

It shall, however, be noted that although excluded applicants will not be allocated a commercial fishing right in this sector, they will be evaluated and assessed against the balancing criteria. This will be done for the purposes of generating scoresheets for such excluded applicants.

### 6.2. Comparative Balancing Criteria

Applications that have not been excluded will be categorized as per the General Policy: Those applicants who held rights in the fishery for which they are re-applying during the period 2006 to 2020 may be considered to be Category A Applicants. Applicants who held rights in sectors other than the fishery they are applying for during the period 2006 to 2020 may be considered to be Category B Applicants. Applicants who did not hold commercial

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fishing rights during the period 2006 to 2020 may be considered to be Category C Applicants. The third category is also referred to as “new entrant” applicants.

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Fisheries Policy for further detail. Weighting and scoring criteria will be developed separately for Category A, B and C applicants during the assessment of applications, and the relative weight of each criterion will differ between Categories.

For all Categories, investment in the sector and access to infrastructure will be heavily weighted, with job creation and sustainable employment, value adding and enterprise development, transformation and performance also important. A like-with-like approach will be followed for Category A, whereby applications will be compared against those from applicants that had allocations of a similar size for one or both of anchovy and sardine and similar fishing operations/areas. A similar approach will be followed for Category B applications, which will also be required to demonstrate their ability to establish themselves in this sector. New entrants (Category C) will have to show that they have the knowledge, skill and capacity to fish for, or process or market small pelagic species as well as demonstrate their commitment to invest in this sector within the medium term.

**(a) Investment in the Sector (Applies to Category A, B and C applicants)**

As far as Category A applicants are concerned, the Delegated Authority should specifically consider:

- (i) Investments in suitable vessels and/or other fixed assets such as processing/marketing infrastructure in the Small Pelagic sector (and, in other sectors, if applicable, but this will be given less weighting) during the past 15 years. Investment in the form of shareholding will also be considered.
- (ii) As far as Category B and C Applicants are concerned, the Delegated Authority should consider investments made in other sectors in the form of vessels and/or other fixed assets such as processing/marketing infrastructure, but a clear demonstration of their commitment (and ability) to invest in this sector (i.e., vessels and FPE's) will be required.
- (iii) All Category C applicants are required to demonstrate that they have the knowledge, skill and capacity to fish for and process/market small pelagic

fish as well as demonstrate commitment to investing in this sector in the medium term.

- (iv) The Department recognises the Economic Unit Business model and that entities belonging to such Units might not necessarily present a Paper Quota risk. The extent to which an applicant has contributed to the Unit will be considered.

**(b) Access to Infrastructure (Applies to Category A, B and C applicants)**

- (i) Access to a Suitable Vessel: Applicants will have to demonstrate access to a suitable vessel. Proof in the form of ownership, part-ownership or catch agreement, together with a valid South African Maritime Safety Authority (SAMSA) registration certificate and photos of the vessel taken from the port and starboard, fore and aft needs to be included in the application. If the applicant has entered into a purchase agreement to acquire a suitable vessel on successful application, then proof of the sales contract must be provided. In the case of a proposed newly-built vessel, the vessel plans, detailed costing from the vessel building company and proof of finance must be provided.
- (ii) Access to a Fish Processing Establishment: Applicants are required to demonstrate access to a Fish Processing Establishment. Proof in the form of ownership, part-ownership or processing or purchase/lease agreements needs to be included in the application for each of the species applied for. If the applicant has entered into a purchase/lease agreement to acquire a suitable fish processing establishment on successful application, then proof of the sales/lease contract must be provided. In the case of a proposed newly- built fish processing establishment, the establishment plans, detailed costing from the establishment building company and proof of finance must be provided.

**(c) Job Creation and Sustainable Employment**

The Small Pelagic sector provides approximately 5 800 jobs. The majority of workers are employed on a full-time basis, with benefits such as medical aid, pension and shareholding as well as informal financial support (e.g., personal loans and funeral insurance).



For Category A Applicants, sustainable employment provided as a result of the previous allocation of long-term fishing rights will be considered, and in particular, applicants that have created jobs and provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of the Employment Act, Labour Relations Act and Merchant Shipping Act.
- (ii) Medical aid, pension, shareholding, informal financial support.
- (iii) Safe working conditions.

In addition, jobs created and sustainable employment provided per tonne of fish allocated during the previous long-term rights allocation period will be assessed and taken into account.

For Category B Applicants, jobs created and sustainable employment provided as a result of the previous allocation of long-term fishing rights in another sector will be considered, and in particular, applicants that have provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of Employment Act, Labour Relations Act and Merchant Shipping Act.
- (ii) Medical aid, pension, shareholding, informal financial support.
- (iii) Safe working conditions.

For Category C Applicants, jobs created and sustainable employment provided as a result of any previous fishery related activity will be considered and in particular, applicants that have provided their employees with:

- (i) Sustainable employment adhering to the requirements of the Basic Conditions of Employment Act, Labour Relations Act and Merchant Shipping Act.
- (ii) Medical aid, pension, shareholding, informal financial support.
- (iii) Safe working conditions.

**(d) Local Economic Development (Applies to Category A, B and C applicants)**

There is a need for investment and decent sustainable employment creation in many of South Africa's smaller coastal towns. The Delegated Authority may reward applicants who commit to supplying/selling small quantities of good quality anchovy,

sardine or red eye to SMMEs in smaller coastal towns, particularly economically depressed areas, for development of products for human consumption. The Delegated Authority may also consider the area of operation of applicants and their potential contribution to local economies.

**(e) Value-adding and Enterprise Development (Applies to Category A, B and C Applicants)**

For Category A applicants, the Delegated Authority should consider past enterprise development and their ability to add value to small pelagic fish products for local and international markets during the past 15 years. The Delegated Authority will consider, in particular, whether applicants have invested in or facilitated, directly or indirectly, the development of products for human consumption of anchovy, sardine (other than traditional canned) and red eye.

**(f) Transformation (Applies to Category A, B and C applicants)**

The objective of allocating long-term fishing rights in this sector is to maintain or improve the transformation profile (specifically the involvement of females, youth and people living with disabilities) and the transformation objectives are applicable to all aspects of the applicant's business. In addition to criteria as stipulated in the General Fisheries Policy, applicants will be assessed and scored on:

- (i) The percentage women ownership and women representation at top salary, board of directors and senior official and management levels.
- (ii) The percentage of disabled persons and youth ownership and representation at top salary, board of directors and senior official and management levels.
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme.
- (iv) Compliance with the Employment Equity Act 55 of 1998, particularly with regards to the representation of women, people living with disabilities and the youth at the various levels of employment below senior official and management level.
- (v) For Category A and B applicants, the degree of present (2020) transformation levels will be compared to historical levels to identify applicants who have significantly increased their black ownership over the previous long-term rights period.

**(g) Performance (applies to Category A applicants)**

- (i) Performance by Category A applicants will be determined from their catch statistics and assessed in terms of the quanta allocated (achieved catch per allocated catch in tonnes; jobs per tonnes, etc). The performance of applicants will be compared relative to the industry average within regions (i.e., previous rights holders on the south coast will not be compared to those on the west coast) per allocated species for the previous allocation period.
- (ii) Category A applicants who did not exercise their rights (i.e., no reported catches) in any given year during the previous allocation period must demonstrate reasons and provide evidence why they could not do so. Failure to do so will result in their performance being scored negatively.

All applicants must indicate whether and how they intend to develop a percentage of their allocations of industrial fish for alternative uses, preferably for human consumption. The Delegated Authority will favourably consider applications that demonstrate commitment to such development.

**(h) Multi-sector Involvement**

Applicants in the Small Pelagic sector are not precluded from holding rights in any other sector/s. Given the inherent variability in population sizes of Small Pelagic fishes, the Department cannot guarantee that allocations will not drop below levels that are economically meaningful and hence encourages multi-sector involvement to spread risk across several sectors.

**(i) Non-payment of Fish Levies (Applies to Category A and B applicants)**

The Department requires every RH to pay a levy on all fish landed, targeted or caught as a bycatch. Applicants that were granted commercial fishing rights in the previous rights allocation period for this or any other sector are required to provide proof that they are up to date on the payment of their levies on fish landed over the last fifteen years at the date of submitting their applications. Those that have under-reported catches to, *inter alia*, avoid the payment of levies, will not be considered further.

**(j) Compliance (Applies to Category A, B and C applicants)**

If the applicant, or any of its Directors, , Senior Management, Shareholders or Members interest (where such shareholding or members interest exceeds 10%) or Skippers have paid admission of guilt fines for contraventions of the MLRA, it's Regulations or permit conditions within the last fifteen years, their application may be penalised. Applicants who fail to disclose this information in their application will not be allocated a commercial fishing right in this sector. However, for the purposes of generating scoresheets for such applicants, they will be evaluated and assessed further against the remaining balancing criteria.

**7. QUANTUM ALLOCATION METHODOLOGY**

For this allocation period, only sardine and anchovy will be allocated under the TACs and TABs, and the quanta allocated will be expressed as a percentage of the TAC for each species. Given the inherent variability in population sizes of small pelagic fish species and the current depleted status of the sardine resource, applicants are encouraged to apply for both sardine and anchovy rights. These percentages will not necessarily remain fixed for the duration of the right and may change under circumstance of low biomass of either anchovy or sardine (see below). The other targeted species (West Coast red eye and mesopelagic fishes) will be managed via unallocated PUCLs. The Department encourages applications that demonstrate an intention to improve utilisation of the West Coast red eye resource. The Delegated Authority shall allocate quanta based on criteria intended to achieve the objectives of this policy.

For sardine and anchovy, the size of each quantum allocated will be based, *inter alia*, on the following considerations: (i) the number of applications received (in each Category) for each resource and the tonnages required; (ii) the anticipated sardine and anchovy TACs over the short to medium term (5-10 years); (iii) the demonstrated capacity of applicants to catch and process small pelagic fish and (iv) the determination of a minimum allocation that will be economically meaningful. These minimum economically meaningful allocations are likely to range between 200 and 500 tonnes for sardine and 1500 and 3 000 tonnes for anchovy.

When sardine or anchovy stocks are at low biomass levels and hence TACs are much reduced, the percentage of the TAC held by each RH will change on an annual basis. This

will be done through the incorporation of a sliding scale for TAC re-apportionment at pre-specified low TAC levels, such that below these levels the relative decrease in the tonnage allocated to smaller rights holders will be less than that of larger rights holders. This mechanism seeks to provide an economic buffer for smaller RHs at low TAC levels. The formula needs final specification and will depend on the level selected for the low TAC threshold and the range over which it applies. The proportion  $P_i$  of the TAC allocated to a right holder in a particular year ( $TAC_y$ ) will change to  $P\#_i$  when the TAC drops below the pre-specified low level ( $TAC_{low}$ ), where  $P\#_i = \frac{100 * P_i^q}{\sum_i P_i^q}$  with  $q < 1$  and where  $q = \frac{TAC_y}{TAC_{low}}$ .

Ten percent of the total quantum for each allocated species will be reserved for appeals until all appeals have been finalised. After finalisation of the appeals process, any remaining quanta will be re-distributed on a pro-rata basis to RHs in the sector from the following fishing season onwards.

Should any right be revoked for whatever reason in any year during the current period of allocation that right will revert to the State. The quanta associated with such rights will be re-distributed in the sector from the following fishing seasons onwards in accordance with the alternatives that have been outlined in the General Policy.

## 8. NEW ENTRANTS

The TAC set for anchovy remained relatively stable over the previous rights allocation period (2006 to 2020). In contrast, there has been a substantial decline (85%) in the TAC set for sardine in this sector. This, together with the inherent variability of stocks of small pelagic fishes and the fact that this sector depends on high volumes with small profit margins has already impacted the viability of particularly small rights. This is borne out by the observed reduction in the number of FPEs and vessels, and the increased consolidation of rights in this sector, over the previous rights period.

The sardine resource is currently depleted and is unlikely to increase substantially in the short to medium term (5-10 years), whilst the anchovy resource is currently at an optimal status. Hence, to ensure viable long-term allocations of anchovy and sardine the number of access rights in this sector should be reduced, particularly the number of rights allocated

for sardine. This could be achieved through, amongst other things, assessment of the performance of the previous RHs.

The Department considers that whereas there is scope for the introduction of new entrants into the sector, this is limited for the sardine fishery. New entrant applicants will have to demonstrate that they have the knowledge, skill and capacity to fish for and process/market small pelagic species, as well as demonstrating commitment to invest in this sector within the medium term.

#### **9. SUITABLE VESSELS**

A suitable vessel in the Small Pelagic sector is a vessel that:

- (a) Is SAMSA registered and of a length between 10-40 m (vessels smaller or larger than this range may be considered).
- (b) Has a functioning Vessel Monitoring System (VMS).
- (c) Is geared for purse-seining.
- (d) Is not being detained or has not been confiscated under the MLRA and is not negatively listed on any Regional Fisheries Management Organisations (RFMO) list and/or Treaties.

#### **10. APPLICATION AND GRANT-OF-RIGHT FEES**

Applicable fees have been published in the Government Gazette No. 39451, Volume No. 605, 25 November 2021, in terms of section 25 of the MLRA.

The application fees are payable upon submission of an application and is non-refundable.

The grant-of-right fees are payable by all successful applicants within 60 days of the granting of the right.

#### **11. MANAGEMENT MEASURES**

The management's principal management measures for the small pelagic sector, following the allocation of rights, are set out below:

### **11.1 Optimising Utilisation and Promoting Sustainability**

The sector will be managed to promote sustainable utilisation of the target species and optimal use of both target and bycatch species.

### **11.2 Rebuilding the sardine resource**

Rebuilding the currently depleted sardine resource, in particular the western component.

### **11.3 Spatial Management**

Given that the sardine resource comprises two stock components, one predominantly off the West Coast and the other predominantly off the South Coast, spatial management of this fishery is required. This will be achieved through restricting and/or prohibiting the amount of the directed sardine TAC that may be caught in certain areas. Additionally, fishing for small pelagic fish may be prohibited in certain areas and/or periods for conservation or scientific purposes and spatial management of other species may also be applied.

### **11.4 Transfer of Commercial Fishing rights and/or Shares and/or Members' Interests**

RHs in this sector shall consider the Policy for the Transfer of Commercial Fishing rights or Parts thereof (the Transfer Policy) when transferring their fishing rights and/or shares and/or members' interests.

### **11.5 Consolidation of Right Holders**

Following the allocation of 15-year commercial fishing rights in this sector, the Department will facilitate the consolidation of the number of RHs active in the sector, if necessary.

### **11.6 Monopoly**

While the Department will encourage the consolidation of rights in this sector, it is opposed to the establishment of a monopoly that may operate to the detriment of smaller RHs.

### **11.7 Vessels and Fishing Effort**

There are presently 63 active small pelagic fishing vessels that operate in South African waters. As many RHs do not own the vessels they use, and as vessels may require replacement, the Department recognises that many RHs will seek to introduce vessels after the allocation of long-term fishing rights. RHs will not be permitted to introduce vessels capable of expending effort that is far in excess of their allocations. In addition, the Department will consider all vessel change applications into the fishery on a case by case basis.

### **11.8 Observer at Sea and Land Based Monitoring**

The Department strongly encourages collaboration with RH's and industry associations to enhance and possibly automate at-sea monitoring, offloading (species composition determination) and data capturing through the use of technology (cameras).

## **12. PERMIT CONDITIONS**

Permit conditions for this sector will be issued annually. The permit conditions will be co-determined through regular interactions with RHs, their representatives or associations and other internal and external stakeholders.

## **13. MONITORING AND EVALUATION OF THE POLICY**

The Department will monitor and evaluate the final policy by instituting a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after seven years, from the date of finalisation of the appeals.

Although the Department will finalise the precise criteria against which RHs will be measured after the allocation of commercial fishing rights, and after consulting with RHs, the following broad performance-related criteria may be used:

- (a) Transformation.
- (b) Investment in vessels and gear.
- (c) Bycatch mitigation compliance with applicable laws and regulations.
- (d) Value adding and enterprise development.



South Africa has not been immune from the negative impacts of climate change on fisheries resources and communities who depend on fisheries for their livelihoods. The impacts of climate change may be addressed through adoption of adaptation and mitigation measures in the fishing sector. Research and ongoing monitoring by both the Department and stakeholders will play an important role in identifying gaps, weaknesses and flaws in existing fisheries policies and management measures.

South Africa has published the National Plan of Action for the Conservation and Management of Sharks (NPOA-Sharks) and the National Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The NPOA-Sharks and NPOA-Seabirds applies amongst others, to the fisheries that catch and land sharks and seabirds as targeted species or non-targeted species (by-catch). In order to achieve the optimum utilisation and ecological sustainable development of marine living resources, South Africa will implement the NPOA-Sharks of Action in all the identified fisheries to ensure that the ecosystem is protected, and fishing strategies are consistent with the principles of biological sustainability and rational long-term economic use.

The purpose of performance measuring will be to ensure that the objectives of this policy are met.

#### **14. CONTRAVENTIONS**

The Department may institute legal proceedings in terms of Section 28 of the MLRA and/or civil or criminal proceedings against any right holder that is found to have contravened any condition upon which the right was granted. These contraventions include:

- (a) A right holder who fails to utilise their Small Pelagic fishing right for any two consecutive fishing seasons during the period for which the right has been granted without a reasonable explanation;
- (b) A breach of the provisions of the MLRA, Regulations, Permit Conditions, the Transfer Policy and other related Acts included in the Permit Conditions by the right holder, or its employees (whether permanent, full-time or part-time), its contractors, agents or advisers and the skipper of the vessel;
- (c) A right holder who fails to meet the objectives of this policy, as identified during the performance measuring exercise.

**15. REPEAL**

This Policy on the Allocation and Management of Small Pelagic Commercial Fishing Rights: 2021 repeals the Policy for the Allocation and Management of Commercial Fishing Rights in the Small Pelagics (Anchovy and Sardine Purse-Seine) Fishery: 2005

~ END ~



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