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## GENERAL NOTICES

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### NOTICE 750 OF 2013

#### DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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

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

for general information.

SCHEDULE A

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



**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES**

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

**THIS POLICY MUST BE READ WITH THE APPLICABLE FISHERY SPECIFIC POLICY  
(available at [www.daff.gov.za](http://www.daff.gov.za))**

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

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

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## PART A: INTRODUCTION AND BACKGROUND

### 1. Introduction

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

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

### 2. Application of the 2013: General Policy

2.1 The 2013: General Policy applies to:

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

(b) The allocation of rights to operate Fish Processing Establishments.

### 3. Purpose and objectives

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

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

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

#### **4. Key government policies**

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

##### **4.1.1 The National Development Plan (NDP)**

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

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

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

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

#### **4.1.3 The New Growth Path (NGP)**

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

#### **4.1.4 The 2012 Industrial Policy Action Plan (IPAP)**

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

#### **4.1.5 The Comprehensive Rural Development Programme (CRDP)**

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

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

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

## **PART B: ALLOCATION METHODOLOGY AND PROCESS**

### **5. The Allocation of Fishing Rights**

#### **5.1 The Marine Living Resources Act 18 of 1998**

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

5.1.2 Another important purpose of the MLRA is to provide for the orderly utilisation of marine living resources, and to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa.

#### **5.2 The legal nature of the fishing right**

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

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

5.2.2 A fishing right is granted to a specific person or entity and, in terms of section 21 of the MLRA, the right may not be transferred without the approval of the Minister or his/her delegate. Upon the death, sequestration or liquidation of a right holder, the right vests respectively in the executor, trustee or liquidator and the right may, with the approval of the Minister or his/her delegate, continue to be exploited for the period of time permitted by the applicable legal provisions. However, the transfer of the fishing right or controlling shareholding are subject to the approval of the Minister or his/her delegate.

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

### 5.3 Core allocation and management considerations

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

#### 5.3.1 Transformation

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

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

NEFA “historically disadvantaged persons” means those persons or categories of persons who, prior to the new democratic dispensation marked by the adoption and coming into force of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), were disadvantaged by unfair discrimination on the basis of their race and includes juristic persons or associations owned and controlled by such persons.

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

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

#### 5.3.2 **Socio-economic and economic considerations**

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

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

### 5.3.3 **Biological considerations**

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

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

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

### 5.3.5 **Performance or potential to perform**

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

### 5.3.6 **Communication with regard to applications submitted**

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

## 5.4. **Allocation process determined by clusters**

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

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

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

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

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

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

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

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

## 5.5 **Provisional lists, representations and consultations**

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

## 5.6 **Multi-sector involvement**

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

## 5.7 **Participation of applicants**

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

## 5.8 Design of criteria and weighting

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

## 5.9 Information to be considered

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

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

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

(b) **Late information**

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

(c) **Information from external sources**

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

(d) **Use of departmental databases**

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

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

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

**5.10 Calls for further information, investigations and consultation**

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

**5.11 Support for delegated authority**

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

## 5.12 Notification of decisions

- 5.12.1 After the delegated authority has made decisions on the allocation of rights and quantum or effort, the Department will notify all applicants in writing at their registered addresses of business of the decisions in respect of their applications.
- 5.12.2 In addition, the Department will publish the results electronically and communicate the results through recognised industrial bodies and interest groups.

## 5.13 Appeals

- 5.13.1 Every applicant will have the right to appeal against the decisions of the delegated authority. The appeal may be lodged against a refusal to grant a right or against the decision on quantum or effort. Details about the submission of appeals will be contained in the notification letter.
- 5.13.2 The appellate authority will consider the facts as they were at the closing date for applications and will not take into account facts that came into existence thereafter. For example, if an applicant made an investment in a vessel after the closing date for applications that fact will not be taken into account when considering the appeal.
- 5.13.3 Once a decision is taken, the appellant will be informed of the appellate authority's decision in writing.

## 5.14 Access to information

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

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

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

### 6.1 Exclusionary criteria

6.1.1 The following types of exclusionary criteria will be employed:

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

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

## 6.2 **Balancing criteria**

- 6.2.1 Applications that were properly lodged, not materially defective and that meet the essential requirements will be scored in terms of a set of balancing criteria (*"the balancing criteria"*).
- 6.2.2 The balancing criteria will be weighted for purposes of ranking the applicants. Some of the criteria, such as transformation, will apply across all sectors, while others will be sector specific.
- 6.2.3 Cut-offs will then be determined. All applicants with a score equal to or greater than the cut-off will be allocated rights.

## 6.3 **Tie-breaking factors**

- 6.3.1 If there are too many applicants with the same score, the delegated authority may use tie-breaking criteria in order to choose between the applicants with the same score.
- 6.3.2 The tie-breaking factors may comprise criteria not scored or scored criteria differently weighted.

## 6.4 **Allocation of quantum or effort**

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

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

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

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

#### **7.1 Duration of right**

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

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

#### **7.2 Form of right holder**

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

7.2.2 The following South African persons will be considered:

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

- (c) a close corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), of which the majority of members are South African persons;
- (d) a trust in which—
  - (i) the majority of trustees having the controlling power at any given time are South African citizens; or
  - (ii) a majority of the beneficial interests are held by South African citizens; and
- (e) a co-operative registered in terms of the South African Co-operatives Act, 2005 (Act No. 14 of 2005) of which all the members are South African persons.

### 7.3 Employment equity

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

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

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

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

#### **7.4 Basic conditions of employment**

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

#### **7.5 Skills development**

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

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

#### **7.6 Affirmative procurement**

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

#### **7.7 Corporate social investment**

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

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

## 7.8 Paper quotas

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

## 7.9 Financial performance

- 7.9.1 The financial performance of an applicant will be assessed in terms of a set of financial ratios which lend themselves to benchmarking backed up by audited financial statements.
- 7.9.2 The financial statements will also be used to determine who the real beneficiaries of the applicant are ("follow-the-buck" principle) and to determine whether the applicant has invested in the industry. The submitted information by applicants will be verified.
- 7.9.3 Successful applicants will regularly have to provide the Department with financial reports indicating the distribution of dividends and other benefits to their historically disadvantaged shareholders, members and beneficiaries as well as the financial obligations of the historically disadvantaged shareholders, members and beneficiaries to the applicants.

## 7.10 Payment of levies and grant-of-right fees

- 7.10.1 Applicants that were granted fishing rights in 2005/2006 will be required to provide proof that they are up to date on the payment of their levies on fish landed at the date of submitting their applications.
- 7.10.2 All successful applicants may be required to pay a grant-of-right fee. The Department will determine the applicable grant of right fee payable for each fishery after consultation with the successful applicants in each fishery. The grant-of-right fee for each fishery will be subject to the approval of the Minister and the Minister of Finance.

## 7.11 Compliance

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

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

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

#### 7.12 **Fishing performance**

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

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

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

#### 7.13 **Investment**

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

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

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

#### 7.14 Value-adding

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

#### 7.15 Enterprise development

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

#### 7.16 Job creation

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

### 7.17 Local economic development

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

### 7.18 Vessels and fishing effort

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

(c) be registered by the South African Maritime Safety Association (SAMSA) as being suitable for fishing; and

(d) not be listed on any RFMO negative list.

7.18.3 The Department will require all applicants for fishing rights to utilise the nominated vessel for harvesting the resource. Vessel changes will only be allowed in appropriate instances.

7.18.4 A key element in the management and conservation of marine resources is the limitation of applied fishing effort to ensure the optimum utilisation of such resources.

7.18.5 Vessel overcapacity is regarded as one of the primary threats to South African fish stocks. Vessel overcapacity places additional burdens on the Department, both in respect of monitoring and enforcing compliance and managing the exploitation of the resource. The Department will therefore carefully monitor any increase in vessel capacity/effort.

7.18.6 Subject to fishery specific policies, joint and cross-sectoral use of vessels is encouraged, as this will result in more effective and efficient use of vessels throughout the season. It is recognised that ageing vessels must be replaced, *inter alia*, for safety reasons. Modernisation of the fishing fleet will inevitably result in an increase in catch capacity. Where necessary, effort limitations will be introduced to limit capacity/effort.

#### 7.19 Safety of staff and crew

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

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

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

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

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

#### **PART E: POLICY REVIEW**

##### **9. Policy review**

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

## 10. GLOSSARY OF TERMS

- 10.1 "Application period" means the period which commences with the publication of an invitation to interested parties to apply for a fishing right in a fishery to the date on which the appellate authority finally decides on the appeals in the fishery.
- 10.2 "Black people or person" is a generic term which means Africans, Coloured, and Indians who are citizens of the Republic of South Africa by birth or descent or who became citizens of the Republic of South Africa by naturalisation-
- (a) before 27 April 1994; or
  - (b) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date but were precluded from doing so by Apartheid policies.
- 10.3 "Codes of Good Practice" means the BEE Codes of Good Practice published by the Minister of Trade and Industry in 2004 in terms of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- 10.4 "Department" means the Department of Agriculture, Forestry and Fisheries.
- 10.5 "Designated Group" means blacks, women and people with disabilities as defined in the Employment Equity Act, 1998 (Act No. 55 of 1998).
- 10.6 "FAO" means the Food and Agricultural Organization of the United Nations.
- 10.7 "Right Holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 10.8 "Minister" means the Minister of Agriculture, Forestry and Fisheries.

- 10.9 "SMME" means Small, Medium and Micro-sized Enterprises.
- 10.10 "Total allowable catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 10.11 "Total applied effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish for individual species or groups of species.

SCHEDULE B

**FISHERY SPECIFIC POLICIES**

#### 9.4 Grant-of-right fees

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

#### 10. Permit Conditions

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

#### 11. Glossary of terms

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

- 11.7. "Right holder" means a person that was granted a fishing right during the period 2005 – 2006 in a specific fishery, or became a right holder in a fishery by way of an approved transfer of a fishing right.
- 11.8. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 11.9. "SMME" means Small, Medium and Micro-sized Enterprises.
- 11.10. "The 2013 General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 11.11. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 11.12. "Total allowable catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 11.13. "Total applied effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licenses or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish individual species or groups of species.