

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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**POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE
KWAZULU NATAL SARDINE BEACH SEINE FISHERY: 2015**

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

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1. Introduction

The Department of Agriculture, Forestry and Fisheries (“the Department”) is responsible for administering the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (“the MLRA”), regulations promulgated thereunder and policies issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”), in consultation with the Department.

This policy on the allocation and management of fishing rights in the KwaZulu Natal Sardine Beach Seine Fishery (“the KZN Sardine Beach Seine fishery”) shall be referred to as the **“KZN Sardine Beach Seine fishery Policy: 2015”**.

This policy must be read in conjunction with the MLRA and regulations under the MLRA; the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”), other relevant current Sector Specific Policies including the Policy for the Small Scale Fisheries Sector in South Africa: 2012 and the Policy for the Transfer of Commercial Fishing right: 2009. This policy must be interpreted to be consistent with the MLRA, and all of the other relevant regulations and policies.

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

Only persons issued with permits in terms of the MLRA may harvest, transport catch from a landing site to the permitted Fish Processing Establishment (FPE) and export KZN Sardine Beach Seine catch and products thereof.

2. Profile of the fishery

2.1. Brief description of the fishery

The KwaZulu Natal Sardine Beach Seine Fishery is an opportunistic fishery operation targeting migrating sardines stranded in the shallow waters of the KwaZulu Natal beaches. These fish are a spill off from the spawning grounds in the Agulhas bank and the south east coast around Algoa bay. They follow inshore cooler counter currents in massive numbers and migrate east and northwards along the former Transkei coast into KwaZulu Natal, affectionately called the **Natal Sardine Run** (“the run”). The sardine schools in these runs can be as big as 15km long, 40 metres deep and three kilometres wide. The sardine run, will draw predator fish, like sharks, dolphins and seals. It also attracts a number of tourist, fishermen and women and the general local public.

As the fish migrate northwards along the KwaZulu Natal Coast, they tend to beach, more often than not in the areas between Port Shepstone and Durban. The sardine run is seasonal occurring during the winter months. Whilst the run is expected annually, it does not always arrive annually. When it does arrive its duration and size varies. Some runs are longer with more fish whilst others are shorter with fewer fish and sometimes its duration may be longer with less fish.

The KZN Sardine Beach Seine Fishery relies exclusively on the **Sardine Run**. The unpredictable variables of the run make operations within the fishery very challenging. Despite the challenges, associated with making viable catches there are times when the catches average landings estimated at 500 tons with a value of approximately two million rand.

2.2. **Current resource users**

The Total Applied Effort (TAE) is set at 35 operators. There are currently 25 operators operating the KwaZulu Natal seashore. These operators are not restricted to any area or beach, allowing them to follow the sardine run to maximise the catch when possible. Understandably, operators participating in this seasonal fishery work in other fisheries or industries when the fishery is dormant. These operators alternatively participate in the traditional line fish industry either as crew or commercial right holders.

3. **The 2005/2006 Long-Term Fishing Rights Allocation and Management Process**

In the 2005/2006 Long-Term Fishing Rights Allocation and Management Process (LTRAMP) fishing rights in this fishery were allocated to 24 operators, 67% of whom were white, with 90% of them being male¹.

4. **Objectives**

4.1. The objectives and principles of allocating fishing rights in a fishery are set out in section 2 of the MLRA, inter alia, to:

- (a) promote transformation through allocation of fishing rights to entities owned and/or controlled by historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), and to broaden meaningful participation in a fishery (through increased participation, sharing value-creation opportunities and profits, and forging links);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improved working conditions;
- (d) promote food security and poverty alleviation;

¹ Figures as per 2005/6 LTRAMP records

- (e) prefer applicants who rely on the KZN Sardine Beach Seine for a major source of their gross annual income over above applicants deriving income from sources outside the fishery;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks; and
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources.

5. Granting of rights

Fishing rights are granted in terms of section 18 of the MLRA. In terms of section 79 of the MLRA the Minister has delegated the power to grant rights in each fishery to a Delegated Authority in the Department. Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. In this fishery the Minister has not exercised his power to allow persons of other nationalities to acquire rights, meaning that only South African persons can acquire rights in this fishery.

The Delegated Authority shall allocate proportions of TAC and/or TAE to each successful applicant based on the applicable balancing criteria and it will be reflected as a proportion of the local commercial TAC, TAE or a combination thereof 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 they will automatically terminate and revert back to the State to be reallocated. It should be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the KZN Sardine Beach Seine fishery or impose effort restrictions in order to address a state of emergency.

5.1. Form of right holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights.
- (b) Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered in the KwaZulu Natal Sardine Beach Seine Fishery:
 - (i) a citizen (individual) as defined in the South African Citizenship Act, 1995 (Act 88 of 1995) permanently resident adjacent to the KwaZulu Natal Province sea-shore.

5.2. Duration of right

Having regard to the right allocation process and the need to encourage investment in the fishery, fishing rights will be granted in the KwaZulu Natal Sardine Beach Seine Fishery for a maximum period of 15 years.

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, TAE, or combination thereof to apply in each fishery. This fishery is regulated by the determination of a TAE.

The TAE 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 TAE 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 TAE 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 whole or in part. However KwaZulu Natal Sardine Beach Seine rights granted in terms of MLRA shall not be transferred within the first two (2) years of allocation of being granted.

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

Failure to pay the grant of right fees or apply for any permits or declare any catches during the first two (2) years shall result in a cancellation of the right by the Minister.

6. Multi-sector involvement

Applicants for the allocation of rights in the KZN Sardine Beach Seine fishery will not be precluded from applying for or holding commercial rights in other local commercial fishery sectors. This shall mean any person can only apply for a right in any fishery sector regardless of whether the applicant has applied for a right or holds a right in any fishery sector. In this case, the "applicant" shall mean an individual, a shareholder or director in a company, or a member in a close corporation or a co-operative applying for a right in any fishery sector.

Individuals who hold shares or a member's interest in an entity which is applying for the allocation of rights in the fishery, may also hold shares, an interest or a stake in a an entity or cooperative which is applying for, or already holds rights in another fishery. Individuals, who are directors or employees of an entity which is applying for the allocation of rights in the fishery, may also be a

shareholder, member, director or employee of an entity which is applying for, or already holds rights in another fishery; or be a participant in a cooperative operating in another fishery.

The Delegated Authority reserves the right to grant a right to the applicant in any sector and may, however, prefer applicants who rely on the harvesting sardines in this fishery as a major source of their gross annual income.

7. Evaluation criteria

Applications for the allocation of rights in the KZN Sardine Beach Seine fishery will be screened in terms of a set of “exclusionary criteria”. All applicants will thereafter be separately scored in terms of a set of weighted “comparative balancing criteria”. A cut-off will then be determined in order to select the successful applicants and a portion of the TAE will be apportioned to successful applicants.

7.1. Exclusionary criteria

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

(a) Compliance

An applicant will be excluded if he or she has been convicted of a serious transgression of the MLRA (without the option of the payment of a fine).

An applicant will also be excluded if he or she has had any fishing right cancelled or revoked in terms of the MLRA.

Minor infringements, including those in respect of which an admission of guilt fine was paid, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) Paper Quotas

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

(c) Non-utilisation

Applicants that had a KwaZulu Natal Sardine Beach Seine right and did not harvest any Sardines during period of 2006 to 2014 shall be excluded.

(d) **Personal involvement in harvesting of the resource**

Applicants will be required to demonstrate that they will be personally involved in the fishery. They will be required to actively participate in the harvesting of the resource and the business operations. Only applicants incapable of participating due to a permanent physical disability will be exempted from this requirement. Consideration will be given to female applicants who may not be personally involved in the harvesting of the resource but who are dependent on the fishery for their livelihood.

7.2. **Balancing criteria**

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

(a) **Transformation**

When assessing and scoring applications, and when allocating portions of the TAE to successful applicants, the Delegated Authority may prefer applicants based on transformation criteria. When attributing a score for transformation criteria, or allocating portions of the TAE, the Delegated Authority may have regard to: census statistics or other information provided by Statistics South Africa regarding the composition of the population of South Africa, and the percentage of that population made up by different demographic groups; the need to ensure the recognition and meaningful participation in the fishing industry of Historically Disadvantaged Individuals (HDIs); and the codes of good practice under the Broad-Based Black Economic Empowerment Amendment Act.

Applicants will be assessed and scored on:

- (i) Affirmative procurement; and
- (ii) Corporate social investment.

(b) **Fishing performance**

The historical fishing performance of applicants who have held fishing rights in the KZN Sardine Beach Seine fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch, and subsequent submission of catch data for at least five years during the period 2007-2014

(c) **Local economic development**

- (i) In order to promote local economic development, the Delegated Authority will give preference to applicants who will land catches at harbours situated outside of

metropolitan areas, and process catches at land-based processing establishments outside of metropolitan areas. Metropolitan areas include the areas under the control of metropolitan (category A) municipalities.

- (ii) The Delegated Authority may, in order to ensure that all fishing communities share in the marine living resources, use the locality of landing sites and fishing processing establishments as scoring or tie-breaking criteria. For these purposes the Delegated Authority may give preference to applicants, with the aim of ensuring an equitable distribution of opportunities to communities along the coastline.

(d) **Job creation**

The Delegated Authority may give preference to any applicant who commits to retaining existing employment opportunities, or to increasing employment opportunities if he or she is allocated a right in the KZN Beach Seine fishery. For these purposes the Delegated Authority will consider the quality of the employment opportunities which will be created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (“BCEA”); and the applicant’s commitment to provide their employees with:

- (i) permanent employment;
- (ii) medical aid or any kind of medical support arrangement;
- (iii) pension / provident fund; and
- (iv) Safe working conditions in accordance with the applicable legislative requirements.

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

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting in the KZN Sardine Beach Seine fishery. Access may be in the form of ownership, part-ownership, a catch agreement, a charter agreement, or a bank guarantee for 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 the vessel plans, the cost to be incurred and a firm and binding commitment by a vessel building company to build the vessel.

A suitable vessel in the KZN Sardine Beach Seine fishery is a vessel that:

- (i) is either a ski boat or traditional rowboat (only row boats are applicable for beach seine/trek netting operations); and

- (ii) it has been certified by the South African Maritime Safety Authority (SAMSA) as safe for fishing.

(f) **Same household involvement**

The same household may not be granted more than one right in the KZN Sardine Beach Seine fishery so as to avoid fronts and monopolies and to broaden access to the KZN Sardine Beach Seine resource. Applicants are required to disclose their relationship to other applicants in the KZN Sardine Beach Seine fishery as well as in other commercial fisheries. If more than one member of the same household applies for a right, the Department will determine who the preferred right holder will be with due regard being taken to the Department's transformation objectives.

Applicants who are permanently resident close to the KwaZulu Natal coastline will be preferred over other applicants.

8. Provisional lists, representations and consultations

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

9. Announcement of decisions

The Delegated Authority shall after making final decisions on the applications, inform all applicants of the outcome of their individual applications giving specific reasons for such decisions.

Further General Reasons for decisions in a specific fishery will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure outlining the scores obtained by all applicants in the KZN Sardine Beach Seine fishery

10. Payment of application and grant of right fees

- 10.1 The application fees for this fishery will be determined having regard to:
 - (a) The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
 - (b) The value of the fish being allocated over the duration of the right.

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

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

11. Management measures

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

11.1. Ecosystem approach to fisheries

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

11.2. Observer Programme

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

11.3. Performance measuring

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

11.4. Offences

A successful applicant that fails to utilise their KZN Beach Seine right for one fishing season without any reasonable explanation, or that contravenes the provisions of the MLRA, will be subject to proceedings under section 28 of the MLRA.

12. Permit conditions

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

13. Glossary of terms

- 13.1. "Brother- Sister corporations" are subsidiary companies owned by the same parent company.
- 13.2. "Close corporation" means close corporation in terms of the Close Corporations Act, (Act No. 69 of 1984), of which the majority of members are South African persons.
- 13.3. "Company" means a company registered in terms of the Companies Act, (Act No. 71 of 2008), of which the majority of shareholders, as prescribed by the Minister, are South African persons.
- 13.4. "Historically disadvantaged person" means a person who belongs to a group of persons who suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.5. "Legal entity" means a close corporation or company.
- 13.6. "MLRA" means the Marine Living Resources Act (Act No. 18 of 1998).
- 13.7. "Race, gender and disability" means race, gender and disability as defined in the Employment Equity Act (Act No. 55 of 1998).
- 13.8. "Right Holder" means a person or a legal entity that was previously granted or lawfully acquired a fishing right or which will be granted a right in the allocation process envisaged in this Policy.
- 13.9. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.10. "Same household" means a group of two or more persons living in a residential dwelling unit (which includes a house, semi-detached dwelling, separate outbuildings, an apartment, or any other independent structure) who are dependent on each other, or dependent on one or more members of that group. This includes, but is not limited to, spouses or persons in a long-term relationship, and their dependent children; guardians and their dependent wards; and any other dependent relationship. Persons living at the same address or in the same residential unit, and who are not dependent on any other person at that address or residential unit, do not constitute the same household.
- 13.11. "South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995).

13.12. "Subsidiary company" is a company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.

13.13. "The Department" means the Department of Agriculture, Forestry and Fisheries.

13.14. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.

13.15. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.

13.16. "Total Allowable Catch" (TAC) means the maximum quantity of fish of individual species or group of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.

13.17. "Total Applied Effort" (TAE) 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.