

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

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**POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN
THE HORSE MACKEREL 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 horse mackerel fishery (“the horse mackerel fishery”) shall be referred to as the **“Horse Mackerel 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 horse mackerel, transport horse mackerel catch from a landing site to the permitted Fish Processing Establishment (FPE) and export horse mackerel catch and products thereof.

2. Profile of the fishery

2.1. Distribution and status of the resource

The Cape Horse Mackerel (*Trachurus capensis*) is found along the entire South African coast with the largest concentrations of adult fish are found on the Agulhas Bank near the continental shelf break. Juveniles are found inshore, mainly on the west coast. The Cape Horse Mackerel is nomadic; causing local availability to be variable and dependent on environmental conditions.

In South Africa Horse Mackerel stock is comparatively small by world standards. In 2011, the stock assessment of Horse Mackerel was updated using recent catch data and abundance estimates. The results showed that in the past five years

Horse Mackerel abundance increased by 20% although long-term mathematical model projections showed no changes in future catches. However, since then and in the past years Horse Mackerel catch rates in the south coast region have decreased substantially.

2.2. History of the fishery

Horse Mackerel is mainly harvested by targeted mid-water trawling, its semi-pelagic nature, however brings it into contact with three different fishing sectors. These are (a) the near-surface pelagic purse-seine fleet that catch juveniles as by-catch; (b) the mid-water trawl fleet that targets adult Horse Mackerel on the south coast; (c) and the hake trawl fleet that catch adults as by-catch on both the west and south coasts. The majority of Horse Mackerel is exported to West Africa without being landed or processed in South Africa.

Since the inception of this fishery in the mid-1960s, Horse Mackerel is still caught primarily on the south coast. The highest landed mass was 93 000 tons in 1977. In 1977, South Africa declared the Exclusive Economic Zone (EEZ). The annual catches ranged between 25 000 and 40 000 tons. The foreign fleets were finally phased out to fish in South African waters in 1991 and the annual catches (now by South African vessels only) declined to between 20 000 and the 30 000 tons. While demersal trawl catches have remained low in recent years, the re-establishment of a mid-water fishery for Horse Mackerel in 1997 has resulted in an increase in the annual catch. Purse-seine catches of mainly adult Horse Mackerel on the west coast peaked in the early 1950s at 118 000 tons, subsequently declined to 80 000 tons in the late 1950s, 40 000 tons in the mid-1960s and finally levelled off at approximately 3 000 tons per annum between the early 1970s and late 1980s. The large surface schools of adult Horse Mackerel that were targeted by the early purse-seine fleet have now disappeared from the South African west coast. During the 1990s, purse-seine catches again showed an increasing trend, reaching 26 000 tons in 1998. Although these catches are low compared to those of the 1950s and 1960s, these purse-seine catches comprised of juvenile fish. Consequently, the number of fish per ton caught by purse-seine in 1998 is much greater than was the case during the 1950s. The increasing pelagic catches prompted modelling of the likely effects of large catches of pelagic juvenile Horse Mackerel on the trawl fishery for adults, resulting in the introduction in 2000 of a Precautionary Upper Catch Limit (PUCL) of 5 000 tons for purse-seine catches, separate from the adult Horse Mackerel Precautionary Maximum Catch Limit (PMCL) then in place. The annual purse-seine catch of juvenile horse mackerel has averaged 3 676 tons since 2000.

Because of their semi-pelagic behaviour and distribution throughout the water column, the biomass of Horse Mackerel cannot be reliably estimated using either hydro-acoustic surveys or demersal swept-area surveys in isolation. Fish in close proximity to the sea bed are accessible to demersal swept-area surveys but are not acoustically detectable, whereas fish in the water column can be detected by hydro-acoustic surveys but are not accessible to demersal trawl gear. These factors make it difficult to assess the status of the resource, particularly as there is limited contrast in the available commercial data. Improved direct survey indices of abundance using combined hydro-acoustic and swept-area techniques are needed to enhance the resource assessments.

2.3. **Management**

The Horse Mackerel fishery has been managed using the Precautionary Maximum Catch Limit ("PMCL") since 2002. A portion of the Horse Mackerel allocation is annually set aside as a by-catch reserve in the hake trawl sectors and some is reserved as by-catch in the small pelagic purse seine fishery. An adaptive control rule in the form of Total Allowable Catch ("TAC") was introduced in 2013. Effectively, the rule determines that if recent abundance indices are high compared to averages over a fixed past period, the TAC is increased; conversely, if recent abundance indices are correspondingly low, the TAC is decreased. Furthermore, a vessel fishing Capacity Management regime has also been implemented to regulate overcapacity in the Horse Mackerel sector since 2012.

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

In the 2005/2006 Long-Term Fishing Rights Allocation and Management process (LTRAMP) Horse Mackerel fishing rights were allocated to a total of 14 right holders, with an average black shareholding of 48%¹.

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

¹ Figure 2009:Performance Review Report records

- conditions;
- (d) promote food security and poverty alleviation;
 - (e) prefer applicants who rely on the harvesting of horse mackerel as 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 rights granted will be based on applicable balancing criteria, and will be reflected as a proportion of the local commercial Total Allowable Catch ("TAC") and/or Total Applied Effort ("TAE") or a combination thereof that is/are available at the time that the rights allocation process is conducted.

All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, whereafter 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 fishery or impose effort restrictions in order to address a state of emergency.

5.1. Form of right holders

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing rights in the Horse Mackerel fishery.
- (b) Having regard to the nature of operations and resource accessibility, only the following South African persons will be considered in the Horse Mackerel fishery:
 - (i) companies (legal entity);and
 - (ii) close corporations (legal entity)

5.2. Duration of right

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

5.3. Total Allowable Catch allocation 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. The 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 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 two (2) years 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.

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 in particular regard to any decrease in black ownership of such entity.

Failure to pay the required fees for the grant of a right or to apply for any permits, or to 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 Horse Mackerel fishery will not be precluded from applying for, or holding commercial rights in other local commercial fisheries 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 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 of horse mackerel in the fishery as a major source of their gross annual income.

7. Evaluation criteria

Applications for the allocation of rights in the Horse Mackerel 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 TAC 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**

Applicants will be excluded if, a controlling shareholder, a member with a controlling interest, or a director, 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, a controlling shareholder, a member with a controlling interest, or a director, has had any fishing right cancelled or revoked in terms of the MLRA. For these purposes an individual will be treated as having had rights cancelled or revoked if that person was a controlling shareholder, a member with a controlling interest, or a director of an entity which had its rights cancelled or revoked.

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-utilization**

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

7.2. Balancing criteria

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

(a) **Transformation**

When assessing and scoring applications, and when allocating portions of the TAC 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 TAC, 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, depending on the form of the applicant, will be assessed and scored on the following transformation criteria:

- (i) The percentage of people from designated groups and HDIs represented 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 (as measured in the 2005 LTRAMP) have subsequently 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, youth, women people with disabilities and participation in learnership programmers; and
- (vii) Corporate social investment.

(b) Fishing performance

The historical fishing performance of applicants who have held fishing rights in the Horse Mackerel 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. Applicants should submit this information with their application forms.

(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 (City of Cape Town; Nelson Mandela Bay Metropolitan Municipality; EThekweni Municipality and Buffalo City Metropolitan Municipality).
- (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 fish 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 which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated rights in the 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;
- (iv) safe working conditions in accordance with the applicable legislative requirements; and
- (v) an employee share scheme, which ensures that employees enjoy an effective shareholding in the right holder.

(e) Access to a suitable vessel

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of horse mackerel in the 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 fishery is one that:

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

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

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

A company and its subsidiary/ies may not be granted more than one right in a fishery, so as to avoid fronts and monopolies and to promote broaden access to the horse mackerel resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the 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 or more entities which are owned and controlled by the same person or persons or shareholders apply for a commercial fishing right in the fishery, and qualify for allocation of such rights, then the Department may consider allocating a fishing right to one of the qualifying entities only; or dividing the TAC/TAE between the qualifying entities.

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

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

(h) **By-catch**

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

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

8. Provisional lists, consultation and representations

- 8.1. The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery / sector.

- 8.2. The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 8.3. The Delegated Authorities may invite representations regarding the assessment of the applications before making final decisions.

9. Announcement of decisions

The Delegated Authority shall after making 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 Horse Mackerel 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 submitting and only payment proof shall be brought to the receipting centre.
- 10.3. The grant of right fee is payable by all successful applicants upon the granting of rights.

11. Management measures

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

11.1. Ecosystem approach to fisheries

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems. 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 Horse Mackerel fishing right shall accommodate an observer on board the right holder's nominated vessel when required to do so by the department or its agent.
- (b) The right holder may bear the costs of the observer deployment when so required by the department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and to test 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 right holder's vessel the Department may implement proceeding under section 28 of the MLRA.

11.3 **Performance measuring**

Successful applicants will be subjected to performance measuring for the duration of 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 its Horse Mackerel fishing right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected 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, 1984 (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, 2008 (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, 1998 (Act No. 18 of 1998).
- 13.7. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.8. "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. "South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995).
- 13.10. "Subsidiary company" is company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.
- 13.11. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.12. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.13. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.14. "Total Allowable Catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as

may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.

- 13.15 “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.