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

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND
MANAGEMENT OF FISHING RIGHTS: 2013**

(available at www.daff.gov.za)

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

TABLE OF CONTENTS

1. Introduction	1
2. Profile of the fishery	1
3. The 2005/2006 long-term fishing rights allocation process	2
4. Objectives	2
5. Granting of rights.....	2
6. Multi-sector involvement.....	3
7. Evaluation criteria.....	4
8. Provisional lists, representations and consultations.....	7
9. Announcement of decisions	7
10. Payment of application and grant of right fees.....	7
11. Management measures.....	8
12. Permit conditions.....	9
13. Glossary of terms	10

1. Introduction

This policy on the allocation and management of fishing rights in the KwaZulu Natal (KZN) Sardine Beach Seine Fishery is issued by the Minister of Agriculture, Forestry and Fisheries ("the Minister") and shall be referred to as the "**2015: KZN Sardine Beach Seine Fishery Policy**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 ("the 2013: General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out the objectives criteria and considerations that will guide the allocation and management of fishing rights in the KwaZulu Natal Sardine Beach Seine Fishery ("the fishery"). This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

2. Profile of the fishery

2.1. Brief description of the fishery

The KwaZulu Natal Sardine Beach Seine Fishery is an opportunistic fishery operation where migrating sardines stranded in the shallow waters off KwaZulu Natal beaches are targeted. These sardines are a spill off from the spawning grounds in the Agulhas bank and the south east coast around Algoa bay). These fish are known to have followed inshore cooler counter currents in massive numbers and migrate east and northwards along the former Transkei coast into KwaZulu Natal, a phenomenon called the **Natal Sardine Run** ("the run"). Some recorded sardine schools measured 15km long and 40 metres deep and three kilometres wide. The sardine run has been popular to predators (which include sharks, dolphins and seals), tourist, fishers and local public.

As the fish migrate northwards the continental narrows along the KwaZulu Natal Coast and the fish get stranded onto beaches, most commonly in the area from Port Shepstone to areas around Durban. The sardine run is a very seasonal and periodical occurrence as it happens only during winter months and does not always happen annually. Moreover the duration and magnitude of the run vary in each instance it happens. Some runs are longer with more fish and some shorter with less fish although there are instances where longer runs occur with very few and scattered fish.

The KZN Sardine Beach Seine Fishery solely depends on the **Sardine Run**. The dynamics associated with the run makes operations very challenging as there are no guarantees that there will be a run in a given year and also it is not known how much fish will be in the run. Further when the run occur there is competition with predators, general public and tourist making it rather impractical to make viable catches. However there are times when much viable catches and sales

are made with the average landings estimated at 500 tons with a value of approximately R2million.

2.2. Current resource users

Whilst the Total Applied Effort is set at 35 operators, there are currently 25 operators operating in the KwaZulu Natal seashore. The operators are not restricted to any area or beach and thus allowing them to follow the sardines and net when and where ever the opportunity comes. Due to seasonality of the fishery the operators are participating in other industries other than the fishing industry to counter for the times that the fishery is dormant. With limited opportunities these operators alternatively partake in the Traditional Linefish industry either crew or commercial right holders.

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

In the 2005/2006 long-term fishing rights allocation process rights were allocated to a total of 24 operators, 67% of which was white and 90% were males.

4. Objectives

- 4.1. The objectives of allocating fishing rights in the KwaZulu Natal Sardine Beach Seine Fishery are to:
- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
 - (b) ensure sustainable livelihoods through the promotion of fair employment;
 - (c) promote adherence to fair labour practices and improved working conditions;
 - (d) promote food security and poverty alleviation;
 - (e) prefer applicants who rely on the harvesting of KZN Sardine Beach Seine for a significant portion of their gross annual income above applicants deriving income from sources outside the KZN Sardine Beach Seine 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 Marine Living Resources Act, 1998 (Act No. 18 of 1998 ("the MLRA")). Unless otherwise determined by the Minister only South African persons shall acquire or hold rights in terms of section 18 of MLRA. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after it shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the

MLRA the Minister shall determine commercial Total Allowable Catch (TAC), Total Applied Effort or combination thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

5.1. Form of right holder

- (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) South African natural persons (individual) who permanently residing adjacent to KwaZulu Natal Province sea-shore only.

5.2. Duration of right

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

5.3 Total Applied Effort allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate rights to a maximum of 35 applicants.

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 in terms of this Policy shall not be transferred within the first two (2) years of allocation except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two (2) years shall result in an automatic cancellation of the right by Minister.

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

6. Multi-sector involvement

Applicants in the KwaZulu Natal Sardine Beach Seine fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for right in any fishery sector regardless of the fact that the applicant has applied for a right or

holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right to the applicant in any sector.

7. Evaluation criteria

Applications for KZN Sardine Beach Seine rights 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 effort will be allocated to each successful applicant.

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:

(a) Compliance

Applicants that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants that have had any fishing right cancelled or revoked in terms of the MLRA will also be excluded. Minor infringements, including payment of admission of guilty fines, may be taken into account 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**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing rights and Rights Holder's apportionment of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE) is being considered.

Applicants will be assessed and scored on –

- (i) The percentage of people from designated groups and Historically Disadvantaged Individuals (HDIs) representation at top salary, board of directors, members and senior official and management levels;
- (ii) Compliance with the Employment Equity Act 55 of 1998 and the representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
- (iii) Affirmative procurement;
- (iv) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (v) Corporate social investment.

(b) **Fishing performance**

The fishing performance of applicants holding 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) The Delegated Authority will take into consideration the landing and processing of catches outside the metropolitan areas to promote local economic development.
- (ii) The Delegated Authority shall, in order to ensure that all fishing communities share in the marine living resources, use locality of landing sites and fish processing establishments as scoring or tie-breaking criteria.

(d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing rights will be rewarded and in particular, compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing their employees with –

- (i) permanent employment;
- (ii) medical aid and pension / provident fund; and
- (iii) 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 of KZN Sardine Beach Seine. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.

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

(i) **Same household involvement**

A household (comprising a couple, their parents and their children) may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the KZN Sardine Beach Seine resource. Applicants may be required to disclose their relationship to applicants in KZN Sardine Beach Seine as well as in other commercial fisheries. If more than one member of a household applies for a right, the head of family will be preferred.

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

An entity and its subsidiary may not be granted more than one right so as to avoid fronts and monopolies and to broaden access to the Abalone resource. Applicants may be required to disclose their relationship to applicants in the abalone fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for fishing rights in this sector, the entity (not subsidiary) will be preferred.

(iii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Abalone fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Abalone fishery.

(iv) **Individuals with shareholding in legal entity**

If a South African natural person applied and qualified for a fishing right in the Abalone sector as an individual and as a shareholder in a legal entity the department will only consider allocating Abalone fishing right to that South African natural person as a shareholder of the legal entity so as to broaden participation in the Abalone fishery.

7.3. Suitable vessels/nets

- (a) A suitable vessel in the KZN Sardine Beach Seine fishery is a vessel that:
- (i) is either a skiboat or traditional rowboat (only row boats are applicable for beach seine/trek netting operations); and
 - (ii) is certified by South African Maritime Safety Authority SAMSA as being safe for Netfishing.
 - (iii) Upon allocation of fishing right such vessel shall be fitted with a functional VMS except for vessels under 5meters in length.

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

10. Payment of application and grant of right fees

- 10.1 The 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 the application form 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 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.

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 proceeding under section 28 of the MLRA.

11.3. Performance measuring

Successful applicants will be subjected to performance measuring for the duration of the 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

Successful applicants that fail to utilise their abalone fishing right for one fishing season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of 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. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 13.3. "Race, gender and disability" refers to the race, gender and disability as defined in the Employment Equity Act 55 of 1998.
- 13.4. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.5. "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.
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "the Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10. "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 individual species or groups of species.

