agriculture,
forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

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Adv Thulisile Mandonsela
The Public Protector SA
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Dear Ms Madonsela

RESPONSE FROM THE DEPARTMENT OF AGRICULTURE, FORESTY AND FISHERIES TO THE PUBLIC PROTECTOR'S REPORT ON ALLEGATIONS OF IRREGULAR AWARDING OF A TENDER FOR SEKUNJALO MARINE SERVICES CONSORTIUM

The Department of Agriculture, Forestry and Fisheries has considered your Office's report into the above-mentioned process. Our response is detailed below.

There are two key issues relating to the report which we believe need emphasis:

The first relates to various administrative matters that should be attended to by the Department.

1. We value the insights of the Public Protector on many of these matters.
2. We would like to put on record that these matters are not in dispute and are being implemented, including the re-advertising of the tender.
3. There are also recommendations to the Director-General of Treasury and to the Director-General of The Presidency. We have been engaging with and have provided the DG of National Treasury with the documents as they have requested, advised them of our intent to re-advertise the tender and have sought Treasury's advice on this.

There is a second point, however, where we hold a different view to that of Public Protector. These relate to four allegations made against the Minister, none of which have anything to do with the original tender about which the compliant was laid.

We believe these comments are highly questionable, as they are based on several highly prejudiced claims and statements which were made by individuals during the course of the investigation, and reject them as being unfounded.

The four issues on which the Minister is criticised are contained in paragraph 11.2.1.1, where the Public Protector recommends that the President *"consider disciplinary action against the Minister for reckless dealing with state money and services, resulting in* ***fruitless and wasteful expenditure, loss of confidence*** *in the fisheries industry, alleged* ***decimation of fisheries*** *resources, and* ***delayed quota allocations*** *due to lack of appropriate research."*

All four of these statements lack substance. The true facts are as follows:

1. On the matter of fruitless and wasteful expenditure: The Auditor General, as the competent accounting and governance authority in government, has declared a clean audit for the period in question, confirming there has been **no wasteful or fruitless expenditure**. In fact, the Department has received clean audits in every year of the Minister's term. The allegation of fruitless and wasteful expenditure is therefore **rejected**.
2. On the matter of a "*loss of confidence by the industry*": This is a matter of perception and opinion, and there is **no evidence in the report to substantiate this**. In fact, statements by various industry leaders suggest the opposite. The statement is most likely a claim made by certain interested individual which seems to have been given singular credence throughout the report. This cannot be a substantive finding. On the contrary, the Department works very closely with the fishing industry, as represented by FishSA and other industry associations, and none of them have suggested any loss of confidence in the department. The allegation of a loss of confidence in the fisheries industry is therefore **rejected**.
3. On the supposed decimation of fisheries resources: This is acknowledged by the Public Protector as being an **allegation**, yet she recommends disciplinary action be considered on the basis of this. It is legally unprecedented to discipline someone on the basis of an allegation. The matter of fish stocks is, in any event, the subject of international scientific studies and academic debates and not the competency of the Public Protector. The allegation of the decimation of fish stock is therefore **rejected**.
4. On the question of fishing quota allocations: Contrary to the premature finding of the Public Protector, fishing quota allocations have been **executed on time**, based on all necessary research. The allegation of delayed quota allocations is, therefore, equally **rejected**.

It is clear from the above that the Public Protector therefore has **no substantive grounds for recommending disciplinary action against the Minister**.

The report acknowledges that the Department did the correct thing in withdrawing the tender, and that no money was spent on this tender. It also acknowledges that the Minister acted correctly in instructing the Department to end a problematic tender by handing the ships to the Navy.

This was contrary to the request of the Public Protector who advised that the problematic tender should be continued.

In the context of these statements, the conclusions and recommendations regarding the Minister are simply incongruous.

A legal opinion has been secured which confirms that due to the anomalies in the report, the Public Protector has opened herself to further challenges on the content of her report. We are taking further advice on this matter.

In the meantime, we would also like to emphasise that the state of South Africa's fishing industry is nowhere near as dire as the one presented in the Public Protector's report when it comes to the broader question security of South Africa's fishing industry, or the protection of marine resources.

Among other things, we would like to highlight the following:

1. Government currently has two patrol vessels -- Victoria Mxengxe and Ruth First – conducting regular patrols, as they have been doing for the past five months.
2. The remainder of the fleet will be operational by the end of March this year.
3. In addition, we have at our disposal a number of smaller vessels such as jet-skis, small ski-boats and a team of approximately 200 fishery control inspectors.
4. We also have an operational centre with a Vessel Management Tracking System monitoring fishing vessels on a 24-hour basis.
5. Furthermore we have regular joint operations with all other law enforcement agencies to ensure we minimise the scourge of illegal fishing and poaching.
6. As with any crime we must educate and empower coastal communities to join in this fight. We do this with regular outreach programmes and road shows.

Should your office deem necessary, we are more than willing to meet to discuss all the matters dealt with this in this response.

Yours sincerely

EDITH V VRIES
DIRECTOR- GENERAL
DATE 12 Jan-14