

Date: 28 August 2026

TO: **Minister of Forestry, Fisheries and the Environment**

Honourable Minister David Maynier

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COPIED TO: **Director-General, Department of Forestry, Fisheries and the Environment**

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AND TO: **Chairperson: Small Pelagic Scientific Working Group; Branch: Fisheries Management, Department of Forestry, Fisheries and the Environment**

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Dear Minister Maynier

RE: URGENT PILCHARD HERPESVIRUS SARDINE MORTALITY EVENT AND REQUEST FOR CONFIRMATION OF THE DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT'S INTENDED RESPONSE

1. On behalf of the Biodiversity Law Centre ("**BLC**") and the Green Connection, we write to first and foremost welcome you to your role as Minister of Forestry, Fisheries and the Environment. We look forward to building an engaging and mutually-supporting relationship and would welcome the opportunity to meet with you should your schedule permit. We would also like to introduce ourselves, and address some urgent concerns arising out of the above-mentioned matter.
2. The BLC is a public benefit organisation and registered law clinic, established with the purpose of using the law to protect and restore indigenous species and ecosystems across Southern Africa. As part of our mandate, we have an interest in activities that may have a harmful effect on the environment, on biodiversity, and on ecosystem functioning that supports the lives and livelihoods of all South Africans. The BLC became interested in South Africa's small pelagic fishery when we instituted legal proceedings on behalf of BirdLife South Africa and SANCCOB to formalise the closure of small pelagic fishing grounds around the Critically Endangered African Penguin breeding colonies.¹ Since then, we have engaged with your Department in several forums regarding the management of this fishery.
3. The Green Connection is a registered non-profit environmental justice organisation established to empower coastal communities, small-scale fishers, and civil society to participate meaningfully in environmental decision-making processes across South Africa. The organisation operates on the premise that economic development must be environmentally sustainable and socially equitable, actively safeguarding the constitutional rights of present and future generations under section 24 of the Constitution². Through legal advocacy, community capacity building, and policy engagement, The Green Connection works to protect marine ecosystems, coastal livelihoods, and natural heritage from destructive industrial activities and non-compliant administrative processes.
4. We write to you urgently regarding the outbreak of the pilchard herpesvirus ("**PHV**") in the South African sardine (*Sardinops sagax*) stock, and to request confirmation of the steps the Department of Forestry, Fisheries and the Environment ("**DFFE**" or the "**Department**") intends to take in response to this outbreak. In this regard, we have the following understandings –
 - 4.1. The event is considered a "mass mortality" event by the DFFE.³
 - 4.2. As per the 14 August 2026 media release,⁴ the DFFE confirmed the detection of the PHV genetic material in South African sardines and that this PHV was associated with sardine mortalities. This is, to our knowledge, the first confirmed detection of PHV in South Africa.⁵

¹ See settlement of *BirdLife South Africa and Another v Minister of Forestry, Fisheries and Environment and Others* (case no: 2024-029857) of 18 March 2025.

² Constitution of the Republic of South Africa Act 108 of 1996 ("**the Constitution**").

³ DFFE Media Release, available at <https://www.dffe.gov.za/index.php/mediarelease/sardinemortalityinvestigation>.

⁴ Found at <https://www.dffe.gov.za/index.php/mediarelease/sardinemortalityinvestigation>.

⁵ FISHERIES_2026_AUG_SWG-PEL_38 at page 1.

- 4.3. This outbreak occurs against a backdrop of an already constrained sardine resource. The most recent small pelagic recruitment survey (conducted between 6 July and 10 August 2026), recorded sardine recruitment west of Cape Agulhas as 30 943 tons, well below the long-term average of 91 870 tons.⁶
- 4.4. As the South African sardine population was immunologically naïve to PHV prior to the mass mortality event, surviving fish require time to develop immunity and contribute to population-level resistance to subsequent infection.⁷
- 4.5. The full magnitude of the mortality event will not be known until the outcome of the small pelagic biomass survey scheduled for October/November 2026.⁸
- 4.6. The mass mortality event of sardine has now spread to Algoa Bay as of 28 August 2026.⁹
- 4.7. Contributing factors, such as harmful algae, unusually cold water, and low-oxygen conditions have been largely ruled out, but more information on the mortality event is being gathered by the DFFE.¹⁰
5. Read together, these facts raise serious and immediate concern for the sustainability of an already constrained sardine resource, and the species and livelihoods that depend on it.
6. PHV outbreaks have been previously documented in Australian sardine stocks, and the available evidence from those events is instructive as to the scale and manner of impact that can result. The following is particularly instructive –
 - 6.1. The 1995 Australian PHV event (the first event) lasted over two months and resulted in an estimated 75% decline in spawner biomass. No juvenile mortality was recorded during this event, and the stock largely recovered by 1998.¹¹
 - 6.2. A second event in 1998-99 resulted in an estimated 70% decline in biomass, this time with juvenile mortality recorded. Recovery was slower than for the 1995 event. The stock subsequently crashed in 1999 with an economic cost estimated at AUS\$12 million, and the Total Allowable Catch (“**TAC**”) in the Albany and Bremer Bay fisheries were reduced to zero.¹²

⁶ Coetzee *et al* “Final results of the 2026 pelagic recruit survey” (August 2026).

⁷ FISHERIES_2026_AUG_SWG-PEL_38 at pages 1 and 5. See also Gaughan, D., Craine, M., Stephenson, P., Leary, T., & Lewis, P. (2008). Regrowth of pilchard (*Sardinops sagax*) stocks off southern WA following the mass mortality event of 1998/99. Final Report to Fisheries Research and Development Corporation on Project No. 2000/135. Fisheries Research Report No. 176, Department of Fisheries, Western Australia, 82p. See also Whittington, R. J., Crockford, M., Jordan, D., & Jones, B. (2008). Herpesvirus that caused epizootic mortality in 1995 and 1998 in pilchard, *Sardinops sagax neopilchardus* (Steindachner), in Australia is now endemic. *Journal of Fish Diseases*, 31(2), 97–105. <https://doi.org/10.1111/j.1365-2761.2007.00869>.

⁸ FISHERIES_2026_AUG_SWG-PEL_38 at page 1.

⁹ See <https://www.news24.com/southafrica/news/like-covid-for-sardines-virus-likely-killed-thousands-of-fish-in-eastern-cape-20260828-0505>.

¹⁰ See Media release at <https://www.dffe.gov.za/index.php/media/sardineinvestigation>.

¹¹ FISHERIES_2026_AUG_SWG-PEL_38 at page 2, citing Ward *et al* (2001).

¹² FISHERIES_2026_AUG_SWG-PEL_38 at page 2, citing Gaughan *et al* (2004) and Gaughan *et al* (2008).

7. As there is no prior record of PHV in South African waters, the sardine stock is, on the available evidence, immunologically naïve.¹³ On this basis, it has been assessed that a population-level impact of up to 70% is plausible,¹⁴ if not probable.
8. Sardine is a key prey species for a range of predators, and the available scientific evidence indicates that PHV-driven biomass declines have direct and measurable impacts on those predators. After the Australian events, Little Penguin colonies at Philip Island, Rabbit Island, and Port Campbell showed an increase in adult mortalities (with autopsies confirming starvation) and a significantly disrupted breeding season.¹⁵
9. African Penguins are substantially dependent on small pelagic fish. The species is currently listed as Critically Endangered (IUCN, 2024) and is predicted to be functionally extinct in the wild by 2035 if current population trends continue.¹⁶ The 2004-2011 collapse in the South African sardine biomass, during a period when sardine fishery exploitation rates reportedly reached as high as 80%, is estimated to have killed approximately 95% of the breeding population at Dassen Island and Robben Island alone.¹⁷
10. African Penguins are not the only marine predators dependent on a healthy sardine population. Sardines, and forage fish in general, form the basis of the marine food web and are preyed upon by several predators, including species relied on in other fisheries (such as snoek and hake¹⁸).
11. Snoek, in particular, are the bread and butter of many small-scale fisher livelihoods. The Green Connection works directly with small-scale fishing communities along the West and South Coasts and in KwaZulu-Natal. The small-scale sector is a statutorily recognised sector. It was given legislative form by the Marine Living Resources Amendment Act¹⁹, which defines a small-scale fisher as a member of a small-scale fishing community that is engaged in fishing to meet food and basic livelihood needs, who traditionally operates in near-shore fishing grounds, predominantly employs traditional low-technology or passive gear, and undertakes single-day fishing trips. Section 19(3) of the MLRA obliges the Minister and any organ of state to have regard to the need to incorporate a community-based approach in the allocation of rights of access within the small-scale fisheries sector, and the Policy for the Small-Scale Fisheries Sector in South Africa was adopted precisely to provide redress to communities previously marginalised and discriminated against by racially exclusionary laws, individualised permit systems and insensitive conservation-driven regulation.
12. Fishers have a direct and material interest in the sardine resource, notwithstanding that they hold no allocation in the commercial small pelagic purse-seine fishery. The basket of species granted to

¹³ FISHERIES_2026_AUG_SWG-PEL_38 at page 3, citing Macey *et al* (2016).

¹⁴ FISHERIES_2026_AUG_SWG-PEL_38 at page 3.

¹⁵ FISHERIES_2026_AUG_SWG-PEL_38 at page 2, citing Dann *et al* (2000).

¹⁶ FISHERIES_2026_AUG_SWG-PEL_38 at page 3, citing Sherley *et al* (2024).

¹⁷ FISHERIES_2026_AUG_SWG-PEL_38 at page 4, citing Crawford *et al* (2025).

¹⁸ Hake is South Africa's most economically significant commercial fishery, accounting for roughly 45% of the value of the country's fisheries through the hake deep-sea trawl sector alone, generating approximately R4.3–R4.5 billion in annual hake sales and an estimated R8.5 billion in total economic contribution, while supporting approximately 12,400 direct, indirect and induced jobs and generating approximately R2.5 billion in annual foreign-exchange earnings. Stats SA reports that in 2023 hake was the second-largest fish by quantity caught but generated more than a quarter of the total sales of caught fish. It also reports that the value of hake sales increased to R1.4bn in 2023. Stats SA also found that hake accounts for approximately **0.8% of total household food expenditure** in the consumer price basket. See <https://www.statssa.gov.za/?p=18599&utm>. See also <https://www.sadstia.co.za/wp-content/uploads/2023/06/Genesis-Summary-of-Findings-1.pdf?utm>.

¹⁹ Marine Living Resources Amendment Act 5 of 2014.

small-scale cooperatives in the Western Cape expressly includes bait species and net-fish species alongside commercial traditional line-fish and hake handline. Sardine is a listed bait species in the Department's own permit conditions for the net fishery, and sardine and anchovy are the principal bait on which the handline snoek and hake-handline fisheries depend. A contraction in sardine availability therefore reaches small-scale fishers immediately and mechanically, as an input cost and a supply constraint on the very rights the Department has granted them. In KwaZulu-Natal the connection is more direct, with published survey work having recorded sardine as approximately 88% of the net-fish catch in that province.

13. That exposure is compounded by the condition of the species on which these fishers otherwise rely. The Department's own reporting records that harders, the principal target of the beach-seine and gill-net fisheries, remain in a depleted to heavily depleted state. Snoek, the seasonal mainstay of the West Coast handline fishery, is a major pelagic predator of the Benguela system whose diet is dominated by sardine, and whose availability to fishers has been shown to track the availability of its small pelagic prey. Small-scale fishers accordingly have little capacity to absorb a shock to the small pelagic resource. The species they may lawfully catch are already constrained, and the gear they use, being low-technology, near-shore and limited to single-day trips, affords no ability to follow fish, switch grounds, or wait out a poor season.
14. There is also a food security dimension, which we respectfully ask the Department to treat as a legal consideration and not just as a policy one. Sardine reaches South African households principally as canned pilchard, among the most affordable animal proteins available in this country, and it does so in the same low-income coastal households in which small-scale fishing families live. Section 27(1)(b) of the Constitution guarantees everyone the right to have access to sufficient food, and section 27(2) obliges the State to take reasonable legislative and other measures, within available resources, to achieve its progressive realisation. The Green Connection addressed precisely this in its submission to the South African Human Rights Commission's national investigative hearing into South Africa's food systems earlier this year, recording that for small-scale fishing communities, food from the ocean is not a commodity but a foundation of identity, survival and social cohesion. A decision that places the sardine resource at risk is, on any view, a decision that engages these interests.
15. As can be seen from the above, the situation is dire, with dire consequences if not managed decisively and in line with the binding guiding principles contained within the National Environmental Management Act ("**NEMA**").²⁰
16. In that spirit, and with a view to assisting your Department, we set out below the legal framework (in terms of NEMA and the Marine Living Resources Act ("**MLRA**")²¹) that we understand to be directly relevant, and which in our respectful submission already equips you as Minister to respond with the urgency the situation requires.

The precautionary principle

17. Section 2(4)(a)(vii) of the NEMA provides, as one of the core principles governing environmental management, that a '*risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions*'. Section 2(c) of the MLRA

²⁰ Act 107 of 1998.

²¹ Act 18 of 1998.

separately requires that, in exercising powers under that Act, the Minister must have regard to ‘*the need to apply precautionary approaches in respect of the management and development of marine living resources*’.

18. The Constitutional Court has confirmed this risk-averse and cautious approach is engaged where, as here, scientific knowledge about the future consequences of a decision (or failure to decide) is incomplete, and that development (such as, in this scenario, the continued exploitation of a resource under conditions of material uncertainty) cannot proceed on a deteriorating environmental base.²²
19. South African courts generally engage the precautionary principle when two related features are present: (1) a threat of serious or irreversible environmental damage, and (2) genuine scientific uncertainty as to that damage.²³ In terms of fishery decisions, this was applied directly in *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Others* (“**WWF South Africa**”),²⁴ and the Court held that the precautionary approach is mandatory in South African law, that decision-makers must have regard to the best available scientific evidence, and that the absence of complete scientific certainty is not, of itself, a proper basis for postponing measures necessary to conserve a target species.²⁵
20. Both features are present in the current scenario in that:
 - 20.1. there is a mass mortality event for a sardine stock that is already compromised (below the long-term average in term of the biomass survey);
 - 20.2. the comparative Australian experience set out above demonstrates that a PHV event decimates a sardine population even where the juvenile population is unaffected;
 - 20.3. in an immunologically naïve sardine stock, PHV can cause a serious (and only slowly or partially reversible) decline in biomass, particularly where fishing of healthy and immunised stock removes them;²⁶
 - 20.4. the consequential harm to dependent species and fisheries has a correspondingly devastating impact; and
 - 20.5. the full magnitude of the event will not be known until the biomass survey is done in October/November.
21. These factors necessitate precautionary measures.

²² *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Mpumalanga* 2007 (6) SA 4 (CC) at paragraphs 44 and 81.

²³ *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Others* 2019 (2) SA 403 (WCC) at paragraphs 100 and 104.

²⁴ *WWF South Africa v Minister of Agriculture, Forestry and Fisheries and Others* 2019 (2) SA 403 (WCC).

²⁵ Above at paragraphs 85 – 87, 101, and 105 – 106.

²⁶ The Australian experience indicates that recovery following PHV-associated mortality depends on the survival of infected fish and subsequent juvenile cohorts, successful recruitment and stock connectivity, with recovery occurring over time as these processes rebuild the population.

Section 16 of the MLRA: emergency powers

22. Section 16 of the MLRA provide the Minister of Forestry, Fisheries and the Environment with the following power –

'16. Emergency measures

*(1) If an **emergency** occurs that **endangers or may endanger stocks of fish or aquatic life**, or any species or class of fish or aquatic life in any fishery or part of a fishery, the Minister may -*

*(a) **suspend** all or any of the fishing in that fishery or any specified part of it;*

(b) restrict the number of fishing vessels fishing in that fishery; or

*(c) **restrict** the mass of fish which may be taken from that fishery.*

(2) The particulars of any measures taken in terms of this section shall be made known by notice in the Gazette and in any other appropriate manner.' (emphasis added)

23. In *Fisher and Another v President of the Republic of South Africa and Another* ("**Fisher**")²⁷, the High Court, relying on the Oxford English Dictionary definition of "emergency", held that the drastic decline of abalone stocks coupled with the more recent phenomenon of encroachment on stocks by West Coast rock lobster, constituted an "emergency" at the time. The current instance is directly analogous. The decline in sardine stocks, as evidenced by recent recruitment surveys, coupled with the mass die-offs, is undoubtedly an emergency justifying Ministerial action in terms of section 16.
24. As demonstrated above, the current mass sardine mortality event is an emergency that has necessitated the Small Pelagic Working Group to convene an emergency meeting and constitute a Task Team to investigate the matter.²⁸ It has clearly already had a significant impact on the fishery and will no doubt have an equally devastating impact on aquatic life, including predator species, as well as on the livelihoods of people who depend on this fishery as well as other impacted fisheries.
25. Your Department has invoked section 16 on two prior occasions. Once in 2000 to reduce the Total Applied Effort of linefish,²⁹ and again in 2007 to wholly suspend abalone fishing.³⁰
26. The abalone decision was taken on judicial review in *Fisher* and was dismissed. The Court held that the decline in abalone stocks constituted an emergency in the context of section 16 and that the Minister's decision had been reasonable. Further, the Court held that the Minister, as custodian of a resource that "may be destroyed if not carefully managed", must balance the long-term ecological survival of the resource against short-term commercial interests, and that the precautionary principle was a relevant statutory objective that must be applied.³¹
27. The same reasoning was applied more explicitly in *WWF South Africa*, where the Court held that a decision-maker cannot rationally elevate short-term socioeconomic considerations over the best available scientific evidence, because, if the depleted resource was allowed to collapse further, the

²⁷ 4 All SA 189 (C) (20 March 2008) ("**Fisher**") at paragraphs 29 and 30.

²⁸ See <https://www.dffe.gov.za/mediarelease/sardinemortalityinvestigation>, and see also <https://www.gov.za/news/media-statements/forestry-fisheries-and-environment-sardine-investigation-advances-23-aug-2026>.

²⁹ GN 4727 of 29 December 2000.

³⁰ GN 1024 of 26 October 2007.

³¹ *Fisher* at paragraph 23, applying *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 (4) SA 490 CC.

collapse would itself extinguish the socioeconomic considerations that were purported to be elevated in the first place.³²

28. In *Sole NO and Another v Minister of Department of Agriculture, Forestry and Fisheries and Others*,³³ the applicants' case was dismissed because the requirements for a final interdict were not met, one of which was that internal remedies were not exhausted. The Court specifically mentioned section 16 as a suitable alternative remedy.³⁴ Read with *Fisher*, this confirms that section 16 is a genuine and available mechanism, one that has previously been invoked, tested and upheld, and used as an example of a suitable remedy in the context of risk to a fishery.
29. Based on the above and the Department's assessment of the sardine mass mortality event and its likely trajectory, we respectfully request –
- 29.1. What measures your Department intends to take in order to protect the fishery and resource, the dependent predator species and livelihoods of fishers;
- 29.2. Whether your Department intends to invoke section 16 of the MLRA, and if not, the legal basis for this decision not to take emergency measures; and
- 29.3. What the timelines are for next steps and measures.
30. We note and welcome the Department's public updates of 14 and 23 August 2026 and would ask that proactive engagement with the public continues as the situation develops, as the matter is one of public concern.
31. Considering the urgency of the situation, including the possible decimation of the sardine population and that of other species, and consequent loss to livelihoods, we request a response by **7 September 2026**.
32. We recognise this is a complex and evolving matter and would welcome the opportunity to discuss it further, or to assist in any other way that the Department might find useful.

Yours faithfully,



BIODIVERSITY LAW CENTRE NPC

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³² *WWF South Africa* at paragraphs 88 – 90.

³³ *Sole NO and Another v Minister of the Department of Agriculture, Forestry and Fisheries and Others* (356/13) [2013] ZAWCHC 94 (13 June 2013).

³⁴ Above at paragraph 20.