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DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE WEST
COAST ROCK LOBSTER COMMERCIAL (NEARSHORE) FISHERY: 2015

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

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

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1. Introduction

This policy on the allocation and management of fishing rights in the west coast rock lobster commercial (nearshore) fishery is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to "**2015: West Coast Rock Lobster nearshore**". This policy must be read in conjunction with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2013 ("the 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.

The policy sets out the objectives criteria and considerations that will guide the, allocation and management of fishing rights in the west coast rock lobster fishery ("the fishery").

2. Profile of the fishery

2.1 Description of the fishery

West coast rock lobster (*Jasus lalandii*) is slow-growing long-lived animals. Female size at maturity varies and ranges from 57 millimetres carapace length (CL) to 66 millimetres CL. Male lobsters attain a larger size and grow faster than females. As a result of the size limit of 75 mm CL that is imposed on commercial fishers, male lobsters make up 90 to 99 percent of the catch.

West coast rock lobster occur inshore (<200m depth) from Orange River in Northern Cape to East London. Commercial exploitation occurs from about 25°S in Namibia to Gansbaai. However, recreational fishing extends further eastwards to Mossel Bay.

Prior to the introduction of lobster traps in the 1960's, the commercial fishery depended almost exclusively on hand-hauled, hoopnets, which are light and easy to deploy from small boats in shallow waters. Hoopnets are seldom used at depths exceeding 30 metres. Hoopnet dinghies may either operate independently from the shore by means of an outboard motor or oars, or be transported to the fishing grounds by means of a motorised mother vessel (deckboat). The commercial sector consists of large-scale offshore operators (right allocations of more than 1.5 tons) and a more limited nearshore component (right allocations of less than 1.5 tons). In the nearshore sector, right-holders may only use hoopnets and may not move between areas.

The nearshore commercial sector (or limited commercial fishery) replaced the subsistence fishery in 2001 as a result of the findings and recommendations of an independent review of subsistence fishing in South Africa. The review recommended that high-value subsistence fisheries such as west coast rock lobster, traditional linefish and abalone should be commercialised. The commercialisation of these fisheries has permitted fishers to sell and market their products.

The Department allocates 20 percent of the west coast rock lobster TAC to the nearshore fishery and 80 percent to the offshore fishery. The reason for this split is that approximately 20 percent of the resource is located in the inshore region, while 80 percent is located offshore in deeper waters.

The offshore fishery supports some 5 500 employees, 95 percent of whom are black. Of these, more than 2 500 are sea-going personnel, with the remainder employed in processing and marketing operations on land. West coast rock lobster fishing takes place between November and July and the average annual income over this period is R26 500. The annual value of west coast rock lobster catches is approximately R200 million. The approximate value of vessels in this fishery is R130 million.

2.2 Current resource users

The west coast rock lobster fishery is made up of three distinct sectors: a commercial fishery, small scale fishery (formerly Interim Relief) and a recreational fishery. Recreational users may only fish using hoopnets from a boat or the shore, or practice breath-hold diving or poling from the shore. Recreational fishers may not sell their catch.

2.2.1 Biological State of the Resource

The current harvestable biomass is estimated at around eight percent of the -exploitation levels and spawning biomass at approximately 21 percent. This decline is largely a result of two effects: large unsustainable catches taken particularly during the first half of the 20th century and a substantial reduction in the somatic growth rate during the 1990's. (Please check 2014/2015 Scientific Recommendation, Research to provide input)

3. The 2005/2006 Long Term Rights Allocation Process

In 2005/2006, the Department allocated 237 full commercial west coast rock lobster fishing rights for the offshore sector. An additional 825 nearshore commercial fishing rights were allocated of the rights allocated in the full commercial fishery, 66 percent were granted to blacks and black-owned entities. The representation of blacks at senior management level in the full commercial fishery is, however, only 34 percent. Of the rights allocated in the limited commercial fishery, 91.5 percent were allocated to blacks; predominantly black-owned micro enterprises. This means that approximately 70 percent of the west coast rock lobster fishery is controlled by blacks.

In 1992, 39 predominantly white right-holders controlled the west coast rock lobster TAC. In contrast, by the end of 2003, the Department had allocated 1 019 commercial rock lobster fishing rights. Of these, more than 785 were allocated to former subsistence fishers. To accommodate the larger number of right-holders, the average allocation in 2002 was 6.8 tons, compared with an average allocation of 56 tons in 1992. However, the difference between largest and smallest right-holders also decreased substantially over the past 10 years. In



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1992, there was a 200-fold difference between the highest (199 tons) and the lowest (one ton) allocations; in 2002, there was a 66-fold difference between the highest (95.6 tons) and the lowest (1.5 tons) allocations.

4. Objectives

4.1. The objectives of allocating fishing rights in the West Coast rock lobster (nearshore) 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 improve working conditions;
- (d) to promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of west coast rock lobster for a significant portion of their gross annual income above applicants deriving income from sources outside the west coast rock lobster 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 granted in terms of section 18 of the Marine Living Resource Act 18 of 1998 (Act No. 18 of 1998) ("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 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 west coast rock lobster nearshore fishery.
 - (i) South African natural persons

5.2 Duration of right

Having regard to the right allocation process and need to encourage investment the West Coast rock lobster nearshore Fishery, Fishing rights will be granted in the West Coast rock lobster nearshore fishery for the maximum period of 15 years.

5.3 **Total Allowable Catch**

Considering the history, current resource users, the sustainable operations and the viability of the fishery the Delegated Authority will only allocate an initial maximum of 376.10 tons which shall not be exceeded for the right duration. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decrease. However 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 allocation 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 in terms of this Policy shall not be transferred within the first of 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 to 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 west coast rock lobster fishery will not preclude from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for a 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 the applicant grant a right in any sector.

7. **Evaluation criteria**

Application for west coast rock lobster 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 Quota**

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

(c) **Non-Utilisation**

(i) Applicants that had west coast rock lobster (nearshore) right and did not harvest any West Coast rock lobster nearshore during the period duration of 2006 to 2015 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 applications 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 personally be involved in the harvesting of the resource but who are dependent on the fishery for their livelihood.

(e) **Resident in fishing zone**

Applicants who do not live adjacent to the fishing zone where they have applied for rights will be excluded. Applicants will be required to demonstrate that they have been permanently resident adjacent to the fishing zone for at least four years. Right-holders in the WCRL (nearshore) fishery will be restricted to fishing in the designated fishing zones or areas.

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%, 9% Coloured, 8.9% White and 2.5% Asian) may amongst other transformation criteria be used to prefer applications from other when allocation of fishing rights and right 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, the demographic 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 west coast rock lobster (nearshore) 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 of catches in fishing harbours 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 landing sites/fishing harbours 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
 - (iii) safe working conditions in accordance with the applicable legislative requirements; and
- (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 west coast rock lobster (nearshore). 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 involvement and relationship with other applicants**

(i) **Same household involvement**

A household which shall include individuals who are married or that is co-habiting, 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 west coast rock lobster (nearshore) resource. Applicants may be required to disclose their relationship to applicants in west coast rock lobster fishery as well as in other commercial fisheries. If more than one member of a household applies for a right, the main breadwinner of the family will be preferred.

7.3 **Suitable vessels**

- (a) A suitable vessel in the WCRL (nearshore) fishery is a vessel that:
- (i) is geared to fish for WCRL using hoop nets only
 - (ii) is certified by South African Maritime Safety Authority (SAMSA) as being safe for WCRL
 - (iii) is geared for WCRL fishing; and
 - (iv) has a functioning Vessel Monitoring System (VMS) at the time of applying for a vessel licence if the application is successful.
 - (v) On allocation of the fishing right such a vessel shall be fitted with a functional VMS Except for vessels under 5 meter length.
- (b) Right Holders in the west coast rock lobster fishery will not be precluded from jointly using one vessel, provided that when the vessel is going out to sea, only one right holder's permit will be on board the vessel.
- (c) **Access to Snoek**
Right holders in the West coast rock lobster (nearshore) fishery will be entitled to fish for snoek, provided that the vessel nominated and used for west coast rock lobster is a bakkie. A bakkie is a non-motorised row boat, which is 6m or less in length.
- (d) Right holders in this fishery will be entitled to catch as many snoek as is considered viable in terms of line fish regulations and the Traditional Line Fishery Management Manual.

8. **Provisional lists, representations and consultations**

- 8.1 The Delegated Authority may issue provisional lists for comment on any aspects relating to an application in any fishery/sector.
- 8.2 The Delegated Authority may request comments 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 a decision. Further General Reasons for decision for decisions in 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 applicants' scores in the west coast rock lobster 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 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

10.4 All successful applicants will be required to pay a grant of right fee. The Department will determine the applicable grant of right fee payable for each fishery after consultation with the successful applicants in each fishery. The grant of right fee for each fishery will be subject to the approval of the Minister and the Minister of Finance.

11. Management measures

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

11.1 Ecosystems 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 and integrated policy which recognises that fishing and associated land-based activities impacts on the broader marine environment. This part of the WCRL (nearshore) fishing policy does not attempt to provide a policy statement on EAF in the WCRL fishery.

11.2 The WCRL (nearshore) fishery will be managed using a number of controls, including minimum size limits, closed seasons, gear restrictions, area and time restrictions, marine protected areas and limitations on retention of berried females and soft-shelled lobster. These restrictions are contained in the permit conditions.

11.3 Observer programme

- (a) The right holder of a commercial west coast rock lobster (nearshore) 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 activities 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

11.4 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.

11.5 Offences

- (a) Successful applicants that fail to utilise their west coast rock lobster nearshore 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. in section 28 proceedings instituted against the right holder.

12. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful 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 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.

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- 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.