



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN THE
WEST COAST ROCK LOBSTER COMMERCIAL (NEARSHORE) FISHERY: 2005**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE
ALLOCATION AND MANAGEMENT OF LONG-TERM COMMERCIAL FISHING
RIGHTS: 2005 (available at
www.mcm-deat.gov.za)**

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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 Environmental Affairs and Tourism ("the Minister"). This sector will be referred to as "WCRL (nearshore)". This policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 ("the General policy").

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial WCRL (nearshore) fishing rights. Many of these considerations are not new. They have been applied by the Minister and delegated authorities of the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") when allocating rights in the past and to an extent this policy documents those considerations. .

Certain post-rights allocation management policies are also presented in this policy. A West Coast Rock Lobster (Nearshore) Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister intends to delegate the section 18 power to allocate commercial WCRL (nearshore) fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. The policy documents will guide the delegated authority in taking decisions on applications in this fishery.

2. Biology and resource dynamics

West coast rock lobster (*Jasus lalandii*) are 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 just north of Walvis Bay in Namibia to East London. Commercial exploitation occurs from about 25°S in Namibia to Gansbaai. However, recreational fishing extends further eastwards to Mossel Bay.

3. Sector profile

The current harvestable biomass is estimated at around eight percent of the pre-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.

Commercial fishing began in the 1880's. The commercial fishery expanded rapidly in the early part of the 20th century. Although catch records prior to 1940 are sparse, catches appear to have peaked in the period 1950 to 1965, when between 13 000 and 16 000 tons were landed annually.

Prior to 1946, the commercial fishery was unregulated. In that year, a tail-mass production quota was imposed to control exports. This formed the basis of the "output-controlled" management philosophy that is still employed in the management of the west coast rock lobster resource today.

From 1946 onwards, annual quotas were granted, based primarily on the performance of the fishery in the preceding season. Until the mid-1960's, catches were directly controlled by these quotas. In the 1967/68 fishing season, catch rates began to decline and quotas could not be filled. Decreases in the Total Allowable Catch ("TAC") to between 4 000 and 6 000 tons restored some balance in the period 1970/71 to 1989/90.

The tail-mass production quota was replaced by a whole lobster (landed mass) quota, and management by means of a TAC was introduced in the early 1980's. Area or zonal allocations were introduced at the same time. Other management measures that were enforced early on were size limits and a closed season. Catches of berried or soft-shelled lobsters were banned. The 1990/91 season again saw the catch rates drop and, in the ensuing years, the commercial TAC was gradually reduced, reaching 1 500 tons in the 1995/96 season. Since then, there has been a slow recovery, with the commercial TAC being set at 3 527 tons for the 2004/2005 season.

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 west coast rock lobster fishery is made up of two distinct sectors: a commercial fishery 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.

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.

Approximately 20 percent of the commercial west coast rock lobster TAC is allocated 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.

4. The medium-term rights allocation process

During the medium term rights allocation process, 234 full commercial west coast rock lobster fishing rights were allocated. An additional 511 limited commercial fishing rights were allocated, many to former subsistence fishers. Of the rights allocated in the full commercial fishery, 66 percent were granted to black persons 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 black persons, predominantly to black-owned micro enterprises.

In 2003, a further 230 tons of west coast rock lobster were allocated to 274 limited commercial right-holders in the area east of Cape Hanglip. Of the rights allocated, more than 90 percent were allocated to black persons.

In 1992, 39 predominantly white right-holders controlled the west coast rock lobster TAC. In contrast, by the end of 2003, 1 019 commercial rock lobster fishing rights had been allocated. Of these, many were allocated to former subsistence fishers.

5. Over-arching sectoral objectives

The objectives of allocating long-term fishing rights in the WCRL (nearshore) fishery are to:

- Maintain the transformation profile of the fishery;
- Allocate commercial fishing rights to fishers who are dependant on the WCRL resource for their main source of income;
- Endeavour to allocate a fair proportion of rights to applicants based at fishing villages that are historically associated with WCRL catches;
- Promote investment in vessels, marketing and processing infrastructure, and promote the creation of secure jobs;
- Sustain the economic viability of the fishery; and
- Ensure the environmental sustainability of the fishery.

6. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the need to encourage further investments in this fishery by micro enterprises;
- the relatively low capital intensity of the fishery;
- the need to encourage creation of permanent jobs;
- the need to maintain the economic stability that currently prevails in the fishery; and
- the fact that the west coast rock lobster resource is well managed with reliable and current data,

commercial rights will be allocated for a period of 10 years (15 November 2005 to 31 July 2015). The Department will regularly evaluate right holders against predetermined performance criteria (*see paragraph 13 below*).

7. **New entrants**

Although the west coast rock lobster fishery is optimally exploited and there is no room for additional participants, new entrant applicants will be considered and may be preferred over existing right-holders who have failed to fully utilise their rights or performed poorly in other respects.

8. **Access to *Snoek***

Right holders in the west coast rock lobster (nearshore) fishery will be permitted 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 dinghy of 6m or less in length.

These right holders will be permitted to catch as many snoek as may be considered viable in terms of the applicable regulations and the Traditional Line Fishery Management Manual to be adopted.

9. **Evaluation criteria**

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter scored in terms of a set of weighted “*comparative balancing criteria*”. A cut-off score or rank will then be determined to select the successful applicants. A proportion of the TAC will be allocated to each successful applicant in terms of a set of “*quantum criteria*”.

9.1 ***Exclusionary criteria***

Apart from the criteria described in the General policy pertaining to the lodgement of the applications and material defects, the delegated authority will exclude applicants that fail to meet the following requirements:

- (a) **Form of the applicant:** Only natural persons will be granted WCRL (nearshore) fishing rights. Right-holders who previously operated in the form of juristic persons (i.e. close corporations, trusts or companies) must apply in their individual capacities, but will be considered to be “medium term right holders” for purposes of the allocation process, provided that they meet the criteria set out in the General policy. In terms of the General policy individuals who were members of close corporations, shareholders of companies and beneficiaries of trusts when these entities were allocated medium term rights in 2001/2002 will be considered to be medium term right holders. The delegated authority

may regard other individuals to be medium term right holders if they obtained control over a medium term right, by way of a transfer approved by the responsible authority.

Persons who were members of a close corporation, shareholders of a company or beneficiaries of a trust may continue to operate in this form provided that they nominate one individual from the close corporation or company to apply on behalf of all the other members, shareholders or beneficiaries. The delegated authority will take into account the relationship between the applicant and the former right holder when allocating rights.

- (b) **Compliance:** Applicants that have been convicted of a serious infringement of the MLRA, the regulations, permit conditions or other serious fishery related offences during the medium-term right period, will not be allocated a WCRL fishing right. This does not include the payment of an admission of guilt fine. If the applicant was a member of a close corporation or a shareholder of a company that held a medium term right, then the applicant will not be granted a right if the medium term right holder or one of its members, directors or controlling shareholders was convicted of a serious infringement of the MLRA, the regulations, permit conditions or other serious fishery related offences during the medium-term right period.

Rights will also not be allocated to an applicant if the applicant has had a fishing right cancelled or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA. If the applicant was a member of a close corporation or a shareholder of a company that held a medium term right, the applicant will not be granted a right if the medium term right holder or one of its members, directors or controlling shareholders had a right cancelled or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act.

Decisions may be reserved on applications if there is a pending criminal investigation, or section 28 proceedings, which may affect the outcome of the application.

- (c) **Paper quotas:** Paper quotas (as defined in the General policy) will be excluded. Large groups of identical, or very similar applications, that are sponsored by consultants or commercial fishing companies and other entities, will be excluded as fronts for paper quotas, regardless of the merits of individual applications.

A household (comprising parents and children) may not be granted more than one right so as to avoid fronting and to broaden access to the west coast rock lobster resource. Applicants may be required to

disclose their relationship to applicants in the WCRL (inshore) sector or other commercial fisheries. If more than one member of a household applies for a right, all the applications from that household may be excluded, unless the applicants clearly and convincingly demonstrate that they have established separate small commercial operations.

- (d) **Non-utilisation:** The delegated authority may refuse to re-allocate a right if a right holder applicant failed to fully utilise a medium-term right. The delegated authority may also refuse to allocate a right to an applicant who was a member of a close corporation or a director or shareholder of a company that held a medium term right and that failed to fully utilise the right.
- (e) **Multi-sector involvement:** An applicant will not be allocated a WCRL (nearshore) right if the applicant is a member of a close corporation, or a director or the controlling shareholder of a company that was allocated a commercial fishing right in any Cluster A or B fishery. A WCRL (nearshore) right holder may hold the following rights in Cluster C and D fisheries, traditional linefish and abalone:
- a WCRL (nearshore) right holder may hold a traditional line fish right, provided that the WCRL right holder does not hold an abalone right or a net fish right as well;
 - a WCRL (nearshore) right holder may hold a net fish right, provided that the WCRL right holder does not hold a traditional line fish right as well; and
 - a WCRL (nearshore) right holder may hold a white mussel right, a netfish right and an abalone right.

In instances where the holding of multiple rights is not allowed applicants should indicate their preference in their applications.

- (f) **Personal involvement in harvesting of the resource:** Applicants will be required to demonstrate that, during the fishing season, they are personally involved in fishing for WCRL, in that they are active on fishing vessels and participate in the operation of the business. Only applicants incapable of participating due to a permanent physical disability will be exempt from this requirement. Women applicants will not be exempt from having to participate on board.
- (g) **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.

- (h) **Vessel access:** Applicants will have to demonstrate a right of access to a suitable vessel (see *paragraph 10 below*).
- (i) **SAMSA Health Certificate:** Applicants must provide proof that the South African Maritime Safety Authority (“SAMSA”) considers them to be medically fit to go out to sea.

9.2 Comparative balancing criteria

Right-holder applicants and potential new entrants will be evaluated in terms of the following balancing criteria which will be weighted to assess the strength of each application:

(a) Transformation

To maintain the transformation profile of the WCRL (nearshore) fishery, black applicants will be positively scored. Gender may be used as a tie-breaking factor, i.e. where more than one applicant scores the same, a female applicant will be preferred over a male applicant.

Applicants will also be assessed on –

- The percentage of black persons and women involved in the management of the applicant’s enterprise and employed by the applicant;
- Whether the applicant complies with skills development laws (if applicable) and whether the applicant has invested in the training and development of crew;
- Whether the applicant regularly shared profit with crew;
- Affirmative procurement; and
- Corporate social investment.

(b) Investment

Investment in vessels and equipment will be recognised, as long as the investment demonstrates a real commitment to participate in the fishery. Shareholding in vessels obtained at minimum or no cost to the applicant will not be recognised as investment.

(c) Jobs

Right-holder applicants who can demonstrate that they have provided temporary or permanent employment during the medium-term period, will be rewarded.

(d) Processing and marketing

Right-holder applicants will be required to submit processing and marketing records and may be assessed on their performance in this regard.

(e) Fishing performance

Right-holder applicants will be assessed by having regard to their performance in the WCRL fishery during the medium-term period.

New entrant applicants will be assessed by having regard to whether they have the ability, knowledge and skills to participate in the WCRL fishery.

(f) Historical involvement

Right-holder applicants and potential new entrants may be rewarded for historical involvement in the fishing industry. Such involvement might include being a crewmember in the limited commercial WCRL fishery, or being a crew member in any other commercial fishery.

(g) Reliance on fishing

The delegated authority should prefer applicants who rely on WCRL fishing for a significant proportion of their gross annual income. Applicants who derive income from sources outside the fishing industry may be negatively scored. New entrant applicants will be required to demonstrate their historical dependency on the WCRL fishery for their livelihood.

(h) Compliance

Minor infringements of MLRA, the regulations and permit conditions will be negatively scored.

9.3 Quantum criteria

Allocations to successful right-holders in the WCRL (nearshore) fishery will be determined at amounts between 750 kilograms and 1.5 tons. Regard will be had to the abundance of the resource in the area or zone applied for, as well as investment in the fishery and job creation.

If the Minister increases or decreases the TAC after the allocation of commercial fishing rights, right holders will have their TAC's adjusted accordingly.

10. Suitable vessels and gear limitations

A suitable vessel in the WCRL (nearshore) fishery is a vessel that –

- has a maximum SAMSA registered length of eight metres; and
- is geared to fish for WCRL using hoop nets only.

Right holders may be required to invest in an affordable vessel monitoring system after the allocation of long term commercial fishing rights.

11. Management measures

The WCRL 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. The EAF in the WCRL fishery will be detailed in the West Coast Rock Lobster (nearshore) Fishery Management Manual. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

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.

12. Application fees and levies

The fee payable on application for a west coast rock lobster (nearshore) fishing right is R300 (three hundred rand). This fee is non-refundable and must be paid in full.

The annual levies payable with effect from 15 November 2005 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

13. Performance measuring

The Department will institute a number of performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after a year, and thereafter every three years.

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.

14. Observers

The vessels used in the WCRL (nearshore) fishery are not able to accommodate observers. Right-holders will, however, be expected to cooperate fully with land-based observers or those transported to the fishing grounds in other vessels.

15. Provisional lists

Before the delegated authority makes final decisions on the successful applicants, he or she should issue a provisional list of successful applicants. The provisional list will be circulated to each fishing area. Interested and affected parties in these areas may then be invited to comment on the list and, in particular, inform the delegated authority if any persons who historically fished for WCRL in the nearshore area have been excluded from the provisional list or whether any person included on the provisional list is not reliant on the WCRL resource.

16. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with right holders in this fishery and will be subject to revision as and when it may be necessary.