

**No. 504**

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**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES**

**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE  
ABALONE 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](http://www.daff.gov.za))**

**This document is also available in Afrikaans, isiXhosa and isiZulu  
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar  
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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

**(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 Abalone sector is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to as the "**2015: Abalone Policy**". The *Abalone Policy: 2015* must be read in conjunction with the 2013: General Policy on the Allocation and Management of Fishing Rights ("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 objectives, criteria and, considerations that will guide the allocation and management of fishing rights in the Abalone fishery sector ("the fishery"). This policy will guide the Delegated Authority in taking decisions on applications in this fishery.

## 2. Profile of the fishery

### 2.1. Species description

The targeted commercial species of abalone in South Africa is *Haliotis midae*, which is locally called perlemoen. Abalone, *Haliotis midae*, is herbivorous gastropod that feed on seaweed and algae.

*Haliotis midae* has a flattened, ear-shaped shell, with irregular corrugation, a wide opening at the base and a row of small holes through which water escapes after aerating the gills. The shell covers the dorsal part of the body leaving some fleshy parts protruding from the side. *Haliotis midae*, has a muscular foot running along the wide open base.

Abalones are dioecious broadcast spawners in that they reproduce by releasing their gametes into the surrounding water for external fertilization to occur. Therefore, groups of adult male and female are necessary to increase chances of successful external fertilization. Like many gastropods, *Haliotis midae* have a complex life cycle involving larval stages. External fertilization is followed by development of larvae that eventually change into the adult form, which settle from the plankton into a hard substrate. The larvae may spend 2 to 14 days in the water column before settling into a hard substrate. *Haliotis midae* takes about eight years to reach sexual maturity or between six to twelve years for their shells to grow to the minimum legal size limit of 114 millimetres shell width.

### 2.2. Habitat

Abalone, *Haliotis midae*, which is long-lived species that can survive for at least 30 years, live in rocky ocean waters habitat that is interspersed with sand channels. Sand channels may be important for the movement, and concentration of drift macroalgae and red algae, upon which *Haliotis midae* are known to also feed. *Haliotis midae* is found in shallow waters, with greatest densities occurring in waters less than 10 metres deep. Abalone, *Haliotis midae*, juveniles are

known to shelter under the sea urchin spines canopy. Abalone shells provide an alternative, secondary habitat for a host of organisms such as algae and small invertebrates.

### 2.3. Distribution of population and status of the fishery

The South African Abalone Fishery extends from St Helena Bay to the North of Port St Johns. However, the commercial fishing grounds are located from Cape of Columbine in the west to Cape Agulhas in the east. The commercial harvesting area is divided into seven primary zones (Zones A-G) which are further subdivided into secondary zones A1, A2, A3 (excluding Dyer Island); B1, B2; C1, C2; D1, D2; E1, E2; F1 G1, G2 and G3 as depicted in Figure 1 and Figure 2 below respectively. The purpose of splitting the zones into smaller secondary zones is to assist with compliance and monitoring and to instill a sense of "ownership" amongst right holder over the secondary zone and abalone in that zone. However, the splitting of the commercial fishery into primary and secondary zones has its own complications in that the populations of abalone in zones differ and may not be enough to recommend commercial fishing. This in turn has resulted in permitting abalone right holders allocated in zones where there is zero or not enough abalone Total Allowable Catch (TAC) to zones where there is recommended TAC or more than enough to accommodate more right holders after the proportional split of the global TAC. Permitting of the right holders to harvest their portions of abalone allocations ("Quota") was never a smooth process given the promise to instill a sense of "ownership." There was some resistance by some of the right holders in areas where there is recommended abalone when the right holders in primary or secondary zones with zero TAC or zonal TAC that was not enough were permitted to harvest portions of their abalone allocations in other zones where there was enough TAC to accommodate them. This cross movement also resulted in court cases, which assisted in legally resolving the matter in that the Minister has got the right to deviate from the policy when necessary but he/she does not have the right to deviate from the law.

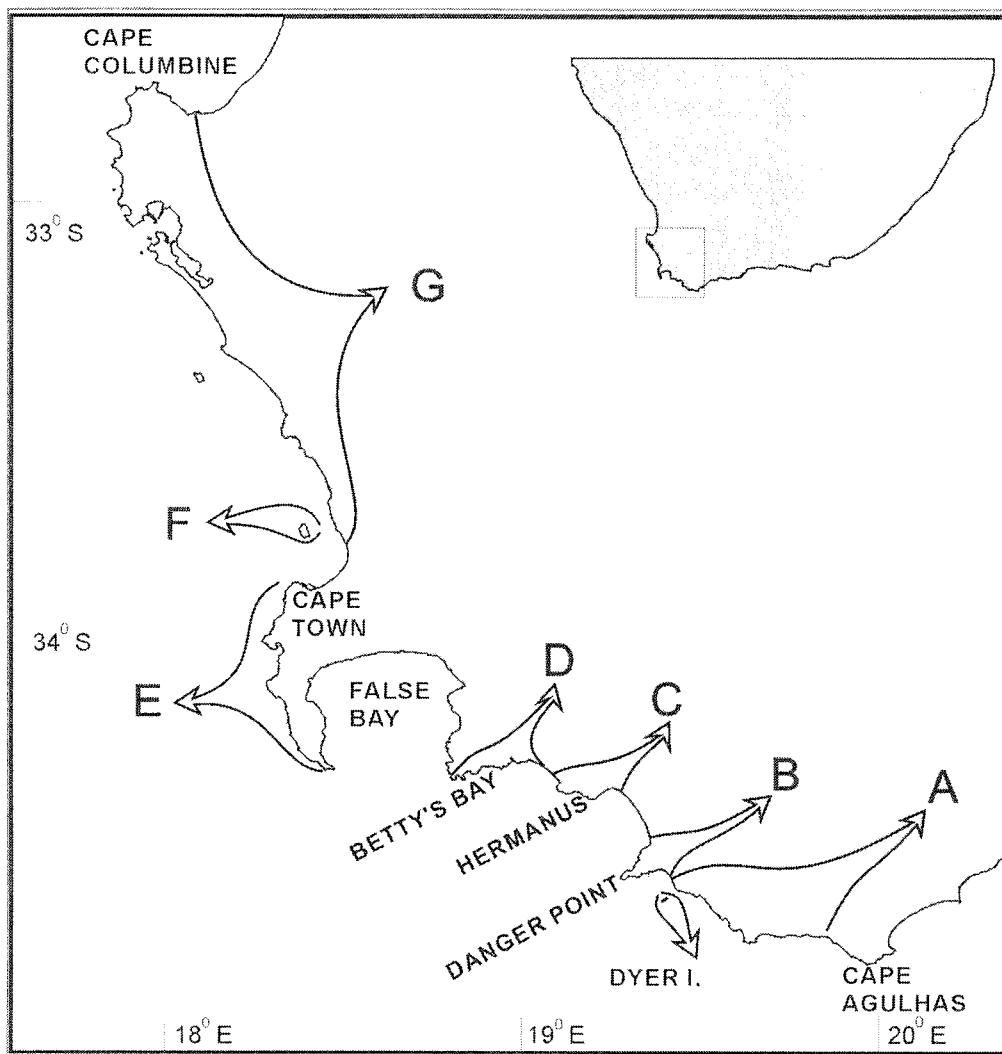


Figure 1: Map depicting the abalone primary harvesting zones.

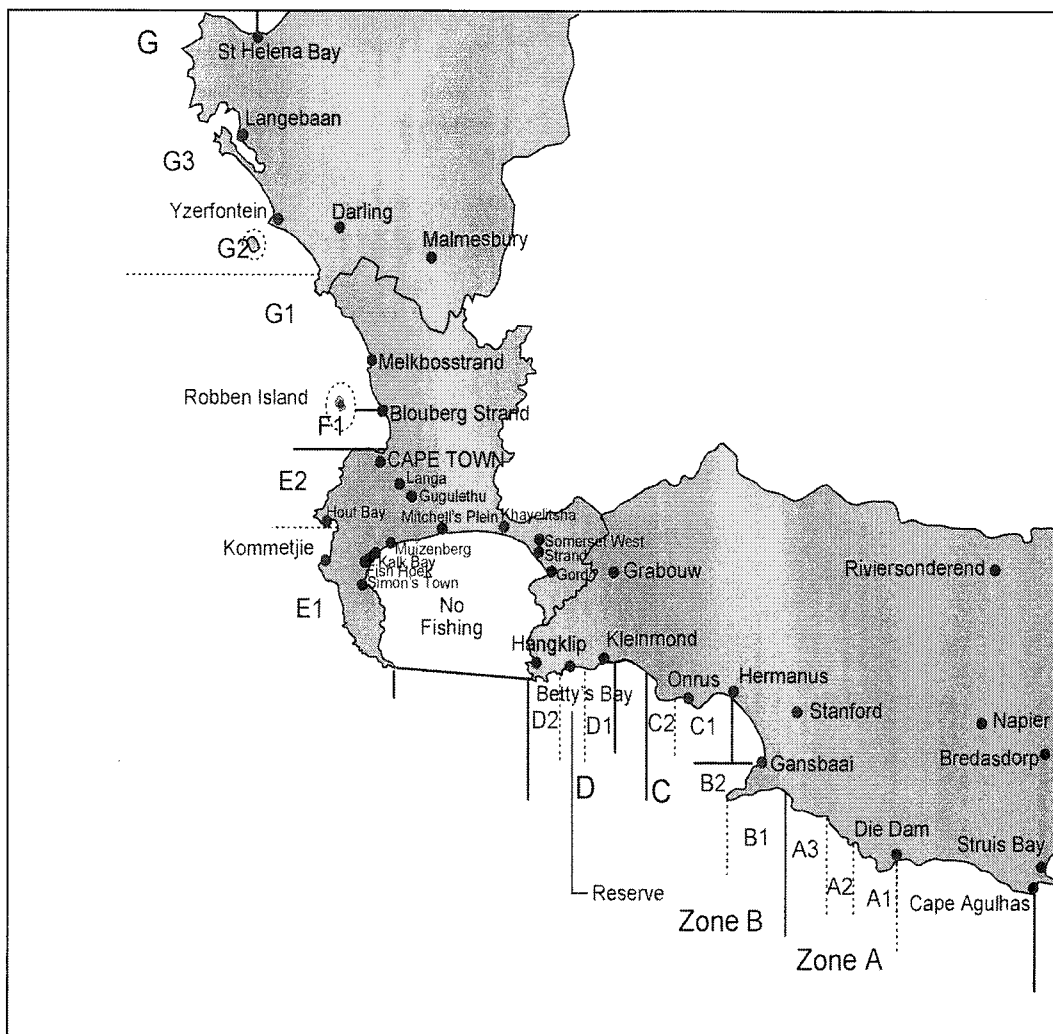


Figure 2: Map depicting the abalone secondary harvesting zones:

- Zone A Secondary Zones: A1, A2 and A3 (excluding Dyer Island)
- Zone B Secondary Zones: B1 and B2
- Zone C Secondary Zones: C1 and C2
- Zone D Secondary Zones: D1 and D2
- Betty's Bay Marine Protected Area between Secondary Zones D1 and D2
- No abalone harvesting in the False Bay Area
- Zone E Secondary Zones: E1 and E2
- Zone F: Robben Island ("F1")
- Zone G Secondary Zones: Secondary Zones G1, G2 (Dassen Island) and G3

The South African abalone commercial fishery which started in 1949 is a limited entry fishery. The abalone fishing seasons is from 1 November of year one to 31 July of the following year. In each fishing season the right holders will be given a certain TAC that they must harvest. The abalone fishery is primarily a day fishery. Vessel launching and landing of catch occurs

between 8AM and 3PM, launching can be done an hour early in summer. The designated landing or launching sites are as depicted in Table 1 below. The right or permit holders are only allowed to utilize a "hookah system" (surface air supply) for the harvesting of abalone. Only the use of an air-hose not exceeding 60 meters in length, which is attached to the vessel, is permitted when undertaking commercial fishing of abalone. Most of the abalone caught is exported to Asian countries and a small portion is sold locally. The abalone catch is exported, frozen, canned, dried and live.

**Table 1: Abalone designated landing or launching sites**

No.	Landing or launching sites
1.	Buffeljagsbaai slipway
2.	Cape Town (Oceana Power Boat Club) slipway
3.	Gansbaai harbor
4.	Hout Bay harbor
5.	Kleinbaai slipway
6.	Kleinmond slipway
7.	Kommetjie slipway
8.	Miller's Point slipway
9.	Saldanha Bay harbour (Allowed to launch at Jacobsbaai but must land at Saldanha Bay Harbour)
10.	St Helena Bay harbor
11.	Witsands slipway
12.	Yzerfontein harbor

Prior to the 1998-1999 abalone fishing season, the commercial fishery was divided into two components, namely: entitlement holders (approximately 50 licenced divers) and quota holders (about five "packers"). The entitlement holders owned the right to dive (using hookah equipment only) and deliver a fixed percentage of the annual TAC. The quota holders owned the receiving, processing, and marketing rights to a fixed percentage of the annual TAC.

Commercial fishing of the resource has been managed on the basis of annual revised area specific TACs since the 1985-1986 fishing season. The TAC in 1986-1987 to 1988-1989 fishing seasons was 640 tons and has decreased in recent years, reaching 75 tons in the 2007/08 fishing season and 96 tons in the 2013/2014 and 2014/2015 fishing seasons. The abalone fishery was closed in February 2008. Then the fishery was reopened in July 2010 upon the decision taken by Cabinet and hence there was zero abalone TAC in 2008/2009 fishing season.

The decrease in TAC has been associated with amongst others the effects of poaching and the collapse of sea urchin population in some commercial fishing zones. The collapse in the

urchin population is as due to increased predation by west coast rock lobster, *Jasus lalandii*. Juvenile abalone shelter under the sea urchin spines canopy, therefore, the collapse in urchin populations resulted in high mortality of juvenile abalone recruits.

Illegal harvest is considered to be the most significant threat to abalone in South Africa. The abalone, *Haliotis midae*, in South Africa is especially vulnerable to harvest because it has a patchy distribution, short larval period, is slow growing, relatively long-lived, has low or sporadic recruitment, and mature individuals, which tend to accumulate in shallow water, are easily accessible to harvesters. The sale of abalone yields high economic returns and hence it has attracted the interest of many including poachers. The high economic return from the abalone fishery has been found to be associated with a sharply declining South African Rand to US Dollar exchange. Poachers are non-selective with regard to the size of the abalone that they poach, and today, more than 60% of the abalone is below the minimum legal size of 114 mm shell breadth (137 mm shell length).

Low recruitment in various protected areas, further threatens the abalone population by not replenishing the reproductive adults that have died from natural causes or illegal and legal harvest. While low recruitment caused by unfavourable environmental and biotic factors usually cannot be predicted nor controlled, ensuring that there are sufficient adult abalones to reproduce each year will allow recruitment to occur when environmental conditions are favourable. Future threats may include habitat loss in localized areas to works or developments on, in and under the water in the event they are unregulated and predation by west coast rock lobster.

#### 2.4. Overview of legislation impacting on management of the fishery

The abalone fishery is managed in terms of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA"), Regulations promulgated thereunder and the policy on allocation and management of the fishing rights in the abalone fishery as well as other related legislations or guidelines.

Only the persons issued with permits in terms of the MLRA may harvest abalone, transport abalone catch from landing site to the permitted Fish Processing Establishment (FPE) and export abalone catch and products thereof.

The Department of Agriculture, Forestry and Fisheries is responsible for administering of the MLRA, Regulations promulgated thereunder, the policy on allocation and management of the fishing rights in the abalone fishery as well as issuing of permits together with permit conditions to right holders or exemption holders.



### 3. The 2003/2004 long-term rights allocation process

During 2003 long term fishing rights valid for ten years were allocated to Divers and Legal Entities, and three year rights were allocated to five Abalone Processing Factories (APFs) in terms of the Marine Living Resources Act 1998 (Act No. 18 of 1998) and Regulations promulgated thereunder. The total number of right holders was 304 (264 individuals and 40 legal entities). However 1 individual right holder returned his abalone fishing right to the Department and 5 abalone fishing rights of individual right holders were revoked by the Minister in 2012. The number of abalone right holders at the expiry of the abalone fishing rights on 30 July 2015 was 298 (258 individual right holders and 40 legal entities). The split of the 298 abalone right holders per zone was as follows:

- Zone A = 28 (25 divers plus 3 legal entities)
- Zone B = 32 (27 divers plus 5 legal entities)
- Zone C = 165 (151 divers plus 14 legal entities)
- Zone D = 18 (15 divers plus 3 legal entities)
- Zone E = 46 (37 divers plus 9 legal entities)
- Zone G = 9 (3 divers plus 6 legal entities)

### 4. Objectives

#### 4.1. The objectives of allocating fishing rights in the abalone 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) to promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of Abalone for a significant portion of their gross annual income above applicants deriving income from sources outside the Abalone 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 fishing Rights

Fishing rights are granted in terms of section 18 of 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 TAC, TAE 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 Abalone Fishery:
  - (i) South African natural persons (individuals/divers);
  - (ii) a company (legal entity); and
  - (iii) a close corporation (legal entity).

**5.2. Duration of Right**

Having regard to the right allocation process and need to encourage investment in the Abalone Fishery, Fishing rights will be granted in the Abalone 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 a determined TAC at the time of fishing rights allocation process. It shall be anticipated that individual allocations may decrease shall the annual approved TAC decreases. 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 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 Abalone 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 Abalone 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 Abalone 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 Abalone right and did not harvest any Abalone during period of 2006 to 2014 shall be excluded.

(d) **Personal involvement in harvesting of the resource**

Individual applicants will be required to demonstrate that they (or a member of the close corporation, shareholder of the company or a member of the co-operative) will be involved on a full-time basis in the abalone 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 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) Whether employees (other than top salary earners) benefit from an employee share scheme in case of an entity;
- (iii) 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;
- (iv) Affirmative procurement;
- (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons and youth and participation in learnership programmes; and
- (vi) Corporate social investment.

(b) **Fishing performance**

The fishing performance of applicants holding fishing rights in the abalone fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilization shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2005 to 2013.

(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 fishing processing 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 employees with –

- (i) permanent employment;
- (ii) medical aid and pension or provident fund;
- (iii) safe working conditions; and
- (iv) an employee share scheme as a shareholding entity of the right holder.

(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 abalone. Access may be in the form of ownership, part-ownership, vessel access 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 abalone resource. Applicants will be required to disclose their relationship to applicants in abalone fishery 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**

(a) A suitable vessel in the abalone fishery is a vessel that:

- (i) has a maximum overall length of 8m ("loa" as set out in the certificate of safety issued by the South African Maritime Safety Authority (SAMSA));
- (i) has a valid safety certificates issued by SAMSA;

- (ii) is geared for abalone fishing; and
  - (iii) has a functioning vessel monitoring system (VMS) at the time of applying for a vessel licence if the application is successful;
  - (iv) has a pole extending 2m above the deck of the vessel displaying the vessel and area numbers at the time of applying for a vessel licence if the application is successful.
  - (v) has a vessel and area numbers clearly marked on the bow section of the vessel. All identification numbers and letters must be 20cm in height and 2cm in thickness and must be white on black.
- (b) For the purposes of ensuring effective enforcement, a suitable vessel will exclude all:
  - (i) inflatable boats;
  - (ii) semi-rigid inflatable boats; and
  - (iii) vessels equipped with outboard motors will not be permitted to utilise motors of more than 90 hp each;
- (c) In order to verify if the vessel meets the suitable vessel criteria, applicants would need to submit photos of the vessel as well as copies of the SAMSA registration certificate.

#### 7.4. Divers

- (a) Preference will be given to allocating rights to natural persons who are *divers* and who reside in the coastal community adjacent to the secondary zone in which abalone rights are to be allocated. A natural person applicant must clearly demonstrate that he or she:
  - (i) is a qualified diver and is certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993 to be a certified commercial diver;
  - (ii) has an historical involvement in the harvesting of abalone (ie. that he or she has a history of diving legally for abalone) and who will use assistants experienced in abalone harvesting and who are members of the communities adjacent to the secondary zone applied for;
  - (iii) is substantially reliant on the abalone resource for 75% or more of his or her annual income;
  - (iv) has been permanently resident for the past two years in the coastal community adjacent to the secondary zone that is applied for;
  - (v) is registered as a tax payer with the South African Receiver of Revenue and all taxes have been paid; and
  - (vi) has not been convicted of an offence related to the poaching of abalone during the last two years.
- (b) Divers that are historically disadvantaged persons will be given preference. Preference will be given to divers who are not shareholders or directors of abalone

processing factories.

**7.5. Legal entities**

- (a) The Department will allow legal entities (only South African companies and trusts and close corporations) to apply. However, a right will only be granted to a legal entity—
- (i) that demonstrates that it is capable of catching its own allocation;
  - (ii) that demonstrates a track-record of involvement in abalone catching or processing and marketing;
  - (iii) that held a medium-term commercial abalone right (2001-2003 abalone fishing seasons);
  - (iv) that has invested in *suitable vessels*, gear and other applicable equipment. Investment in a vessel does not only mean sole ownership of the vessel but includes joint ownership or part ownership;
  - (v) that demonstrates significant transformation in both ownership and management (i.e. is more than 66% owned and managed by historically disadvantaged persons);
  - (vi) that demonstrates that 75% or more of its annual turnover is derived from the harvesting and / or marketing of abalone;
  - (vii) that is a registered VAT vendor (if applicable) and is registered with the South African Revenue Services and whose taxes have been fully paid up;
  - (viii) whose registered place of business for the past two abalone fishing seasons has been in the coastal area adjacent to the zone that is applied for; and
  - (ix) that has historically complied with the Act.

**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 Abalone 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;
- (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. All 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 Abalone 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.

**11.5. Marine Protected Areas**

The marine protected area at Betty's Bay will be closed to all abalone harvesting. No right holder shall be permitted to enter this protected area for the purposes of diving for abalone.

**11.6. Dyer Island**

- (a) The closure of Dyer Island for the purposes of making it a sanctuary is part of a strategy to protect the abalone species. The Bettys Bay Marine Protected Area is no longer considered as being sufficient to provide the only protection to abalone.
- (b) It is the Department's view that the abalone species should be afforded further protection in one other "no-take" refuge. This should be a discrete identifiable, population site, and Dyer Island suits this requirement well.

**11.7. Gear and equipment**

- (a) The Department will only permit the utilisation of the "hookah system" for the harvesting of abalone. The generator that will be used on board the vessel must at all times carry an official Department "abalone generator" tag, which shall be provided by the Department.
- (b) Each *diver* will only be permitted one wetsuit or drysuit on board the *suitable vessel*. No assistant may wear or carry a wet suit on board the *suitable vessel*. Each *diver* will be provided with one tag for their wetsuit,

**11.8. Landing site**

- (a) Right holders shall only be entitled to land catches at the landing site located nearest to the secondary zone in which they are permitted to harvest abalone. The landing sites for abalone are listed in Table 1. These landing sites / boat launching sites (other than those within proclaimed harbours or ports) will however only be capable of use if licenced in accordance with regulation 7 of GN Regulation 1399 of 21 December 2001.

- (b) Permits allocated will stipulate the harbour or landing site at right holders must launch from and at which all catches must be landed. All catches will be weighed at the harbour or landing site. The weight at the landing site will be the recorded weight for the purposes of quantum control.

#### 11.9. Processing, transporting and selling abalone

- (a) Only fish processing establishments that hold a fish processing establishment permitted in terms of the MLRA to process abalone in wild form shall process abalone.
- (b) Harvested abalone must be transported from the landing site and delivered to a permitted fish processing establishment by a person(s) permitted to transport abalone. A certified true copy of the catch permit and the catch statistics book (landing book) for the permit holder whose abalone is being transported must be kept in the vehicle transporting the harvested abalone. Should any fish processing establishment purchase abalone that has already been shucked, such a fish processing establishment could have its right suspended, revoked or cancelled.
- (c) The landed mass of the abalone must be recorded by the right holder. The Department will only allow for a maximum of 3% loss of weight from landing site to the fish processing establishment.
- (d) Who may market and sell the abalone shall be for the right holder to determine.

#### 12. Permit Conditions

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

**13. Glossary of Terms**

- 13.1. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.2. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.3. "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.
- 13.4. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.5. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.6. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.7. "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.
- 13.8. "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 licenses 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.
- 13.9. "divers" means an individual who is qualified to dive commercially for abalone and who is so certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993.
- 13.10. "Essential requirements" means a requirement that must be satisfied and in the abalone fishery means that applicants must demonstrate — (i) ownership of or a right of access to a suitable vessel; (ii) that he/she owns or has a right of access to the appropriate equipment and gear in order to harvest abalone.
- 13.11. "Historically disadvantaged person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.12. "Legal entity" means a close corporation, South African company or trust, other than an abalone processing factory.

- 13.13. "Ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.