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

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND
MANAGEMENT OF LONG-TERM COMMERCIAL 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 offshore fishery is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to as the **"2015: West Coast Rock Lobster Offshore Policy"**. This Policy must be read in conjunction with the General Policy on the Allocation and Management of Fishing Rights: 2013 ("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 West Coast rock lobster offshore 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. Description of the fishery

West Coast rock lobsters (*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 occurs inside the 200m depth contour from just from Orange River in Northern Cape to East London. Commercial exploitation occurs from about 25°S in Namibia to Gansbaai on the Cape south coast. However, recreational fishing extends further eastwards to Mossel Bay.

2.2. History of the fishery

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 motorized mother vessel (deckboat).

The WCRL (offshore) fishery is permitted to catch rock lobster in traps. In the medium-term rights allocation process, right-holders in this fishery were granted allocations of more than two tons each.

Right-holders in the WCRL (offshore) fishery use larger, more sophisticated vessels than right-holders in the WCRL (nearshore) fishery, which is restricted to using hoopnets in shallow water. The WCRL (offshore) fishery also employs larger numbers of crew.

The WCRL (nearshore) fishery replaced the subsistence fishery in 2001 in keeping with the 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 commercial 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.

The west coast rock lobster fishery has been particularly well managed and, since 1997, it has seen steady increases in the total allowable catch. In 2003, the Minister declared a total allowable catch for the commercial harvesting of rock lobster in the area east of Cape Hangklip. The Department continues to manage this fishery in terms of precautionary management principles.

2.3. Biological state of the resource

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.

2.4. 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.

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 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 offshore 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) promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of West Coast rock lobster offshore for a significant portion of their gross annual income above applicants deriving income from sources outside the West Coast rock lobster offshore 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 Marine Living Resource Act (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. 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 Africans persons may hold a fishing right
- (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 offshore fishery.
 - (i) company (legal entity);

- (ii) close corporations (legal entity); and
- (iii) co-operations (legal entity)

5.2. Duration of right

Having regard to the right allocation process and need to encourage investment the West Coast rock lobster Offshore Fishery, Fishing rights will be granted in the West Coast rock lobster offshore 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 1120.25 tons which shall not be exceeded for the right duration. 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 rights in whole or in part. However West Coast rock lobster offshore 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 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 offshore fishery (including their controlling shareholders and members of their executive management team) will not be precluded from holding commercial fishing rights in other 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

Applications for West Coast rock lobster offshore fishery 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**

In addition to the criteria described in the 2013: 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) **Compliance**

Applicants, including their members, directors or controlling shareholders that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders 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**

(i) Applicants that had West Coast rock lobster (offshore) right and did not harvest any West Coast rock lobster nearshore during the period duration of 2006 to 2015 shall be excluded.

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 Total Allowable Catch (TAC) 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;

- (iii) Compliance with the Employment Equity Act 55 of 1998 and the demographic representativity of blacks and women 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 West Coast rock lobster offshore fishery will be examined to determine if they have effectively utilised their fishing rights. Effective utilisation shall mean activation of the catch permit and subsequent catch data submission 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 may, 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, in respect of applicants that have provided 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
- (iv) an employee share scheme as a shareholding entity of the right holder.

(e) **Access to a suitable vessel**

Applicants will be required to demonstrate a right of access to a vessel suitable for the harvesting of West Coast rock lobster offshore. 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 involvements and relationship with other applicants**

(i) **Entity and their subsidiaries involvement**

An umbrella company and its subsidiary may not be granted more than one right West Coast rock lobster offshore resource so as to avoid fronts and monopolies and to broaden access to the West Coast rock lobster offshore resource. Applicants will be required to disclose their relationship to applicants in the hake inshore trawl fishery as well as in other commercial fisheries. If an entity and its subsidiary both apply for rights in this sector, the umbrella company (not subsidiary) will be preferred.

(ii) **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 West Coast rock lobster offshore 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 West Coast rock lobster fishery.

7.3. **Suitable vessels**

- (a) A suitable vessel in the West Coast rock lobster offshore fishery is a large fishing vessel that:
 - (i) has a South African Maritime Safety Authority (SAMSA) registered length of approximately 30 metres and a minimum length of approximately 8 metres;
 - (ii) has a functioning Vessel Monitoring System (VMS); and
 - (iii) is geared for either trap or hoop net fishing; and does not operate in another fishery
- (b) 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.

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

- 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 West Coast rock lobster sector.

10. Payment of application and grant of right fees

10.1 The application fee 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 application fee shall be payable on or before the submission of the application form. 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 reflect a number of the Department's principal post-right allocation management intentions for this fishery.

11.1. Ecosystem Approach to Fisheries Management

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 West Coast rock lobster offshore 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. Vessels and fishing effort

As many right-holders do not own the vessels they use, the Department anticipates that many right-holders will seek to introduce further vessels after the allocation of long-term fishing rights. Current effort levels are optimal and the Department will therefore carefully evaluate the cumulative effect of the introduction of further and new vessels into the fleet. Right-holders will not be permitted to introduce vessels capable of expending effort far in excess of their allocations.

11.4. Performance measuring

Successful applicants will be subjected to a number of performance measuring exercises for the duration of the fishing rights. The purposes of the performance measuring exercises 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

Successful applicants that fail to utilise their West Coast rock lobster offshore fishing right for one season without any reasonable explanation or that contravenes the provisions of the MLRA will be subjected to proceedings of section 28 of the MLRA.

12. 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.

13. Glossary of terms

- 13.1. "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting right in the sector to and ending on 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)
- 13.3. "Race, gender and disability" means to 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.
- 13.6. "SMME" means Small, Medium and Micro-sized Enterprises.
- 13.7. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.8. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.9. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.10. "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.
- 13.11. "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 for individual species or groups of species.