

DRAFT



**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 LIMITED COMMERCIAL (NEARSHORE)
FISHERY: 2005**

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

TABLE OF CONTENTS

1.	Introduction _____	3
2.	Biology and resource dynamics _____	4
3.	Sector profile _____	4
4.	The medium-term rights allocation process _____	6
5.	Over-arching sectoral objectives _____	7
6.	Duration of rights _____	7
7.	New entrants _____	8
8.	Evaluation criteria _____	8
8.1	Exclusionary criteria _____	8
	(a) Form of applicant _____	9
	(b) Compliance _____	9
	(c) Paper quotas _____	9
	(d) Non-utilisation _____	9
	(e) Multi-sector involvement _____	9
	(f) Personal involvement in harvesting the resource _____	9
	(g) Dependence on the resource _____	10
	(h) Resident in fishing zone _____	10
	(i) Vessel access _____	10
8.2	Comparative balancing criteria _____	10
	(a) Transformation _____	10
	(b) Investment _____	11
	(c) Jobs _____	11
	(d) Processing and marketing _____	11
	(e) Fishing performance _____	11
	(f) Historical involvement _____	11
	(g) Compliance _____	12
8.3	Quantum criteria _____	12
9.	Suitable vessels and gear limitations _____	12
10.	Management measures _____	12
11.	Application fees and levies _____	13
12.	Performance reviews _____	13
13.	Observers _____	13
14.	Provisional lists _____	14
15.	Permit conditions _____	14

1. Introduction

This policy on the allocation and management of fishing rights in the west coast rock lobster limited commercial (nearshore) fishery is issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) for public comment. This sector will also be referred to as “WCRL (nearshore)”. This policy must be read with the Draft General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 (“*the General Policy*”).

As stated in the General Policy, the Department will hold public meetings at coastal venues in order to consult with the general public, and interested and affected parties in particular, with respect to this draft WCRL (nearshore) policy. At these public meetings, comments on this policy will be invited. Written comments must be submitted to the Department by 11 April 2005. Comments submitted after this date will not be considered. Comments shall be submitted as follows:

By Fax: Fax Number: (021) 670-1782 Attention: The Deputy Director-General WCRL (Nearshore) Policy Comments	By Mail: Attention: Mr Horst Kleinschmidt The Deputy Director-General The Department of Environmental Affairs and Tourism P.O Box 44963 Claremont 7735 WCRL (Nearshore) Policy Comments	By E-mail: RVU@deloitte.co.za Attention: The Deputy Director-General WCRL (Nearshore) Policy Comments
		By Hand Attention: The Deputy Director-General The Rights Verification Unit 11 Lansdown Road Claremont WCRL (Nearshore) Policy Comments

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 Department when allocating rights in the past. This policy documents these considerations, but includes a few changes and additions.

Certain post-rights allocation management policies are also presented in this draft 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 of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial WCRL (nearshore) fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

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 motorized 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.

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.

4. The medium-term rights allocation process

In 2001, the Department allocated 234 full commercial west coast rock lobster fishing rights. An additional 511 limited commercial fishing rights were allocated to former subsistence fishers. 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 2003, the Department allocated a further 230 tons of west coast rock lobster to 274 limited commercial right-holders in the area east of Cape Hangklip. Of the rights allocated, more than 90 percent were allocated to 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.

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 this fishery;
- Allocate commercial fishing rights to fishers who depend on the WCRL resource for their livelihoods;
- Ensure that applicants based at fishing villages that are historically associated with WCRL catches are allocated a fair proportion of rights;
- Encourage investment in vessels, marketing and processing infrastructure, and 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 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,

The Department will allocate commercial rights for a period of 10 years (01 January 2006 to 31 December 2015 and subject to regular review against predetermined performance criteria, including the attainment of agreed transformation goals (**see paragraph 12 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 transform at all, or who have failed to implement transformation plans as stipulated in their medium-term right applications. In addition, those right-holders that did not utilise their rights, or did not utilise them effectively, will not be re-allocated a right and may be replaced by new entrants.

8. Evaluation criteria

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter weighted in terms of a set of “*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*”.

8.1 Exclusionary criteria

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

- (a) **Form of the applicant:** Only natural persons will be considered. Right-holders who previously operated in the form of juristic persons (i.e. close corporations, trusts or companies) will have to apply in their individual capacities, but will be considered to be “*right-holders*” for purposes of the allocation process.

A nuclear family (comprising a couple, their parents and their children) may not be granted more than one right so as to avoid monopolies and to broaden access to the west coast rock lobster resource. Applicants may be required to disclose their relationship to applicants in other commercial fisheries. If more than one member of a household applies for a right, all the applications from the family may be excluded, unless the applicants clearly and convincingly demonstrate that they have established separate small commercial operations.

- (b) **Compliance:** Applicants that committed a serious infringement of the MLRA will be excluded.
- (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.
- (d) **Non-utilisation:** Those right-holders that failed to utilise their medium-term commercial west coast rock lobster right between 2002 and 2004 will not be re-allocated a commercial right.
- (e) **Multi-sector involvement:** Applicants who hold rights in a commercial fishery other than the abalone fishery, or have interests - including shares and membership interests - in right-holders in other commercial fisheries will be excluded. Applicants who are the beneficiaries of right-holder trusts will be excluded.
- (f) **Personal involvement in harvesting of the resource:** Applicants will have to demonstrate that, during the fishing season, they are involved on a full-time basis in

fishing for WCRL. They should be active on fishing vessels and participate in the operation of the business.

- (g) **Dependence on the resource:** Right-holder applicants who are not dependent on the harvesting of WCRL for at least 75 percent of their annual gross income will be excluded. Potential new entrants will be required to demonstrate their historical dependence on WCRL fishing for their livelihood. Applicants that derive any of their income from sources outside the fishing industry will be excluded.
- (h) **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 lived adjacent to the fishing zone for at least four years. WCRL (nearshore) fishing rights will only be granted to residents who live adjacent to a fishing zone or area. Successful right-holders in the WCRL (nearshore) fishery will be restricted to designated fishing zones or areas.
- (i) **Vessel access:** Applicants will have to demonstrate a right of access to a suitable vessel (*see paragraph 9 below*).

8.2 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, applicants will be scored positively if they are black. 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 and scored on –

- Affirmative procurement; and
- Corporate social investment.

(b) Investment

Investment in vessels by 31 December 2004 will be recognised, as long as the investment demonstrates a real commitment to participate in the fishery.

(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 fish for WCRL.

(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) Compliance

Minor infringements of MLRA, the regulations and permit conditions, such as over-fishing or the landing of under-sized WCRL, will be negatively scored. Right-holder applicants who cannot demonstrate that they comply with the Skills Development Act 97 of 1998 and the Skills Development Levies Act, 9 of 1999, and the Occupational Health and Safety Act, 85 of 1993, will be negatively scored.

8.3 Quantum criteria

Allocations to successful right-holders in the WCRL (nearshore) fishery will be fixed at 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.

9. Suitable vessels and gear limitations

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

- has a maximum SAMSA certified length of eight metres;
- is fitted with a vessel monitoring system; and
- is geared to fish for WCRL using hoop nets only.

10. 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.

11. Application fees and levies

The application fee for the WCRL (nearshore) fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation, verification and appeals and reviews. In this regard, the costs incurred during the medium-term process will be used as a guide; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 01 January 2006 will be revised, after consultation with interested and affected parties.

12. Performance reviews

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. Failure to perform as stipulated may result in the right being suspended, cancelled or revoked.

13. 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.

14. Provisional lists

Before the Department makes a final decision on who will be allocated rights to participate in the WCRL (nearshore) fishery, it will 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 inform the Department if any persons who historically fished for WCRL in the nearshore area have been excluded from the provisional list.

15. Permit conditions

Permit conditions for this fishery will be issued annually. The permit conditions applicable to this fishery for the 2005 season are attached as **Annexure A**. Interested and affected parties are invited to comment on these permit conditions.