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**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 (OFFSHORE) 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**

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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 Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) for public comment. This fishery, which was previously referred to as the “full commercial” west coast rock lobster fishery, will now be referred to as the WCRL (offshore) fishery. A separate policy has been published for the west coast rock lobster fishery (nearshore), which was formerly referred to as the “limited commercial” west coast rock lobster fishery.

This policy must be read with the Draft General Policy on the Allocation and Management of Long-Term Commercial Fishing Rights: 2005 (“the General Fisheries Policy”). Interested and affected parties may submit written comment to the Department by 4 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 (Offshore) 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 (Offshore) Policy Comments	By E-mail: RVU@deloitte.co.za Attention: The Deputy Director-General WCRL (Offshore) Policy Comments
		By Hand Attention: The Deputy Director-General The Rights Verification Unit 11 Landsdown Road Claremont WCRL (Offshore) Policy Comments

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial WCRL (offshore) 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 (Offshore) 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 WCRL (offshore) 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 inside the 200m depth contour from just north of Walvis Bay in Namibia 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.

3. Profile of the fishery

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 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 of Environmental Affairs and Tourism 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.

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 this fishery are to:

- Increase the transformation profile of this fishery, particularly the representativity of blacks at the level of executive management;
- Encourage investment in vessels (to replace ageing vessels), infrastructure and more secure jobs;
- Support 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 number of full-time jobs provided (and to further encourage the conversion of part-time employment into 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 in terms of reliable and current data,

the Department will allocate commercial rights for a period of 10 years (01 January 2006 to 31 December 2015). Every right-holder will, however, be tested at regular intervals 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 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*”. New entrant applicants and previous right-holder applicants will then be separately assessed in terms of a set of weighted “*comparative balancing criteria*”. A cut-off score or rank will be determined to select the successful applicants. A proportion of the TAC will then 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:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. individuals or sole proprietors) and trusts will not be considered.
- (b) **Compliance:** Applicants, including the directors or controlling shareholders, that have been convicted of a serious contravention of the MLRA (punishable by imprisonment without the option of the payment of a fine) will not be allocated a WCRL (offshore) fishing right. Applicants, including the directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA will also not be allocated a WCRL (offshore) fishing right. Other breaches of the MLRA will adversely affect the evaluation of applications, as set out below.
- (c) **Paper quotas:** Paper quotas, as defined in the General Policy, will be excluded.
- (d) **Access to a suitable vessel:** Applicants will have to demonstrate a right of access to, or ownership of, a suitable vessel (*see paragraph 9 below*).
- (e) **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.
- (f) **Application for rights in the WCRL (nearshore) fishery:** If a member of an applicant's executive management team, or if a controlling shareholder(s) lodges an application for a WCRL (nearshore) fishing right, then the offshore commercial fishing right application will be excluded.

8.2 Balancing criteria

Although the following criteria will generally be applied to both right-holder applicants and new entrant applicants, the weighting that will be applied to each category will differ.

(a) Transformation

Currently, 66 percent of right-holders in this fishery are black-owned. Thirty four percent are black-managed. These right-holders collectively control 60 percent of the TAC. Furthermore, small- and medium-sized enterprises make up 90 percent of right-holders. Small- and medium-sized entity applicants are considered to be, *inter alia*, those entities whose annual turnover did not exceed R5 million for medium size operations, and R3 million for small operations.

The Department's objective with the allocation of long-term fishing rights in this fishery is to improve on the present levels of transformation. Accordingly, applicants will be assessed and scored on –

- The percentage black and women representation at ownership and executive management levels;
- Whether employees are shareholders in the applicant and the extent of their benefits;
- Affirmative procurement;
- The representivity of blacks and women at the various levels below executive management;
- Compliance with the Employment Equity Act 55 of 1998 and
- Corporate social investment.

(b) Investment in the Fishery

Applicants will be evaluated by having regard to investments made in the WCRL (offshore) fishery.

As far as right-holder applicants are concerned, the Department will specifically consider:

- Investments in suitable vessels. In this regard, investment in the form of shareholding will be considered. Right-holder applicants will not be rewarded for having concluded purchase agreements, charter agreements or catching agreements.
- Investments in processing and marketing infrastructure. In this regard, the Department will reward right-holder applicants that have invested in processing and marketing initiatives.

New entrant applicants will have to show whether they have invested in a vessel and in what form. New entrant applicants must also show whether they have invested in any marketing initiatives or whether they have access to marketing facilities.

(c) Fishing Performance

Right-holder applicants will be assessed by having regard to their performance in the west coast rock lobster fishery over 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 west coast rock lobster.

(d) Local economic development

The Department will prefer those applicants, particularly smaller right-holder applicants that elect to land their catches and have them processed in centres outside of the large metropolitan areas such as Cape Town. Larger right-holders that have invested in facilities in Cape Town will not be penalised.

The Department will positively score those right-holder applicants that undertake to invest in and land their catches at smaller fishing harbours, particularly, Port Nolloth, Hondeklipbaai and Paternoster.

(e) Jobs

The west coast rock lobster fishery provides some 5 500 jobs for crew and land-based employees. However, the seasonal nature of the fishery means that there are few full-time jobs and employees consequently have very little job security. The WCRL (offshore) fishery is a valuable fishery and the TAC has been steadily increasing since 1997.

The Department will prefer those applicants that have provided their employees with –

- Full-time employment;
- Medical aid and pension;
- Any other employment benefits; and
- Safe working conditions.

The Department will also have regard to the wage differentials between the highest and lowest paid employees.

(f) Reliance on west coast rock lobster

The Department will prefer applicants who rely on west coast rock lobster fishing (including processing and marketing) for 50 percent or more of their gross annual income. Applicants, or their controlling shareholders, who derive an income from sources outside the fishing industry will be penalised.

(g) Non-payment of fish levies

The Department requires every right-holder to pay a levy on the targeted fish landed. A number of right-holders have either not paid their levies or have under-reported catches in order to, *inter alia*, avoid the payment of levies.

In the former case, right-holder applicants will be penalised. However, should such right-holder applicants still qualify for a right, a fishing permit will not be issued until the total amount of levies payable (plus interest) has been paid to the Department. In the latter case, applicants will be excluded.

(h) Compliance

Right-holders, including their directors or controlling shareholders, who are currently being investigated for breaches of the MLRA, whether criminal or administrative, will not be allocated a west coast rock lobster fishing right until the conclusion of the investigation.

Minor infringements of the MLRA, including its regulations, by the applicant, its directors or controlling shareholders, will be negatively scored.

8.3 Quantum Criteria

In the case of existing right-holders, the Department will use as a base the quantum allocated to right-holders during the 2005 season, add proportionately the TAC of existing right-holders that did not apply or were unsuccessful, and then re-distribute the TAC in terms of the following mechanisms:

- **Black Management:** 15 percent of the west coast rock lobster TAC will be re-distributed on the basis of scores attained for black management; and
- 35 percent of the TAC will be re-distributed on the basis of comparative balancing scores attained, including the score for **transformation**.

Successful new entrant applicants will be allocated a quantum equivalent to that allocated to new entrant applicants in the medium-term rights allocation process.

9. Suitable vessels

A suitable vessel in the west coast rock lobster fishery is a vessel that:

- has a SAMSA certified length of maximum length of 30 metres and a minimum length of eight metres;
- has a functioning vessel monitoring system;
- is geared for either trap or hoop net fishing; and
- does not operate in another fishery.

10. Multi-sector involvement

Right-holders in the WCRL (offshore) fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the WCRL (offshore) fishery, including their controlling shareholders and members of their executive management team, will not be allowed to hold commercial fishing rights in the Cluster C, including the WCRL (nearshore) fishery, and Cluster D fisheries.

11. Application fees and levies

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

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and review. 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. Management measures

The management measures discussed below reflect a number of the Department's principal postright allocation management intentions for this fishery.

12.1 *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 and integrated

policy recognising that fishing and associated land-based activities impact on the broader marine environment. This part of the WCRL (offshore) fishing policy does not attempt to provide a policy statement on EAF. The EAF in the WCRL fisheries will be detailed in the WCRL (Offshore) Fishery Management Manual. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

12.2 Consolidation of participants

Subsequent to the allocation of the 10-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery. Right-holders may want to consolidate their respective business operations:

- Where right-holders share the same shareholders, offices or management team; or
- Where smaller right-holders opt to consolidate their business operations so as to further facilitate the transformation profile of this fishery.

Consolidation of right-holders is however subject to the Department's approach to monopolies (*see paragraph 12.4 below*).

12.3 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.

12.4 Monopolisation

While the Department will encourage the consolidation of right-holders in this fishery, it is opposed to monopolies which may operate to the detriment of smaller right-holders. The Department will not at this stage determine a maximum threshold of the TAC that

any one right-holder may hold or control, but will monitor whether any larger right-holder acts in a manner contrary to fair competition practices.

13. Performance measuring

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

Although the Department will finalise the precise criteria against which right-holders will be measured after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels and gear;
- fishing performance;
- compliance with applicable laws and regulations.

14. Observer programme

The Department's current observer programme will be expanded to include compliance observation. In addition, the Department will progressively increase the observer coverage of this fishery. Right-holders will be required to bear the costs of the observer programme.

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.