

DRAFT



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

**DRAFT POLICY FOR THE ALLOCATION AND MANAGEMENT OF  
COMMERCIAL FISHING RIGHTS IN THE SOUTH COAST ROCK  
LOBSTER 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](http://www.mcm-deat.gov.za))**

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## 1. Introduction

This draft policy on the allocation and management of commercial fishing rights in the south coast rock lobster fishery (hereafter also “*SCRL*”) is issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) for public comment. 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:

<b>By Fax:</b> Fax Number: (021) 670-1782 Attention: The Deputy Director-General South Coast Rock Lobster Policy Comments	<b>By Mail:</b> Attention: Mr Horst Kleinschmidt The Deputy Director-General The Department of Environmental Affairs and Tourism P.O Box 44963 Claremont 7735 South Coast Rock Lobster Policy Comments	<b>By E-mail:</b> <a href="mailto:RVU@deloitte.co.za">RVU@deloitte.co.za</a> Attention: The Deputy Director-General South Coast Rock Lobster Policy Comments
		<b>By Hand</b> Attention: The Deputy Director-General The Rights Verification Unit 11 Landsdown Road Claremont South Coast Rock Lobster Policy Comments

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial south coast rock lobster 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 south coast rock lobster 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 south coast rock lobster 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. Biological and resource dynamics**

South Coast rock lobster (*Palinurus gilchristi*) is endemic to the continental shelf of southern South Africa, occurring on rocky substrata at depths of 50 to 200 metres. The species is found in commercial quantities at two locations: offshore on the Agulhas Bank in an area roughly 200 kilometres from the coast, and closer inshore (two to 50 kilometres from the coast) between Mossel Bay and East London. South coast rock lobster is a cold-water species that grows slowly and is long-lived. The inshore area between Danger Point and Cape Agulhas is an important settlement area for juveniles, which migrate to adult habitats on the Agulhas Bank and in the inshore area between Mossel Bay and Port Elizabeth. Rock lobsters that occur between Port Alfred and East London are generally smaller, slower-growing and do not migrate.

## **3. Sector profile**

The South Coast rock lobster fishery is a deep water long line trap fishery that began in 1974. At that stage, both South African and foreign vessels exploited the deep water resource. However, in 1976 South Africa declared its 200 mile Exclusive Economic Zone and effectively halted foreign participation in the fishery. A total of 26 South African vessels remained in the fishery. This number dropped to 15 in 1981 after years of unsustainable and unregulated fishing led to the resource's collapse. In 1975, 2 092 tons of south coast rock lobster were harvested; by 1981 this had dropped to a mere 176 tons.

The fishery was first regulated by a total allowable catch ("TAC") in 1984. The TAC was set at 450 tons (tail mass). Ten years later, research indicated that the resource was still in decline. The management strategy for this fishery was fundamentally changed in 2000. A combined TAC and total applied effort ("TAE") strategy was introduced, which limited the number of days that a SCRL vessel may stay at sea. The "sea days" limit is calculated according to the portion of the TAC that is caught by a specific vessel, taking into account that vessel's fishing capacity.

Between 1989 and 2001, the SCRL resource had declined by 65 percent, largely due to overfishing by Hout Bay Fishing Industries (Pty) Ltd.

The Department's management plan for the SCRL fishery has borne fruit. In the 2001/2002 fishing season, the SCRL TAC was set at 340 tons, combined with a TAE of 1 922 sea days. Three years later, the TAC increased to 382 tons, combined with a TAE of 2 089 sea days.

South coast rock lobster catches are off-loaded at Cape Town and Port Elizabeth harbours. The catch is generally frozen at sea and graded and repacked at shore-based facilities. Almost the entire catch is exported, predominantly to the USA.

The SCRL industry employs about 400 people. Of these, 285 are sea-going personnel who are employed on nine vessels. Ninety seven percent of employees are historically disadvantaged persons. On average, workers earn R50 000 per annum in salaries, making this industry one of the best paying in the fishing industry. The value of the catch is approximately R100 million per annum. The market value of vessels operating in the fishery is approximately R70 million.

Vessels are rigged for long-line trap-fishing. Barrel-shaped plastic traps are set for periods of 24 hours to several days. Each vessel typically hauls and resets approximately 2 000 traps per day in sets of 100 to 200 traps. Long-line trap-fishing is a labour-intensive fishing method. Crews consist of up to 35 persons. The vessels in this fishery are large, offshore vessels ranging in length between 30 and 60 metres. They fish for between 180 to 300 days per year.

The south coast rock lobster fishery is capital intensive, requiring large vessels with insured values of between R4 million and R10 million, a substantial number of crew, access to foreign markets and funds for overhead costs such as fuel, vessel maintenance and salaries.

#### **4. The medium-term rights allocation process**

Medium-term commercial fishing rights were allocated to 18 right-holders. Right-holders typically hold between two and 10 percent of the TAC, with the exception of one company that holds 41.1 percent. Nine vessels are used to fish the entire TAC.

Of the 18 right-holders:

- 72 percent are black owned entities;
- 47 percent are black managed;

- 65 percent are small- and medium-sized enterprises (“SMEs”).

## 5. Over-arching sectoral objectives

The over-arching objectives of allocating long-term fishing rights in this fishery are to:

- Maintain or improve the transformation profile of the SCRL fishery;
- Create an environment that attracts investment and stimulate job creation;
- Support the economic viability of the fishery
- Ensure the environmental sustainability of the fishery; and
- Re-distribute the TAC among the rights holders in terms of transformation criteria and criteria aimed at rewarding SMEs that performed in accordance with their permit conditions.

## 6. Duration of rights

Having regard to –

- the transformation profile of the fishery;
- the number of quality full time jobs provided (and to encourage the conversion of part-time employment into permanent jobs);
- the need to maintain the stability in the fishery; and
- the fact that, according to scientific data, the SCRL resource is recovering,

the Department will allocate commercial rights for a period of 15 years (01 January 2006 to 31 December 2020). It is the intention of the Department that every right-holder will be tested at regular intervals against predetermined performance criteria (*see paragraph 13 below*).

## 7. New entrants

SCRL stocks are currently managed in terms of a conservative recovery strategy. By 1981, the stock had collapsed and it was subjected to years of over fishing between the late 1980’s and

2001. In 1992 the average allocation was 75 tons; 14 tons being the smallest individual allocation. By 2002, the average allocation dropped to a mere 17 tons; with seven tons the smallest individual allocation.

The Department therefore considers the current 18 right-holders and eight vessels to be the maximum that the fishery can sustain at this point. The fishery also has acceptable levels of transformation and substantial numbers of small- and medium-sized enterprises. Although the Department does not exclude the possibility of replacing existing right-holders, it is highly unlikely that any new entrants will be admitted.

## **8. Evaluation criteria**

Applications will be screened in terms of a set of “*exclusionary criteria*”, and thereafter assessed in terms of a set of weighted “*comparative balancing criteria*”. A cut-off score or rank will then be determined in order 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:** 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:** Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine) will not be allocated a SCRL fishing right. Right-holder applicants, including the directors or controlling shareholders, that

have had any fishing right cancelled or revoked in terms of the Marine Living Resources Act will also not be allocated a SCRL fishing right.

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

The Department requires every right-holder to pay a levy on targeted fish landed. A number of right-holders have either not paid their levies or have under-reported catches to, *inter alia*, avoid the payment of levies. The former will be penalised in the comparative balancing process as set out below. The latter will be excluded.. However, should such an applicant still qualify for a right, a fishing permit will not be issued until the total amount of outstanding levies (plus interest) has been paid to the Department.

- (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 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 in order to assess the strength of each application:

### **(a) Transformation:**

Currently, 72 percent of right-holders in the SCRL fishery are black owned. These right-holders collectively control 77 percent of the TAC. Furthermore, SMEs make up 65 percent of right-holders and 78 percent of the vessels used in this fishery are black owned.

The Department's objective during the process of allocating long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Policy, 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 of employment below executive management;
- Compliance with the Employment Equity Act 55 of 1998; and
- Corporate social investment.

**(b) Investment in the fishery**

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

- Investments in vessels suitable for the harvesting of SCRL. In this regard, investment in the form of shareholding will be considered.
- Investments in marketing infrastructure.

**(c) Jobs**

The SCRL fishery provides about 400 jobs. Average salaries are R50 000 per year for sea-going employees.

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

- Full-time employment;
- Medical aid and pension;

- Any other employment benefits; and
- Safe working conditions.

In the case of right-holder applicants, jobs created per ton of fish allocated during the medium-term rights allocation process will be assessed and taken into account. The Department will also have regard to the wage differentials between the highest and lowest paid employees.

**(d) Performance**

Right-holder applicants that significantly over and under-caught (more than 10 percent) will be penalised. Financial performance will be measured, as indicated in the General Policy.

**(e) Payment of Fish levies**

Right-holder applicants will be penalised if their levies are outstanding for a period longer than 60 days.

**(f) Compliance**

Applicants that failed to comply with their obligations under the Skills Development Act, 97 of 1998, and the Skills Development Levies Act, 9 of 1999, and those that committed minor infringements of the MLRA (i.e. infringements which do not justify their exclusion) will be penalised.

**8.3 Quantum criteria**

In respect of right-holder applicants, the Department will use as a base the quantum allocated to right-holders during the 2005 season. To this will be added a proportional division of the TAC from any existing participants that were unsuccessful or that did not apply for a long-term right. The following quantum pools will be applied to redistribute the TAC:

**(a) Transformation pool:**

Fifteen percent of the SCRL TAC will be set aside for affirming those successful applicants that are blackowned and black-managed. All successful applicants will be allocated a percentage of the TAC set aside for transformation, depending on the scores attained for transformation.

**(b) Small- and medium-sized enterprise pool**

Fifteen percent of the SCRL TAC will be set aside to affirm small- and medium-sized applicants that performed over the medium-term right allocation period. Small- and medium-sized applicants are, *inter alia*, those entities whose annual turnover did not exceed R5 million for medium size operations and R3 million for small operations.

**9. Suitable vessels**

A suitable vessel in the SCRL fishery is a vessel that:

- has a minimum SAMSA certified length of not less than 30 metres;
- is fitted with a functioning vessel monitoring system;
- is capable of deploying lines of approximately two miles long and 200 traps;
- is capable of storing at least 2 000 traps;
- is capable of carrying the necessary winches; and
- is capable of carrying approximately 30 or more crew members.

**10. Multi-sector involvement**

Right-holders in the SCRL fishery are not precluded from holding rights in any fishery in the Cluster A and Cluster B fisheries. Right-holders in the SCRL 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 and Cluster D fisheries.

## **11. Application fees and levies**

Marine resources are renewable resources and the “user pays” principle will be applied. Application fees for the SCRL 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 applications. 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 affected and interested parties.

## **12. Management measures**

The management measures discussed below reflect a number of the Department’s principal post right 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 which recognises that fishing and associated landbased activities impact on the broader marine environment. This part of the SCRL fishing policy does not attempt to provide a policy statement on EAF in the SCRL fishery. The EAF in the SCRL fishery will be detailed further in the Fishery Management Manual for the SCRL fishery. 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**

After the allocation of the 15-year commercial fishing rights in this fishery, the Department will facilitate the consolidation of the number of right-holders active in the fishery, particularly where:

- Right-holders share the same shareholders, offices or management team;  
or
- Smaller right-holders opt to consolidate their business operations.

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**

There are presently eight SCRL fishing vessels that operate in South African waters. As some right-holders do not own the vessels they use and because vessels may require replacement, the Department recognises that many right-holders will seek to introduce further or new vessels after the allocation of long-term fishing rights. The Department will 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 that is far in excess of their allocations. In addition, the Department may consult with the Fishery Industrial Body on all applications to introduce further or new vessels into the fishery.

## **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 first performance measuring exercise will take place after two years and thereafter every four years.

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

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the ecological impacts of longline trap fishing;
- 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.