

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

NO. 1136

16 NOVEMBER 2015

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

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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

(In case of any inconsistency, the English text prevails)

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1. Introduction

The Department of Agriculture, Forestry and Fisheries (“the Department”) is responsible for administering the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (“the MLRA”), regulations promulgated thereunder and policies issued by the Minister of Agriculture, Forestry and Fisheries (“the Minister”), in consultation with the Department.

This policy on the allocation and management of fishing rights in the West Coast Rock Lobster commercial (nearshore) fishery (“the WCRL(N) fishery”) shall be referred to as the **“West Coast Rock Lobster Nearshore Policy: 2015”**.

This policy must be read in conjunction with the MLRA; regulations under the MLRA; the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”); other relevant Sector Specific Policies including the Policy for the Small Scale Fisheries Sector in South Africa: 2012; and the Policy for the Transfer of Commercial Fishing Rights: 2009. This policy must be interpreted to be consistent with the MLRA, and all of the other relevant regulations and policies.

This policy sets out objectives, criteria and considerations that will guide the allocation, evaluation, and management of fishing rights in the fishery. This policy will thus guide the Delegated Authority in taking decisions on applications in this fishery.

Only persons issued with permits in terms of the MLRA may harvest lobster caught in the WCRL(N) fishery, transport the catch from a landing site to a permitted Fish Processing Establishment (“FPE”) and export lobster and any products thereof.

2. Profile of the fishery

2.1 Description of the fishery

West Coast rock lobster (*Jasus lalandii*) are slow-growing, long-lived animals. The size of females 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.

The resource is found in waters less than 200 metres deep from the mouth of the Orange River in Northern Cape to East London. Commercial exploitation of the resource occurs from about 25°S in Namibia to Gansbaai. Recreational fishing extends further eastwards to Mossel Bay.

Until 2001 the resource was exploited by subsistence fishers. In 2001 a nearshore commercial sector (or limited commercial fishery) was established, based on the recommendations and findings 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 Minister or a delegated Authority annually sets a commercial Total Allowable Catch ("TAC") for the exploitation of West Coast rock lobster, which is divided between the WCRL(N) fishery and a separate fishery for the offshore area ("the WCRL(O) fishery"). Based on the prevalence and location of the resource, 20% of the TAC is allocated to the WCRL(N) fishery, and 80% to the WCRL(O) fishery.

2.2 History of the fishery

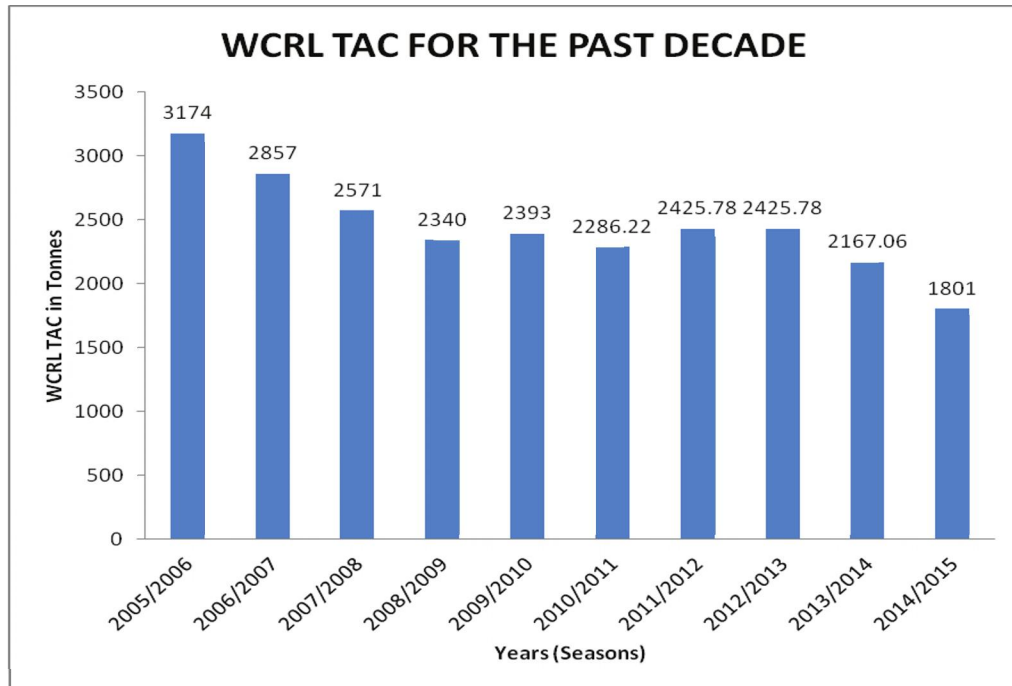
Commercial fishing began in the 1880's, and expanded rapidly in the early part of the 20th century. Although catch records prior to 1940 are sparse, catches appear to have peaked in the period 1950 to 1965, when between 13 000 and 16 000 tons were landed annually.

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.

Beginning in 1946 onwards, annual tail-mass production quotas were granted to participants in the industry, 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 permissible catch TAC restored some balance in the period 1970/71 to 1989/90.

In the early 1980's the tail-mass production quota was replaced by a whole lobster (landed mass) quota, and a TAC was introduced to manage the exploitation of the resource. Area or zonal allocations were introduced at the same time. Other management measures that were enforced included size limits and the enforcement of a closed season. Catches of berried (i.e. females bearing eggs) and 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. There was subsequently a slow recovery, and by the 2004/2005 season the TAC had risen to 3 527 tons for the 2004/2005 season.

Since the 2004/2005 season the TAC has had to be reduced sharply, based on serious declines in the resource, which primarily resulted from alarmingly high levels of illegal fishing. By the 2014/15 fishing season the TAC had reduced to 1801 tonnes. The reduction in the TAC has serious implications for the future of both the WCRL(N) and WCRL(O) fisheries. Over the past decade the TAC in the West Coast rock lobster has been set as indicated in the graph below:



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 shallower waters. Hoopnets are seldom used at depths exceeding 30 metres. Hoopnet dinghies may either travel to fishing grounds independently (by oar or with outboard motors); or be transported to the fishing grounds on larger motorized mother vessels (deckboats).

Right-holders in the WCRL(N) fishery are still restricted to using hoopnets in shallower waters. As a result right-holders in the WCRL(N) fishery usually use smaller vessels with fewer crew-members. By contrast, right-holders in the WCRL(O) fishery use larger, more sophisticated vessels, with larger crews.

2.3 Biological state of the resource

The resource is in a parlous state. The current harvestable biomass is estimated to be approximately 2.5 percent of that which existed before the resource was exploited.. This decline has several causes, including: large unsustainable catches taken particularly during the first half of the 20th century; a substantial reduction in the somatic growth rate during the 1990's; and unlawful fishing.

2.4 Current resource users

West Coast rock lobster is exploited by three distinct sectors: the commercial fisheries (i.e. the WCRL(N) and WCRL(O) fisheries); a small scale fishery (formerly interim relief); and a recreational sector. 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 and Management Process

The Department has made significant strides in transforming the commercial West Coast rock lobster fisheries. In 1992, 39 predominantly white right-holders controlled the West Coast rock lobster TAC. The industry was also marked by a high disparity in the highest and lowest quota allocations. By contrast, by the end of 2003, the Department had allocated 1 019 commercial rock lobster fishing rights, of which more than 785 were granted to former subsistence fishers. To accommodate the larger number of right-holders, the average allocation per right-holder was reduced, and the disparity between the largest and smallest right-holders was greatly narrowed.

During the 2005/2006 Long-Term Fishing Rights Allocation and Management Process ("LTRAMP"), the Department allocated 1062 commercial West Coast rock lobster fishing rights. Of these, 825 were granted in the WCRL(N) fishery.

More than 90 percent of the rights granted in the WCRL(N) fishery were allocated to black individual right holders; and 66 percent of the rights granted in the WCRL(O) fishery were allocated to black entities. This means that approximately 70 percent of the West Coast rock lobster fishery is controlled by blacks.¹

4. Objectives

4.1. The objectives and principles of allocating rights in a fishery are set out in section 2 of the MLRA, *inter alia*, to:

- (a) promote transformation through allocation of fishing rights to historically disadvantaged persons, which includes persons from designated groups (youth, women and people with disabilities), and to broaden meaningful participation (through increased participation, sharing: value-creation, and linkages);
- (b) ensure sustainable livelihoods through the promotion of fair employment;
- (c) promote adherence to fair labour practices and improve working conditions;
- (d) to promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of West Coast rock lobster nearshore fishery as a major source of their gross annual income above applicants deriving income from sources outside the West Coast rock lobster fisheries;

¹ Figures as per 2005/6 Long Term Rights Allocation Process.

- (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 a right

Fishing rights are granted in terms of section 18 of the MLRA. In terms of section 79 of the MLRA the Minister has delegated the power to grant rights in each fishery to a Delegated Authority in the Department. Unless otherwise determined by the Minister, only South African persons shall acquire or hold rights in terms of section 18 of MLRA. In this fishery the Minister has not exercised his power to allow persons of other nationalities to acquire rights, meaning that only South African persons can acquire rights in this fishery. The rights granted will be based on applicable balancing criteria, and will be reflected as a proportion of the local commercial TAC available at the time that the rights allocation process is conducted. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, whereafter they will automatically terminate and revert back to the State to be reallocated. It should be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restrictions, in order to address a state of emergency.

5.1 Form of right-holders

Having regard to the nature of operations and resource accessibility, applications for rights in the WCRL(N) fishery will only be considered from South African citizens (Individuals).

5.2 Duration of right

Having regard to the right allocation process and the need to encourage investment, fishing rights in the WCRL(N) fishery will be granted for the maximum period of 15 years.

5.3 Total Allowable Catch allocation and Total Applied Effort

In terms of section 14 of the MLRA the Ministers is empowered to determine a TAC, a Total Allowable Effort ("TAE") or combination thereof to apply in each fishery. This fishery is regulated by determination of a TAC.

The TAC is determined by the Delegated Authority considering the history, resource users, sustainability of the operations of right holders, and the viability of the fishery. The Delegated Authority will only allocate a local commercial portion of the determined TAC to commercial right holders based on the proportion granted to each successful applicant at the time of commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of determined TAC decrease or increase respectively. In terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist increases, the mass of the increase shall be available for allocation by the Minister.

5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, rights granted in the WCRL(N) fishery in terms of the MLRA shall not be transferred within the first two (2) years of being granted. 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. Failure to pay the required fees for the grant of a right, or to apply for any permits, or to declare any catches during the first two (2) years, shall result in a cancellation of the right by Minister.

6. Multi-sector involvement

Applicants for the allocation of rights in this fishery will not be precluded from applying for, or holding commercial fishing rights in other local commercial fisheries.

This shall mean any person can apply for a right in any fishery sector regardless of whether the applicant has applied for a right or holds a right in any other fishery sector.

Individuals applying for rights in the WCRL(N) fishery may also hold shares, an interest or a stake in an entity which is applying for, or already holds rights in another fishery. Individual applying for rights in the WCRL(N) fishery may also be a shareholder, member, director or employee of an entity which is applying for, or already holds rights in another fishery.

The Delegated Authority reserves the right to grant a right to the applicant in any sector and will prefer applicants who rely on the West Coast rock lobster for a major source of their gross annual income.

7. Evaluation criteria

Application for the allocation of rights in the West Coast rock lobster nearshore 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 a portion of TAC, TAE or combination thereof will be apportioned to successful applicants.

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/criteria:

(a) Compliance

An applicant will be excluded if he or she has been convicted of a serious transgression of the MLRA (without the option of the payment of a fine). For these purposes an applicant will be treated as having been convicted of a serious

transgression of the MLRA if he or she was a controlling shareholder, a member with a controlling interest, or a director of an entity which has been so convicted.

An applicant will also be excluded if he or she has had any fishing right cancelled or revoked in terms of the MLRA. For these purposes an applicant will be treated as having had rights cancelled or revoked if he or she was a controlling shareholder, a member with a controlling interest, or a director of an entity which has had its rights cancelled or revoked.

Minor infringements, including those in respect of which an admission of guilt fine was paid, may be taken into account as a balancing criterion and may also adversely affect an application

(b) Paper Quota

Applications from paper quota applicants, as defined in the 2013: General Policy, will be excluded.

(c) Non-Utilisation

Applicants who held a right in the WCRL(N) fishery during the period of 2007 to 2014, which was not utilised, shall be excluded.

(d) Personal involvement in harvesting of the resource

Applicants will be required to demonstrate that they will be personally involved in the fishery. They will be required to actively participate in the harvesting of the resource and the business operations. Only applications incapable of participating due to a permanent physical disability will be exempted from this requirement. Consideration will be given to female applicants who may not personally be involved in the harvesting of the resource but who are dependent on the fishery for their livelihood.

7.2 Balancing criteria

Applicants will be evaluated in terms of the following balancing criteria which will be weighted in order to evaluate and assess applications:

(a) Transformation

When assessing and scoring applications, and when allocating portions of the TAC to successful applicants, the Delegated Authority may prefer applicants based on transformation criteria. When attributing a score for transformation criteria, or allocating portions of the TAC, the Delegated Authority may have regard to: census statistics or other information provided by Statistics South Africa regarding the composition of the population of South Africa, and the percentage of that population made up by different demographic groups; the need to ensure the recognition and meaningful participation in the fishing industry, of Historically Disadvantaged

Individuals (HDIs) and the codes of good practice under the Broad Based Economic Empowerment Amended Act.

Applicants, will be assessed and scored on the following criteria:

- (i) Affirmative procurement; and
- (ii) Corporate social investment.

(b) Fishing performance

The historical fishing performance of applicants who have held fishing rights in the 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) In order to promote local economic development, the Delegated Authority will give preference to applicants who will land catches at harbours situated outside of metropolitan areas, and process catches at land-based processing establishments outside of metropolitan areas. Metropolitan areas include the areas under the control of a metropolitan (category A) municipality (which in this fishery most notably includes the area governed by the City of Cape Town).
- (ii) The delegated authority shall, in order to ensure that all fishing communities share in the marine living resources, use the locality of landing sites and fish processing establishments as scoring or tie-breaking criteria. For these purposes the Delegated Authority may give preference to applicants, with the aim of ensuring an equitable distribution of opportunities to communities along the coastline.

(d) Job creation

The Delegated Authority may give preference to any applicant who commits to retaining existing employment opportunities, or to increasing employment opportunities if he or she is allocated a right in the fishery. For these purposes the Delegated Authority will consider the quality of the employment opportunities which will be created, including compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) ("BCEA"); and the applicant's commitment to provide their employees with:

- (i) permanent employment;
- (i) medical aid or any kind of medical support arrangement;
- (ii) pension / provident fund; and
- (iii) safe working conditions in accordance with the applicable legislative requirements.

(e) Access to a suitable vessel

An applicant will be required to demonstrate a right of access to a vessel suitable for harvesting in the WCRL(N) fishery. Access may be in the form of ownership, part-ownership, a catch agreement, a charter agreement, or a bank guarantee for sufficient capital to purchase or build a vessel. If an applicant intends purchasing a vessel, then additional information must be provided to prove a firm and binding offer by the current owner of the vessel to sell the vessel to the applicant. If an applicant intends building a new vessel, then additional information must be provided including the vessel plans, the cost to be incurred, and a firm and binding commitment by a vessel building company to build the vessel.

(f) Same household involvement

The same household may not be granted more than one right in the WCRL(N) fishery so as to avoid fronts and monopolies and to broaden access to the WCRL(N) resource. Applicants are required to disclose their relationship to other applicants in the WCRL(N) fishery as well as in other commercial fisheries. If more than one member of the same household applies for a right, the Department will determine who the preferred right holder will be with due regard being taken to the Department's transformation objectives.

(g) Residing adjacent to fishing zones

Applicants who reside adjacent to fishing zones will be preferred over other applicants. Fishing zones in the WCRL(N) fishery are in the map below.

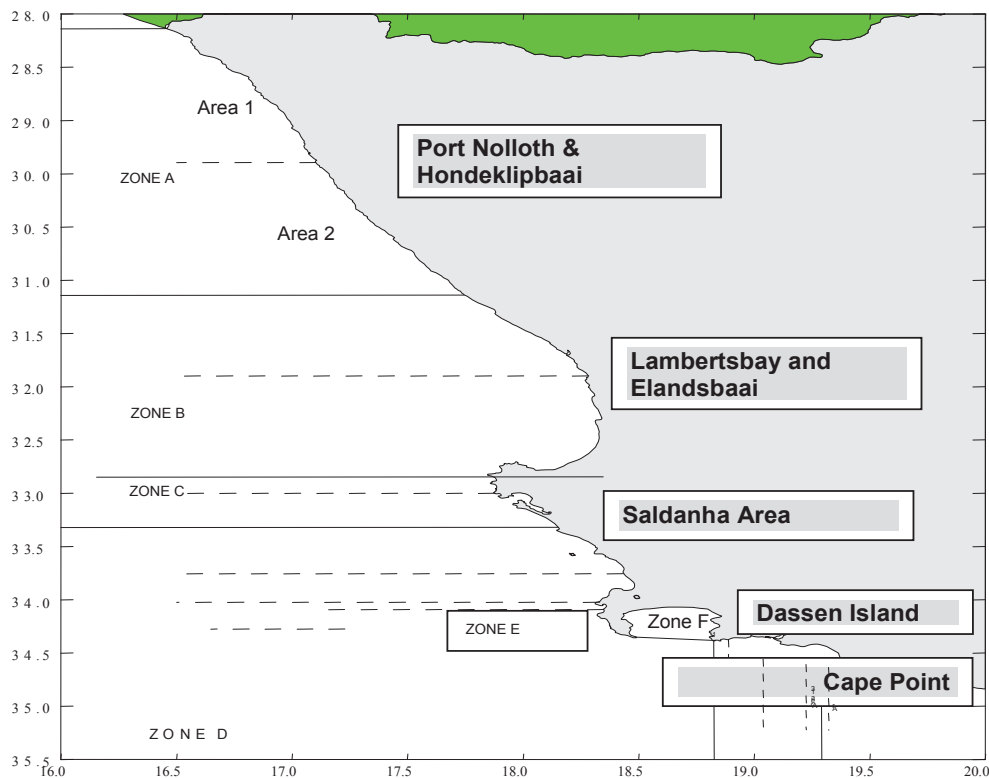


Fig.1. West Coast rock lobster fishing zones and areas. The five super-areas are A1-2 corresponding to Zone A, A3-4 to Zone B, A5-6 to Zone C, A7 being the northernmost Area within Zone D, and A8+ comprising Area 8 of Zone D in conjunction with Zone F.

7.3 Suitable vessels

- (a) A suitable vessel in the WCRL(N) fishery is a vessel that –
 - (i) is geared to fish for WCRL using hoop nets only;
 - (ii) is certified by South African Maritime Safety (“SAMSA”) as being safe for fishing; and
 - (iii) has a functional Vehicle Monitoring System (“VMS”) except for vessels under 5 metres in length.
- (b) Right Holders in the WCRL(N) fishery will not be precluded from jointly using one vessel, provided that when the vessel is going out to sea, only one right holder’s permit will be on board the vessel.
- (c) In order to verify if the vessel meets the suitable vessel criteria, applicants must submit photographs of the vessel as well as copies of the SAMSA registration certificate.

8. Provisional lists, representations and consultations

- 8.1 The delegated authority may issue provisional lists for comment on any aspects relating to an application in any fishery/sector.
- 8.2 The delegated authority may request comments 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

9. Announcement of results

The Delegated Authority shall after making final decisions on the applications, inform all applicants of the outcome of their individual applications giving specific reasons for such decisions. Further General Reasons for decisions in a specific fishery will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure outlining the scores obtained by all applicants in the WCRL(N) fishery.

10. Payment of application and grant of right fees

- 10.1 The application fees for this fishery will be determined having regard to:
 - (a) The cost of the entire fishing rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
 - (b) The value of the fish being allocated over the duration of the right.
- 10.2 The application fee shall be payable before the submission of the application form and only proof of payment shall be brought to the receipting centre.

10.3 The grant of right fee is payable by all successful applicants upon the granting of rights.

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 Ecosystems approach to fisheries

- (a) 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 land-based activities impacts on the broader marine environment. This part of the current policy does not attempt to provide a comprehensive statement on EAF applicable in the WCRL(N) fishery. An EAF strives to balance diverse societal objectives by taking account the knowledge and uncertainties about biotic and abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.
- (b) The WCRL(N) 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 will be contained in permit conditions.

11.2 Observer programmes

- (a) The right holder of a commercial WCRL(N) 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 activities, and to test 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 right-holder's vessel, the Department may implement proceedings under section 28 of the MLRA.

11.3 Performance measuring

Successful applicants will be subjected to performance measuring for the duration of their fishing rights. The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

11.4 Offences

A successful applicants that fail to utilise his or her WCRL(N) right for one fishing season without any reasonable explanation, or who contravenes the provisions of the MLRA, will be subject to proceedings under 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 the successful with the successful applicants in this fishery and will be revised as and when it may be necessary.

13. Glossary of terms

- 13.1. "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998)
- 13.2. "Right Holder" means a person who was previously granted or lawfully acquired a fishing right, or who will be granted a right in the allocation process envisaged in this Policy.
- 13.3. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.4. "Same household" is the people in a family living together at the same residential address or house. A family shall be inclusive of parent(s) or guardian(s) and dependants. Person(s) living in the same address and not depending in each other shall not be regarded as same household.
- 13.5. "South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995)
- 13.6. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.7. "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.8. "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.9. "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.
- 13.10. "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 individual species or groups of species.