

**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES**

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

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(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 (offshore) fishery ("the WCRL(O) fishery") shall be referred to as the **"West Coast Rock Lobster Offshore Policy: 2015"**.

This policy must be read in conjunction with 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(O) 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.

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(O) fishery and a separate fishery for the nearshore area ("the WCRL(N) fishery"). Based on the prevalence and location of the resource, 80% of the TAC is allocated to the WCRL(O) fishery, and 20% to the WCRL(N) fishery.

## **2.2. History of the fishery**

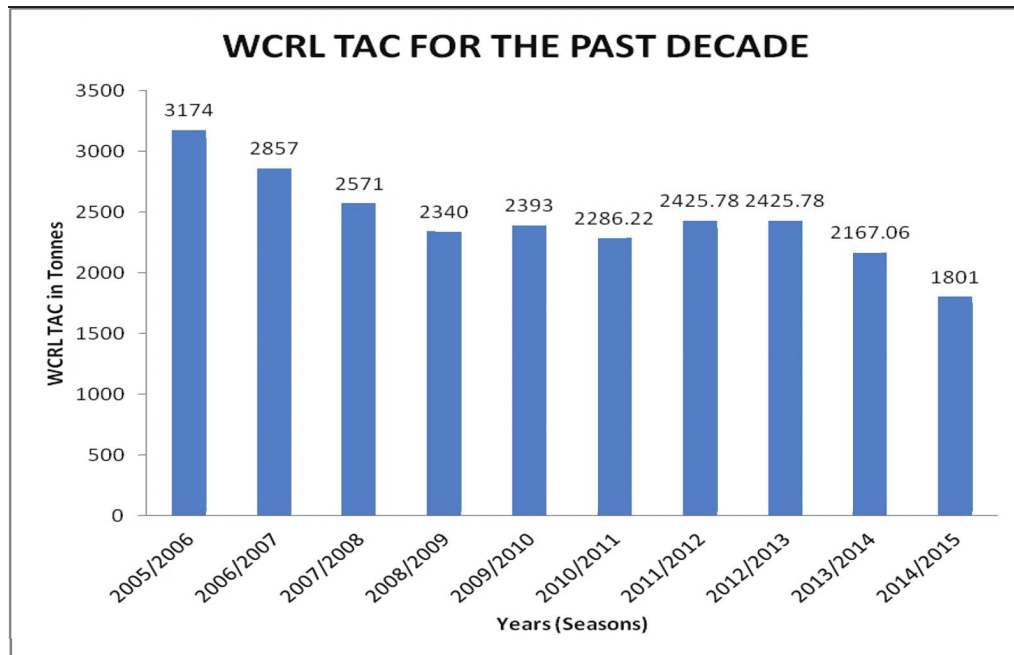
Commercial fishing began in the 1880's, and expanded rapidly in the early part of the 20<sup>th</sup> century. Although catch records prior to 1940 are sparse, catches appear to have peaked in the period 1950 to 1965, when between 13 000 and 16 000 tons were landed annually.

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.

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 20<sup>th</sup> 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(O) and WCRL(N) 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, 237 were granted in the WCRL(O) fishery (as per records of the long term rights allocation process, LTRAMP)<sup>1</sup>.

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.

### 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 entities owned and/or controlled by historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), and to broaden meaningful participation in the WCRL(O) fishery (through increased participation, sharing value-creation opportunities and profits, and links);
- (b) ensure sustainable livelihoods through the promotion of fair employment
- (c) promote adherence to fair labour practices and improved working conditions
- (d) promote food security and poverty alleviation;
- (e) prefer applicants who rely on the harvesting of lobster in the WCRL(O) fishery as a major source of their gross annual income above applicants deriving income from sources outside the WCRL(O) fishery;
- (f) facilitate the recovery of over-exploited and collapsed fish stocks; and
- (g) achieve optimum utilisation and ecologically sustainable development of marine living resources.

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<sup>1</sup> Figures as per 2005/6 long term rights allocation process

## **5. Granting of fishing rights**

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**

- (a) Section 18 of the MLRA provides that only South Africans persons may hold a fishing right.
- (b) Having regard to the nature of operations and resource accessibility. Only the following South African citizens will be considered in the West Coast rock lobster offshore fishery.
  - (i) companies (legal entity); and
  - (ii) close corporations (legal entity).

### **5.2. Duration of right**

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

### **5.3. Total Allowable Catch 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(O) 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 the WCRL(O) fishery will not be precluded from applying for, or holding commercial rights in other local commercial fisheries sectors.

This shall mean any person can only 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. In this case, the "applicant" shall mean an individual, a shareholder or director in a company, or a member in a close corporation applying for a right in any fishery sector.

Individuals who hold shares or a member's interest in an entity which is applying for the allocation of rights in the fishery, may also hold shares, an interest in an entity which is applying for, or already holds rights in another fishery.

Individuals who are directors or employees of an entity which is applying for the allocation of rights in the 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 harvesting of lobster in the WCRL(O) fishery as a major source of their gross annual income.

## **7. Evaluation criteria**

Applications for the allocation of rights in the WCRL(O) 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 the TAC 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 it, a controlling shareholder, a member with a controlling interest, or a director, has been convicted of a serious transgression of the MLRA (without the option of the payment of a fine).

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

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

#### **(c) Non-utilisation**

Applicants which have held a right in the WCRL(O) fishery during the period duration of 2006 to 2014, which was not utilised, shall be excluded.

## 7.2. Balancing criteria

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

### (a) Transformation

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 Black Economic Empowerment Amendment Act.

Applicants, depending on the form of the applicant, will be assessed and scored on the following transformation criteria:

- (i) The percentage of people from designated groups and HDIs represented at top salary, board of directors, members and senior official and management levels;
- (ii) The extent to which an applicant's black ownership and black management transformation credentials (as measured in the 2005 LTRAMP) have subsequently improved, remained the same, or deteriorated in the period following the granting of rights in the LTRAMP
- (iii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iv) Compliance with the Employment Equity Act 55 of 1998 and the representativity of designated groups and HDIs at the various levels of employment below senior official and management level;
- (v) Affirmative procurement;
- (vi) Compliance with legislation on skills development and the amounts spent on the training of Black persons, youth, women people with disabilities and participation in learnership programmes; and
- (vii) Corporate social investment.

### (b) Fishing performance

The historical fishing performance of applicants who have held fishing rights in the WCRL(O) fishery will be examined to determine if they have effectively utilised their

fishing rights. Effective utilisation shall mean activation of the catch permit, landing of catch, and subsequent submission of catch data 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 which commits to retaining existing employment opportunities, or to increasing employment opportunities if it is allocated a right in the WCRL(O) 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;
- (ii) medical aid or any kind of medical support;
- (iii) pension and provident fund;
- (iv) safe working conditions in accordance with the applicable legislative requirements; and
- (v) an employee share scheme, which ensures that employees enjoy an effective shareholding in the right holder.

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

An applicant will be required to demonstrate a right of access to a vessel suitable for the harvesting of lobster in the WCRL(O) 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.

A suitable vessel in the WCRL(O) fishery is a large fishing vessel that:

- (i) has a South African Maritime Safety Authority (SAMSA) registered length of approximately 30 meters and a minimum length of approximately 8 meters;
- (ii) has a functioning Vessel Monitoring System (VMS); and
- (iii) is geared for either trap or hoop net fishing.

**(f) Applicants involvements and relationship with other applicants**

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

A company and its subsidiary/ies may not be granted more than one right in the WCRL(O) fishery, so as to avoid fronts and monopolies in order to promote broader access to the WCRL(O) resource. Applicants are required to disclose their relationship to other applicants for the allocation of rights in the WCRL(O) fishery, as well as in other commercial fisheries. If an entity and its subsidiary both apply for a right in this fishery, the holding/umbrella/parent company will be preferred with due regard being taken of the Department's transformation objectives.

**(ii) Brother-Sister Corporations**

If two or more entities which are owned and controlled by the same person or persons or shareholders apply for commercial fishing rights in the WCRL(O) fishery, and qualify for the allocation of such rights, then the Department may consider: allocating a fishing right to one of the qualifying entities only; or dividing the TAC between the qualifying entities.

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

- 8.1. The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery sector.
- 8.2. The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received make its final decisions.
- 8.3. The delegated authorities may invite representations regarding the assessment of the applications before making final decisions.

**9. Announcement of decisions**

The Delegated Authority shall after making 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(O) 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 non-refundable application fee shall be payable before submission of the application 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. Ecosystem Approach to Fisheries Management**

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems. An EAF strives to balance diverse societal objectives, by taking into account the knowledge and uncertainties about biotic, abiotic and human components of ecosystems and their interactions and applying an integrated approach to fisheries within ecologically meaningful boundaries.

**11.2. Observer programme**

- (a) The right holder of a commercial WCRL(O) 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 so required by the Department.

- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity, 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 proceeding under section 28 of the MLRA.

### **11.3. Vessels and fishing effort**

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

### **11.4. Performance measuring**

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

### **11.5 Offences**

A successful applicant that fails to utilise its WCRL(O) fishing right for one fishing season without any reasonable explanation, or that 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 right holders in this fishery and will be subject to revision as and when it may be necessary.

**13. Glossary of terms**

- 13.1 "Brother-Sister corporations" are subsidiary companies owned by the same parent company.
- 13.2 "Close corporation" means close corporation in terms of the Close Corporations Act (No. 69 of 1984), of which the majority of members are South African persons.
- 13.3 "Company" means a company registered in terms of the Companies Act No. 71 of 2008, of which the majority of shareholders, as prescribed by the Minister, are South African persons.
- 13.4 "Historically disadvantaged person" means a person who belongs to a group of persons who suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.5 "Legal entity" means a close corporation or company.
- 13.6 "MLRA" means the Marine Living Resources Act (Act No. 18 of 1998).
- 13.7 "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act (Act No. 18 of 1998).
- 13.8 "Right Holder" means a person or a legal entity that was previously granted or lawfully acquired a fishing right, or which will be granted a right in the allocation process envisaged in this Policy.
- 13.9 "Same household" means a group of two or more persons living in a residential dwelling unit (which includes a house, semi-detached dwelling, separate outbuildings, an apartment, or any other independent structure) who are dependent on each other, or dependent on one or more members of that group. This includes, but is not limited to, spouses or persons in a long-term relationship, and their dependent children; guardians and their dependent wards; and any other dependent relationship. Persons living at the same address or in the same residential unit, and who are not dependent on any other person at that address or residential unit, do not constitute a single household.
- 13.10 "South African citizen" means a South African citizen in terms of the South African Citizenship Act (Act No. 88 of 1995).
- 13.11 "Subsidiary company" is a company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.
- 13.12 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.13 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.14 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.15 "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.
- 13.16 "Total Applied Effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish for individual species or groups of species.