

**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES**

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**POLICY ON THE ALLOCATION AND MANAGEMENT OF COMMERCIAL FISHING RIGHTS IN  
THE ABALONE 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 Abalone fishery (“the abalone fishery”) shall be referred to as the “**Abalone Fishery Policy: 2015**”.

This policy must be read in conjunction with the MLRA and regulations under the MLRA; the General Policy on the Allocation and Management of Fishing Rights: 2013 (“the 2013: General Policy”), other relevant current 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 right: 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 the persons issued with permits in terms of the MLRA may harvest abalone, transport abalone catch from a landing site to the permitted Fish Processing Establishment (“FPE”) and export abalone catch and products thereof.

## 2. Profile of the fishery

### 2.1. Species description

The targeted commercial specie of abalone in South Africa is the *Haliotis midae*, locally known as perlemoen. Abalone is an herbivorous gastropod that feeds on seaweed and algae.

Abalone has a flattened, ear-shaped shell, with irregular corrugation, a wide opening at the base and a row of small holes through which water escapes after aerating the gills. The shell covers the dorsal part of the body leaving some fleshy parts protruding from the side. Abalone also has a muscular foot running along the wide open base.

Abalones are dioecious broadcast spawners in that they reproduce by releasing their gametes into the surrounding water for external fertilization to occur. Therefore, groups of adult males and females are necessary to increase chances of successful external fertilization. Like many gastropods, Abalone has a complex life cycle involving larval stages. External fertilization is followed by development of larvae that eventually change into the adult form, which settle from the plankton into a hard substrate. The larvae may spend 2 to 14 days

in the water column before settling into a hard substrate. Abalone takes about eight years to reach sexual maturity or between six to twelve years for their shells to grow to the minimum legal size limit of 114 millimetres shell width.

## 2.2. **Habitat**

Abalone is a long-lived specie that can survive for at least 30 years, living in rocky ocean waters habitat that is interspersed with sand channels. Sand channels may be important for the movement, and concentration of drift macro algae and red algae, upon which Abalone is also known to feed. Abalone is found in shallow waters, with greatest densities occurring in water less than 10 metres deep. Abalone juveniles are known to shelter under the sea urchin spines canopy. Abalone shells provide an alternative, secondary habitat for a host of organisms such as algae and small invertebrates.

## 2.3. **Distribution of population and status of the fishery**

The South African Abalone Fishery extends from St Helena Bay to the North of Port St Johns. The commercial fishing grounds, however, are located from Cape of Columbine in the west to Cape Agulhas in the east. The commercial harvesting area is divided into seven primary zones (Zones A-G) which are further subdivided into secondary zones A1, A2, A3 (excluding Dyer Island); B1, B2; C1, C2; D1, D2; E1, E2; F1 G1, G2 and G3 as depicted in Figure 1 and Figure 2 below respectively. The purpose of splitting the zones into smaller secondary zones is to assist with compliance and monitoring and to instill a sense of “ownership” amongst right holders over the secondary zone and abalone in that zone. However, the splitting of the commercial fishery into primary and secondary zones has its own complications in that the populations of abalone in zones differ and may be insufficient to support commercial fishing. This in turn has resulted in abalone right holders allocated to zones where there is zero or not enough abalone to harvest their Total Allowable Catch (TAC) being allocated to other zones where there is a recommended TAC or more than enough that can be harvested by right holders after the proportional split of the global TAC. Permitting the right holders to harvest their portions of abalone allocations (“Quota”) has never been a smooth process given the expectation of “ownership.” Some of the right holders in areas where there is a recommended abalone TAC resisted the re-allocation of right holders in primary or secondary zones with zero TAC or zonal TAC even though there was enough abalone to accommodate them. As result hereof court proceedings were instituted. The dispute was resolved in a manner which permitted the Minister to deviate from policy when necessary.

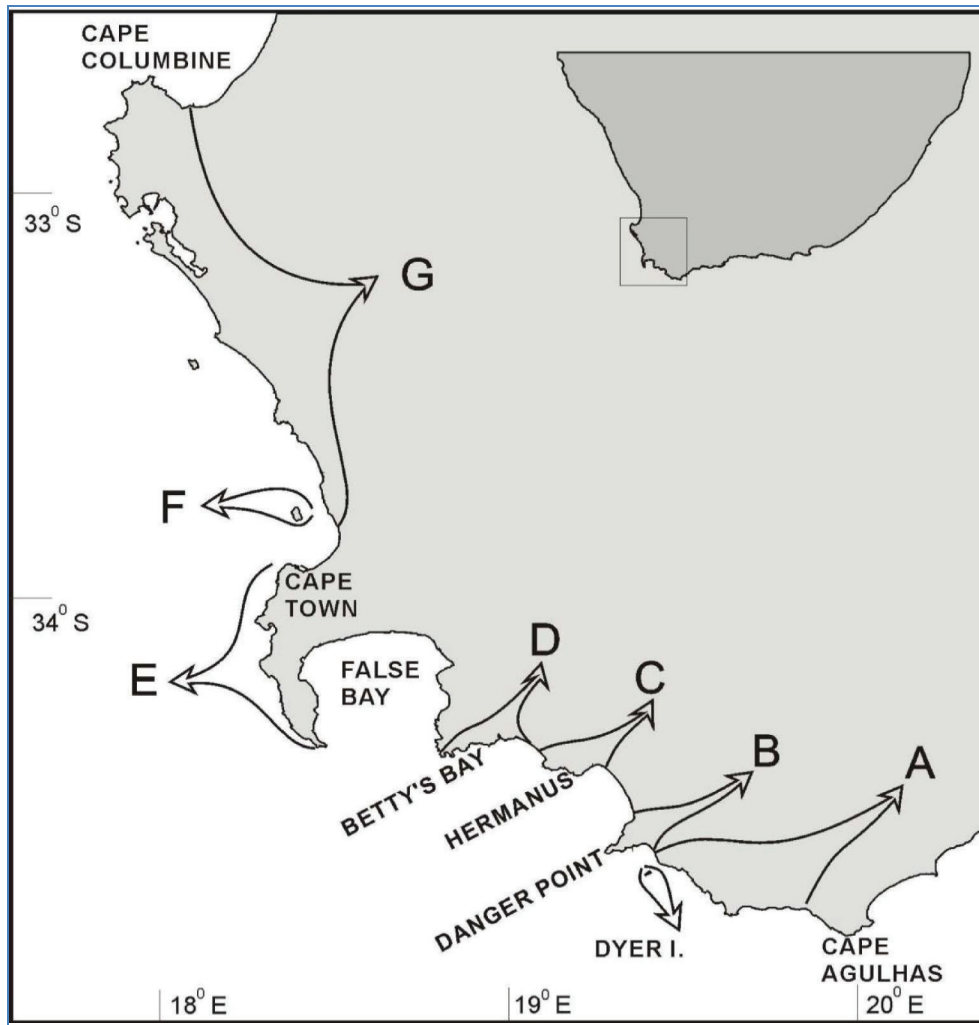
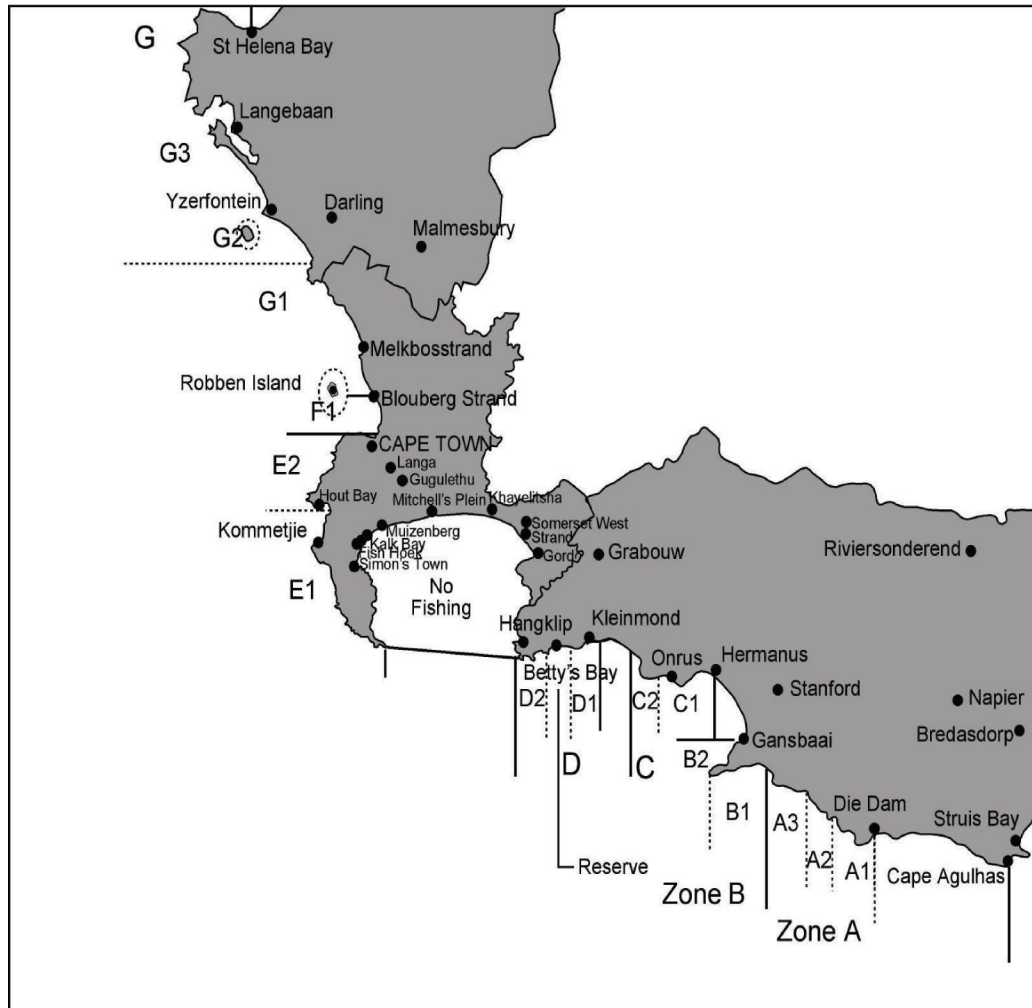


Figure 1: Map depicting the abalone primary harvesting zones.



**Figure 2: Map depicting the abalone secondary harvesting zones:**

- Zone A Secondary Zones: A1, A2 and A3 (excluding Dyer Island)
- Zone B Secondary Zones: B1 and B2
- Zone C Secondary Zones: C1 and C2
- Zone D Secondary Zones: D1 and D2
- Betty's Bay Marine Protected Area between Secondary Zones D1 and D2
- No abalone harvesting in the False Bay Area
- Zone E Secondary Zones: E1 and E2
- Zone F: Robben Island ("F1")
- Zone G Secondary Zones: Secondary Zones G1, G2 (Dassen Island) and G3

The South African abalone commercial fishery commenced in 1949 as a limited entry fishery. The abalone fishing season is from 1 November of year one to 31 July of the following year. In each fishing season the right holders will be given a certain TAC that they must harvest. The abalone fishery is primarily a day fishery. Vessel launching and landing of catch occurs

between 08h00 and 15h00. In summer launching can be done an hour earlier. The designated landing or launching sites are depicted in Table 1 below. The right or permit holders are only allowed to utilize a “hookah system” (surface air supply) for the harvesting of abalone. Only the use of an air-hose not exceeding 60 meters in length, attached to the vessel, is permitted when undertaking commercial fishing of abalone. Most of the abalone caught is exported to Asian countries and only a small portion is sold locally. The abalone catch is processed and exported in frozen or canned or dried or live or shell products and/or parts thereof.

**Table 1: Abalone designated landing or launching sites**

No.	Landing or launching sites
1.	Buffeljagsbaai slipway
2.	Cape Town (Oceana Power Boat Club) slipway
3.	Gansbaai harbor
4.	Hout Bay harbor
5.	Kleinbaai slipway
6.	Kleinmond slipway
7.	Kommetjie slipway
8.	Miller’s Point slipway
9.	Saldanha Bay harbour (Allowed to launch at Jacobsbaai but must land at Saldanha Bay Harbour)
10.	St Helena Bay harbor
11.	Witsands slipway
12.	Yzerfontein harbor

Prior to the 1998-1999 abalone fishing season, the commercial fishery was divided into two components, namely: entitlement holders (approximately 50 licenced divers) and quota holders (about five “packers”). The entitlement holders owned the right to dive (using hookah equipment only) and deliver a fixed percentage of the annual TAC. The quota holders owned the receiving, processing, and marketing rights to a fixed percentage of the annual TAC.

Commercial fishing of the resource has been managed on the basis of annual revised area specific TACs since the 1985-1986 fishing season. The TAC in 1986-1987 to 1988-1989 fishing seasons to approximately 640 tons. It steadily decreased, reaching 75 tons in the 2007/08 fishing season. The abalone fishery was closed in February 2008. The fishery was reopened in July 2010 pursuant to a Cabinet decision. There was a zero TAC for abalone in the 2008/2009 fishing season. The TAC was 96 tons in the 2013/2014 and 2014/2015 fishing seasons.

The decreased in the TAC was as a result of amongst other the effects of illegal harvesting (poaching) and the collapse of the sea urchin population in some commercial fishing zones. The latter is due to increased predation by west coast rock lobster, *Jasus lalandii*. Juvenile abalone shelter under the sea urchin spines canopy. As a result of the collapse in the urchin populations it resulted in a high mortality of juvenile abalone recruits.

In fact illegal harvesting is considered to be the most significant threat to abalone in South Africa. Abalone in South Africa is especially vulnerable to harvesters because it has a patchy distribution, short larval period, is slow growing, relatively long-lived, has low or sporadic recruitment, and mature individuals, which tend to accumulate in shallow water, making it easily accessible to harvesters. The sale of abalone yields high economic returns and hence it has attracted the interest of many, including poachers. The high economic return from the abalone fishery has been found to be associated with a sharply declining South African Rand to US Dollar exchange. Poachers are non-selective with regard to the size of the abalone that they poach, and today, more than 60% of the abalone is below the minimum legal size of 114 mm shell breadth (137 mm shell length).

Low recruitment in various protected areas further threatens the abalone population as the reproductive adults that have died from natural causes or have been removed from illegal and legal harvesting are not replenished. While low recruitment caused by unfavourable environmental and biotic factors usually cannot be predicted or controlled, ensuring that there are sufficient adult abalones to reproduce each year will allow recruitment to occur when environmental conditions are favourable. Future threats may include habitat loss in localised areas to developments on, in and under the water in the event they are unregulated, and predation by west coast rock lobster.

### 3. The 2003/2004 long-term rights allocation process

In the 2003/2004 Long-Term Fishing Rights Allocation and Management Process (LTRAMP) 304 rights were issued (264 individuals and 40 legal entities). Rights valid for ten years were allocated to Divers and Legal Entities. Rights valid for three years were allocated to five Abalone Processing Factories (APFs). One individual right holder returned his abalone fishing right to the Department. In 2012 the Minister revoked the abalone rights of 5 individual right holders. The number of abalone right holders at the expiry of the abalone fishing rights on 30 July 2015 was 298 (258 individual right holders and 40 legal entities). The split of the 298 abalone right holders per zone was as follows:

- Zone A = 28 (25 divers plus 3 legal entities)
- Zone B = 32 (27 divers plus 5 legal entities)
- Zone C = 165 (151 divers plus 14 legal entities)
- Zone D = 18 (15 divers plus 3 legal entities)
- Zone E = 46 (37 divers plus 9 legal entities)



- Zone G = 9 (3 divers plus 6 legal entities)

#### 4. Objectives

The objectives and principles of allocating fishing 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 a fishery (through increased participation, sharing value-creation opportunities and profits, and forging 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 abalone as a major source of their gross annual income over above applicants deriving income from sources outside the 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.

#### 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 fishing 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 this sector. In the abalone 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 the fishery.

The Delegated Authority shall allocate proportions of TAC to each successful applicant based on the applicable balancing criteria and it will be reflected as a proportion of the local commercial TAC available at the time the fishing right is allocated. All rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after 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 abalone 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 African persons may hold fishing rights.

- (b) Having regard to the nature of operations and resources accessibility, only the following South African persons will be considered in the abalone fishery:
- (i) a citizen (individuals/divers) as defined in terms of the South African Citizenship Act, 1995 (Act 88 of 1995);
  - (ii) a company (legal entity); and
  - (iii) a close corporation (legal entity).

## **5.2 Duration of Right**

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

## **5.3 Total Allowable Catch**

In terms of section 14 of the MLRA the Minister is empowered to determine a TAC, Total Applied Effort (TAE) or combination thereof to apply in each fishery.

The TAC, TAE or combination thereof are 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, TAE or combination thereof to commercial right holders based on the proportion granted to each successful applicant at the time of the commercial fishing rights allocation process. The right holder's allocation may decrease or increase should the annual local commercial portions of the determined TAC, TAE or combination thereof 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 transfer of fishing rights in whole or in part. However, rights granted 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.

A notification of transfer of shares or members' interest must be served on the Department within 30 days of such sale or transfer or any time-period set in applicable permit conditions in all cases in which shares or a member's interest in a right holder are sold or transferred. In addition, the Department's approval is required for all cases in which the sale or transfer of shares or a member's interest in a right holder results in a change of control of the entity, or in the entity being less transformed than it was at the date on which rights are allocated.

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 the Minister.

## **6. Multi-sector involvement**

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

This shall mean any person can apply for a right in any fishery sector regardless whether the applicant has applied for a right or holds a right in any other fishery sector. In this case, the “applicant” shall mean an individual, a shareholder or Director in a company, or a member in a close corporation or a co-operative applying for a right in any fishery sector. However the Delegated Authority reserves the right to grant a right in any 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 or a stake in an entity or cooperative 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; or be a participant in a cooperative operating in another fishery.

The Delegated Authority reserves the right to grant a right to the applicant in any sector and may, however, prefer applicants who rely on the harvesting of abalone as a major source of their gross annual income.

## **7. Evaluation Criteria**

Applications for rights in the abalone 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 TAC will be apportioned to successful applicants.

### **7.1. Exclusionary criteria**

Apart from the criteria described in the 2013: General Policy pertaining to the lodgement of 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 member with controlling interest, a director or a controlling shareholder 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 member with a controlling interest, a director or controlling shareholder had 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 person 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 abalone fishery during the period of 2006 to 2014, which was not utilised, shall be excluded.

(d) **Personal involvement in harvesting of the resource**

Individual applicants will be required to demonstrate that they will be personally involved in the abalone fishery. They will be required to actively participate in the harvesting of the resource and the business operations. Only applicants 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 be personally involved in the harvesting of the resource but who are dependent on the abalone 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, depending on the form of 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 2004/05 abalone rights allocation process) have subsequently improved, remained the same, or deteriorated in the period following the granting of rights in the 2004/05 abalone rights allocation process;
- (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 representivity 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 blacks, 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 abalone 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 (5) years during the period 2005-2013. Applicants should submit this information with their application forms.

**(c) Local economic development**

To the extent relevant to the abalone fishery:

- (i) In order to promote local economic development the Delegated Authority will give preference to applications who will land catches at harbours situated outside the metropolitan areas.
- (ii) The Delegated Authority may, in order to ensure that all fishing communities share in the marine living resources, use the locality of landing sites and fishing 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 rights 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;
- (ii) medical aid or any kind of medical support arrangement;
- (iii) pension / 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 abalone. 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 (where applicable) in the abalone fishery is a vessel which is suitable in the abalone fishery in that it:

- has a maximum overall length of 8m ("loa" as set out in the certificate of safety issued by SAMSA);
- is certified by South African Maritime Safety (SAMSA) as being safe and has valid safety certificates issued by SAMSA;
- is geared for abalone fishing; and
- has a functioning vessel monitoring system (VMS) at the time of applying for a vessel licence if the application is successful;

- has a pole extending 2m above the deck of the vessel displaying the vessel and area numbers at the time of applying for a vessel licence if the application is successful.
- has a vessel and area numbers clearly marked on the bow section of the vessel. All identification numbers and letters must be 20cm in height and 2cm in thickness and must be white on black.

For the purposes of ensuring effective enforcement, a suitable vessel will exclude all:

- inflatable boats;
- semi-rigid inflatable boats; and
- vessels equipped with outboard motors will not be permitted to utilise motors of more than 90 hp each.

In order to verify if the vessel meets the suitable vessel criteria, applicants must submit photos of the vessel as well as copies of the SAMSA registration certificate.

(f) **Applicant's involvements and relationship with other applicants**

(i) **Same household involvement**

The same household may not be granted more than one right in the abalone fishery so as to avoid fronts and monopolies and to broaden access to the abalone resource. Applicants are required to disclose their relationship to other applicants in the abalone 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.

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

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

(iii) **Brother-Sister Corporations**

If two or more entities which are owned and controlled by the same person or persons or shareholders apply for a commercial fishing right in the fishery, and qualify for 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.

(iv) **Individuals with shareholding in legal entity**

If an individual applies and qualifies for a fishing right in the abalone sector as an individual as well as a shareholder in a legal entity, the Department will only consider allocating the abalone fishing right to the individual in the capacity as a shareholder of the legal entity so as to broaden participation in the abalone fishery.

7.3. **Divers**

- (a) Preference will be given to allocating rights to citizen who are *divers* and who reside in the coastal community adjacent to the secondary zone in which abalone rights are to be allocated. The South African citizen applicant must clearly demonstrate that he or she:
- (i) is a qualified diver and is certified in terms of the regulations promulgated under the Occupational Health and Safety Act 85 of 1993 to be a certified commercial diver;
  - (ii) has an historical involvement in the harvesting of abalone (i.e. that he or she has a history of diving legally for abalone) and who will use assistants experienced in abalone harvesting and who are members of the communities adjacent to the secondary zone applied for;
  - (iii) is substantially reliant on the abalone resource for 75% or more of his or her annual income;
  - (iv) has been permanently resident for the past two years in the coastal community adjacent to the secondary zone that is applied for;
  - (v) is registered as a tax payer with the South African Receiver of Revenue and all taxes have been paid; and
  - (vi) has not been convicted of an offence related to the poaching of abalone during the last two years.
- (b) Divers that are historically disadvantaged persons will be given preference. Preference will be given to divers who are not shareholders or directors of abalone processing factories.

7.4. **Legal entities**

- (a) The Department will allow legal entities (only South African companies and trusts and close corporations) to apply. However, a right will only be granted to a legal entity—
- (i) that demonstrates that it is capable of catching its own allocation;
  - (ii) that demonstrates a track-record of involvement in abalone catching or processing and marketing;
  - (iii) that held a medium-term commercial abalone right (2001-2003 abalone fishing seasons);
  - (iv) demonstrates access to a suitable vessel as described above;



- (v) that demonstrates significant transformation in both ownership and management (i.e. is more than 66% owned and managed by historically disadvantaged persons);
- (vi) that demonstrates that 75% or more of its annual turnover is derived from the harvesting and / or marketing of abalone;
- (vii) that is a registered VAT vendor (if applicable) and is registered with the South African Revenue Services and whose taxes have been fully paid up;
- (viii) whose registered place of business for the past two abalone fishing seasons has been in the coastal area adjacent to the zone that is applied for; and
- (ix) that has historically complied with the MLRA and all the requirements thereunder.

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

- 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 decision.
- 8.3. The Delegated Authority 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 decision.

Further General Reasons for decisions in a specific fishery sector 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 application in the abalone sector.

## **10. Payment of application and grant of right fees**

- 10.1. The application fees 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 on or 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. Ecosystem approach to fisheries**

A 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 abalone 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 holders' vessel; the Department may implement proceedings under section 28 of the MLRA.

**11.3. Performance measuring**

Successful applicants will be subjected to a number of performance measuring exercises for the duration of their fishing right. 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 applicant that fails to utilise its abalone 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.

**11.5. Marine Protected Areas**

The marine protected area at Betty's Bay will be closed to all abalone harvesting. No right holder shall be permitted to enter this protected area for the purposes of diving for abalone.

**11.6. Dyer Island**

- (a) It is the Department's view that the abalone species should be afforded further protection in one other "no-take" refuge. This should be a discrete identifiable, population site.
- (b) Dyer Island is well suited and the closure of Dyer Island for the purposes of making it a sanctuary is part of a necessary strategy to protect the abalone species as the Bettys Bay Marine Protected Area is not sufficient to provide the only protection to abalone.

**11.7. Gear and equipment**

- (a) The Department will only permit the utilisation of the "hookah system" for the harvesting of abalone. The generator that will be used on board the vessel must at all times carry an official Department "abalone generator" tag, which shall be provided by the Department.
- (b) Each diver will only be permitted one wetsuit or drysuit on board the suitable vessel. No assistant may wear or carry a wet suit on board the suitable vessel. Divers will each be provided with one tag for their wetsuit.

**11.8. Landing site**

- (a) Right holders shall only be entitled to land catches at the landing site located nearest to the secondary zone in which they are permitted to harvest abalone. The landing sites for abalone are listed in Table 1. These landing sites / boat launching sites (other than those within proclaimed harbours or ports) will however only be capable of use if licenced in accordance with regulation 7 of GN Regulation 1399 of 21 December 2001.
- (b) Permits allocated will stipulate the harbour or landing site from which right holders must launch and at which all catches must be landed. All catches will be weighed at the harbour or landing site. The weight at the landing site will be the recorded weight for the purposes of quantum control.

**11.9. Processing, transporting and selling abalone**

- (a) Only fish processing establishments that hold a fish processing establishment permitted in terms of the MLRA to process abalone in wild form shall process abalone.
- (b) Harvested abalone must be transported from the landing site and delivered to a permitted fish processing establishment by a person(s) permitted to transport

abalone. A certified true copy of the catch permit and the catch statistics book (landing book) for the permit holder whose abalone is being transported must be kept in the vehicle transporting the harvested abalone. Should any fish processing establishment purchase abalone that has already been shucked, such a fish processing establishment could have its right suspended, revoked or cancelled.

- (c) The landed mass of the abalone must be recorded by the right holder. The Department will only allow for a maximum of 3% loss of weight from landing site to the fish processing establishment.
- (d) Who may market and sell the abalone shall be for the right holder to determine.

## **12. Permit Conditions**

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with successful applicants 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, (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, (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. "Race, gender and disability" means race, gender and disability as defined in the Employment Equity Act (Act No. 55 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. "Rights" means fishing or harvesting rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.10. "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 the same household.
- 13.11. "South African citizen" means a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995).
- 13.12. "Subsidiary company" is a company that is partly or completely owned by another company that holds a controlling interest in the subsidiary company.
- 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. "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.16. "Total Allowable Catch" (TAC) means the maximum quantity of fish of individual species or group 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.

- 13.17. "Total Applied Effort" (TAE) 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.