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**IN THE EQUALITY COURT OF SOUTH AFRICA**

**Held in the High Court of South Africa  
(Cape of Good Hope Provincial Division)**

**Case no: EC1/05**

**Before the Honourable Mr Justice N C Erasmus**

In the matter between

**KENNETH GEORGE AND OTHERS**

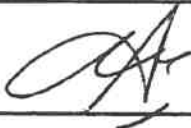
Applicants

and

**THE MINISTER OF ENVIRONMENTAL AFFAIRS**

Respondent

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~~DRAFT ORDER~~

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**The following order is made by agreement between the parties:**

1. The inquiry to be held in terms of section 21(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 is postponed *sine die*.
2. The Respondent must approve for gazetting by 31 July 2009 the policy presented to him by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("DEAT").

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2.1. The framework must accommodate the socio-economic rights of traditional/ subsistence fishers and ensure equitable access to marine resources for those fishers.

2.2. The framework must take into account:

2.2.1. the principles and objectives contained in section 2 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("the MLRA"); and

2.2.2. international and national legal obligations;.

2.3. The respondent must develop the framework in consultation with the National Joint Small Scale Fisheries Policy Task Team, (the National Task Team) which has been set up in compliance with the order of this court dated 2 May 2007.

2.4. Should the task team fail to reach consensus on the contents of the framework to be submitted to the Respondent, the parties agree to submit the matter to be resolved in terms of the dispute mechanism procedures set out in Chapter 4 of the National Environmental Management Act, 1998 (Act No.107 of 1998).

3. Pending the implementation of the framework, interim relief is granted in the following terms and subject to the following conditions:

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- 3.1. The applicants must identify not more than 1 000 *bona fide* traditional fishers (“the identified fishers”) who had not been allocated long-term fishing rights and who can demonstrate both historical dependence and reliance on fishing (“the criteria”) along the Cape West and south coast between Port Nolloth in the north and Arniston in the south and submit these identified persons to the Respondent or his delegated official. It is agreed that the parties will seek to ensure that the Arniston fishers be granted an improved package by 31 December 2008 as they may possibly not benefit from the species package set out in the table below.
  
- 3.2. The Respondent or his delegated official reserves the right to eliminate from this list of identified fishers any person who do not comply with the criteria in paragraph 3.1 and will give notice with reasons of such intention to The Trustees Of The Time Being Of The Masifundise Development Trust (“Masifundise”).
  
- 3.3. The identified fishers must apply for and be in possession of a valid recreational fishing permit, which shall be processed and issued by the DEAT without the payment of the fees as prescribed by the MLRA.
  
- 3.4. The Respondent or his delegated official shall by way of exemption, until the date specified in the paragraph below, permit the identified fishers to engage in fishing and to sell the lawfully caught catch under the authority of the recreational permit, the following species:

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Species/Common Name	Fishing Arrangement	Duration
West Coast Rock Lobster	20 lobsters per person per week	15 November to 15 April 2009 (Weekdays only)
Traditional Linefish	Cumulative total of not more than 30 fish per person per day in any combination of species (Yellowtail, Snoek and Cape bream (Hottentot) but excluding Silverfish (Carpenter)	Every day of the week until 30 June 2009
White mussel	Not more than 50 white mussels per person per day	Everyday of the week until 30 September 2009

- 3.5. The Respondent undertakes to consider extending the time period for harvesting of traditional linefish beyond 30 June 2009 until finalisation of the policy.
- 3.6. The identified fishers shall not be entitled to transfer the recreational permits.
- 3.7. Should the Respondent, at any time, consider that the stock of any species identified for catch and sale by the identified fishers in terms of this order may be endangered or under undue pressure, or consider that the interim relief is not sustainable taking into account other claims on the resource, then the Respondent may:

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- 3.7.1. Suspend all or any of the fishing in that fishery by the identified fishers;
  - 3.7.2. Restrict the number of identified fishers or fishing vessels in the fishery;
  - 3.7.3. Restrict the mass of fish or amount of fish which the identified fishers are permitted to catch in terms of this order.
- 3.8. DEAT shall issue permits to the identified fishers in order to give effect to the terms of this order, which shall include a composite set of permit conditions stipulating clearly the seasonal calendar for each permit, the vessel and landing site specifications and any sector specific regulations that pertains to the qualifying fishers. The conditions shall include that the qualifying fishers must:
- 3.8.1. Use suitable vessels and fishing gear determined by DEAT as being suitable;
  - 3.8.2. Engage in fishing in designated fishing zones only;
  - 3.8.3. Catch and land the fish in the landing site zones to be designated by DEAT or harvest their fish in coastal areas designated by DEAT;

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3.8.4. Should no significant progress be made in implementing this order, the applicants may set the matter down for hearing on a date to be determined by the Registrar after consultation with the parties.

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GOVERNMENT NOTICE

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DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

No. 474

20 June 2012



**POLICY FOR THE SMALL SCALE FISHERIES  
SECTOR IN SOUTH AFRICA**

February 2012

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**GLOSSARY OF TERMS - DEFINITIONS AND ACRONYMS USED IN THE POLICY****Definitions**

<b>Terms</b>	<b>Definitions</b>
Co-management	Means a governance approach in which Government and a Small Scale fishing community share the responsibility and authority for the management of a marine resource by that community.
Community	Means any group of persons or a part of such a group who share common interests, and who regard themselves as a community.  (Small Scale fishing community is defined below)
Community-based legal entity	Means a recognised group of fishers from an identified and declared fishing community, which is a legal entity with perpetual succession, and the holder of a right granted or recognised under this Policy.
Small Scale Fishing	Means the use of marine living resources on a full-time, part-time or seasonal basis in order to ensure food and livelihood security. For the purposes of this policy, fishing also means the engagement (by men and women) in ancillary activities such as, (pre and post harvesting, including preparation of gear for harvesting purposes), net making, boat-building, (beneficiation, distribution and marketing of produce) which provide additional fishery-related employment and income opportunities to these communities).
Human rights based approach	Means an approach to policy making and development that uses the normative human rights framework and instruments as a guide for planning and for measuring the progress that is made towards achieving the objectives of that policy.
Low technology or passive gear	Means simply fishing equipment, nets or vessels operated mainly by hand that have been traditionally used in or for catching or harvesting marine living resources.
Multi-species approach	Means an arrangement where a pre-determined variety or mix of marine living resources are harvested or caught.
Small Scale fishers	Means persons that fish to meet food and basic livelihood needs, or are directly involved in harvesting / processing or marketing of fish, traditionally operate on or near shore fishing grounds, predominantly employ traditional low technology or

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	passive fishing gear, usually undertake single day fishing trips, and are engaged in the sale or barter or are involved in commercial activity.
Small Scale fisheries sector	Means that sector of fishers who employ traditional and/or passive fishing gear and engage in a range of labour intensive harvesting, processing and distribution technologies to harvest marine living resources on a full-time, part-time or seasonal basis in order to ensure food security. This sector of fishers also engage in ancillary activities such as their own net-making, boat-building, which provide additional fishery-related employment and income opportunities to their communities.
Small Scale fishing community	Means an established socio-cultural group of persons who are, or historically have been, fishermen and -women, including ancillary workers and their families; have shared aspirations and historical interests or rights in the harvesting, catching or processing of marine living resources; have a history of shared Small Scale fishing activity but, because of forced removals, are not necessarily tied to particular waters or geographic area; and were or still are operating near or in the seashore or coastal waters where they previously enjoyed access to marine living resources, or continue to exercise their rights in a communal manner in terms of an agreement, custom or law; and who regard themselves as a community".
Sustainable development	The integration of social, economic and environmental factors into planning, implementation and decision making so as to ensure that development serves present and future generations.
Sustainable use	The management and utilisation of marine and coastal resources for fishing in an environmentally sound way that does not compromise the ability of future generations to meet their own needs from the same resources.
Vulnerable groups	Vulnerable groups in the context of small scale fisheries policy means women, children, disabled and elderly persons who have (historically) been marginalized by others in the fishing sector" or any person who can show that his/her equal enjoyment of rights and freedoms is affected in a serious manner comparable to any woman, children, disabled or elderly persons.

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**A: ABBREVIATIONS AND ACRONYMS**

CAF	Consultative Advisory Forum
Constitution	Constitution of the Republic of South Africa Act, 1996
The Department	Department of Agriculture, Forestry and Fisheries in the National Government
ECRL	East Coast Rock Lobster
FSRD	Farming Systems Research and Development
ICMA	National Environmental Management: Integrated Coastal Management Act, 24 of 2008
IGDP	Agriculture, Forestry and Fisheries Integrated Growth and Development Plan (Draft), 2 September 2010
INFP	Integrated National Fisheries Plan and Programme of Action, 20 May 2010
IDP	Integrated Development Plan
MIS	Management Information System
MLRA	Marine Living Resources Act, 18 of 1998
NEMA	National Environmental Management Act, 107 of 1998
NEMBA	National Environmental Management: Biodiversity Act, 10 of 2004
NEMPAA	National Environmental Management: Protected Areas Act, 57 of 2003
NGOs	Non-governmental Organisations
NTT	National Task Team
PGDS	Provincial Growth and Development Strategy

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SETA	Services Sector Education and Training Authority
SFTG	Subsistence Fisheries Task Group
TAC	Total Allowable Catch
TAE	Total Applied Effort
WCRL	West Coast Rock Lobster

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## 1. INTRODUCTION AND BACKGROUND

This policy aims to provide redress and recognition to the rights of Small Scale fisher communities in South Africa previously marginalised and discriminated against in terms of racially exclusionary laws and policies, individualised permit-based systems of resource allocation and insensitive impositions of conservation-driven regulation. In line with the broader agenda of the transformation of the fishing sector, this policy provides the framework for the promotion of the rights of these fishers in order to fulfil the constitutional promise of substantive equality. Indeed, in terms of our Constitution, the State is committed to respecting, protecting, promoting and fulfilling<sup>1</sup> the rights of Small Scale fishers in South Africa.

In so doing, this policy discharges the State's obligation in terms of Article 1 of the African Charter on Human and Peoples' Rights<sup>2</sup> to 'adopt legislative and other measures' to give effect to the rights enshrined in the Charter. In particular, this policy gives effect to the protection of peoples' rights to "pursue their economic and social development according to the policy they have freely chosen"<sup>3</sup> and to "freely dispose of their wealth and natural resources",<sup>4</sup>

### 1.1 Historical perspectives of the Small Scale fisheries sector

Marine living resources have been harvested for consumptive use, livelihoods, medicinal purposes and as part of cultural and spiritual practices for centuries along our coastline and evidence of marine resource use by indigenous (and local) coastal communities exists along the south, east and west coast. From archaeological evidence and oral history it is clear that Small Scale fishers have a very long history of harvesting marine living resources. For example, along certain areas of the KwaZulu-Natal coast, inter-tidal resources have been harvested for the past 100 000 years. Many Small Scale fishing communities have ancestral links with the indigenous communities and evidence such as fish traps, shell middens<sup>1</sup>, (and) vestiges of customary practice archival records remains.

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<sup>1</sup> Section 7(2) of the South African Constitution of 1996.

<sup>2</sup> South Africa ratified the Charter on 9 July 1996.

<sup>3</sup> Article 20 of the African Charter.

<sup>4</sup> Article 21 of the African Charter.

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**During Colonial times and more recently during the Apartheid era, many traditional fishing communities were dispossessed of their lands adjacent to the coast. In the 1890's South Africa introduced policy and legislation to establish a fisheries management system.**

However, this system was aimed mainly at the growing commercial fisheries sector and largely neglected the Small Scale fisheries sector. The commercial sector was dominated by wealthy white capital, which from the 1940's onwards was assisted by the range of measures that the Apartheid regime introduced to support the establishment of a flourishing export-orientated commercial fishing industry. During this period most of the coloured and black coastal communities living outside of the designated 'Bantustans' were deprived of the access that they had traditionally had to the sea and marine living resources; and prohibitions and regulations forced many into working for the white owned fishing companies. The dispossession of land, combined with the imposition of new systems of fisheries management, led to many communities losing some or all of their customary access to harvest resources and traditional fishing practices. A few communities have managed to retain their traditions and these customary practices.

## **1.2 Current status of the Small Scale fishing community**

### **1.2.1 Social dynamics of Small Scale fishers**

Small Scale fishers are an integral part of rural and coastal communities where they reside. This is reflected in the socio-economic profile of such communities. In the Eastern Cape, KwaZulu-Natal and the Northern Cape, Small Scale fishers live predominantly in rural areas, compared to those in the Western Cape, who live mainly in urban and peri-urban areas.

According to the Departmental records, fishers in the Western Cape are mainly males with a decreasing trend towards the Eastern Cape and KwaZulu-Natal. In the Western Cape, women were involved in harvesting but in more recent years, they have been marginalized. Women are however involved in many activities that are integral to the Small Scale fishing community sector.

Small Scale fishers derive their livelihoods from a wide variety of activities apart from fishing to meet basic needs. These include insecure and low pay labour without any prospects for improvement, state grants and limited employment in the services sector. Currently, cash income from fishing contributes only minimally to the livelihoods of Small Scale fishers.

### 1.2.2 Variety of species and resource use trends

Organisms such as fin-fish, mussels, octopus, rock lobster, sand and mud prawns, limpets and red bait, periwinkle(alikreukel), crabs, oysters, seaweed, sea lice, worms and abalone are generally and traditionally the most harvested resources by Small Scale fishers. Fin-fish, lobster and abalone were harvested primarily but not exclusively, for sales. However, the trend of consuming harvested resources for food tends to increase from the west to the east. It is important to stress that there are bio-regional distinctions in resource use patterns and specific organisms most harvested.

Although west coast rock lobster (WCRL) is almost entirely sold, east coast rock lobster (ECRL) is also used for bait and consumed for food in addition to being sold. Seaweed in the west coast is sold and harvested predominantly by men while collected by women from poor households in the rural south coast. Sand and mud prawns, worms and red bait are harvested for bait to be used by anglers.

Rocky inter-tidal zone resources are harvested primarily for consumption as food by poor households in rural areas. Although the demand is not high, traditional healers target some species for medicinal purposes.

The equipment used by Small Scale fishers includes rowing boats in some areas, motorized boats on the south and west coast and simple fishing gear including hands, feet, screw drivers, hand lines, prawn pumps, rods with reels, gaffs, hoop nets, gill nets, seine/trek nets and semi-permanently fixed kraal traps.

The diversity within the Small Scale fisheries and its potential contribution to poverty eradication and food security is not addressed in the Marine Living Resources Act (MLRA). The application and allocation process as provided in the General Fishery Policy on the Allocation and Management of Long-Term Commercial Fishing Rights (May 2005) was too complex and competitive for Small Scale fishers. This resulted in a large percentage of the traditional Small Scale fishers being excluded from the process.

### 1.3 Sustainable management of Small Scale fisheries resources

Traditionally, Small Scale fishers harvested a variety of marine living resources and used diverse harvesting methods. The resource harvested in a particular area also depended on regional patterns in the distribution of the various marine living resources this needs to be

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taken into consideration when determining which marine living resources are applicable to the Small Scale fisheries sector.

The Department recognises that the Small Scale Fisheries sector must be recognised for its social, socio-economic and macro-economic contribution to basic food security.

The Department recognizes that the ecosystems approach is central to the fisheries management system. Small Scale fisheries resources will be managed in terms of a community-based co-management approach that must ensure that harvesting and utilisation of the resource occurs in a sustainable manner in line with the ecosystems approach.

#### **1.4 The role of Small Scale fisheries in economic development and food security**

The Department recognizes that Small Scale fishers will be making a contribution to the country's economy and that some form of the distributive mechanisms aimed at targeting poverty alleviation or generic social support is required. Support is also required for infrastructure and services that are vital for economic development but which are unlikely to be provided by the private sector, for example, construction of transport infrastructure to markets and the provision of education and health care facilities. The Department therefore recognizes that a developmental agenda must be implemented in order to drive Small Scale fisheries.

##### **1.4.1 Poverty alleviation**

At present the most important contribution of Small Scale fisheries towards poverty alleviation would be through the use of marine living resources for food security. Experience suggests that for the large majority of households involved in fishing activities (full-time or seasonal) in developing countries, fishing and related activities have not generated high economic returns but instead have helped them to sustain their livelihoods and have prevented them from falling deeper into poverty.

In situations of economically or institutionally restricted access to other capital (e.g. financial capital such as credit) or production factors (such as private land) the relatively easy and free access to fishing grounds allows the poor to rely more heavily on the local common resources to obtain the goods and services they need to sustain their livelihoods, or to gain access to remunerated employment. This safety-net dimension of fisheries is of greater importance and relevance to poor and marginalized households - particularly those with limited access to land and other resources.

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Although these poverty alleviation mechanisms are perhaps less attractive from a purely economic point of view (no significant surplus rent is generated by the activities), the role of Small Scale fisheries as a livelihood support and coping mechanism for the poor is crucial from a social point of view particularly in areas where alternative employment may be scarce and where social security programmes are either minimal or non-existent. In such areas fisheries can play a critical role as a "welfare" (or redistributive) system, that would otherwise have to be provided through other forms of social support by local, provincial or national Government.

Small Scale fisheries should also provide a critical safety net for vulnerable Small Scale fisher households (even those which were not previously poor) when they face a sudden decline in their income. This can happen, for example, when the head of a household loses his or her job; or, on a larger scale, when the local or even national economy deteriorates.

The reliance on fisheries to provide income for the poorest not only concerns fisheries activities *per se*, but applies also to processing and trading activities. This aspect adds an important gender dimension to Small Scale fisheries, given that women are usually the main participants in these related sectors.

#### **1.4.2 Job creation and livelihoods**

Small Scale fisheries may provide substantial job creation and livelihood opportunities if these fishers and communities are involved in and are part of the entire supply chain and related activities. The Department recognizes that its and Government's role is as facilitator and provider of an enabling environment for job creation through a viable Small Scale fisheries sector within the larger fisheries management regime in South Africa.

#### **1.4.3 Food security**

Fish is an important source of protein – particularly where other sources of animal protein are scarce or expensive. In South Africa, however, per capita fish consumption is low as most of the population prefers livestock and poultry protein. The contribution of Small Scale fisheries to food security must, however, not be underestimated as an important source of cheap protein; and the income generated from it can also be used to buy food. This policy seeks to address this issue by ensuring access to the marine living resources and maximizing the benefits for fishers that can be derived from those resources.

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#### 1.4.4 Value chain and alternative livelihoods

Government recognizes that there is potential for value addition and job creation in certain fisheries sectors but that incentives are needed to stimulate the development of value added initiatives.<sup>5</sup> The Draft Agriculture, Forestry and Fisheries Integrated Growth and Development Plan (Sector IGDP) proposes a chain-wide (value chain) approach and recognizes the need for alignment with the Department of Trade and Industry's mandate.<sup>6</sup> The plan for enhancing the sector includes focussing on:

- a) equity in the value chain;
- b) growth and competitiveness through providing support to small operators (such as Small Scale fishers) to enable them to improve their productivity and incomes, while ensuring the commercial sector continues to grow; and
- c) environmental sustainability to ensure that the natural resources the sector is dependent on are used sustainably and efficiently.

This is particularly pertinent in relation to supporting the Small Scale fisheries sector and is reflected in the Department's Integrated Fisheries Development Plan and Programme of Action (IFDP). This Plan includes strategic goals that specifically address the value chain and the development of alternative livelihoods for coastal communities to lessen the implications of resource limitations and scarcity on the growth and development of the sector. The purpose of these goals is to create an enabling environment that encourages and supports value-adding activities and alternative livelihoods in key sectors and sub-sectors, such as the Small Scale fisheries. The IFDP focuses government interventions on developing and transferring new skills that will boost local economic development and create decent jobs. Some of the interventions included in this Plan are to promote the development and support of the development of alternative livelihoods. With this in mind the Department has committed itself to a comprehensive analysis of each of South Africa's 22 commercial fishery sectors in order to reach a better understanding of the socio-economic dynamics involved and to inform policy and decision-making processes.

It is envisaged that this will contribute to developing an economy in which all role players, including Small Scale fishers, the commercial sector and government, enjoy maximum

<sup>5</sup> Sector Integrated Growth and Development Plan, 2011 – 2031, p 13 (Draft).

<sup>6</sup> Sector Integrated Growth and Development Plan, 2011 – 2031, p 43 (Draft).

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benefit and financial advantage from the national marine resource base in a sustainable way.

Other initiatives include:

- a) investing in processing and marketing infrastructure in productive areas;
- b) developing relevant marketing strategies for fisheries zones;
- c) capacity development programmes and information sharing;
- d) developing area and fishery economic development zones with purpose specific development programmes in each zone;
- e) developing existing proclaimed fishing harbours to ensure equitable access to marine resources to promote local economic development;
- f) promoting job creation through the implementation of the Working for Fisheries Programme; and
- g) Aquaculture development.

The IFDP identifies various interventions aimed at providing technical and support services to the sector that, once implemented, will benefit the Small Scale fisheries sector. These include establishing a technical support and advisory service programme and comprehensive development finance scheme for fisheries; and developing a comprehensive fishery processing/beneficiation strategy to ensure maximum benefit for new market entrants along the full value chain in each fishery.

This Plan includes strategic goals that specifically address the value chain and the development of supplementary and alternative livelihoods for coastal communities to lessen the implications of resource limitations and scarcity on the growth and development of the sector. The purpose of these goals is to create an enabling environment that encourages and supports value-adding activities, supplementary and alternative livelihoods in key sectors and sub-sectors.

### **1.5 Problem statement**

The formulation of this policy takes place within a very challenging and complex context and various factors determine its formulation. These include:

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- a) the lack of a holistic approach to fisheries policy and management as the development of a new Small Scale fisheries policy comes more than two decades after the promulgation of the MLRA and after long-term commercial rights were granted;<sup>7</sup>
- b) the existing approach to fisheries governance which allocates individual rights through a long-term rights allocation process has historically and, with exception of one or two sectors like traditional line fish, been orientated towards the export driven, commercial fisheries sector in South Africa;
- c) the fact that Small Scale fishers are not a recognised category of fishers in the legislation that regulates access to, and the consumptive use of, marine living resources;
- d) the allocation of commercial fishing rights to a small number of traditional Small Scale fishers negatively impacted on the traditional fishing communities and their lifestyles as a large percentage of these fishers have not received any allocations;
- e) the unfairness of past decisions to allocate marine living resources in an exclusive way (that is for commercial and recreational purposes only) and without due consideration of the vulnerability that most Small Scale fishers would face if forced to compete within a commercial environment;
- f) Equality Court Orders that compel the state to finalise a policy framework that will effectively accommodate traditional and subsistence Small Scale fishers within the allocation of fishing rights by securing the socio-economic rights of traditional subsistence fishers and ensuring equitable access to marine living resources for these fishers;
- g) international and regional agreements on developing sustainable and responsible fisheries to which South Africa is a party;
- h) increasing concerns about the state and sustainability of marine living resources;
- i) pollution and degradation of marine ecosystems;
- j) the possible impacts of environmental and climate change on coastal communities: changes in biodiversity distribution and the potential loss of some species and ecosystem services which humans depend on will negatively affect the provision of food, water and fuel; and impacts of climate change are likely to be most severe in the western parts of the country, where decreased rainfall and higher temperatures will

<sup>7</sup> Long term commercial fishing rights were awarded in about 2006 after publication of the General Policy and sector specific policies.



affect the availability and accessibility of (and demand for) water, agriculture, forestry, fisheries and biodiversity;<sup>8</sup>

- k) high levels of poverty and food insecurity, not only within the affected coastal communities, but in the Southern African region as a whole;
- l) lack of gender equity; and
- m) the global economic recession.

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<sup>8</sup> DEA, Draft National Strategy on Sustainable Development, January 2010.

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## 2. SCOPE OF POLICY

The Policy for the Small Scale Fisheries Sector recognizes that traditional/artisanal fishers were excluded from the long-term rights allocation process under the General Policy on the Allocation of Long-term Fishing Rights, 2005, and the effect that this had on Small Scale fishing communities. It provides a mechanism for allocating fishing rights to Small Scale fishing communities and ensures equitable access to marine living resources for these communities.

### 2.1 Relevance

The diversity within the Small Scale fisheries sector enhances its potential contribution to poverty alleviation and food security and it is therefore important to have an effective framework to ensure its optimal use as a key role player as far as food for household use and income to buy food is concerned. This diversity is documented as part of an integrated and sustainable management program for the sector and is endorsed at the highest level within a policy as the basis for any strategy and supporting legislation.

This policy will establish an effective basis for determining which marine living resources are applicable to the Small Scale fisheries sector. This will include:

- a) the principle of preferential access to Small Scale fishing communities who have traditionally depended on marine living resources for their livelihood;
- b) adopting a multiple species approach in allocating fishing rights to Small Scale fishers;
- c) a co-management approach to managing the Small Scale fisheries sector; and
- d) that the integrity of ecosystems and sustainability of the resource is not compromised.

### 2.2 Need for the policy

Post 1994 an important limitation in fully transforming the sector relates to the definition of subsistence fishing in the MLRA which restricts this category to those who fish for local consumption with very limited local sale, thereby excluding other Small Scale and artisanal fishers who catch and sell in order to sustain their livelihoods, albeit on a Small Scale. The definition is also confined to harvesting and therefore tends to exclude those who are directly involved in pre and post harvesting. This has particular implications for women in the regions

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where they are not directly involved in harvesting but may be involved in bait preparation, cleaning, processing and marketing of the catch.

The implications of this definition for Small Scale fishers were identified and in 2007, the National Summit on Small Scale Fisheries elected and mandated a National Task Team (the NTT) with representatives from fishing communities in all four coastal provinces to oversee the process of developing policy to address the inequalities in the current dispensation with regard to the Small Scale fisheries sector. Traditional Small Scale fishing communities want their traditional and customary fishing practices recognized within the fisheries management system.

Taking the relevance of this policy into consideration, it is clear that a new approach is needed to address the ecological sustainability of the resource and to provide for the progressive realisation of human rights within the affected communities.

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The Department recognises that in order to achieve this, the policy must:

- a) ensure the sustainable consumptive use of marine living resources in a manner that ensures equitable access to resources to reduce and eliminate the barriers experienced by Small Scale fishers;
- b) introduce a range of appropriate mechanisms that will promote an integrated approach in the future and address possible conflicts in the intervening period;
- c) provide a dispensation that will contribute to efforts to eradicate poverty, ensure food security and promote equity without endangering the ecological sustainability of marine living resources;
- d) accommodate traditional/subsistence fishers effectively, secure the socio-economic rights of traditional/subsistence fishers as well as provide equitable access to marine living resources; and
- e) provide for the upliftment of these communities by using appropriate support mechanisms, education and training, infrastructure and participatory management practices.

### 2.3 Strategic position

The sector is a key role player in the sustainable use of marine living resources as direct and indirect users that already have a large impact on food security by way of fish for food and fishing and related activities to generate an income to buy food in areas where Small Scale fisheries is a way of life.

The policy will facilitate the development of a multi-sectoral and integrated approach that will incorporate the following key Government 2010 – 2014 Medium Term Strategic Framework priorities – namely:

- a) economic growth and transformation of the economy to create decent work and sustainable livelihoods;
- b) vibrant, equitable, sustainable rural communities contributing towards food security for all; and
- c) protect and enhance our environmental assets and natural resources through sustainable resource management and use.

This sector also provides important benefits in terms of environmental and social gains relative to the industrial sector. The Department is committed to ensure that these benefits be realized by supporting the Small Scale sector wherever necessary.

It will also guide and facilitate the integration of a range of interventions that will lead to the incorporation of Small Scale fisheries into mainstream marine fisheries management.

#### 2.4 Legislative framework

Fisheries fall within the legislative competency of the national sphere of Government and are largely regulated in terms of the MLRA. This is in line with the constitutional imperative to protect the environment and secure the ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. The Act includes provisions that regulate the use and management of marine living resources and ecosystems to achieve economic growth, human resource development and capacity building within fisheries while applying precautionary approaches towards such activities. The MLRA also seeks to transform the inequalities of the past fisheries system in the measures it introduces.

In addition to the MLRA, various other national laws are relevant to the Small Scale fisheries sector and the use and management of marine living resources. These include the:

- a) National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (ICMA);
- b) National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA);
- c) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA);
- d) National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEMPAA);
- e) Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996);
- f) Animals Protection Act, 1962 (Act No.71 of 1962) ;
- g) National Ports Authority Act, 2005 (Act No.12 of 2005);
- h) Companies Act, 2008 (Act No. 71 of 2008); and
- i) Co-operatives Act, 2005 (Act No. 14 of 2005);
- j) Communal Property Association Act,1996 (Act No.28 of 1996).

The Department recognizes that the transformation of society, skills development and secure access to land, basic services and the resources on which livelihoods are dependent, are critical in alleviating poverty and redressing past inequalities. These fishers and communities must be assisted, where appropriate, to access mechanisms and policies aimed at redressing the past.

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### **3. POLICY PRINCIPLES AND OBJECTIVES**

#### **3.1 Principles**

The principles set out in this section apply to the actions of the State and:

- a) shall apply alongside all other appropriate and relevant considerations, including the State's responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination;
- b) serve as the general framework within which any implementation plans must be formulated and community legal entities be established;
- c) serve as guidelines by reference to which any function must be exercised or decision taken concerning management of the sector;
- d) serve as principles by reference to which dispute resolution must be undertaken; and
- e) guide the interpretation, administration and implementation of this policy.

This section sets out the principles for Small Scale fisheries that will guide Government and stakeholders in achieving the vision and objectives of the policy. The principles listed below are the fundamental premises that will apply to decision-making, management and regulation of marine living resources in the sector. The state must:

- a) recognise the existence of any rights conferred by common law, customary law or legislation to the extent that these are consistent with the Bill of Rights;<sup>9</sup>
- b) recognise rights guaranteed by custom and law and access to, and use of natural resources on a communal basis to the extent that these are consistent with the Bill of Rights;<sup>10</sup>
- c) adopt an integrated and holistic approach which is based on human rights principles;
- d) recognise an approach which contributes to alleviation of poverty, food security and local socio-economic development;
- e) promote biodiversity and the sustainable use and management of marine living resources and associated ecosystems;
- f) recognise that the disturbance of the ecosystem and biological diversity is to be avoided or where not able to be avoided, it must be minimised;

<sup>9</sup> In terms of section 39(3) of the Constitution

<sup>10</sup> In terms of section 39(3) of the Constitution

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- g) recognise the interdependency of the social, cultural, economic and ecological dimensions of (Small Scale) fishery systems;
- h) adopt an approach of co-management empowerment that builds the capacity of the fishers through education, training and skills development in all aspects of the fishery;
- i) develop accountable and transparent structures and mechanisms;
- j) promote effective participation in policy development, management and decision-making;<sup>11</sup>
- k) promote equitable access to and involvement in all aspects of the fishery in particular noting past prejudice against women and other marginalised groups;<sup>12</sup>
- l) promote preferential access for Small Scale fishers who are part of a Small Scale fishing community, who derive their livelihood from the sea and are aligned to a community-based legal entity, to harvest the marine living resources;
- m) ensure that Small Scale fishing communities are not denied physical access to infrastructure and amenities that are central to exercising their right to fish;
- n) incorporate a community-based rights approach to the allocation of marine living resources;
- o) recognise that resources may be allocated through a multi-species approach;
- p) recognise the complementary value of indigenous and local knowledge;
- q) where tenure to coastal land involves coastal communities and affects the implementation of this policy, there must be liaison with the relevant organs of state to resolve such issues; and
- r) to contribute to the development of Small Scale fisheries through promoting initiatives that will improve and support the entire value chain, including all economic activities relating to provision of harvesting marine resources, processing, distribution, logistics and associated activities that add value to fishing products; and improve and support Small Scale fishing communities' capacity to access and optimise the entire value chain.

### 3.2 Objectives

The primary object of this policy is to introduce certain fundamental shifts in Government's approach to the Small Scale fisheries sector. This entails adopting a developmental approach and an integrated and rights-based allocation system which recognizes the need to

<sup>11</sup> This principle is in line with the NEMA provisions for participation and need for capacity development to participate effectively.

<sup>12</sup> This principle is in line with the Bill of Rights.

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ensure the ecological sustainability of the resource; identifies Small Scale fishers as a category of fishers for the purposes of the MLRA in law; and provides for community orientation in the management of the marine living resources harvested by these fishers.

With this object in mind the following strategic policy objectives are proposed:

- a) to give formal and appropriate legal protection for Small Scale fishers through the (recognition) and allocation of their fishing rights;
- b) to promote equitable (race, gender, disability) access to and benefits from, marine living resources, taking the historical background of the fisher/s into account;
- c) to improve access to marine living resources through mechanisms that allow preferential access for Small Scale fishers, including the designation of strips of land where appropriate as coastal access land to secure access<sup>13</sup> ;
- d) to co-manage Small Scale fisheries sector and applicable marine living resources in an integrated and holistic manner recognising national management protocols while responding to local contexts;
- e) to ensure the long-term sustainable use and management of marine living resources and surrounding coastal environments;
- f) to ensure the sustainable development of fisheries identified as Small Scale, making sure that Small Scale fishing communities maximise the benefit from those resources and are the main beneficiaries;
- g) to facilitate value adding development and support through investment in processing and marketing infrastructure in productive areas; developing relevant marketing strategies for fishing zones; and capacity development programmes;
- h) to facilitate the establishment of appropriate institutional arrangements at different spheres of Government, in particular co-management arrangements, in order to give effect to this policy;
- i) to facilitate co-operative governance with relevant Government departments involved in fishery dependent communities to promote poverty alleviation, food security, sustainable livelihoods, fair and safe labour practices, and local economic development;
- j) to facilitate the establishment of mechanisms that will address Small Scale fishing communities' issues relating to harbours, defence or other strategic facilities and marine protected areas when exercising their right to fish;
- k) to inform the process of amending the MLRA;
- l) to introduce measures and mechanisms that prioritise the Small Scale fisheries sector within fisheries as whole;

<sup>13</sup> This principle is in line with Section 18 of the ICMA.

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- m) to introduce mechanisms and structures that promotes a community orientation, co-management and community-based approach in the harvesting and management of marine living resources within the Small Scale fisheries sector; and
- n) to facilitate the participation of affected Small Scale fishing communities in the planning and implementation of marine protected areas by the relevant department.

#### **4. POLICY FOCAL AREAS AND PARADIGM SHIFT**

The vision of Small Scale fishers is a sustainable, equitable, Small Scale fishing sector in which the well being and livelihood of fishing and coastal communities is secured and the health of marine ecosystems is maintained. Small Scale fishers are seen to be empowered to participate effectively in policy making and co-management of the near shore marine living resources. Local, provincial and national Government provide support to ensure that the Small Scale fisheries sector is able to contribute to poverty alleviation and food security as well as to the growth and development of vibrant local economies based on the principles of social justice, participatory democracy and sustainable marine resource utilization. To achieve this vision, the focal areas of this policy are people and communities; supply chain from catch to markets; governance, monitoring and enforcement; and learning, information and sustainability.

This policy introduces a paradigm shift and new policy approach to the Small Scale fisheries sector. The Department recognises that the new approach must address the existing need for transformation, the progressive realisation of human rights within affected communities, developmental objectives and current economic realities, and the ecological sustainability of the resource; and contribute to community well-being and development,.

#### **4.1 People and communities**

##### **4.1.1 Community orientation and community-based approach**

The policy proposes a shift away from past management approaches to one which emphasises a community orientation and establishes mechanisms and structures for a community-based approach to harvesting and managing marine living resources by the sector and to the allocation of fishing rights to a legal entity closely associated with Small Scale fishers. This shift gives preference to the fishers and communities that can demonstrate their historical involvement in the sector and the use of traditional fishing

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practices. It encourages a re-appraisal of the relative advantages that the Small Scale sector offers in terms of environmental sustainability, energy use and labour intensity potential.

The Department recognises that allocation of rights is only part of the process of uplifting the communities but that on-going and cross-sectoral support is required to achieve this. The policy further introduces a dispensation designed to promote the development and upliftment of the Small Scale fishing communities by contributing to efforts to eradicate poverty, ensure food security and promote equity without endangering the ecological sustainability of the resources these communities depend upon.

The policy seeks to give guidance on how the relationship between the Small Scale fishers and the marine living resources and ecosystems that these fishers harvest and their livelihoods depend upon, will be managed and work in practice. In adopting an approach that is community-based and supports a community orientation, the policy further recognizes the need to balance consideration of human rights while ensuring the ecological sustainability of the resource.

The policy proposes that responsibility for the harvesting and management of marine living resources and ecosystems be shared by Government and the Small Scale fishers. This is given effect in the:

- a) right holding option;
- b) the range of management instruments and tools;
- c) institutional arrangements; and
- d) capacity building and compliance monitoring and enforcement – all of which are dealt with below.<sup>14</sup>

Such an approach means involving Small Scale fishers and coastal communities in decisions about the harvesting and management of the resource, as well as in the monitoring of the sector. Co-management will furthermore promote community participation in natural resource management initiatives and projects. The concept of government and communities sharing responsibility for the management of resources (co-management)<sup>15</sup> is an established concept

<sup>14</sup> The draft policy is not a strategy, implementation plan or procedural guideline and therefore does not spell out the operational details of how the envisaged management system will work in practice. The operational details will be determined and may be spelt out in regulations or operating procedures once the draft policy is adopted.

<sup>15</sup> Currently the statutory basis for co-management exists under NEMPAA (s42). However, the focus here is on co-management within the context of protected areas, and while this may be appropriate in respect of coastal communities living within (such as is the case in most nature reserves in the Eastern Cape) or adjacent to

and approach within the environmental and resource management governance sectors, and particularly in respect of protected areas and biodiversity conservation.

#### 4.1.2 Transformation and gender

The Department recognises that the Small Scale fisheries sector must be recognized and prioritized for its social, socio-economic and macro-economic importance. The contributions by the tens of thousands of people who directly or indirectly work in the Small Scale fisheries sector are of great importance to the national economy. It is important to recognize the potential for high quality fish and fish products from this sector through the predominant use of selective fishing gear and the better handling of fish. The sector must be transformed so that these important aspects are used to the maximum benefits for the Small Scale fishing communities. This transformation requires that Small Scale fishers regain their access to traditional fishing areas, are provided with appropriate support and given opportunities to work within an enabling environment.

The need to ensure that men and women enjoy equitable benefits from the Small Scale fisheries policy presents a major challenge to the Department in the context of past policies and entrenched patriarchal beliefs and practices. Women have always played a major role in the pre and post fishing activities in South Africa, and in some communities women are the primary harvesters of intertidal resources. In some areas, women have played a significant role in the development of the fishing industry by providing labour for processing and packaging. In recent years, the impact of globalization, the consolidation of processing plants and changes in the geographical location of fish landing sites have led to job losses in rural areas.

The introduction of gender equity legislation in the 1990's, coupled with the emphasis on women's equal rights in the Constitution resulted in a move within Government to encourage women to apply for fishing rights during the medium-term (2002) and the long-term (2005) application rounds. This impacted primarily on women in the Northern and Western Cape where they were allocated quotas in the commercial WCRL and Line Fish sectors during the medium-term period. A significant number of these women, with no previous experience as fishers, did not fish their quotas personally, but as a result of being quota holders they came to see themselves as being legitimate stakeholders in the fisheries. This presented a number of problems in the Long-Term Rights Allocation Process as these women believed that they

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protected areas, it is advisable that consideration be given to the inclusion of co-management of marine living resources and ecosystems falling outside of protected areas, under the MLRA in the long term.

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were entitled to rights. Those who were unsuccessful have now turned towards the Interim Relief (2007 and 2008) as a means of getting an income. The majority of these women worked in the processing plants before these were closed down due to retrenchments. In the coastal towns there are so few opportunities for alternative employment that most maintain their focus on the fisheries as the primary source of income.

A limited number of the women who received quotas in the medium-term period have received training and got their safety certificates. These women are now eager to go to sea personally but very few of them have access to vessels. In the Eastern Cape and KwaZulu-Natal most of the women who previously received subsistence permits have been fishing traditionally. Women want the option of going to the sea if they so chose. Even though few may actually choose to go to sea but they must benefit in the Small Scale fisheries sector.

Much of this expectation stems from their previous involvement in the sector, as well as from the very high levels of poverty in their communities and the lack of alternative sources of income. As primary caretakers and providers of food security these women sometimes articulate this demand in the absence of a viable alternative. In promoting a human rights-based approach the policy recognizes the need to address women's historical legacy of prejudice and inequality; and the importance of placing gender equality at the centre of transformation in the sector in line with the vision and principles set out in the National Gender Policy Framework. The policy advocates the important value adding and support role that women play in the Small Scale fisheries sector. Particular attention should be given to addressing the role of women in the compilation of management plans; negotiation of co-management agreements; and establishing institutional structures to:

- a) promote the economic empowerment of women within the Small Scale fisheries sector; and
- b) change practices that previously hindered women's access to, and benefit from, resources, employment, economic opportunities and decision-making.

The policy further promotes a co-operative approach among and within all sectors in ensuring that gender equality is achieved within the Small Scale fishing sector, and also within the community-based legal entities. Mechanisms and institutions implemented under this policy must cover the following gender specific areas:

- a) women must be empowered to exercise their rights to participate in the management of the marine resources. This is particularly important because women generally give high prioritization to socio-economic issues and food security;

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- b) women must be ensured to participate in fisheries policy development, implementation, and evaluation;
- c) training of women to participate in marketing. This includes skills training in the areas of business administration, processing, and marketing;
- d) training of women to engage in tourism and additional coastal economic opportunities as managers, chefs, tour operators, guides etc;
- e) facilitating the improvement of facilities to make it easier for women to participate as fishers;
- f) strive for equal representation of women in institutional structures related to Small Scale; and
- g) education for women to ensure employment and ownership in the aquaculture industries.

#### **4.1.3 Social security and disaster relief**

The Department is mindful that Small Scale fishers may not have been able to access social security schemes in the past. To ensure that Small Scale fishers who belong to a community-based legal entity are catered for within the Government social security net, the Department will facilitate the process of ensuring that appropriate mechanisms are established.

The Department is aware that Small Scale fishing communities may need relief or assistance where disasters, whether through natural or human causes, pose a threat or cause death, injury or disease, or disrupt the life of a community. The Department must establish mechanisms to deal with such an eventuality arising and ensure that provision is made for fishing communities to access disaster relief or assistance under appropriate circumstances.<sup>16</sup>

It recognises that an integrated and cooperative approach with other Departments such as Environmental Affairs, Transport and Social Development as well as provincial and local authorities is required to achieve this.

Trust funds may also be established by community-based legal entities to provide financial aid to fishers when needed.

<sup>16</sup> Specific relief is provided for farmers in terms of the Conservation of Agricultural Resources Act 43 of 1983, but that refers to "natural agricultural resources" only.

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#### 4.1.4 Labour rights and safety at sea

As with farm workers and domestic workers, fishers are vulnerable in times of unemployment, illness and on the death of a breadwinner. They are also vulnerable to exploitation by unscrupulous boat owners, marketers and commercial fishing rights holders and their right to basic conditions of employment may have been violated. Minimum labour standards and basic conditions of employment for the sector, that accommodate the needs for safety at sea in the Small Scale fisheries sector, should be developed in line with the national labour law and SAMSA requirements. Attention should also be given to ensuring that women's special needs in respect of working conditions are addressed.

The Department recognises that Small Scale fishers contribute to the Road Accident Fund but are not covered for accidents at sea. The Department recognizes that an integrated and cooperative approach is needed and will enter into discussions with the Department of Transport on this and other matters of concern, including the development and enforcement of appropriate minimum safety standards.

#### 4.2 Supply chain from catch to markets

The Department recognises that the marketing requirements as required in the Long Term Fishing Policy and onerous conditions in contracts between fishers and fish processing establishment owners, where advance payments were made to fishers, may have worked to the detriment of these fishers.

The Department is aware that for communities to receive the maximum benefit from marine living resources in their area, those communities must be responsible for adding value to the resource and must benefit directly from doing so. The Department must assist communities with appropriate infrastructure support, advice and other relevant mechanisms in order to achieve this objective. This policy provides mechanisms that will assist fishers with marketing of marine living resources. The mechanisms that this policy will put in place include, but are not limited to the following:

- a) subsidy schemes for the storage of fish. This could be in the form of financial support for storage facilities and ice machines;
- b) skills training of people from fishing communities, fishers or non-fishers, in the areas of processing, storing, packaging, marketing, transporting and exporting of fish, and basic business skills such as finance management, human resource management, logistics, and business management;

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- c) subsidy schemes for the establishment of locally based and owned marketing companies, especially companies focusing on high quality marine living resources caught by Small Scale fishers by use of environmentally friendly catching methods;
- d) development of a South African label/certificate for fish products caught by Small Scale fishers in an environmentally friendly manner with traditional fishing methods and with insignificant levels of by-catch. This certificate should guarantee that the marketing companies adhere to high levels of social and ethical responsibilities. The added value of the marine living resource will be to the benefit of fishers, marketing companies and South African as a whole;
- e) development of a comprehensive fishery processing/beneficiation strategy to ensure maximum benefit for new market entrants along the full value chain in each fishery; and
- f) the establishment of a comprehensive development finance scheme for fisheries.

#### **4.3 Governance, monitoring and enforcement**

##### **4.3.1 Co-management of fisheries**

The Department supports a co-management approach for the management of this fishery. This approach is people centred and community orientated. The Department and Small Scale fishing communities will have shared responsibility for management of the fishery. Co-management is a participative process which promotes social equity, justice and the collective governance of marine living resources.

Co-management of marine resources means that affected stakeholders, especially fishers from fishing communities, are empowered to participate with Government in developing, implementing and evaluating fishery policies and management plans. Co-management requires devolution of some management decisions to the fishing communities and the inclusion of provincial and local Government. Representatives of Small Scale fishing communities in a given area together with Government will make up the co-management committees.

Co-management of the fishery will be implemented and strengthened on an ongoing basis. An adaptive management approach tailored to each area must be adopted. In the long term, co-management of the Small Scale fisheries will facilitate:

- a) improved social and environmental responsibility among fishers and other members of the community;
- b) improved compliance in fisheries;
- c) individual and collective empowerment in fishing communities;

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- d) strengthened democracy; and
- e) sustainable utilization of marine living resources.

Different fishery management plans will have to be developed for different areas as a result of the varying nature of the marine and coastal environment and the different fishing and livelihood strategies along the South African coastline.

#### 4.3.2 Compliance, monitoring and enforcement

The Department recognises that coastal fishing communities are well placed to assist it in protecting marine living resources, monitoring and reporting illegal activities. Although the Department is ultimately responsible for ensuring compliance with Regulations, this policy provides for a compliance and enforcement regime which advocates the supporting and active self-regulating role that Small Scale fishing communities can and should play through co-management. Organised crime will be dealt with by the relevant safety and security structures and processes within Government.

Education and training are important in ensuring that members of the community based legal entity have the required skills and support in order to record and monitor fishing related activities and assist in preventing illegal fishing. The Department will implement measures to educate and transfer skills to community based legal entity members to ensure they are able to make a meaningful contribution to compliance monitoring. This should include:

- a) providing guidance on how co-management structures monitor or enforce the TAC/TAE allocated to the Small Scale fishing community based legal entities;
- b) enabling these legal entities to meet their obligations in keeping community catch records and analysing reports; and
- c) providing training on important species identification, monitoring and verification of catches.

The policy provides for co-management and the demarcation of areas that may be prioritised for Small Scale fishers. It is in the interests of those fishers to protect the resources to which they have access. This is to be achieved firstly through monitoring and reporting the number and type of marine living resources harvested by Small Scale fishers in their respective Small Scale fishing community area. Secondly, the fishers will monitor access to their Small Scale fishing community area to ensure that non-permit holders or members do not exploit the resources as it may affect the percentage of TAC or TAE that may be allocated.

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Monitoring programmes must be established by the co-management committee and in each Small Scale fishing community a local monitor must be appointed. The monitor must be trained by the Department. It may be necessary to appoint more than one monitor. The information captured by the monitors combined with fishers' knowledge in general, would feed directly into the co-management committees' knowledge base, and thereby facilitate the continuous re-assessment of the management plans and allow for rapid responses to declines in fish stocks.

The Minister may also appoint members of a Small Scale fishing community or community-based legal entity as Fish Wardens and specify the powers that might be exercised by them.<sup>17</sup> Alternatively, section 50 of the MLRA on observers may also be amended so as to broaden their powers and make the provisions applicable to land based observers as well. These observers can exercise compliance, monitoring and other functions determined by the Minister.<sup>18</sup>

Provision may also be made in the founding documents that a member of a community based legal entity may be expelled from that structure where she or he is convicted of an offence under the MLRA.

**4.4 Learning, information and sustainability**

**4.4.1 Capacity building, conflict management and dispute resolution**

The policy proposes that a strategy be developed for building capacity within the Small Scale fishing sector and for implementing customised training programmes (through the Department of Labour and SETA's). The Department recognises that the building of capacity is important in ensuring that fishing communities are able to manage and use marine living resources in their areas;<sup>19</sup> maximise value adding and to participate meaningfully in strategic planning processes that impact on their livelihoods and sector such as the IDP process. The Department is aware that capacity building, training and skills development should be provided on, for example, establishing local community-based legal entities; the preparation and implementation of management plans; conflict resolution; monitoring and recording catches; value addition and marketing; and the effective and efficient functioning of the co-

<sup>17</sup> Section 9(2) of the MLRA.

<sup>18</sup> Section 50(4): "An observer shall exercise the scientific, compliance, monitoring and other functions determined by the Minister."

<sup>19</sup> June 2008 Draft Policy 29.

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management committees. Provincial and local Governments and non-government organisations (NGOs) are going to play an important role in building capacity and providing training to local fishing communities. Capacity building initiatives must also address the concerns and needs of women. The Department is aware that its own capacity must be strengthened in order to provide an appropriate extension service to the Small Scale fishing sector and implement the more participatory and integrated approach advocated in this policy.

#### **4.4.2 Policy and legislation**

The policy must be evaluated against the objectives on a regular basis and stakeholder inputs must be taken into consideration. Stakeholders also need to be fully informed of all relevant and associated policy and legislation, including National legislation, Provincial ordinances and Municipal by-laws that affect their livelihoods. The community-based co-management approach ought to provide the platform for more effective understanding and application of policy and legislation in the interests of the stakeholders.

#### **4.4.3 Research for ecosystems approach to fisheries management**

Conservation and management decisions officially should be based on scientific evidence available, also taking into account additional knowledge of the resources and their habitat as well as relevant environmental, economic and social factors. The Department should prioritise Small Scale fisheries and multi-species research and data collection in order to improve scientific and technical knowledge of fisheries including their interaction with ecosystems.<sup>20</sup>

#### **4.4.4 Research for technology**

Small Scale fisheries research should include all aspects of the sector and the technology developed in the process will need to be tested using a 'fisher systems' approach similar to farming systems research and development (FSRD). This should include economic / market research, the collection and processing of key data into useful information, reviews of technology used in other developing countries with Small Scale fisher sectors, capture and processing technology and the collection and evaluation of local knowledge with potential and innovative application. The Department should prioritise research that contributes to the green economy and development of green technologies.

<sup>20</sup>

Adapted from the FAO, Code of Conduct for responsible Fisheries, 1995, article 6.4

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Research into improving technology for sustainable harvesting should be promoted and the technology developed.

#### **4.4.5 Technical and advisory support services,**

The Department is aware that the success of the policy is dependent on an effective technical and advisory support service network with the capacity to transfer technology and information at grassroots level. Such a service should include access to training and information on all aspects of the Small Scale fisheries sector, as well as alternative livelihoods and value chain development and should, where possible, incorporate an integrated fisher – support centre as a hub where fishers could access research findings and information on climate, the movement of fish, appropriate technology, permits and other documents, from a National databank without having to travel to Cape Town.

Such centres could be jointly managed and may include a facility managed by the community to provide basic fishing and other supplies that are often difficult to access due to distances and transport. The centres would have an onsite official with access to technical experts on specific issues which would increase the effectiveness of the system.

## **5. MECHANISMS AND INSTRUMENTS FOR THE MANAGEMENT OF SMALL SCALE FISHERIES**

### **5.1 Management Instruments and tools**

The policy proposes a range of management instruments and tools that can be used in the Small Scale fishing sector. These include assessment of the status of marine living resources; management plans; demarcating areas that are prioritised for Small Scale fishers; and agreements. Each of these instruments and tools are briefly outlined below but this does not exclude other instruments and tools.

#### **5.1.1 Comprehensive assessment of status of resource/s**

It is proposed that comprehensive regular assessments are conducted to determine which species should be made available to Small Scale fishers; sustainable harvesting targets and, where appropriate, the boundaries of areas demarcated for Small Scale fishers. These assessments will focus on the abundance and distribution of key species, which are utilised by Small Scale fisheries, across the whole population of such species. The focus of the

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assessments will thus be on the natural distribution of species as opposed to focussing on specific Small Scale fishing community areas. The Department should undertake the assessments in consultation with, and must make available the findings of such assessments to, affected local Small Scale fishing communities. Consultation should take place through the community structures that are put in place as part of the community-based co-management approach to managing the marine living resources of a particular area. The assessment should include both the marine ecosystem and the availability and status of species in their area of distribution; as well as socio-economic studies assessing the livelihood needs, strengths and vulnerabilities of the affected fishing community.

This may be done through a cross-sectoral, integrated approach where stakeholders, such as local and provincial Government, existing rights holders (where appropriate) and non-governmental organizations are also consulted. The involvement of local and provincial authorities should ensure that the assessments take local and provincial development priorities into account, and further that the Integrated Development Plan (IDP) and Provincial Growth and Development Strategy (PGDS) addresses the specific needs and interests of the Small Scale fishing sector.

**5.1.2 Demarcation of Small Scale fishing community areas**

The policy proposes that certain areas along the coast may be demarcated as areas prioritized for Small Scale fishers. Once the fishing community has established a community-based legal entity described in section 5.2.2, the community can apply to the Minister to have an area designated a Small Scale fishing community area. The Department will consult with other Government Departments that impose restrictions on areas or to areas that are needed by fishers, and with relevant stakeholders.

The Minister, Director-General or Small Scale fishing communities may, where a dispute arises concerning the boundaries of an area between Small Scale fishing communities, between regions or where to draw the lines for the demarcation of small-fishing community areas, refer the dispute for conflict resolution under this policy.

A range of management mechanisms can then be deployed in this area. In some areas access rights can be reserved for the exclusive use by Small Scale fishers on a spatial basis. This community may be granted the exclusive use of specific marine living resources and the area must be co-managed by the community and the Department through the applicable co-management committee. The precise boundaries of such an area will be determined taking into consideration social and economic aspects, the migratory patterns of fish, other marine

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ecosystem components and the historical recreational use of the area; and after consultation with interested and affected parties. Designated landing sites will be identified in these areas and strict measures for local community-based monitoring and catch-recording instituted.<sup>21</sup> Reference to demarcated Small Scale fishing community areas should be included in IDP's to ensure such areas are integrated into local economic development priorities; as well as Coastal Management Programmes and any other statutory plan, policy of programme adopted by an organ of state that may affect Small Scale fishing community areas.

Other fishing and/or developmental activity in a demarcated area will be subject to the approval from the co-management committee.

Organs of state, when determining spatial planning and development priorities, must take areas that have been demarcated as Small Scale fishing community areas, into account to ensure that Small Scale fishing communities' access is not impeded upon.

**5.1.3 Management plans**

The Department must introduce a system of management plans to guide and facilitate the implementation and management of activities at the local level and to ensure coordinated action in a particular area. The specific needs of an area and its fishers must be taken into consideration in the development of local management plans along with the conditions that are associated with the right to fish in a particular area and that have been agreed upon through a local participatory process. The requirement to develop management plans should be concretized in law or adopted as policy instruments.

The content, information requirements and procedures whereby such plans are to be developed and adopted will have to be determined in regulations (should these plans become statutory requirements), alternatively in guidelines or procedural manuals (which are more flexible and therefore easily amended). Management plans should encourage value adding to marine living resources and the development of local markets. It is further proposed that these plans are aligned with other similar management plans such as local and district IDP's and Coastal Management Plans.

The management plans should, where appropriate, provide guidance on how to make provision for the needs and interests of young fishers under the age of 18, and in particular

<sup>21</sup> In some areas there may be two or more Small Scale fishing communities working together in one demarcated area. This may be necessary in areas where fishers have traditionally 'chased the snoek' or migrated in search of specific species.

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those from child headed households. Management plans should also address issues of gender equity within the sector in the local community and include measures to ensure that safe and fair labour practices are used in the local fishing community.

#### **5.1.4 Technical control measures**

The policy proposes that a range of technical control measures are applied in the management of marine living resources in the Small Scale fishing sector that will vary according to the region. These include, but are not limited, to Total Allowable Catches (TAC) and Total Applied Effort (TAE); closed areas and seasons; bag and size limits; specifying fishing methods and tools; and monitoring and recording of fisheries data.

#### **5.1.5 Agreements**

To ensure effective co-management the policy proposes that provision is made for co-management agreements to govern the relationship between Government and the Small Scale fishing community in managing the resource. Each party's roles and responsibilities must be clearly defined. Such agreements should be structured in such a way that the Small Scale fishing communities' benefits will not compromise the ecological integrity of the resource and will support the attainment of the vision spelt out in this policy. Co-management agreements may, within the context of the relevant legal framework, further provide for:

- a) the duties and obligations of the parties to the agreement;
- b) access to, and use of marine living resources in, Small Scale fishing community areas and protected areas;
- c) development of economic opportunities, including opportunities for (vulnerable groups);
- d) financial and other support to ensure the effective administration and implementation of co-management agreement;
- e) the duration of the agreement;
- f) breach of the agreement; and
- g) measures for dealing with and resolving disputes and conflicts.

Where appropriate, community-based legal entities may be allowed to enter into agreements with neighbouring community based legal entities to which Small Scale fishing rights have been allocated in order to access migratory or other species that form part of the multi-

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species basket.<sup>22</sup> However, prior to entering in to such agreement the Department must be informed of this and may grant its approval where the proposed agreement will not result in unacceptable exploitation of the species or will not be contrary to the objectives of this policy or that of the community-based legal entities involved. No agreement may be entered into where the Department withholds its approval.

The successful implementation of the community-based approach and co-management depends on certain institutional arrangements and structures being established and on-going support from Government and NGOs where appropriate. These are dealt with below.

## **5.2 Institutional arrangements**

The policy proposes the establishment of a multi-tiered organisational model that incorporates representatives from all three spheres of Government and the Small Scale fishing sector; and provides for community-based structures.

### **5.2.1 Multi-tiered organisational model**

The policy proposes a multi-tiered organisational model that comprises various management structures. At the national level it is proposed that the consultative advisory structure provided for in the MLRA, also advises on issues that relate to the Small Scale fishing sector. At the next level a dedicated management working group for the Small Scale fishing sector is proposed to serve as the vehicle for interaction between the sector and Department to consider and address matters pertaining to the management of the Small Scale fishing sector. At the local level it is proposed that the co-management committees and community-based legal entities address implementation and issues pertaining to individual fishers and specific communities.

### **5.2.2 Structures at community level**

#### **Community-based legal entity**

The policy proposes that every Small Scale fishing community establish a community-based legal entity within which fishers can operate. The main purpose of these structures will be to serve as local management structure and formalise co-management and the community-based approach advocated in this policy. These structures will have to ensure that all

<sup>22</sup> Coastal Links Comments on the Draft Policy. Drafting note: The words referring to multi-species were added so as to avoid any confusion as to the species that this applies to.

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activities associated with the harvesting and management of marine living resources are coordinated and properly controlled. This includes compliance with the conditions of the fishing right and ancillary fishing activities. These structures will play a key role in ensuring that the interests of the local fishing community and sustainability of the ecosystems and marine living resources they depend upon are not compromised. The community-based structures will further serve as a platform for Small Scale fishers to express their aspirations, needs and the challenges that they face.

The nature and composition of the community-based legal entity will be decided on by the fishing community and must be informed by which type of legal entity will best serve the interests and needs of the particular community. Legal entities could be a section 21 or other type of company, or a trust or co-operative.

**The community based legal entity would provide its members with flexibility in making decisions as to who from its membership may be allowed to exercise the fishing right granted to the entity; how they will sell their catch; and how their members will be involved in ancillary and value adding activities. When these activities take place then it is proposed that priority will be given to women's involvement in it.**

#### **Co-management committees**

To implement the co-management approach described in chapter 4.4, co-management committees must be established. These committees must consist of representatives of all three spheres of Government and members of the relevant community-based legal entity. Co-management in areas adjacent to, or near, marine protected areas must also include representatives from the relevant conservation authority.

#### **5.2.3 Division of roles and responsibilities**

The Department will be responsible for policy development; consultation with all stakeholders; screening fishing right applicants (i.e. community based legal entities); reviewing applications; coordinating the application process (including aspects such as the design of application forms, advertisement of applications, and dissemination of applications) and issuing rights and permits. The Department will share the responsibility for managing marine living resources with the community-based legal entity through the co-management committee. These community-based legal entities will be expected to implement the decisions taken by the co-management committee.

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**6. RIGHT HOLDING AND ALLOCATION OF SMALL SCALE FISHING RIGHTS**

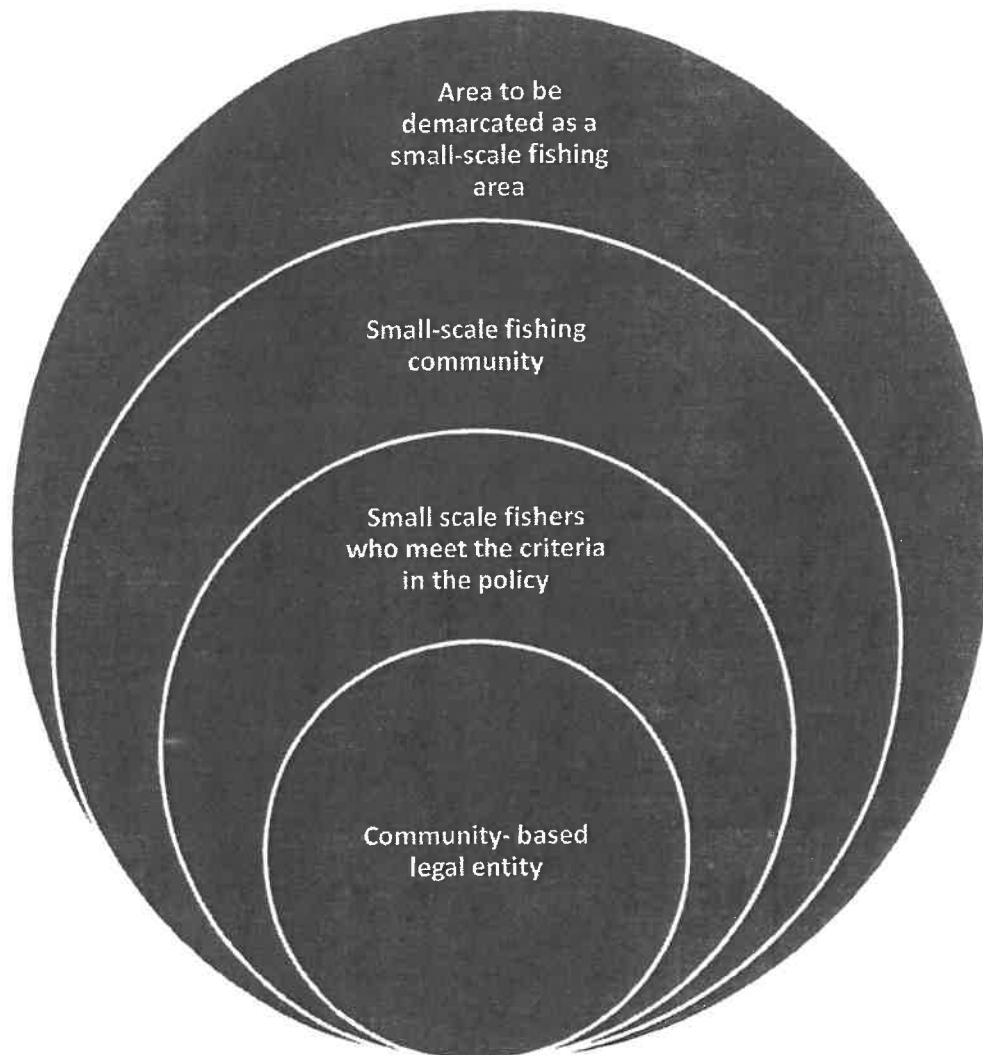
**6.1 Right Holding**

This Policy proposes that Small Scale fishing rights be granted to a community based legal entity in a particular area where Small Scale fishers have traditionally operated. No rights will be awarded to individuals, however, individuals belonging to a community based legal entity established in terms of this policy will benefit from the collective right allocated to that entity. The marine living resources are to be managed through co-management structures.

The steps that community based legal entities need to follow to obtain rights in terms of this policy, are explained in the section dealing with the procedure for allocating rights (6.2.5).

The rights holding model advocated for the Small Scale fishing sector in this policy is illustrated in the figure below. The outer circle represents the area in which Small Scale fishers live and operate; the second circle represents the Small Scale fishing community which comprises of the people who are, or historically have been, fishermen and –women (including their families and ancillary workers) living and fishing in that area; the third circle represents the Small Scale fishers who meet the criteria of Small Scale fisher spelt out in this policy; and the inner circle represents the community based legal entity (which is the right holder).

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## 6.2 Allocation of Small Scale fishing rights

This section elaborates on the **paradigm shift** in the approach to the Small Scale fishing sector that is introduced in this policy and discussed briefly in section 4. This shift introduces a new approach that recognises and draws on age-old local traditions and practices of catching, harvesting and managing marine living resources among Small Scale fishers. At the same time, the new approach seeks to address the ecological sustainability of the resource, the progressive realisation of socio-economic human rights within affected communities and current economic realities. The policy shift addresses several different, but inter-related aspects including:

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- a) transformation and the redress of past injustices in the sector;
- b) the approach adopted in exercising the fisheries mandate; and
- c) the mechanisms for managing the sector.

The policy proposes a shift away from past management approaches to one which emphasises community orientation and establishes mechanisms and structures for a community-based approach to catching, harvesting and managing marine living resources by the sector and to the allocation of fishing rights to Small Scale fishers. This is in line with the global trend which indicates a shift in the governance and management of fisheries to a broader approach that recognizes the participation of fishers, local stewardship, and shared decision-making.<sup>23</sup> The policy shift gives preference to the fishers and communities that can demonstrate their historical involvement in the sector and the use of traditional fishing practices.

#### **6.2.1 Approach to allocation**

Rights allocated in terms of this policy are for the benefit and upliftment of a specific fishing community or for the fishing community in general. The relevant regional and international instruments, fundamental human rights as provided in the Constitution and the principles and objectives provided in the MLRA and the policy will be taken into account to secure the socio-economic rights of Small Scale fishers, equitable access to marine living resources and the development of thriving communities. Due regard must be had for promoting the rights of vulnerable groups.

#### **6.2.2 Community based system of rights allocation**

Small Scale fishing rights must be allocated to community-based legal entities. The community-based legal entity will be made up of individual persons who meet the criteria of a Small Scale fisher under this policy and make up a Small Scale fishing community. The criteria for being considered eligible as Small Scale fisher and for belonging to a community-based legal entity are set out in paragraph 6.2.4.

The Department must establish mechanisms for verification of membership; and where disputes arise about eligibility to be included as a member of Small Scale fishing community

<sup>23</sup> R.S. Pomeroy and R. Rivera-Guieb, *Fishery Co-Management A Practical Handbook*.

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or legal entity, such disputes must be referred to conflict resolution as provided for in terms of this policy.

The Department issues a right to fish and, where appropriate, to operate a processing establishment to a community-based legal entity where a fishing community has been declared. The Small Scale fishing community determines the manner in which the rights granted to it by the Minister are to be exercised among members of the legal entity. The Small Scale fishing community must extensively consult the Department during this phase to keep it informed of the reason, manner and methods used in selecting the fishers.

Preferential treatment for women and disabled persons may also be provided. It may not be possible to allow all the fishers or harvesters that are part of a Small Scale fishing community and who are members of the legal entity to undertake activities such as going to sea. Mechanisms, for example, rotation schedules, may therefore be required where it is desirable. No rights will be allocated to individual persons under this policy. Small Scale fishers that hold rights in terms of the long term rights allocation process and who are not part of a community based legal entity will not be entitled to hold rights in terms of this policy.

Local sales and consumption of marine living resources are essential. The Department will encourage the development of local markets and maximising of benefits to be derived from Small Scale fishers at a local level. This will include a range of positive incentives to promote local marketing actively and to increase the power of Small Scale fishing communities. Specific measures will also be introduced to support women to develop a range of value adding activities.

### 6.2.3 "Multi species" approach

The Department recognises that Small Scale fishers have traditionally harvested a variety of species. The approach is that consideration will be given to this by allowing fishers access to multiple species within an area or a particular prioritised area. The decision regarding which species will be included in the allocation, and the quantum of the allocation, will be based primarily on the quantity of marine living resources available given the TAC, zonal allocations and TAE of particular species. The inclusion of species in the multi-species system will depend upon, among other things, the following:

- a) the availability and productivity of specific species that are of a sedentary nature in a particular area;

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- b) the geographic availability of specific migratory species to the affected Small Scale fishing community and TAE of that species. It will not be possible to allocate migratory species to specific community based legal entities operating within a particular Small Scale fishing community area given the nature of these species. The allocation for migratory species will, where appropriate, be granted across the boundaries of Small Scale fishing community areas and allocated according to the geographic availability (of the resource) to the affected community; and will not exceed the overall effort for that species;
- c) the extent to which those resources (sedentary and migratory) can be sustainably exploited;
- d) the extent to which a particular resource is already being exploited in terms of the long-term rights allocation process;
- e) the availability of certain species where the TAC is made up of zonal allocations, taking into consideration the allocations to other sub-sectors (such as the commercial and recreational sectors) to ensure the zonal allocation does not exceed the TAC; the potential market value of the resource when sold taking into consideration the potential for value addition; and
- f) the nature, extent and history of traditional fishing in the area.

These are some of the factors that the Department may take into account when considering the species that are to be included when allocating Small Scale fishing rights to community based legal entities. The list of factors is not exhaustive. For example, the number of members included in a community-based legal entity in an area or a particular prioritised fishing area, who will exercise the fishing right granted to that community based legal entity to harvest a particular resource, will also be taken into consideration to ensure that the resource is exploited sustainably. Where appropriate, the Department may consider prioritising the allocation of "new" species that become available to the Small Scale fishery.

#### **6.2.4 Criteria for allocation**

The criteria for allocation of rights to fish and to operate fish processing establishments to Small Scale fishing communities and to provide a mechanism for verification of distinguishing Small Scale fishers and Small Scale fishing communities from other individuals and communities, are set out below.

In addition to applying the criteria set out below when determining whether a community is a Small Scale fishing community, the decision-maker needs to take into account additional factors. These factors may include:

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- a) paying due regard to affording young adults (between 18 and 35 from within the Small Scale fishing community) the opportunity to enter the Small Scale fishing sector, even though they cannot prove that they have 10 years' experience; and
- b) dealing with requests from non South African citizens, that meet the criteria listed below, to be deemed eligible for incorporation into a Small Scale fishing community.

CRITERIA FOR COMMUNITY-BASED LEGAL ENTITY(RIGHT HOLDER)	CRITERIA FOR FISHERS TO BECOME MEMBERS OF COMMUNITY-BASED LEGAL ENTITY
Recognized Small Scale fishing community	Must be South African citizens (male or female) from the Small Scale fishing community
Community-based legal entity	Must be at least 18 years of age (in the case of children headed households, a guardian from within the community may be appointed to represent such children as members of the legal entity)
List of identified eligible fishers	Must harvest marine living resources directly or be involved on a daily basis in operations such as processing or marketing the resources (unless physically disabled)
	Must be able to show direct historical involvement in the Small Scale fisheries sector (through 10 years experience at any one time but not necessarily over the past 10 years)
	Must be able to show historical involvement in traditional fishing operations, which include catching, processing or marketing marine living resources
	Must derive the major part of their livelihood from Small Scale fishing or traditional fishing operations and be able to show historical dependence on marine living resources, either directly or in a household context, to meet food and basic livelihood needs

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It is the responsibility of the Small Scale fishing community to identify the Small Scale fishers within that community that meet the criteria set in the policy to become part of the community-based legal entity. Non-governmental organisations may have to assist these communities in ensuring that the criteria are properly applied so that the list contains the names of bona fide Small Scale fishers.

The call for names may be made by means of placing an advert in a local newspaper of that area or by any other method that the Department considers appropriate in the circumstances. Members of the proposed Small Scale fishing community comment on the names on the provisional lists on the basis of the criteria set for being a member of a community based legal entity. The Small Scale fishing community develops a list of Small Scale fishers from that community. This list is submitted to the Minister.

A Small Scale fisher may go to sea to fish or harvest as long as her or his name is on the list, she or he fishes in accordance with the terms agreed to when the community based legal entity decided who may exercise the rights, and fishes in accordance with the conditions of the permit issued by the Department. The community-based legal entity is responsible for updating the list but the department must be notified of the update.

- c) Minister, the Department or a third party will verify the list according to the criteria. They will then inform the Small Scale Fishers that the Community Based Legal Entity may be established.

The names of persons on the list will be verified against the criteria that were used by the Small Scale fishing community in that particular area. The policy proposes that verification be undertaken by an independent third party. This mechanism is to ensure that the criteria were properly applied and that only persons who are indeed Small Scale fishers are going to be members of the community based legal entity. Where the community based legal entity at a later stage updates the names on the list, those names may also have to be verified.

- d) Community Based Legal Entity is established.

Once the names on the list have been verified the community based legal entity may be established. This community based legal entity comprises of Small Scale fishers which by definition includes not only persons involved in catching but also persons involved in processing of marine living resources.

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The Department may in order to assist fishers and communities properly to consider, implement and give effect to establishing a legal entity, hold workshops to explain this to fishers and communities and advise them of the legal entities available to communities. The fishers and communities will have to decide on the appropriate legal entity that is going to best serve their interests. The Department may with the assistance of other government departments provide the requisite training and education to help respective communities make informed decisions as to the most appropriate legal entity.

Where the majority of the members of the Small Scale fishing community present at a meeting to decide on a legal entity, chooses the type of legal entity, that community based legal entity must be established. Such a meeting may be chaired by the Department, another government department or even representatives from NGOs. Provisional committee members must be nominated who will be responsible for ensuring that the entity is established and registered in terms of the laws applicable to that entity.

The Small Scale fishing community establishes a (or where the Department is of the view that it is appropriate to do so more than one) community-based legal entity for a Small Scale fishing community in a specific area. The right to fish and operate a fish processing establishment is held by the community-based legal entity comprising of Small Scale fishers (these include persons involved in marketing and processing activities). The rights of the individual members of this legal entity must be protected in the founding documents of the legal entity.

- e) Community Based Legal Entity compiles a list of members who may exercise its allocation and then applies for the fishing right and also, if needed, the fish processing right.

The community based legal entity now compiles a list of fishers that may go to sea in order to exercise the allocation that has been awarded to the entity. No rights are awarded to an individual person as the entity holds the right. It may not be possible for all of the fishers whose names are on the list to be actively involved in catching of marine living resources. This may be so as the TAC or TAE allocated to the community based legal entity may not be sufficient to justify that all of the members of the community based legal entity may go to sea. Accordingly, the community based legal entity may have to make use of rotation schedules

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or any other mechanism to ensure that those fishers who do want to go to sea have the opportunity to do so.

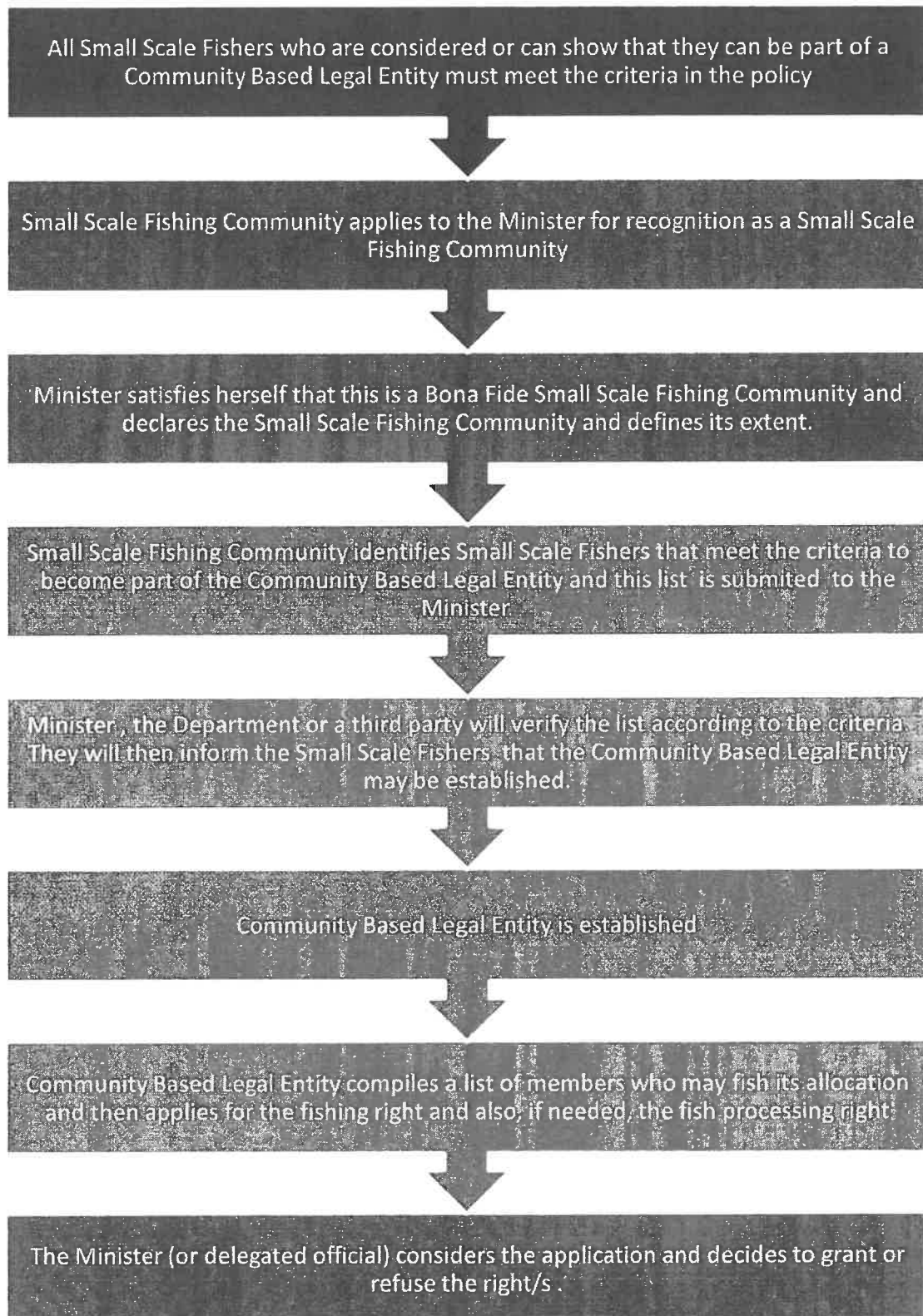
The details of how these fishers are to be rewarded for their catch must also be determined upfront although this may be amended from time to time. The details would stipulate whether the fishers are to be paid for the catch, are salaried employees and the extent to which the fishers may share in the benefit derived from the value added to the resource. These details will be spelt out in the Founding Documents of the community based legal entity.

Once the list of persons who may catch or harvest the marine living resource has been compiled and finalised, the community based legal entity submits its application for a fishing right and, if needed, a fish processing right.

- f) The Minister (or delegated official) considers the application and decides to grant or refuse the right/s.

The Minister (or her delegated official) decides whether or not to grant the right. If a delegated official took the decision then an appeal would be available to the Minister. Once the Minister has taken a decision, then no further appeal would be available.

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Where conflict arises between members of a Small Scale fishing community that conflict must be resolved in terms of the internal conflict resolution mechanisms agreed upon by members of the community based legal entity at the time the community-based legal entity was established. No appeal is available to the Minister. Where an individual belonging to a community-based legal entity is aggrieved by any decision taken within those structures she or he does not have recourse to the appeal provisions under the MLRA.

**6.2.8 Conflict resolution mechanisms**

Where an appeal is submitted to the Minister the decision appealed against is suspended until the Minister has decided the appeal.

- a) the refusal to declare a Small Scale fishing community;
- b) the demarcation of an area that may be used by a particular Small Scale fishing community;
- c) the refusal to grant rights to a community based legal entity; or
- d) where a community based legal entity is allocated Small Scale fishing rights, but is not satisfied with the allocation made to it.

on appeal include the following:  
appeal is available where the Minister makes the decision. The decisions that may be taken Where the Minister delegates her power to an official to make a decision under the Marine Living Resources Act to allocate rights or (as spelled out in paragraph 6.3.2 above) quantum to a community based legal entity, that decision may be taken on appeal to the Minister. No appeal is available where the Minister makes the decision. The decisions that may be taken

Any person affected by a decision that was made by a person acting under a power delegated in terms of the MLRA or section 238 (e.g. agency or delegation) of the Constitution, may appeal to the Minister.

**6.2.7 Appeals**

Small Scale fishing rights are to be awarded for the remaining period of the long-term rights allocation period. This is so as it would allow the Department time to reassess the species to which Small Scale fishers may have access. This also has the added advantage of allowing this policy to be realigned with the other allocation processes, including through consultation with existing right holders.

**6.2.6 Duration of rights**

The Director-General may, of his or her own accord or at the request of a Small Scale fishing community, a community based legal entity or any member of a Small Scale fishing community or community based legal entity, appoint an accredited mediator who is acceptable to the parties to assist in resolving any issues or disputes including the following:

- a) the eligibility of individuals to be members of a community based legal entity;
- b) the preparation or adoption of a constitution;
- c) conflicts between Small Scale fishing communities;
- d) conflicts between a Small Scale fishing community and the community based legal entity;
- e) conflicts between community based legal entities;
- f) conflicts between a community-based legal entity and its members or between members or committee members of these entities.

The Director-General may, of her or his own accord or at the request of one of the parties to the dispute, appoint a person who has adequate experience or knowledge in mediating community disputes where the parties to the dispute cannot agree on the person to be appointed.

#### **6.2.9 Current rights holders**

Fishers who have been granted long-term fishing rights in terms of the long-term rights allocation process and who meet the criteria for Small Scale fishers may retain his or her fishing rights for the duration of the long-term rights period. However, at expiration of the period for long-term fishing rights, the Small Scale fisher may be incorporated in this policy, provided that she or he meets the criteria for Small Scale fishers and is part of the community based legal entity.

A fisher that would meet the requirement for a Small Scale fisher in respect of the Small Scale fishing community or community-based legal entity with fishing rights under the Long Term Policy may choose to be accommodated in this policy. In this case he or she will not be entitled to retain the fishing right allocated under the General Fishery Policy on the Allocation and Management of Long-Term Commercial Rights 2005. The Minister may in her discretion, where it is appropriate to do so, combine the TAC or/and TAE from permit holders under the Long Term Policy who decide to be accommodated under the policy and the Minister may add it to the TAC and/or TAE of the relevant Small Scale fishing community or community-based legal entity.

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There are several different categories of rights holders under the current Long Term Fisheries Policy that pose critical legal challenges for the development of the policy. For example, a large number of persons who may qualify as Small Scale fishers in terms of the policy have allowed their names and identity documents (ID's) to be used to set up companies that hold commercial rights. However, many of these fishers have not been paid regular or consistent dividends and remain dependent on the Small Scale fisheries sector for their livelihoods. These fishers must at the time when the provisional lists are being drawn up request that their names be added to the list. However, they must provide details of the legal entities that hold commercial fishing rights that they are part of and provide proof of the money that they have received over the period that the legal entity has held the long-term commercial fishing right to the Department and community based legal entity. The Department may investigate the matter once that information has been provided and take appropriate action.

### 6.3 Fish processing establishments

No person may operate a fish processing establishment unless a right to undertake or to operate such an establishment has been granted to such a person by the Minister.<sup>24</sup> The activities to be undertaken by community-based legal entities may fall within the meaning of "fish processing establishment" as defined in the Marine Living Resources Act. This means that in addition to Small Scale fishing rights a right to operate such an establishment would also be required.<sup>25</sup> Particular emphasis should be given to strengthening the role women play in fish processing as a way of empowering women in the Small Scale fishing sector.

The Department in the rights allocation process must bring it to the attention of entities that they would have to apply for a fish processing establishment right as well and that their members will have to process the fish at a particular establishment. This may be a mechanism to monitor the species that are being caught and control the pooling of the respective catches, and more importantly, the distribution of monies earned from the sale of fish. This may however be impractical to implement across all of the areas.<sup>26</sup>

<sup>24</sup> Section 18(1) of the MLRA.

<sup>25</sup> The meaning of "fish processing establishment" could be amended to exclude facilities or areas used by Small Scale fishers.

<sup>26</sup> Further input is required from the stakeholders.

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**6.4 Applicability of permits, levies and fees**

**6.4.1 Permits, levies and application fees**

The Department endeavours to ensure that access to its administration in relation, among other things, to decision-making and permits is going to be more transparent and, where appropriate, decentralised. The Department recognises the difficulty and expense experienced by fishers when they need to raise issues or have areas of concerns that must be addressed. The establishment of community-based legal entities and co-management may alleviate some of these problems previously experienced by providing a platform where these matters can be attended to at a local level, in addition to the establishment of information hubs that may also assist fishers.

Community-based legal entities will pay a nominal application fee when submitting applications for Small Scale fishing rights, which fees will be determined through consultation with stakeholders once the policy is implemented. The Department may charge levies on certain leviable species (which are to be determined) on fish landed.

**6.4.2 Conditions of Small Scale fishing rights and permits**

The Department may include conditions when it grants rights or permits that are appropriate for this sector in the policy.

The Department may in allocating rights include the following conditions that:

- a) the agreed criteria are not deviated from;
- b) there are special provisions for women, the disabled and elderly persons;
- c) statistics are kept and regularly sent to the Department; or
- d) where appropriate, that levies are paid.

The following conditions may be included in the permit:

- e) the type of vessel that may be used;
- f) the fishing gear that may be used;
- g) the areas in which harvesting or fishing are to take place;
- h) the areas where marine living resources may be landed;
- i) the areas where marine living resources may be sold;

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- j) that food safety requirements must be complied with; or
- k) that there must be compliance with the labour laws.

#### **6.5 Transfer of fishing rights**

Small Scale fishing rights may only be transferred in exceptional circumstances and only to a community-based legal entity established in terms of the policy. The transfer of these fishing rights must be in line with the principles and objectives of the policy.

An application for the transfer of the right must be made to the Minister. The Minister decides whether or not the right may be transferred. In doing so, the Minister must consider the criteria specified in the policy for the allocation of Small Scale fishing rights and the extent to which the Small Scale fishing community or the community-based legal entity to which the right is to be transferred, complies with the criteria.

The Minister may, prior to and when considering an application for the transfer of fishing rights, call for comments from the Small Scale fishing community, community-based legal entities in the area or persons in the area where the right is to be exercised.

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## **7. POLICY REVIEW**

Finally, it is important that in adopting and implementing the policy that there is a commitment to ongoing and continued review of the policy's effectiveness in addressing ecological sustainability and the socio-economic needs of the affected communities and fishers. When the Department reviews the General Fisheries Policies it will take the principles, objectives and management approach to the Small Scale fisheries sector as spelt out in this policy into consideration to ensure alignment between the policies.

Research and ongoing monitoring by both Government and stakeholders will play an important role in identifying weaknesses and flaws in the policy and its implementation.

The Department will put in place a monitoring and evaluation system to ensure that useful, reliable, and timely feedback is provided to Government and other relevant stakeholders. This system should also monitor risk areas, such as financial management by service providers and beneficiaries, the adequacy of support services and environmental issues. Ex-post random audits, both physical and financial, will be systematically deployed.

The monitoring and evaluation system may assess project outcomes and processes, for example, by using the following methods and tools:

- a) an adapted management information system (MIS), in order to collect and organize baseline and progress data on interventions, beneficiaries' and service providers' performance;
- b) guidelines for performance information recording and management;
- c) periodic qualitative monitoring of beneficiaries, in order to examine project processes and problems;
- d) periodic enterprise and firm-level surveys from a sample of beneficiaries, in order to help establish enterprise-level benefits from the project; and
- e) qualitative assessments of the impact of the policy on people living in the focus areas.

A scientifically rigorous impact evaluation will be undertaken conclusively to demonstrate the success or failure of the policy. It is the impact evaluation which assesses whether the key outcome indicators are being achieved i.e. success and sustainability.

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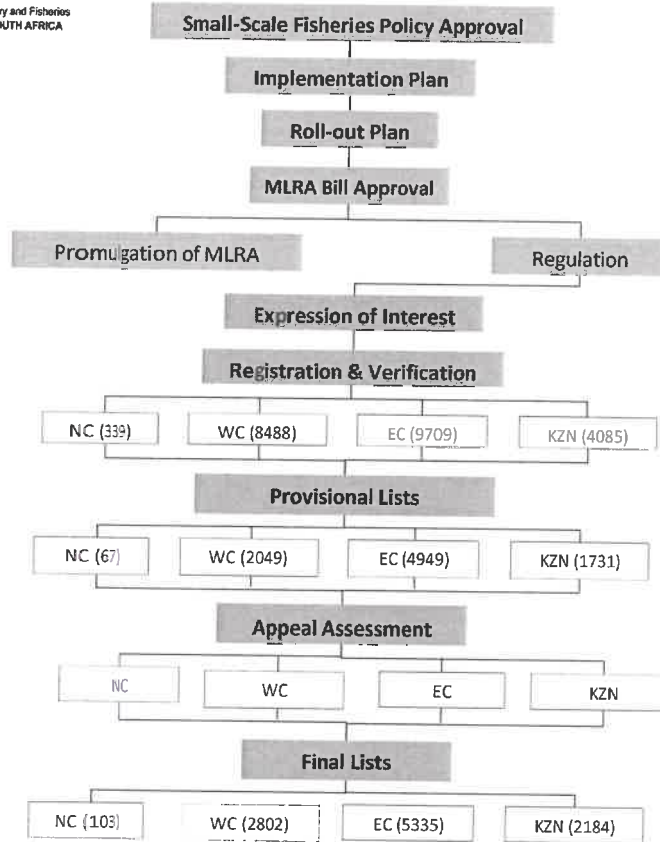
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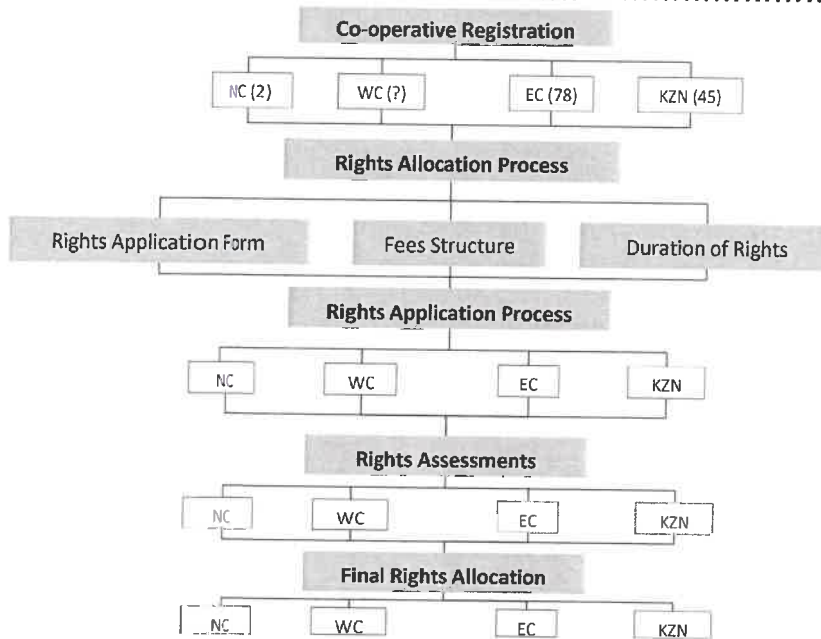
1. LEGAL FRAMEWORK



2. RECOGNITION OF SMALL-SCALE FISHERS

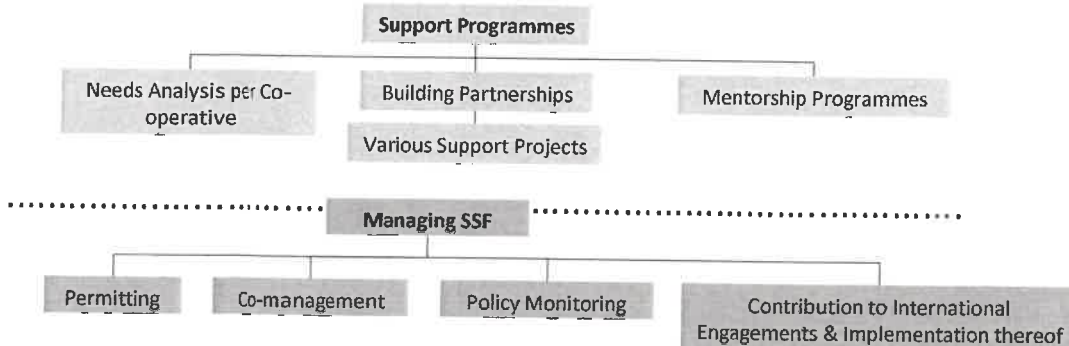


3. CO-OPERATIVE REGISTRATION & RIGHTS ALLOCATION



4. SUPPORT PROGRAMMES

5. SSF MANAGEMENT



SSF Implementation Process Flow

Handwritten signatures and initials.