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CONTENTS · INHOUD

No.		*Page No.*	*Gazette No.*
	GENERAL NOTICE		
Agriculture, Forstry and Fisheries, Department of			
General Notice			
852	Marine Living Resources Act (18/1998): Invitation to comment on the Draft Policy for the Small-Scale Fisheries Sector in South Africa: August 2010	3	33530

GENERAL NOTICE

NOTICE 852 OF 2010

DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

MARINE LIVING RESOURCES ACT, 1998 (Act No. 18 of 1998)

INVITATION TO COMMENT ON THE DRAFT POLICY FOR THE SMALL-SCALE FISHERIES SECTOR IN SOUTH AFRICA: AUGUST 2010

The Minister of Agriculture, Forestry and Fisheries hereby publishes for comment the DRAFT POLICY FOR THE SMALL-SCALE FISHERIES SECTOR IN SOUTH AFRICA: AUGUST 2010

Interested and affected parties are invited to submit written comments on the DRAFT POLICY FOR THE SMALL-SCALE FISHERIES SECTOR IN SOUTH AFRICA: AUGUST 2010 in the manner provided for in this Notice.

Interested parties may submit written comments to the Department by 16h00 on Friday 22 October 2010 by mail, by hand, e-mail or telefax transmission. Please note that comments received after the closing date may be disregarded.

By mail	By Hand	By Email
Subject: Comments on DRAFT POLICY FOR THE SMALL-SCALE FISHERIES SECTOR IN SOUTH AFRICA: AUGUST 2010, Customer Services Centre, Private Bag X2, Roggebaai, 8012	Subject: DRAFT POLICY FOR THE SMALL-SCALE FISHERIES SECTOR IN SOUTH AFRICA: AUGUST 2010Customer Services Centre, 2nd Floor, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town	smallscale@daff.gov.za **By FAX** 021 402 3622 **Telephonic queries** 021 402 3344 Sandile Sibya

The draft policy is also available on the Department's website www.daff.gov.za
The draft policy will also be made available in Afrikaans, Isixhosa and Isizulu on the Department's website.

IN THE CASE OF INCONSISTENCY BETWEEN THE ENGLISH, AFRIKAANS, ISIXHOSA AND ISIZULU TEXT, THE ENGLISH TEXT PREVAILS.

MINISTER

01/09/2010

agriculture,
forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

DRAFT POLICY FOR THE SMALL-SCALE FISHERIES SECTOR IN SOUTH AFRICA

TABLE OF CONTENTS

1. INTRODUCTION AND BACKGROUND 1

1.1 Historical perspectives of the small-scale fisheries sector 1

1.2 Current status of the small-scale fishing community 2
1.2.1 Social dynamics of small-scale fishers 2
1.2.2 Variety of species and resource use trends 2

1.3 Sustainable management of small-scale fisheries resources 3

1.4 The role of small-scale fisheries in economic development and food security 3
1.4.1 Poverty alleviation 4
1.4.2 Job creation and livelihoods 5
1.4.3 Food security 5

1.5 Problem statement 5

2. SCOPE OF POLICY 8

2.1 Relevance 8

2.2 Need for the policy 8

2.3 Strategic position 9

2.4 Legislative framework 10

3. POLICY PRINCIPLES AND OBJECTIVES 12

3.1 Principles 12

3.2 Objectives 13

4. POLICY FOCAL AREAS AND PARADIGM SHIFT 16

4.1 Paradigm shift for management of small-scale fisheries 16

4.2 People and communities 17
4.2.1 Community orientation and community-based approach 17
4.2.2 Transformation and gender 18
4.2.3 Social security and disaster relief 20
4.2.4 Labour rights and safety at sea 20

4.3 Supply chain from catch to markets 21

4.4 Governance monitoring and enforcement 22
4.4.1 Co-management of fisheries 22
4.4.2 Compliance monitoring and enforcement 23

4.5 Learning, information and sustainability 24
4.5.1 Capacity Building 24
4.5.2 Policy and legislation 25
4.5.3 Research for ecosystems approach to fisheries management 25
4.5.4 Research for technology 25
4.5.5 Technical and advisory support services, ... 25

5. MECHANISMS AND INSTRUMENTS FOR THE MANAGEMENT OF SMALL-SCALE FISHERIES 27

5.1 Right Holding 27

5.2 Management Instruments and tools 29
5.2.1 Comprehensive assessment of status of resource/s 29
5.2.2 Demarcation of small-scale fishing community areas 29
5.2.3 Management plans 30
5.2.4 Technical control measures 31
5.2.5 Agreements 31

5.3 Institutional arrangements 32
5.3.1 Multi-tiered organisational model 33
5.3.2 Structures at community level 33
5.3.3 Division of roles and responsibilities 34

5.4 Allocation of small-scale fishing rights 34
5.4.1 Approach to allocation 35
5.4.2 Community-based system of rights allocation 35
5.4.3 "Multiple species" approach 36
5.4.4 Criteria for allocation 37
5.4.5 Procedure for allocating rights 38
5.4.6 Duration of rights 39
5.4.7 Appeals 39
5.4.8 Conflict resolution mechanisms 40
5.4.9 Current rights holders 40

5.5 Fish processing establishments 41

5.6 Applicability of permits, levies and fees 42
5.6.1 Permits, levies and application fees 42
5.6.2 Conditions of small-scale fishing rights and permits 42

5.7 Transfer of fishing rights 43

6. POLICY REVIEW 44

GLOSSARY OF TERMS - DEFINITIONS AND ACRONYMS USED IN THE POLICY

Definitions

Terms	Definitions
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 resource.
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 an association of small scale fishers from an identified and listed small scale fishing community that is established in terms of laws and has legal capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Examples of community-based legal entities envisaged under this policy include a Section 21 Company, a cooperative or a trust.
Small-scale Fishing	Means the use of marine living resources on a full-time, part-time or seasonal basis in order to ensure food security. For the purposes of this policy, fishing also means the engagement in ancillary activities such as net making, boat-building, 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 simple 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; are directly involved in harvesting; operate on or near the shore or in coastal water bodies; traditionally operate on/near the fishing grounds and predominantly employ traditional low technology or passive fishing gear; undertake single day (24 hour) fishing operations; and subsist from their catch, 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, held individual rights or continue to exercise their rights in a communal manner in terms of an agreement, custom or law.
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.

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 Coat Rock Lobster
FSRD	Farming Systems Research and Development
ICMA	National Environmental Management: Integrated Coastal Management Act, 24 of 2008
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
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

1. INTRODUCTION AND BACKGROUND

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 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,[1] archival records and vestiges of customary practice remain. Spiritual ancestral beliefs and traditions abound and are linked to the sea's role in healing processes (such as drinking sea water and bathing in the sea for healing), baptism, cleansing rituals and the use of a variety of marine living resources for traditional medicinal purposes. The introduction of slaves also influenced the practices, beliefs and traditions of small-scale fishing communities.

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 1920'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

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[1] Shell middens signify the accumulation of food debris from groups visiting or living close to the coast and exploiting the abundant marine living resources, predominantly shellfish. Shell middens may be found along the entire length of the South African Coast but are principally located on or close to exposed rocky headlands. These deposits most commonly contain the remains of marine and terrestrial animals including fish-bone, crayfish, seal, birds, tortoise and small antelope. Human burial remains are occasionally found in midden deposits. Shell middens may also occasionally represent short-term campsites and include remnants of structures, fire places, etc.

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 sale. 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, knives, pangas, 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 taken into consideration when determining which marine living resources are applicable to the small-scale fisheries sector.

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. This approach is discussed further below.

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.

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.

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:

- 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;[2]
- the existing approach to fisheries governance which allocates individual rights through a long-term rights allocation process has historically and, with exception of

[2] Long term commercial fishing rights were awarded in about 2006 after publication of the General Policy and sector specific policies.

one or two sectors like traditional line fish, been orientated towards the export driven, commercial fisheries sector in South Africa;

- 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;
- 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;
- 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;[3]
- 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;
- international and regional agreements on developing sustainable and responsible fisheries to which South Africa is a party;
- increasing concerns about the state and sustainability of marine living resources;
- pollution and degradation of marine ecosystems;
- 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

[3] Draft Policy for the Allocation and Management of Medium-term Small-scale Fishing Rights. June 2008 page 6.

will affect the availability and accessibility of (and demand for) water, agriculture, forestry, fisheries and biodiversity;[4]

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

[4] DEA, Draft National Strategy on Sustainable Development, January 2010.

2. SCOPE OF POLICY

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 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.

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. 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; and

d) 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:

- economic growth and transformation of the economy to create decent work and sustainable livelihoods;

- vibrant, equitable, sustainable rural communities contributing towards food security for all; and

- protect and enhance our environmental assets and natural resources through sustainable resource management and use.

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).

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.

3. POLICY PRINCIPLES AND OBJECTIVES

3.1 Principles

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, protect and support the rights of small-scale fishers in line with national and international instruments;

b) adopt an integrated and holistic approach which is based on human rights principles;

c) recognise an approach which contributes to alleviation of poverty, food security and local socio-economic development;

d) promote biodiversity and the sustainable use and management of marine living resources and associated ecosystems;

e) 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;

f) recognise the interdependency of the social, cultural, economic and ecological dimensions of (small-scale) fishery systems;

g) 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;

h) develop accountable and transparent structures and mechanisms;

i) promote effective participation in policy development, management and decision-making;[5]

j) promote equitable access to and involvement in all aspects of the fishery in particular noting past prejudice against women and other marginalised groups;[6]

k) promote preferential access to 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;

l) ensure that small-scale fishing communities are not denied physical access to infrastructure and amenities that are central to exercising their right to fish;

m) incorporate a community-based rights approach to the allocation of marine living resources;

n) recognise that resources may be allocated through a multi-species approach;

o) recognise the complementary value of indigenous and local knowledge.

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 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 recognition and appropriate legal protection for small-scale fishers through the allocation of fishing rights;

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[5] This principle is in line with the NEMA provisions for participation and need for capacity development to participate effectively.

[6] This principle is in line with the Bill of 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 as coastal access land to secure access[7];

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 the establishment of appropriate institutional arrangements at different spheres of Government, in particular co-management arrangements, in order to give effect to this policy;

h) to facilitate co-operative governance with relevant Government departments involved in fishery dependent communities to promote poverty alleviation, food security, sustainable livelihoods and local economic development;

i) to facilitate the establishment of mechanisms that will address physical access for small-scale fishing communities to harbours, defence or other strategic facilities and marine protected areas when exercising their right to fish;

j) to inform the process of amending the MLRA;

k) to introduce measures and mechanisms that prioritise the small-scale fisheries sector within fisheries as whole; and

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[7] This principle is in line with Section 18 of the ICMA.

l) 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.

4. POLICY FOCAL AREAS AND PARADIGM SHIFT

4.1 Paradigm shift for management of small-scale fisheries

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.

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 ecological sustainability of the resource, the progressive realisation of human rights within affected communities, developmental objectives and current economic realities.

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 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.

4.2 People and communities

4.2.1 Community orientation and community-based approach

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:

- right holding option;
- the range of management instruments and tools;
- institutional arrangements; and
- capacity building and compliance monitoring and enforcement – all of which are dealt with below.[8]

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)[9] is an established concept and approach within the environmental and resource management governance sectors, and particularly in respect of protected areas and biodiversity conservation.

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[8] 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.

[9] 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 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.

4.2.2 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 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:

- promote the economic empowerment of women within the small-scale fisheries sector; and
- 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;

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; and

e) education for women to ensure employment and ownership in the aquaculture industries.

4.2.3 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 small scale fishing communities to access disaster relief or assistance under appropriate circumstances.[10]

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.

4.2.4 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

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[10] 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.

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 International Labour Organization recommendations.

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.

4.3 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;

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; and

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.

4.4 Governance monitoring and enforcement

4.4.1 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 local 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;

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.

4.4.2 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. This policy provides for a compliance and enforcement regime which advocates the 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 have the required skills and support in order to monitor fishing related activities and assist in preventing illegal fishing. The Department will implement measures to educate members and fishers to ensure skills training in this regard.

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.

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 honorary marine conservation officers and specify the powers that might be exercised by them.[11] 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.[12]

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

4.5 Learning, information and sustainability

4.5.1 Capacity Building

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;[13] 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; and the effective and efficient functioning of the co-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.

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[11] Section 9(2) of the MLRA.

[12] Section 50(4): "An observer shall exercise the scientific, compliance, monitoring and other functions determined by the Minister."

[13] June 2008 Draft Policy 29.

4.5.2 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.

4.5.3 Research for ecosystems approach to fisheries management

Conservation and management decisions for fisheries should be based on the best scientific evidence available and local knowledge of the resource and their habitat, as well as relevant environmental, economic and social factors (in other words an ecosystem approach). 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.[14]

4.5.4 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.

4.5.5 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 and should, where possible, incorporate an integrated fisher – support centre as a hub where fishers could access

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

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 Right Holding

This Policy proposes that small-scale fishing rights be granted to small-scale fishers in a particular area in which the small-scale fisher/s have traditionally operated and a particular type of community-based structure is established, among other things, to manage the resource.[15] Marine living resources are to be managed through co-management structures.

The small-scale fishing community applies to the Minister to be recognized as a small-scale fishing community and establishes a (or where appropriate more than one) community-based legal entity for a small-scale fishing community in a specific area. The right to fish is held by the community-based legal entity comprising of small-scale fishers. The rights of the individual members of this legal entity must be protected in the founding documents[16] of the legal entity. The members of the small-scale fishing community will draw-up a list with the names of the fishers who in their view may be entitled to harvest or fish for marine living resources. This list is submitted to the Minister. The Minister, on the basis of pre-set criteria, which have been determined in consultation with that particular small-scale fishing community determines how the right to fish that has been granted to the community-based legal entity is to be shared or distributed among its members.[17] The legal entity submits the application for the right to the Department. The authority to grant or refuse a right to fish remains vested in the Minister as prescribed in the MLRA. However, extensive consultation is required with the community.[18]

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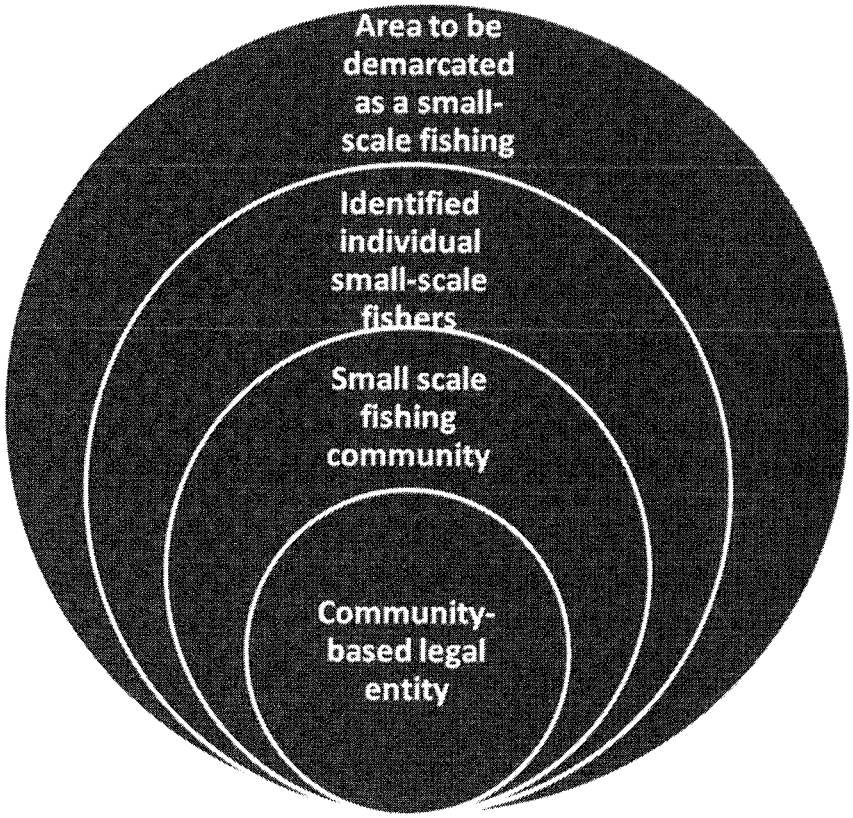
15 It was not decided whether the individual members would also benefit from prioritised areas or whether this would only be available to community-based legal entities.

16 For example Articles of Association

17 The procedure for allocating rights is described in paragraph 7.5.

18 Following extensive discussion and debate on options for rights holding at the NTT Meeting of 22 and 23 February 2010 in Cape Town, the NTT chose to include only ONE option in the draft policy, namely that of the "Community Right Option". However, the branch Marine and Coastal Management of the then Department of Environmental Affairs and Tourism was concerned that this option may in practice not be feasible in certain areas, and decided to include both options in the draft policy which was to be published in the Government Gazette for wider public consultation. The NTT never supported this. Accordingly, we used the community-based option which is what was also agreed to at the NTT meeting of 12 and 13 July 2010.

The rights holding relationship is illustrated in the figure below:



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 advise them of the legal entities available to communities. The fishers will have to decide on the appropriate legal entity that the small-scale fishing community is going to use that will 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.

5.2 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.

5.2.1 Comprehensive assessment of status of resource/s

It is proposed that comprehensive 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. 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 the area; as well as 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.

5.2.2 Demarcation of small-scale fishing community areas

The policy proposes that certain areas along the coast be demarcated as areas prioritized for small-scale fishers. Once the fishing community has established a community-based legal entity, the community can apply to the Minister to have an area designated a small-scale fishing community area. Where appropriate the Department will engage with other Government Departments that impose restrictions on areas or to areas that are needed by fishers.

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 once a comprehensive assessment has been conducted, taking into consideration the migratory patterns of fish, other marine 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.[19] 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.

5.2.3 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

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[19] 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.

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 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.

5.2.4 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; and specifying fishing methods and tools.

5.2.5 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 fishers 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 fishers' 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 further provide for:

- the duties and obligations of the parties to the agreement;

- access to, and use of marine living resources in, small-scale fishing community areas and protected areas;

- development of economic opportunities, including opportunities for women;[20]
- development of local management capacity in the small-scale fishing community and the exchange/transfer of knowledge between the parties;
- financial and other support to ensure the effective administration and implementation of co-management agreement;
- the duration of the agreement;
- breach of the agreement; and
- measures for dealing with and resolving disputes and conflicts.

Where appropriate, community-based structures may be allowed to enter into agreements with neighbouring entities to which small-scale fishing rights have been allocated in order to access migratory or other species that form part of the multi-species basket.[21] 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.

5.3 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.

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[20] The specific reference to women is in line with the National Gender Policy Framework.

[21] 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.

5.3.1 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 Forum (CAF) 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.

5.3.2 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 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 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 local community and depend on what 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 entity will make recommendations to the Minister as to which fishers are allowed to exercise the fishing right granted to the entity.

The community-based legal entity would provide its members with flexibility in making decisions as to how they market their catch; and who is involved in ancillary and value adding activities.

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.

5.3.3 Division of roles and responsibilities

The Department will be responsible for policy development; screening fishing right applicants; reviewing applications; coordinating the application process (including aspects such as the design of application forms, advertisement of applications, and dissemination of applications) and issuing fishing rights and permits.[22] 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.

5.4 Allocation of small-scale fishing rights

This chapter explains the **paradigm shift** in the approach to the small-scale fishing sector that is introduced in this policy and which was discussed above in section 4. This shift introduces a new approach that recognises and draws on age-old local traditions and practices of 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 human rights within affected communities and current economic realities. The policy shift addresses several different, but inter-related aspects including:

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

The policy proposes a shift away from past management approaches to one which emphases community orientation and establishes mechanisms and structures for a

[22] June 2008 Draft Policy 29-30.

community-based approach to 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.[23] 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.

5.4.1 Approach to allocation

Rights allocated in terms of this policy are for the benefit and upliftment of a specific community or for the community in general. The relevant 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 women, the disabled and, where appropriate, child-headed households.

5.4.2 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 members who are individual persons that make up a small-scale fishing community. The criteria for belonging to a community-based legal entity are as follows:

- South African citizens (male or female);
- at least 18 years of age (In the case of child-headed households, a guardian will be appointed to represent them as a member of the legal entity);
- must harvest the resources directly or be involved on a daily basis in operations (unless physically disabled);
- must be able to show historical dependence on the resource;

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[23] R.S. Pomeroy and R. Rivera-Guieb, *Fishery Co-Management A Practical Handbook.*

- must be able to show historical involvement in traditional fishing operations;[24]
- derive a major part of their livelihood from small-scale fishing; and
- not be permanently employed.

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, such disputes must be referred to the Department for resolution.

The Department issues a fishing right to a community-based legal entity where a fishing community has been declared. The Department, after consultation with the affected community, determines the criteria to be used and how the right granted by the Minister is to be exercised among members of the legal entity. The Department must extensively consult affected small-scale fishing communities during this phase.

Preferential treatment for women and disabled persons may be provided for. 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 so desired.

Local sales and consumption are essential and exports will be discouraged as much as possible in order to encourage the development of local markets and maximising of benefits at a local level.

5.4.3 "Multiple 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 a particular prioritised area.[25] The inclusion of species into the multi-species system will depend upon, among other things, the following:

- the availability of resources;
- extent to which those resources can be sustainably exploited;

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[24] This was inserted to ensure that traditional fishers are captured in the criteria as well.

[25] Previous reference was to TURF, but this was removed as per agreement between the stakeholders.

- the extent to which a particular resource is already being exploited in terms of the long-term rights allocation process;
- the number of members of a community-based legal entity in a particular prioritised fishing area that wish to exploit a particular resource;
- the potential market value of the resource when sold; and
- the nature and extent of the area.

These are an example 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 but are by no means exhaustive. For example, the Department, where appropriate, may prioritise the allocation of "new" species that become available, to the small-scale fishers.

5.4.4 Criteria for allocation

The criteria for allocation to small-scale fishing communities and to providing a mechanism for verification to distinguish 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 eligibility as small-scale fishing community, the decision-maker needs to take into account certain other factors. These factors may include:

- 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
- 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 RIGHT HOLDER (COMMUNITY-BASED LEGAL ENTITY)	**CRITERIA FOR FISHERS TO BECOME MEMBERS OF COMMUNITY-BASED LEGAL ENTITY**
Recognized small-scale fishing community	South African citizens from the small-scale fishing community.

Community-based legal entity	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/on of the legal entity)
List of identified eligible fishers	Must harvest the resources directly and be involved on a daily basis in operations (unless physically disabled)
	Must be able to show direct historical involvement in the small-scale sector (through 10 years experience at any one time but not necessarily over the past 10 years)
	Must be able to show involvement in the traditional fishing operations
	Derive a major part of their livelihood from small-scale fishing
	Have no permanent employment
	Fish to meet food and basic livelihood needs
	Subsist from their catch or are engaged in the sale or barter or involved in semi-commercial activity

5.4.5 Procedure for allocating rights

The call for names and where small-scale fishing community is to be established in an area will 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 right holding in this policy. A register of small-scale fishers from each fishing community will be developed. A small-scale fisher may go to sea to fish or harvest as long as he or she is on the register. The small-scale fishing community, with the community-based legal entity, is responsible for updating the register. Following those comments, the Department takes the decision in allocating rights to the legal entity of the

small-scale fishing community as well as deciding which members of the small-scale fishing community on the register may be entitled to exercise the right.

The diverse nature of small-scale fishing communities coupled with the extensive consultation that is required means that varied criteria may be used by the Department when determining the conditions subject to which the rights may be exercised. The applicant and any affected party's right to appeal decisions made in relation to allocating rights is set out in paragraph 5.4.7 below.

As previously mentioned the community must apply to the Minister for recognition as a small-scale fishing community and provides the Minister with a provisional list of fishers. However, before submitting its application the community needs to identify persons who are potentially eligible for membership of the legal entity and establishes a community-based legal entity. The community-based legal entity then applies to the Minister for a fishing right once the criteria to be determined for allowing fishers to exercise the right have been set by the Department in consultation with the community. The Minister awards this right to the community-based legal entity. The Minister after extensive consultation with the affected communities determine who of the fishers on the register may go to sea to exercise that right. The criteria for determining the eligible fishers and the fishers must be agreed to before the right is allocated. To ensure fairness and transparency in the rights allocation procedure the community-based legal entity will be required (as mentioned above) to give fair notice to the public of its application to the Minster. Comments on, and objections to, this application may be made to the Minister to consider when deciding on the application.

5.4.6 Duration of rights

Small-scale fishing rights are to be awarded for the remaining period of the long-term rights allocation period.[26] 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.

5.4.7 Appeals

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

[26] This must be confirmed with the stakeholders. The June 2008 Draft Policy stated that "the duration of the rights will be three years."

Constitution, may appeal to the Minister. Decisions on applications for rights (as spelt out in paragraph 5.4.5 above) or quantum may be taken on appeal. However, where the Minister takes the decision no appeal is available. Small-scale fishing right applicants may appeal to the Minister where they are affected by the decision taken by a delegated official under the MLRA. The decisions that may be taken on appeal, where appropriate, include the following:

- where an individual is excluded from the list;
- where the legal entity has not been granted small-scale fishing rights; or
- where a member of a small-scale fishing community that received small-scale fishing rights, has not received an allocation or is dissatisfied with the allocation awarded.

No rights may be allocated until the appeal process has been decided.

5.4.8 Conflict resolution mechanisms

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 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.

However, the Director-General may, of his or her own accord or at the request of a small-scale fishing community or any member, appoint a mediator who is acceptable to the parties to a dispute to assist in resolving any issues including the eligibility of membership, the preparation or adoption of a constitution or to resolve a dispute between a community-based legal entity and its members or between members or committee members of these entities: Provided that if the parties to the dispute do not reach agreement on the person to be appointed, the Director-General may appoint a person who has adequate experience or knowledge in conciliating community disputes.

5.4.9 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 the time of expiration of the long-term fishing rights, the small-scale fisher may be incorporated in this policy,

provided that she or he meets the criteria of small-scale fishers. The Minister may, where appropriate, adjust the overall allocation made to the small-scale fishing community or the community-based legal entity where additional small-scale fishers who held long-term fishing rights are added to the community or 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. 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.

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 new 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.

5.5 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.[27] The activities undertaken by community-based legal entities may therefore fall within the meaning of "fish processing establishment". This means that in addition to small-scale fishing rights a

[27] Section 18(1) of the MLRA.

right to operate such an establishment would also be required.[28] 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.[29]

5.6 Applicability of permits, levies and fees

5.6.1 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 may also assist fishers.

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

5.6.2 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:

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[28] The meaning of "fish processing establishment" could be amended to exclude facilities or areas used by small-scale fishers.

[29] Further input is required from the stakeholders.

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

The following conditions may be included in the permit:

- the type of vessel that may be used;
- the fishing gear that may be used;
- the areas in which harvesting or fishing are to take place;
- the areas where marine living resources may be landed;
- the areas where marine living resources may be sold;
- that food safety requirements must be complied with; or
- that there must be compliance with the labour laws.

5.7 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.

6. 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. 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:

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