

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO:

In the matter between:

WWF SOUTH AFRICA

Applicant

And

**MINISTER OF AGRICULTURE, FORESTRY
AND FISHERIES**

First Respondent

**DEPUTY DIRECTOR GENERAL:
FISHERIES MANAGEMENT BRANCH OF
THE DEPARTMENT OF AGRICULTURE,
FORESTRY AND FISHERIES**

Second Respondent

**RIGHTS HOLDERS IN THE WEST COAST
ROCK LOBSTER SECTOR**

**Third and Further
Respondents**

AFFIDAVIT

I, the undersigned,

GEORGE MEREDITH BRANCH

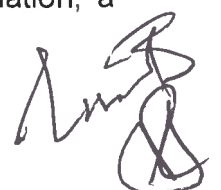


do hereby make oath and state:

1. I am an adult male and am employed as an Emeritus Professor and Senior Scholar in the Department of Biological Sciences at the University of Cape Town. In my professional capacity I have taught courses on fisheries management, authored books on Marine Science, and have been a full member of the West Coast Rock Lobster Scientific Working Group ("SWG") of the Department of Agriculture, Forestry and Fisheries since its inception in 1997 and in my capacity as an independent scientist.
2. I have been rated 'A' by the National Research Foundation in recognition of my international status as a world leader in marine science, and was awarded the Gilchrist Gold medal for my lifetime contributions to marine science. I was also Chair of the Access Rights Technical Group that advised on the formation of the Marine Living Resources Act 18 of 1998 ("MLRA"), and Deputy Chair of the Subsistence Fisheries Task Group that advised on the development of policy for subsistence fishers. I am therefore well versed in both the ecological aspects of fisheries as well as management and policy components of fisheries.
3. The facts stated in this affidavit are within my personal knowledge, unless the contrary is stated or indicated by the context. To the best of my knowledge and belief they are true and correct.

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4. Where I make submissions of a legal nature, I do so on the advice of the Applicant's legal representatives, which I believe to be true and correct.
5. It is of special concern that west coast rock lobster ("WCRL") *Jasus lalandii* has progressively declined in abundance over the past 15 years to a point where it is now less than 2% of pristine (i.e. its pre-exploitation level). In particular, by 2010 the biomass of males with a carapace length exceeding 75mm (the formal unit of biomass employed, and henceforth referred to as 'biomass') had dropped to less than 3% of the pristine and by 2016 had declined to around 1.9%.
6. By international standards, concern is expressed when a stock drops below 20% of pristine, and values below 10% are considered completely unacceptable; so the status of the WCRL is perilous by any standards.
7. Under normal circumstances, best scientific practice is to strive for a Total Allowable Catch ("TAC") that will be equivalent to a Maximum Sustainable Yield ("MSY"), i.e., one at which the potential population growth of the resource balances the amount that is taken. This allows a high economic return without diminishing the resource in the long term. In most fisheries the MSY is approximately 40% of the pristine level.
8. WCRL sits radically below the desired MSY. Frankly, its current biomass is now so low that by international standards, the WCRL fishery should be closed to allow for recovery. However, fishing continues for socio-economic reasons, but the WCRL resource is now poised at a point where, if steps are not taken to stabilise and rebuild the population, a



complete collapse is in the offing with significant long-term damage to the resource.

9. The concern regarding the depleted status of the WCRL resource is reflected in the fact that the status of the resource, as assessed by WWF's South African Sustainable Seafood Initiative (known as SASSI), has slid in a few years from being 'Green' (eat without guilt), to 'Orange' (think twice) to 'Red' in 2017 (do not buy due to the depleted state of the resource). This status is rigorously assessed annually by a team of interdisciplinary experts and in consultation with managers and stakeholders.
10. Both the Marine Living Resource Act ("MLRA") and the National Environmental Management Act 107 of 1998 ("NEMA") embody principles that emphasise the need for sustainable harvesting of living resources to ensure their beneficial use by future generations. There is thus a legal imperative to manage living resources in a way that does not threaten the future of the resource or the fishery and those dependent on it.
11. The fishery for WCRL is usually managed by an Operational Management Procedure ("OMP"). This is a rigorous procedure that has been internationally evaluated and approved. Amongst other things, it allows for the calculation of what TAC can be set without jeopardising the resource or the fishery, and the ecological and economic risks attached to a range of estimates. Because of the decline in the abundance of

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WCRL, it has been necessary to recommend a progressive decrease the TAC to prevent over-exploitation.

12. The science behind the recommendations for the annual setting of TAC is robust and sound, and on an almost annual basis has been evaluated by a team of international independent experts in the field.
13. In 1996, the SWG, which comprises representatives of stakeholders, management and scientists, unanimously accepted and recommended the need to 'rebuild' the resource (i.e. to increase the biomass) by 20% by 2006; but in reality the resource declined a further 16%. A second target was then set to achieve an improvement of 20% by 2016, but actually ended with a 6% decline.
14. In taking such decisions, the SWG does consider socio-economic consequence of its recommendations. So, for example, it may offer a range of options spanning those with greater risk to the resource but less impact to the economics of the fishery, through to those with less biological risk that come at great economic cost. It has also offered options in which necessary cuts in the TAC are spread over a few years to soften the economic consequences of reductions.
15. Apart from effects of depleting the stock to levels where they are well below optimal economic yields, there are also effects on the ecosystem as a whole. Components of the MLRA require ecosystem effects to



fishing to be taken into account and, indeed the Department of Agriculture, Forestry and Fisheries is committed to this goal. In the context of WCRL, the most obvious effect is that it is an important food source for the Bank Cormorant *Phalacrocorax neglectus*, which is listed as 'Endangered' on the South African Red Data Book, and has declined and shifted its geographic position in response to the decline of WCRL.

16. Concerns about the failure to manage the WCRL resource at a level that can be regarded as sustainable and that will allow optimal economic returns are pressingly urgent for two reasons. First, allocations are expected to be made shortly to the Small-scale fisheries sector. This is particularly directed at poor fishers from traditional fishing communities and the need to redress their rights. WCRL is pivotal to this exercise - if the resource is driven down further, these fishers will be the first to suffer. Second, illegal fishing for WCRL is demonstrably on the rise, compounding the problem of resource depletion.

17. Finally, and most importantly in the light of all these concerns, it is completely unacceptable that the 2017/18 allocation of a TAC should have been set at 1924.08 tons, more than *double* the level of 790 tons as recommended by the SWG. This flies in the face not only of all evidence pointing to the need to reduce the TAC, but also against the principles embedded in the MLRA and NEMA.



18. The implementation of an unchanged TAC for the 2017/18 season that ignored the recommendations of the SWG to reduce the TAC to avoid over-exploitation would have brought a short-term economic benefit, but will inevitably result in further reductions in the stock that will require more radical slashes in future TACs to achieve sustainability and will, hence, be economically detrimental in the long term.

George Meredith Branch
GEORGE MEREDITH BRANCH

I certify that:

1. the deponent acknowledged to me that:
 - 1.1 he/she knows and understands the contents of this declaration;
 - 1.2 he/she has no objection to taking the prescribed oath;
 - 1.3 he/she considers the prescribed oath to be binding on his/her conscience;
2. the deponent thereafter uttered the words, "I swear that the contents of this declaration are true, so help me God";
3. the deponent signed this declaration in my presence at the address set out hereunder on this 24th day of JUNE 2018.

Jacobs
.....
COMMISSIONER OF OATHS

Designation and Area WARRANT OFFICER
Full Names JEANINE JACOBS
Street Address 104 MAIN ROAD
DIEPRIVER

