

# DRAFT EXPLANATORY NOTES – MEDIUM TERM RIGHTS HOLDERS SOUTH COAST ROCK LOBSTERS AND PATAGONIAN TOOTHFISH

THESE EXPLANATORY NOTES PROVIDE INFORMATION REGARDING CERTAIN QUESTIONS WHICH ARE INTENDED TO HELP APPLICANTS TO UNDERSTAND WHAT IS REQUIRED. QUESTIONS THAT ARE CONSIDERED TO BE SELF-EXPLANATORY ARE NOT COVERED IN THESE EXPLANATORY NOTES.

## SECTION 1: APPLICANT DETAILS

This section requires the applicant to provide the relevant details of the applicant, including those of the authorized contact person. The applicant was required to provide these details when it registered for an application form on Marine and Coastal Management's website. Questions 1.8.1 to 1.8.7d only need to be completed if the applicant's details have changed since registration.

## SECTION 2: FORM OF APPLICANT AND COMPLIANCE

This section deals with the nature of the applicant, as well as the applicant's compliance with various legislation.

### 2.1 Form of Applicant

**Question 2.6:** The fishing industry falls under the Agriculture Sector. As such, a Small, Medium or Micro Enterprise is defined by the National Small Business Act 102 of 1996 as follows:

*"Small Business" means a separate and distinct business entity, including cooperative enterprises and non-governmental organisations, managed by one owner or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy mentioned in column 1 of the Schedule and which can be classified as a micro-, a very small, a small or a medium enterprise by satisfying the criteria mentioned in columns 3, 4 and 5 of the Schedule opposite the smallest relevant size or class as mentioned in column 2 of the Schedule."*

Sector or sub-sectors in accordance with the Standard Industrial Classification Column 1	Size or class Column 2	Total full-time equivalent of paid employees <i>Less than:</i> Column 3	Total annual turnover <i>Less than:</i> Column 4	Total gross asset value (fixed property excluded) <i>Less than:</i> Column 5
Agriculture	Medium	100	R 4.00 m	R 4.00 m
	Small	50	R 2.00 m	R 2.00 m
	Very small	10	R 0.40 m	R 0.40 m
	Micro	5	R 0.15 m	R 0.10 m

**Question 2.8:** All applicants must indicate the number of employees in respect of which the applicant contributes to the Unemployment Insurance Fund only. No employees from another entity may be included in the figures.

## SECTION 3: COMPLIANCE

**Question 3.1.1:** The MLRA is the Marine Living Resources Act 18 of 1998. A copy is available on the Department's website [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za)

## SECTION 4: VESSEL DETAILS

This section requires the applicant to furnish the details of each of the vessel(s) nominated by the applicant.

## SECTION 5: CATCH UTILISATION

This section requests details regarding the applicant's catch records while holding a medium term rights (2001 – 2005) period.

**Question 5.1:** This question requires the applicant to provide information regarding the total allowable catch allocated to the applicant for each year, and to indicate the percentage which the applicant over- or under- caught while holding a medium term right.

### Example

Year	TAC Allocated	Total Annual Catch (in tons)	By what percentage did you under-catch?	By what percentage did you over-catch?
2001	3000 Tons	3300 Tons	0%	10%

*Actual tonnage caught (3300 tons) minus total allowable catch allocated (3000) = 300. To establish the percentage, divide the difference by the TAC allocated and multiply it by 100. i.e. (300/3000) x 100 = 10 %.*

## SECTION 6: TRANSFORMATION

This section requires the applicant to provide details regarding Black and Female Ownership, Employment Equity, Skills Development, Corporate Social Investment and Affirmative Procurement.

**Question 6.1:** A designated employer, in terms of the Employment Equity Act 55 of 1998 is:

- a) *an employer who employs 50 or more employees;*
- b) *an employer who employs fewer than 50 employees, but has a total annual turnover that is equal to or above the applicable annual turnover of a small business in terms of Schedule 4 of this Act. (which is R2 million per annum); or*
- e) *an employer bound by a collective agreement in terms of section 23 or 31 of the Labour Relations Act, which appoints it as a designated employer in terms of this Act, to the extent provided for in the agreement;*

**Question 6.2:** Compliance with the Employment Equity Act 55 of 1998 means:

- 1) *Every designated employer must, in order to achieve employment equity, implement affirmative action measures for people from designated groups in terms of this Act.*
- 2) *A designated employer must-*
  - a) *consult with its employees as required by section 16;*
  - b) *conduct an analysis as required by section 19;*
  - c) *prepare an employment equity plan as required by section 20; and*
  - d) *report to the Director-General on progress made in implementing its employment equity plan, as required by section 21.*

**Question 6.3.1:** This question requires the applicant to provide details regarding the applicant's board of directors. If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 6.3.1 by listing the board of directors of both the applicant and of the holding company.

**Question 6.3.2:** This question requires the applicant to provide details regarding employees that earn the highest salaries (total cost to company). Total cost to company includes benefits and bonuses, but excludes dividends. Applicants that employ 165 or fewer employees must provide the details of their top salary earners as indicated in the table in the application form. Applicants that employ more than 165 people must first calculate how many 3% of their employees are and then provide details of that number (up to a maximum of 90).

**Example:** If the applicant employs 2500 people, the applicant should multiply this number by 3% ( $2500 \times 0.03 = 75$ ). The applicant should therefore provide the details of the top 75 salary earners paid by the applicant. The applicant must not provide the details of more than 90 employees, regardless of how many employees the applicant has.

Designation or actual title held by the employee, as reflected on the organogram or organizational structure, must be provided.

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 6.3.2 with reference to the employees of both the applicant and of the holding company. The applicant must complete the tables for both entities and merge the results giving only the required number of employees in the table in Question 6.3.2.

**Example:** If the applicant employs 75 people, and the holding company employs 125 people, the two entities combined employ 200 people. This number should be multiplied by 3% ( $200 \times 0.03 = 6$ ). The payrolls of the two entities should be merged, and the top six salary earners of the combined entities should be completed in the table in Question 6.3.2

**Question 6.4:** This question requires applicants to provide details of income levels within the organization. "Employees" are those employees in respect of which the applicant contributes to the Unemployment Insurance Fund. "Percentage of total employees" is the number of employees falling into that particular income level, as a percentage of total employees. "Number of black employees" is the number of black employees falling into that particular income level. "Percentage of total black employees" is the number of black employees falling into a particular income level as a percentage of total black employees employed by the applicant. "Number of female employees" is the number of female employees falling into a particular income category.

Example

1	Monthly Income	Number of employees	Percentage of Total Employees	Number of Black Employees	Percentage of Total Black Employees	Number of Female Employees
	< R 2 500	100	80%	80	90 %	70

*Establish the total number of employees employed by the applicant (refer to Question 2.7). Then divide the employees in this income level by the total number of employees, multiplied by 100.*

*Establish the total number of black employees employed by the applicant. Then divide the number of black employees in this income level by the total number of black employees employed by the applicant*

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 6.4 with reference to the employees of both the applicant and of the holding company. The applicant must complete the tables for both entities and merge the results, and provide the combined totals in the table in Question 6.4.

**Question 6.5:** This question requires the applicant to complete the employment equity profile of the applicant per occupational category as **at 30 April 2005**. A = African, C = Coloured, I = Indian, W = White, F = Female and ACI = African, Coloured and Indian

**Example**

Company A employs a total of seven Senior Officials and Managers. Of the seven employees in this occupational category, 1 is an African Male, 2 are Coloured Males, and 2 are White Males. 1 is an Indian female and 1 is a White female. In order to determine the percentage take the number of employees from each designated group in the occupation level and divided by the total number of employees in the occupational level. See below to calculate the ACI and F percentages

										<b>Totals</b>	
Occupational Categories		A No	A %	C No	C %	I No	I %	W No	W %	ACI%	F%
Senior Officials and Managers	Male	1	14%	2	28%	0	0%	2	28%		
	Female	0	0%	0	0%	1	14%	1	15%		

*Establish the total number of African, Black and Indian employees employed by the organisation. Divide the number of ACI Senior Officials and Managers (the occupational category) by the total number of ACIs employed by the applicant to calculate this percentage.*

*Establish the total number of female employees employed by the organisation. Divide the number of female Senior Officials and Managers (the occupational category) by the total number of females employed by the applicant to calculate this percentage.*

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 6.5 with reference to the employees of both the applicant and of the holding company. The applicant must complete the tables for both entities and merge the results, and provide the combined totals in the table in Question 6.5.

**Question 6.6.1:** This question requires the applicant to describe the employment equity profile for Senior Officials and Managers since 2001. The percentages should be calculated in the same manner as described under question 6.5 above. Repeat the information given in respect of senior officials and managers in that question in the bottom row

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 6.6.1 with reference to the employees of both the applicant and of the holding company. The applicant must complete the tables for both entities and merge the results, and provide the combined totals in the table in Question 6.6.1.

**Question 6.6.2:** This question requires the applicant to describe the employment equity profile for Professionals since 2001. The percentages should be calculated in the same manner as described under question 6.5 above.

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 6.6.2 with reference to the employees of both the applicant and of the holding company. The applicant must complete the tables for both entities and merge the results, and provide the combined totals in the table in Question 6.6.2.

**Question 6.7.1:** This question requires applicants that are companies to provide details regarding the applicant shareholding held by black persons. The applicant is required to follow the Flow Through Principle as defined by Code 100 of the BEE Codes of Good Practice.

**Example:** Company A has four shareholders. Three of these shareholders are natural persons (individuals), while one is a company. The company holds 50% of the applicant company's shares. The shareholder company is 50% owned by a black person and 50% owned by a white person. This means that 25% of this company's shareholding in the applicant is black.

Percentage voting rights should be calculated based on voting rights assigned to all shares held by black persons as a percentage of the voting rights of all issued shares. Percentage dividend declared in favour of black shareholders should be calculated as total dividends declared in favour of shares held by black persons as a percentage of the total dividend amount declared in favour of all shares.

**Question 6.7.2:** Female ownership, voting rights and percentage dividend declared in favour of women for companies is calculated in the same manner as described under **Question 6.7.1** above.

**Question 6.8.1:** This question requires applicants that are close corporations to provide information regarding the membership interests in the close corporation held by black persons, the percentage voting rights held by those black members, and the percentage profit distribution declared in favour of black members. The percentage voting rights and profit distribution should be calculated as a percentage of the total voting rights and total profit distribution declared respectively.

**Question 6.8.2:** Female ownership, voting rights and percentage dividend declared in favour of women for companies is calculated in the same manner as described under **Question 6.8.1** above

**Question 6.9:** This question requires the applicant to provide information on the extent to which it has achieved the targets set in the Transformation Plan submitted in 2001.

**Question 6.10:** This question requires the applicant to provide information relating to compliance with section 3 of the Skills Development Levies Act 9 of 1998.

To determine the "percentage of payroll spent on training" divide the actual annual amount spent on training by the total annual payroll cost and multiply the result by 100 to determine the percentage value.

#### **Example**

Company X has an annual payroll cost of R 1 000 000,00. The company has spent R 10 000,00 on training for all employees.  $(R10\,000,00/R1\,000\,000) = 0.001 \times 100 = 1\%$ .

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete the columns "Percentage Payroll Spent on Training" and "Percentage of Training Budget spent on Black Employees" with reference to the payroll and training budget of both the applicant and its holding company. The payrolls, percentage of payroll spent on training and percentage of training budget spent on black employees must be merged and the combined results provided in 6.10.

**Question 6.11:** This question requires the applicant to indicate whether it participated in a learnership programme in 2004. Participation in a learnership programme means that the applicant has registered a learnership agreement with the SETA as per the Regulations Concerning the Registration of Intended Learnerships and Learnership Agreements published under the Skills Development Act 97 of 1998 in Government Notice No. R. 330 of 3 April 2001.

**Question 6.15 and 6.16:** These questions refer to the applicant's corporate social investment donations. If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete these questions in relation to the donations made by both the applicant and the holding company. The net profit and donation figures must be added together and the percentage of net profit calculated accordingly. The benefiting organisations of donations made by both the applicant and its holding company must be merged, and the top five benefiting organizations of results provided in Question 6.16.

**Question 6.18:** Black ownership of these suppliers should be calculated as described above under **Question 6.7.1** and **Question 6.8.1**. "Percentage of total procurement spend" should be calculated as the amount paid to a particular supplier as a percentage of the applicant's total procurement spend.

#### **SECTION 6: SAFETY**

This section requires the applicant to provide information that relates to the safety requirements of the South African Maritime Safety Authority.

**Question 7.8:** Compliance with the Compensation for Occupational Injuries and Diseases Act 130 of 1993 means compliance with Sections 80 to 88 of the Act which provides as follows:

##### **"Obligations of employers to register with commissioner and to furnish him with particulars"**

- 1) An employer carrying on business in the Republic shall within the prescribed period and in the prescribed manner register with the commissioner, and shall furnish the commissioner with the prescribed particulars of his business, and shall within a period determined by the commissioner furnish such additional particulars as the commissioner may require.
- 2) The particulars referred to in subsection (1) shall be furnished separately in respect of each business carried on by the employer.
- 3) An employer shall within seven days of any change in the particulars so furnished notify the commissioner of such change.

### Obligations of employers to keep record

An employer shall keep a register or other record of the earnings and other prescribed particulars of all the employees, and shall at all reasonable times produce such register or record or a microfilm or other microform reproduction thereof on demand to an authorized person referred to in section 7 for inspection.

### Contributions by employers individually liable and mutual associations

Notwithstanding any provision to the contrary contained in this Act, the employers individually liable and the mutual associations shall pay annually to the Director-General in such manner and at such times as he may determine, such portion of the expenditure incurred by him in the administration of the provisions of this Act as he may deem equitable."

## SECTION 8: JOB CREATION

This section requires the applicant to furnish details regarding job creation. Refer to the corresponding Schedule to determine the annexures that should be submitted in relation to this section, as well as further information regarding how the section should be completed.

**Question 8.1.1:** This question requires the applicant to provide information regarding its employees, the wage bill, and the changes in the number of people the applicant employs since 2001. These figures need to be supplied as at each financial year end. The column headed, "Total Number of Employees" (those in respect of which the applicant contributes to the Unemployment Insurance Fund and Seasonal Employees, should be the total of the four previous columns. In the column headed "Percentage increase or decrease in total number of employees," the applicant *must* include a negative (-) sign if the number of employees has decreased.

**Question 8.1.2 and 8.1.3:** This question requires applicants to furnish details regarding employees and wages per ton allocated.

### Example

TAC Allocated in 2005 (in tons)	Total Annual Wage Bill (in relation to this fishery) (Total Cost to Company) (1 May 2004 – 30 April 2005)	Total Employees (in relation to this fishery) (30 April 2005)	How many people does the applicant employ per ton allocated?	How much does the applicant spend on wages per ton allocated?
5 000	R1 000 000	1 000	0.2	R200

*Divide the total number of employees in relation to this fishery (1000), by the TAC allocated to the applicant (5000) [1000/5000=0.2]*

*Divide the Total Annual Wage Bill (1 000 000) by the TAC Allocated (5000) = R200 per ton.*

**Question 8.1.4:** This question requires applicants to provide details regarding the wage gap.

### Example

Company X's highest salary (total cost to company) paid in 2004 was R 200 000 per annum. Their lowest paid employee earned R 12 000 per annum (total cost to company). The multiple between the lowest and highest salaries in 2004 is calculated by dividing the highest salary by the lowest salary.

What was the applicant's highest annual salary (total cost to company) paid in 2004 (in 2004 financial year)?	What was the applicant's lowest annual salary (total cost to company) paid in 2004 (in 2004 financial year)?	What was the multiple between the lowest and highest salaries in 2004?
R200 000	R12 000	16,67

*Divide the highest salary by the lowest salary to calculate the multiple. Round this figure off to the nearest decimal.*

If the applicant is part of a group of fishing companies, and is more than 50% owned by another fishing company, close corporation or trust, the applicant must complete Question 8.1.4 with reference to the payroll of both the applicant and of the holding company. The applicant must identify the highest and lowest annual salary with reference to the payrolls of both the applicant and the holding company.

## SECTION 9: INVESTMENT

This section requires the applicant to provide details regarding investment in the fishery. Refer to the corresponding Schedule to determine the annexures that should be submitted in relation to this section, as well as further information regarding how the section should be completed.

**Question 9.1.1:** This question requires the applicant to provide information regarding its investment in total fixed assets, both land and sea or harbour based, and the changes in that level of investment since 2001, in relation to this fishery. These figures need to be supplied as at each financial year end. The column headed, "Rand Value of Total Fixed Assets (in relation to this fishery) should be a total of the "Rand Value of Total Land Based Assets (in relation to this fishery)" and the "Rand Value of Harbour and Sea Based Assets (in relation to this fishery)" columns. In the column headed "Percentage increase or decrease in Rand Value of Total Fixed Assets (in relation to this fishery)," the applicant *must* include a negative (-) sign if the investment has decreased.

**Question 9.1.2:** This question requires the applicant to provide information regarding the value of investment per ton allocated.

### Example

Company X was allocated a TAC of 5000 tons. The value of its harbour and sea-based assets at date of application was R5 000 000. The value of land based assets were R 4000 000. The value of harbour and sea-based assets per ton allocated to it is calculated as follows:

TAC allocated to the applicant in 2005 in tons	Rand Value of harbour and sea-based assets at date of application	Value of land based assets at date of application	Value of Harbour and Sea-based Assets per ton allocated to the applicant	Value of land Based Assets per ton allocated to the applicant
5 000	R5 000 000.00	R4 000 000	R1 000,00	R800,00

*Divide the value of harbour and sea based assets (5 000 000) by the TAC allocated to the applicant in 2005 (5000) [5 000 000/5 000=R1 000]*

*Divide the total value of land based assets (4 000 000) by the TAC allocated to the applicant in 2005 (5000) [4 000 000/5 000=R800]*

### SECTION 10: LOCAL ECONOMIC DEVELOPMENT

This section requires the applicant to provide information regarding harbours where it has landed catches (in relation to this fishery) in 2004, and where it intends to land its catch should this application be successful.

**Question 9.1:** This question requires the applicant to provide detailed information regarding harbours where it landed catches in 2004.

### Example

Company X lands fish at various different harbours. Of the total fish landed in terms of its TAC of 20 000 tones it lands 5 tons in Mossel Bay, 10 tons in Fish Hoek and 5 tons in Cape Town.

The calculation is done as follows:

Harbour Name	Tons Landed at Harbour in 2004	Rand Value of Catch landed at Harbour in 2004	Percentage of Total Catch landed in 2004
Mossel Bay	1500	R100 000	30 %
Port Nolloth	1500	R100 000	30 %
Cape Town	2000	R150 000	40 %

*Divide the catch (in this fishery) landed at each Mossel Bay by the total TAC landed by the applicant and multiply by 100 to calculate this percentage (1 500/5 000x100=30%)*

### SECTION 11: FINANCIAL PERFORMANCE

This section requires the applicant to provide details regarding the Financial Performance of the applicant's business during the medium term rights allocation period and as at the close of the 2004 financial year. Only information from the applicant's 2004 audited financial statements must be supplied.

**Question 11.2:** The applicant is required to calculate the percentage of total turnover of the business for the specific fishery that the applicant is applying for, expressed as a percentage of the business's total turnover.

### Example

Company X was allocated fishing rights for Hake Deep Sea Trawl and South Coast Rock Lobster during the medium term right period. It was allocated a TAC of 5000 tons for Hake Deep Sea Trawl and 7 tons South Coast Rock Lobster in 2004. Company X's total turnover (for both fisheries) for the 2004 financial year was R18 000 000. The total turnover for Hake Deep Sea Trawl for the financial year 2004/5 was R10 000 000. The total turnover for South Coast Rock Lobster was R 8 000 000. In it's application for Hake Deep Sea Trawl, the applicant's table would appear as follows:

Tons Allocated in 2004	Rand Value of turnover for this fishery	Percentage of Total turnover
5000	R10 000 000	55.6%

*Divide turnover of this fishery by total turnover of the applicant and multiply by 100 to determine the percentage value. 10 000 000/18 000 000x100= 55,6%*

Section 12.3 This question requires applicants to provide financial performance ratios. These should be calculated as follows:

### Return on Net Assts

$$\text{RONA} = \frac{\text{Operating Profit}}{\text{Net Operating Assets}} = \frac{\text{Operating Profit}}{\text{Sales}} \times \frac{\text{Sales}}{\text{Net Operating Assets}}$$

**Debt: Equity Ratio:**  $\frac{\text{Debt}}{\text{Equity}}$

**Current Ratio:**  $\frac{\text{Current Assets}}{\text{Current Liabilities}}$

Current Liabilities

**Acid Test:**  $\frac{\text{Current Assets} - \text{Inventory}}{\text{Current Liabilities}}$

**Questions 11.4, 11.5 and 11.6:** These questions require the applicant to fill in information from its audited or verified financial statements.

**SECTION 12 FISHING PLAN**

This section requires the applicant to provide information regarding its fishing plan.

**SECTION 13: BY-CATCH AND ENVIRONMENTALLY SUSTAINABLE PRACTICES**

This section requires the applicant to provide information regarding by-catch and environmentally sustainable practices.

**Question 13.1:** This question requires the applicant to provide information regarding avoidable and unavoidable by-catch as a percentage of total catch.

**Example:**

Company X was allocated 5000 tons in 2004. This unavoidable by-catch in 2004 was 400 tons, while avoidable by-catch was 320 tons. The applicant landed 5450 tons in 2004.

Year	Annual By-Catch (in tons)	Annual Unavoidable By-Catch as a percentage of total catch	Annual Avoidable Catch as a Percentage of By-Catch
2004	720	7.3%	5.9%

↓  
*Divide the annual unavoidable by-catch by total catch landed and multiply by 100 to calculate the percentage  
[400/5450x100 = 7.3%].*

↓  
*Divide the annual avoidable by-catch by total catch landed and multiply by 100 to calculate the percentage  
[320/5450x100 = 5.9%].*

**SECTION 14: LEVIES**

This section requires the applicant to provide information regarding levies paid during the medium term right period.