

**DRAFT**



**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

**BRANCH MARINE AND COASTAL MANAGEMENT**

**POLICY FOR THE ALLOCATION AND MANAGEMENT OF LONG-  
TERM COMMERCIAL FISHING RIGHTS IN THE PATAGONIAN  
TOOTHFISH FISHERY: 2005**

**THIS DRAFT POLICY MUST BE READ WITH THE DRAFT GENERAL  
POLICY ON THE ALLOCATION AND MANAGEMENT OF LONG-TERM  
COMMERCIAL FISHING RIGHTS: 2005 (available at [www.mcm-  
deat.gov.za](http://www.mcm-deat.gov.za))**

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## 1. Introduction

This is a draft policy on the allocation and management of commercial fishing rights in the Patagonian toothfish (*Dissostichus eleginoides*) fishery and is issued by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (“the Department”) for public comment. Interested and affected parties are advised that this policy must be read with the Draft General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 (“*the General Fisheries Policy*”). Interested and affected parties must submit written comment by 4 April 2005. Comments submitted after this date will not be considered. Comments shall be submitted as follows:

<b>By Fax:</b> Fax Number: (021) 670-1782 Attention: The Deputy Director-General Patagonian Toothfish Policy Comments	<b>By Mail:</b> Attention: Mr Horst Kleinschmidt The Deputy Director-General The Department of Environmental Affairs and Tourism P.O Box 44963 Claremont 7735 Patagonian Toothfish Policy Comments	<b>By E-mail:</b> <a href="mailto:RVU@deloitte.co.za">RVU@deloitte.co.za</a> Attention: The Deputy Director-General Patagonian Toothfish Policy Comments
		<b>By Hand</b> Attention: The Deputy Director-General The Rights Verification Unit 11 Landsdown Road Claremont Patagonian Toothfish Policy Comments

The purpose of this policy is to set out the considerations that will apply to the allocation of long-term commercial Patagonian toothfish fishing rights. Many of these considerations are not new. They have been applied by the Department when allocating rights in the past. This policy documents these considerations, but includes a few changes and additions.

Certain post-rights allocation management policies are also presented in this draft policy. A Patagonian toothfish Fishery Management Manual will be finalised with all right-holders during the course of 2006. This manual will stipulate in detail the management methodology and procedures for the fishery.

The Minister of Environmental Affairs and Tourism intends to delegate the section 18 power to allocate commercial Patagonian toothfish fishing rights in terms section 79 of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) to a senior official of the Department.

## **2. Biology and resource dynamics**

Patagonian toothfish, also known as Chilean sea bass, is a deep-water, demersal species which is found on sub-Antarctic continental shelves down to 3 000 metres. Several countries can lay claim to Patagonian toothfish which occur within the exclusive economic zones (EEZs) of Chile, Argentina and many other countries with sovereignty over southern Ocean islands. South Africa's EEZ around the Prince Edward Islands is a prime fishing ground for Patagonian toothfish. Much of the range of Patagonian toothfish falls within the high seas.

Patagonian toothfish live for over 50 years and reach a length of over two metres. Maturity is attained between six and nine years of age, equivalent to a length range of 70 to 95 centimetres. Spawning occurs on continental shelves in winter, but eggs only hatch in spring.

## **3. Sector profile**

Global catches of Patagonian toothfish have declined sharply since the origins of the fishery in the late 1980s. A combination of its high value, late maturity and occurrence in the high seas has caused the near-collapse of the fishery, which has seen unprecedented levels of illegal, unregulated and unreported (IUU) fishing. South Africa's waters around the Prince Edward Islands were extensively targeted and CCAMLR estimates that as much as 32 000 tons of toothfish, with a value of US\$100 million was illegally fished from the PEI-EEZ between 1996 and 1998. Patagonian toothfish are caught by trawl and by longline. The latter method has had a disastrous impact on seabirds, particularly albatross and petrels.

The harvesting of Patagonian toothfish has been authorised by South Africa since 1996. Following the promulgation of the Marine Living Resources Act in 1998, the fishery has been regulated as an experimental fishery under section 83.

In 1996, the Department of Environmental Affairs and Tourism issued five experimental permits (under the Sea Fisheries Act of 1988) for the harvesting of Patagonian toothfish within the EEZ of the Prince Edward Islands (“the PEI-EEZ”). Since then, the Minister of Environmental Affairs and Tourism has set annual total allowable catches (“TACs”) for this fishery. The TAC for the 1996/1997 fishing season was set at 2 500 tons. However, the TAC for the experimental toothfish fishery has declined steadily and was set at 500 tons for the 2003/2004 fishing season.

The Prince Edward Islands are situated within the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”) Convention Area. South Africa is a founding member of CCAMLR, which is the regional fishery management organisation tasked with primarily monitoring and allocating catching rights for Patagonian toothfish in Antarctic waters. Patagonian toothfish have been targeted by poachers as toothfish is a sought after white fish on Asian and North American markets. Patagonian toothfish is a high value white fish that fetches prices as high as US\$7 000 per ton. It is the fish’s high value that has contributed to the high levels of Illegal, Unregulated and Unreported (“IUU”) fishing in the fishery.

Poaching in the PEI-EEZ has been brought under control. The fishery remains commercially sustainable provided that it is effectively regulated with participants in terms of the Guidelines determined by CCAMLR. The Department has decided to allocate long-term commercial fishing rights in this fishery.

The fishery is a high risk, extremely capital intensive fishery that requires right-holders to make substantial investments in vessels, gear, research and marketing. Start-up costs would require a capital investment of several million rand and operational costs are massive.

#### **4. Experimental permit allocation**

Commercial fishing rights have never been allocated in this fishery. In 1996, five experimental permits were issued for the fishing of Patagonian toothfish. With the continuous decline in the TAC, the five experimental permit-holders consolidated costs and effort by reducing the number of

vessels in the fishery from three to two. Four of the operators concluded a joint venture agreement to operate one vessel and have effectively pooled their resources for the catching of Patagonian toothfish in the PEI-EEZ. The fifth permit holder operates in both the PEI-EEZ and on the high seas within the CCAMLR Convention area.

## **5. Over-arching sectoral objectives**

The over-arching objectives of allocating long-term fishing rights in the Patagonian toothfish fishery are to:

- Ensure the continued presence of South African vessels in the PEI-EEZ and on the high seas within the CCAMLR Convention area in order to deter IUU fishing.
- Improve the transformation profile of the fishery;
- Encourage investment in South African vessels, infrastructure and jobs;
- Reduce the avoidable by-catch and catch losses associated with longlining by seeking alternative fishing methods ;
- Support the economic viability of the fishery; and
- Support the environmental sustainability of the fishery

Certain post rights allocation management policy considerations are broadly elaborated below.

## **6. Duration of rights and limitation of effort**

Having regard to –

- the precarious biological state of the resource;
- the fact that the fishery requires substantial capital investments;
- the fact that substantially more data on the biology of Patagonian toothfish is required;

- the need to sustain the number of jobs in this fishery; and
- the objectives of CCAMLR,

the Department will allocate commercial rights for a period not exceeding 10 years (01 January 2006 to 31 December 2015). Every right-holder will, however, be tested at regular intervals against predetermined performance criteria.

With regard to the effort to which this fishery will be subjected, the Department intends to limit the number of vessels in this fishery to two.

## **7. New entrants**

Rights under section 18 of the Marine Living Resources Act have never before been granted for Patagonian toothfish. Accordingly, there are no previous right-holders. The Department will accept applications from entities regardless of whether they held an experimental permit for this fishery. Due to the precarious state of the resource, no more than five right-holders can be accommodated. Furthermore, although the Department does not exclude the possibility of replacing the experimental right-holders, it is unlikely that any other applicants will be admitted.

## **8. Evaluation criteria**

Applications for commercial Patagonian toothfish fishing rights will be evaluated against a number of exclusionary and balancing criteria.

### **8.1 Exclusionary criteria**

Apart from the criteria described in the general policy pertaining to the lodgement of applications and material defects, the Department will exclude applicants that fail to meet the following requirements:

**(a) Form of the applicant:** Applications will only be considered from entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Applications from natural persons (i.e. Individuals or sole proprietors) will not be considered.

**(b) Compliance:** Right-holders, including the directors or controlling shareholders, that have been convicted of an offence in terms of the MLRA (without the option of the payment of a fine), the Law of the Sea, the Convention, declaration or treaty of CCAMLR, or the provisions of any other country's marine and/or fisheries laws, will not be allocated a Patagonian toothfish fishing right. Right-holder applicants, including the directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA will also not be allocated a Patagonian toothfish fishing right.

Right-holders, including their directors or controlling shareholders, who are currently being investigated for breaches of any of the laws or legal instruments listed above, whether criminal or administrative, will not be allocated a Patagonian toothfish fishing right until the conclusion of the investigation.

**(c) Paper quotas:** Paper quotas as defined in the General Policy will be excluded.

**(d) Access to a suitable vessel:** Applicants will have to demonstrate a right of access to a suitable vessel (*see paragraph 9 below*).

## **8.2 Comparative balancing criteria**

Right-holder applicants and potential new entrants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application:

### **(a) Transformation**

The Department's objective during the process of allocating long-term fishing rights in this fishery is to maintain or improve on the present levels of transformation. As stipulated in the General Fisheries Policy, applicants will be assessed and scored on –

- The percentage black and women representation at ownership and executive management levels;
- Whether employees are shareholders in the applicant and the extent of their benefits;
- Affirmative procurement;
- The representivity of blacks and women at the various levels below executive management;
- Compliance with the Employment Equity Act, as well as legislation on skills development and fishing levies. Applicants that do not comply with these laws may be refused a commercial right; and
- Corporate social investment.

**(b) Investment in the fishery**

Applicants will be evaluated on:

- Investments in suitable vessels. In this regard, investment in the form of shareholding or purchase agreements will be considered. Applicants may be rewarded for having concluded charter agreements or catching agreements; and
- Investment in and access to markets for Patagonian toothfish.

**(c) Knowledge of the fishery**

Applicants will be required to demonstrate whether they have invested in and have the appropriate knowledge to fish for Patagonian toothfish.

**(d) Participation in the experimental fishery**

Applicants that successfully participated in the Patagonian toothfish experimental fishery will be preferred. In this regard, the Department will consider, *inter alia*, catch performance, reporting and adherence to permit conditions and CCAMLR conservation measures.

**(e) By-catch and dumping**

Applicants will be required to demonstrate what by-catch mitigation and reduction measures they have invested in, or would invest in, to ensure that seabird mortality is avoided and by-catch reduced.

The dumping of fish is prohibited and right-holders that are found to be dumping fish may not have a right allocated or if allocated a right, the right may be revoked in terms of section 28 of the Act.

**(f) Ability to commence with fishing operations**

Preference will be given to applicants who are able to demonstrate that they are able to commence with fishing operations soon after a right is allocated.

**(g) Jobs**

Although this fishery is a small fishery, employing a small number of people, the provision of quality jobs will be taken into account. The Department will prefer those applicants that provide their employees with –

- Full-time employment;
- Medical aid and pension;
- Any other employment benefits; and
- Safe working conditions.

Jobs created per ton of fish allocated during the experimental phase may be assessed and taken into account. The Department will also have regard to the wage differentials between the highest and lowest paid employees.

**(h) Compliance**

Minor infringements of the MLRA, including its Regulations, by the applicant, its directors

or controlling shareholders will result in the applicant being penalised.

### **8.3 Quantum criteria**

Quantum will be allocated with reference to the catching ability and, where applicable, the past performance of an applicant. The details will be the subject of consultation between successful applicants and the Department before permits are issued.

## **9. Suitable vessels**

A suitable vessel in the Patagonian toothfish fishery is a vessel that:

- has a minimum SAMSA certified length of approximately 40 metres;
- is fitted with a functioning vessel monitoring system;
- is geared for long lining and is capable of carrying fishing pots;
- is ice strengthened (if the applicant intends to fish south of 60° South);
- is not black-listed by any international or regional fishery organisation; and
- is South African flagged. The Department will consider a foreign flagged vessel to be suitable if the vessel complies with all of the above and the owner of the vessel gives a written undertaking to have the vessel re-flagged as South African within 12 months of the allocation of the fishing right.

## **10. Multi-sector involvement**

Right-holders in the Patagonian toothfish fishery are not precluded from holding rights in any fishery in the other Cluster A and Cluster B fisheries. Right-holders in the Patagonian toothfish fishery (including their controlling shareholders and members of their executive management team) will not be allowed to hold commercial fishing rights in the Cluster C and Cluster D fisheries.

## **11. Application fees and levies**

The application fee for the Patagonian toothfish fishery will be set having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews. In this regard the costs incurred during the medium-term process will be used as a guide; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 01 January 2006 will be revised, after consultation with affected and interested parties.

## **12. Management measures**

The management measures discussed below reflect a number of the Department's principal post right allocation management intentions for this fishery.

### **12.1 *Ecosystem approach to fisheries management***

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is an holistic and integrated policy which recognises that fishing and associated land based activities impact on the broader marine environment. This part of the Patagonian toothfish fishing policy does not attempt to provide a policy statement on EAF in the Patagonian toothfish fishery. The EAF in the Patagonian toothfish fishery will be detailed further in the Fishery Management Manual for the Patagonian toothfish fishery. South Africa remains committed to the target date of 2010 for the implementation of an EAF in the commercial fisheries.

## **12.2 Marine protected areas**

The Minister of Environmental Affairs and Tourism has indicated his intention to declare a Marine Protected Area in the area around the Prince Edward Islands. In so doing, the Department hopes to conserve the unique biodiversity of the sub-Antarctic Islands and their surrounding waters. The intention at this stage is to prohibit all fishing in the territorial waters (i.e. within the 12 nautical mile marine area) but permit controlled fishing in the waters beyond the 12 mile limit. The Minister will, however, consult with all interested and affected parties about this matter in due course.

## **12.3 Consolidation of participants**

As noted above, five participants were allocated an experimental permit for Patagonian toothfish. Four of these permit holders have consolidated operations. Currently, two vessels operate in the experimental fishery. Consolidation is accordingly not of any particular relevance in this fishery.

## **12.4 Vessels and fishing effort**

As stated in **paragraph 6** above, the Department intends to only authorise two vessels to operate in this fishery. The vessels must be rigged to fish with long lines, using suitable bird by-catch mitigation gear. In addition, vessels will be allowed to carry fishing pots.

## **12.5 Reporting**

All right-holders in this fishery will have to adhere to strict reporting measures to ensure that they and South Africa comply with international requirements for this fishery. In particular, right-holders will have to adhere to the requirements of the *Dissostichus* Catch Document (*DCD*) issued by CCAMLR, and report by way of Vessel Monitoring Systems (VMS). Each landing of Patagonian toothfish must be accompanied by a DCD and the Port State must verify the position of the catches by examining the VMS plot supplied by the vessel.

### **13. Performance measuring**

The Department will institute a number of formal performance measuring exercises for the duration of the commercial fishing rights. It is envisaged that the first performance measuring exercise will take place after two years and thereafter every three years.

Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights, and after consulting with right-holders, the following broad performance-related criteria may be used:

- transformation;
- investment in vessels and gear;
- sustainable utilisation, and in particular the biological and ecological impacts of longline and pot fishing;
- compliance with applicable laws and regulations (both national and international).

### **14. Observer programme**

The Department's current observer programme will be expanded to include compliance observation. Right-holders will be required to carry an observer during every voyage. . Right-holders will be required to bear the costs of the observer programme.

### **15. Permit conditions**

Permit conditions for this fishery will be issued annually. The permit conditions applicable to the experimental fishery for the 2005 season are attached as **Annexure A**. Interested and affected

parties are invited to comment on these permit conditions.