



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

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1. Introduction

This policy on the allocation and management of commercial fishing rights in the Patagonian toothfish (*Dissostichus eleginoides*) fishery is issued by the Minister of Environmental Affairs and Tourism ("the Minister"). Interested and affected parties are advised that this policy must be read with the General Policy on the Allocation and Management of Long-term Commercial Fishing Rights: 2005 ("the General Fisheries Policy").

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 Minister and delegated authorities from the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("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 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 intends to delegate the section 18 power to allocate commercial Patagonian toothfish fishing rights in terms of section 79 of the Marine Living Resources Act 18 of 1998 ("the MLRA") to a senior official of the Department. This policy document will guide the delegated authority in taking decisions on applications in this fishery.

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 ("EEZ's") of Chile, Argentina and other countries with sovereignty over the southern Ocean islands. South Africa's

EEZ around the Prince Edward Islands (“PEI”) is a prime fishing ground for Patagonian toothfish. Much of the range of Patagonian toothfish, however, 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 the Commission for the Conservation of Antarctic Marine Living Resources (“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, five experimental permits were issued (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 (“TAC”) for this fishery. The TAC for the 1996/1997 fishing season was set at 3000 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 CCAMLR Convention Area. South Africa is a founding member of CCAMLR, the regional fishery management organisation

tasked with primarily monitoring and allocating catching rights for Patagonian toothfish in Antarctic waters. Patagonian toothfish has been targeted by poachers. Toothfish is a sought after fish on Asian and North American markets. Patagonian toothfish is a high value white fish that fetches prices as high as US\$13 000 per ton. It is the fish's high value that has led to the high levels of IUU fishing in the fishery.

Poaching in the PEI-EEZ has largely 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 Minister 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 substantial.

4. The experimental permit allocation

Commercial fishing rights have never previously 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. All permit holders operate 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 Patagonian toothfish vessels in the PEI-EEZ and on the high seas within the CCAMLR Convention area as an important means to deter IUU fishing;

- Maintain or 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 improved 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 on 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 investment;
- 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,

commercial rights will be allocated for a period of 10 years (1 December 2005 to 30 November 2015). Every right-holder will be tested at regular intervals against predetermined performance criteria. With regard to the effort to which this fishery will be subjected, the Department's current strategy is to limit the number of vessels in this fishery to two. This strategy may change should poaching levels decrease and the TAC increase.

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 delegated authority will consider applications from entities regardless of whether or not they held an experimental permit for this fishery. Due to the precarious state of the resource, it is unlikely that more than five right-

holders can be accommodated.

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 delegated authority will exclude applicants that fail to meet the following requirements:

- (a) Form of the applicant:** Rights will only be granted to entities incorporated in terms of the Close Corporations Act 69 of 1984 and the Companies Act 61 of 1973. Rights will not be granted to natural persons (i.e. individuals or sole proprietors) or trusts.
- (b) Compliance:** If a permit holder applicant, or its members, directors or controlling shareholders have been convicted of an offence in terms of the MLRA, the applicant breached the provisions of the Law of the Sea Convention, any applicable 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. This does not include the payment of an admission of guilt fine. Rights will also not be allocated to a permit holder applicant if the applicant, or its members, directors or controlling shareholders, that have had any fishing right cancelled or revoked in terms of the MLRA, or assets seized under the Prevention of Organised Crime Act 121 of 1998 or the MLRA.

Permit holders, including their members, 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, may 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

Applicants will be evaluated in terms of the following balancing criteria, which will be weighted to assess the strength of each application. The criteria stated below must be read with the corresponding criteria in the General Policy for further detail. This applies in particular to the “transformation” criterion.

(a) Transformation

One 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 ownership and black and women representation at top salary, board of directors and senior official and management levels;
- Whether employees (other than top salary earners) benefit from an employee share scheme;
- Affirmative procurement;
- Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The delegated authority may also have regard to the wage differentials between the highest and lowest paid employees;
- Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and

- Corporate social investment.

(b) Investment in the fishery

Applicants will be evaluated on:

- Investments in suitable vessels and other fixed assets. In respect of vessels, investment in the form of shareholding will also be considered. Applicants may also be rewarded for having concluded agreements in terms of which operating or other costs are shared; and
- Investment in and access to markets for Patagonian toothfish.

(c) Knowledge of the fishery

Applicants will be required to demonstrate that they 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 delegated authority 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 management procedures and controls are implemented.

The dumping of fish is prohibited and may lead to the revocation of a right in terms of section 28 of the MLRA.

(f) Ability to commence with fishing operations

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

(g) Jobs

Job creation and increases in jobs as a result of the allocation of experimental permits will be rewarded, and in particular, applicants that have provided their employees with –

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

Jobs created per ton of fish allocated during the experimental phase or in other sectors may be assessed and taken into account.

(h) Compliance

If the applicant, its members or its directors or controlling shareholders have paid admission of guilt fines for contraventions of the MLRA, its Regulations or permit conditions, the applicant will be 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 methodology in terms of which quantum will be allocated will be the subject of consultation between successful applicants and the delegated authority before permits are issued.

9. Suitable vessels

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

- has a minimum SAMSA registered 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);
- if to be used in the PEI-EEZ, is certified by SAMSA to fish south of 40° South;
- is not negatively listed by any international or regional fishery organisation;
- and
- is South African flagged. The delegated authority 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 members, 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, including traditional line fish.

11. Application fees and levies

The application fee for this fishery will be determined having regard to:

- The cost of the entire rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
- The value of the fish being allocated over the duration of the right.

The annual levies payable with effect from 1 December 2005 will be determined after consultation with right holders. The levies payable will be utilised by the Department for mitigating the annual costs of management, compliance and research.

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 nautical 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 delegated authority will 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.

12.5 Experimental crab fishery

Crabs are currently a high value by-catch in the Patagonian toothfishery. The Department is accordingly considering the appropriateness of introducing an experimental fishery for crabs. Should the Department decide to introduce such an experimental fishery, experimental permits will be issued in terms of section 83 of the MLRA but subsequent to an open invitation to apply for such experimental permits.

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).

The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.

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 will be determined after consultation with right holders but subject to CCAMLR requirements for this fishery and will be subject to revision as and when it may be necessary.