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GENERAL NOTICE

NOTICE 2609 OF 2003

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

INVITATION TO APPLY FOR COMMERCIAL RIGHTS TO UNDERTAKE COMMERCIAL FISHING OF ABALONE (*HALIOTIS MIDAE*) IN TERMS OF SECTION 18 OF THE MARINE LIVING RESOURCES ACT, 1998 (ACT NO 18 OF 1998)

The Department of Environmental Affairs and Tourism hereby announces for general information that it is the intention of the Minister of Environmental Affairs and Tourism to allocate commercial abalone fishing rights on a secondary zone or Turf basis. The allocation of the commercial rights will be in terms of Section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).

REQUIREMENTS FOR THE COMPLETION AND SUBMISSION OF THE APPLICATION FORM

1. Important

Every applicant will be required to complete the stipulated application form. There are two types of stipulated application forms. The first (**Annexure B to this Notice**) is for divers and legal entities (see the Policy for the Allocation of Commercial Abalone Fishing Rights: 2003 for definitions) and the second (**Annexure C to this Notice**) is for Abalone Processing Factories (see the Policy for definitions). The completion and submission of an application form must be in terms of this Notice. Clear instructions are also provided as part of the application form itself.

Failure to adhere to the requirements will result in the sanction provided being applied.

2. Policy and Criteria

All applicants are advised to read the *Policy for the Allocation of Commercial Fishing Rights in the Abalone Fishery: 2003 ("the Policy")*, which is **Annexure A** to this Notice prior to completing the applicable Application Form, which is **Annexure B** or **Annexure C** to this Notice.

3. Who May Apply

Only South African persons may apply for a commercial abalone fishing right. A South African person is any one of the following:

- a South African citizen in terms of the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- a company registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), in which the majority of the shareholders, as prescribed by the Minister, are South African persons;
- a Close Corporation in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984), of which the majority of members are South African persons; or
- a trust in which -

- the majority of trustees, having the controlling power, are South African citizens; or
- a majority of the beneficial interest is held by South African citizens.

IMPORTANT: Applicants must read the Policy and determine whether it is feasible for them to apply in terms of the criteria set out in paragraphs 8 and 15. Remember, the application fee you pay is non-refundable.

4. Duration of Rights

The Department will allocate a 10 (ten) year commercial fishing right to divers and legal entities, other than abalone processing factories.

The Department will allocate a 3 (three) year commercial fishing right to abalone processing factories.

5. Geographic extent and applicability of the Rights

The allocation of commercial abalone fishing stretches from Cape Columbine in the west to Cape Agulhas in the east.

The coastline between these two extremities is divided into seven zones. Each of these zones have been further divided into secondary zones. Rights will be allocated limiting each right holder to a specific secondary zone or zones.

6. Collecting Application Forms

The Department, through its Branch: Marine and Coastal Management, will make available application forms (see the specimen application forms included as Annexure B and Annexure C) and the Policy (included as Annexure A) for collection from its Foreshore Offices (2nd floor, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town).

The application forms and Policy will be available for collection with effect from 09h00 on Friday 17 October 2003 until 15h30 on Friday 14 November 2003. No application form will be handed out after 15h30 on Friday 14 November 2003. Every person who collects an application form will be required to sign for the application form(s).

Application forms will not be faxed or emailed to any person.

7. Completing Application Forms

The application form contains clear instructions which every applicant must strictly adhere to.

The application form requires very specific information. All information requested must be completed and / or submitted as annexures to the application form and in the order required by the Annexure Checklist to the application form. The application form requires the minimum information from applicants.

Failure to provide the information required in the application form will result in the application being adversely considered, which could also result in the application being refused.

8. Completing the correct Application Form

Each of the six abalone zones (Zones A to G, excluding Zone F) have separate colour coded application forms. Applicants must only complete the application form applicable to their zone. The zones and their extent are as follows. A map of the zones is included in the Policy.

- Zone A: Cape Agulhas to Uilkraals
- Zone B: Uilkraals to Die Plaat
- Zone C: Die Plaat to Hermanus
- Zone D: Hermanus to Hangklip Lighthouse
- Zone E: Cape Points to Table Bay
- Zone G: Table Bay to St Helena Bay

Abalone processing factories have their own separate application form to complete. Only abalone processing factories will be entitled to apply for a right to harvest abalone in Zone F (Robben Island).

Should you fail to complete an application form applicable to the zone in which you are resident or where your registered place of business is, then your application **may** be refused. **Should you complete an application form not applicable to you** (eg. A diver/legal entity completes an application form for an abalone processing factory or an abalone processing factory completes an application form for a diver/legal entity), **then the application will be refused.**

9. Lodging Applications

As stated above, all applications must be submitted on the application form provided by the Department. Failure to submit applications on the stipulated application form **will result in the application being refused.**

Each applicant may only lodge one application form. Should an applicant lodge more than one application and these are received by the Department at approximately the same time (ie on the same day), then both applications will be rejected. Should an applicant lodge an application and thereafter (but before the closing date) lodge a second or further application, then the second or further application will be the application considered, provided it meets the various other peremptory requirements. The initial or first application will not be considered and removed from the process of evaluation.

Applicants are advised that the obligation rests entirely on them to ensure that all information, which they believe is necessary for the evaluation of the application is provided in the application form and/or attached as clearly marked annexures to the application form. The Department will not receive any further information, annexures, documents, other supplementary information or amendments after the closing date. The Department does reserve its right to call for further information pertaining to a specific application.

Applications must be lodged at or before 17h00 on Monday 17 November 2003 ("the closing date"). Failure to lodge an application on or before the closing date will result in the late application **being refused.**

Applicants may only lodge applications in one of the following two ways. **Applications transmitted by facsimile, electronic mail or by any other means not mentioned below, will be refused.**

1. Hand deliver applications to the **Good Hope Centre**, Corner Sir Lowry Road and Oswald Pirow Street, Cape Town. Hand delivered applications may be lodged from 07h00 on Monday 17 November 2003 until 17h00 on Monday 17 November 2003. Where an application is received without proof of payment of the application fee, it will be presumed that proper and timeous payment has not been effected. **Such applications will be refused.**
2. Post applications by **registered** mail only. These applications should be addressed as follows:

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM
PO BOX 23155
CLAREMONT
7735**

Every posted application must be accompanied by proper proof of payment of the application fee of R6700. Where an application is received by post and without proper proof of payment of the application fee, it will be presumed that proper and timeous payment of the application fee has not been effected. **Such applications will be refused.** You may commence with the mailing of applications with effect from 31 October 2003. **Mailed applications must reach the Department by no later than 17h00 on 17 November 2003.**

10. Form in which Applications must be Lodged

Applicants must lodge an original application form inclusive of the required annexures and one hard copy that is certified as a true copy of the original.

The purpose of the above requirement is the following. The original application will be securely stored by the Rights Verification Unit. The copy will be used by the decision-maker and/or the Minister for the purposes of evaluation. Should a dispute arise as to the content of the hard copy, the hard copy will be compared against the original and any dispute will be settled in this way.

Accordingly, a failure to adhere to this requirement will result in the application being refused.

11. Payment of application fees

The lodgement of an application for a commercial abalone right requires the payment of an **application fee of R6700 (six thousand seven hundred rand).**

All applicants must pay this fee into the bank account stated below **on or before** the closing date.

Further, applicants must attach a deposit slip or a bank validated proof of electronic transfer showing that the full application fee was deposited into the Department's account. Such proof of proper and timeous payment must be securely attached to the original application form.

A copy of the deposit slip or electronic transfer should also be attached to the application copy.

Any applicant that fails to properly and timeously pay the full application fee of R6700 and that fails to attach proof of payment to its original application form at or before 17h00 on 17 November 2003 will have its application refused.

The full application fee of R6700 must be paid into the following bank account:

Name of Account:	Rights Verification Unit
Bank:	ABSA
Branch:	Claremont
Account No.:	9112417007
Branch No.:	632005

Signature and Commissioning

Part P of the Application Form (see **Annexure B**) or Part M of the abalone processing factory application form (see **Annexure C**) requires that the applicant (and if the application was prepared or completed by a third party or on the advice of a third party, then this third party or its authorised representative) must sign the application form as instructed in Part P or Part M, as the case may be. The applicant must have its signature commissioned by a Commissioner of Oaths.

Failure to carry out the instructions in Part P or Part M, as the case may be, of the application form will result in the application being refused.

Verification

Applicants are informed that it remains the prerogative of the Department to verify any or all information submitted by applicants in their applications, including information attached as annexures. The Department will verify the information submitted by every applicant that is granted a right. The Department reserves its right to randomly verify information submitted by other applicants.

By completing and submitting the application form, the applicant authorises the Department or the Rights Verification Unit to enter upon any property owned by the applicant or to which the applicant has a right to use (such as in terms of a lease agreement and so forth) to conduct verification activities pertaining to the submission of an application for a commercial abalone fishing right.

Helpline

The Department has set up a toll-free helpline for prospective applicants. Prospective applicants are encouraged to make full use of the toll-free helpline which will be operative from Wednesday 15 October 2003 to 14 November 2003. The telephone number for the helpline is:

0861 – ABALONE
0861 – 222 5663

ANNEXURE A

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**

**POLICY FOR THE ALLOCATION OF COMMERCIAL
FISHING RIGHTS IN THE ABALONE FISHERY: 2003**

10 October 2003

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1. Introduction and Background

This policy is intended by the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management ("the Department") to define the process of allocating commercial abalone fishing rights for the area from Cape Columbine in the west to Cape Agulhas in the east.

This policy will introduce a radical shift in the way South Africa manages its abalone resource, commercially and recreationally. It is indeed common cause that our abalone, *Haliotis midae*, has been seriously over fished and it has collapsed.

The seriousness of the problem was identified prior to the allocation of the two-year medium term commercial abalone fishing rights. This is evident if regard is had to the fact that the global total allowable catch ("TAC") in 2000 was set at 693 tons. For the 2002/2003 season the global TAC was reduced to 430 tons.

The allocation of two-year rights was largely to determine how best the abalone resource could be managed in the future. Scientific evidence now shows that the current management regime has failed to effectively curb poaching. As a consequence, there has been no recovery on the desperate state the abalone resource.

In 2001, the Department determined that the illegal harvesting of abalone amounted to approximately 1023 tons. The global TAC for the 2001/2002 season was set at 475 tons. The illegal harvesting of abalone is however not the only cause for the significant decreases in the abalone TAC's. The migration of the west coast rock lobster further east and around Cape Hangklip has also contributed to the decline in abalone numbers.

As a result of the incursion of west coast rock lobster into the formerly abalone rich areas east of Cape Hangklip, the Department will be allocating a minimum of 100 tons of commercial west coast rock lobster on a limited basis to commercial applicants during the last quarter of 2003. This policy is intended to complement the policy that has been adopted for the management of the west coast rock lobster fishery east of Cape Hangklip.

This policy intends to introduce a new system of co-management and to effectively address the threat of the illegal harvesting and over catching of abalone.

2. Purpose and Objectives

The purpose of this policy is to adopt a management regime for the abalone fishery that will result in the substantial reduction in the rate of illegal harvesting.

The objectives of adopting a new management regime are to –

- Instill a culture of “ownership” amongst right holders and members of the respective coastal communities;
- Encourage right holders and members of the respective coastal communities to co-manage the abalone resource, together with the Department;
- Ensure the long-term viability of the South African abalone fishery; and
- Sustain the level of employment in the abalone fishery.

3. Management Options Considered

The Department has considered three main options to managing the abalone resource at a commercial and recreational level.

3.1 Option One: The Status Quo

Maintaining the status quo would mean simply allocating commercial abalone fishing rights pursuant to a new invitation to apply for commercial abalone fishing rights. Rights would be allocated for a very limited period and right holders would be managed in terms of the same regime currently in place.

The status quo has however not resolved the problem of illegal harvesting. Each year, reports indicate that the quantity of poached abalone seized by South African authorities is increasing. Authorities in the Asian sub-continent also confirm that the quantities of South African abalone available on their markets far exceeds the global TAC.

Maintaining the status quo would also mean that a recreational abalone fishing industry would continue to exist, notwithstanding that the commercial fishery is under significant threat.

3.2 Option Two: Closing the commercial and recreational abalone fisheries

The Minister of Environmental Affairs and Tourism is empowered under the Marine Living Resources Act, 18 of 1998 (“the Act”) to declare an emergency in the fishery and terminate all forms of commercial and recreational harvesting of abalone in order to allow the recovery of the abalone resource.

Terminating the harvesting of abalone would allow enforcement agencies to monitor and prosecute the illegal harvesting of abalone with greater ease as any South African abalone found in the possession of any person would mean it has been harvested illegally.

Militating against such an option would be the adverse socio-economic consequences such as substantial job losses, potential increases in ordinary as well as organised crime and the loss of important markets for South African abalone.

3.3 Option Three: Co-management of the commercial abalone resource

This option calls for a radical change in the management of the commercial abalone resource. Management of the resource will not rest solely with the Department. Instead, the Department will share this important responsibility with the right holders who depend on the resource for their livelihoods and with the coastal communities who depend on the commercial sale of abalone for their income and prosperity.

The TAC for abalone is currently split into zones from Cape Columbine in the west to Cape Agulhas in the east. There are 7 primary zones. In terms of the co-management option, the Department intends to divide each primary zone into smaller secondary zones. The purpose of reducing the size of the fishing zones is to assist with compliance and monitoring and to instill a sense of “ownership” over the secondary zone and abalone in that zone. The extent of each secondary zone will be determined by the Department.

The allocation of commercial abalone rights will only be to three types of persons, namely:

- a. **Divers;**
- b. **Legal entities;** and
- c. **Abalone processing factories.**

Each right holder will be allocated a secondary zone. It is intended that each secondary zone will comprise a relatively small number of right holders who will only be entitled to harvest abalone in that secondary zone. This secondary zone will effectively be “owned” by the right holders. The community adjacent to each secondary zone will play an important oversight role, ensuring that only “their” right holders dive in that secondary zone.

Good management of the secondary zone by the right holders and communities could result in larger quantities of abalone in that secondary zone. The Minister may reward such good management by increasing the TAC for that secondary zone. Reductions in abalone numbers in a secondary zone could result in a reduction in that secondary zone TAC or even a zero TAC being declared.

This third option, furthermore, will require the suspension of the recreational abalone fishery until such time as the commercial abalone fishery is no longer under threat of closure.

It is this third option – *co-management of the abalone resource* – that is considered by the Department as the most viable option to preventing a complete collapse of the abalone fishery.

Policy option three is adopted by the Department and now stated in further detail.

4. Duration of right

In order to instill a sense of “ownership” amongst right holders and communities and therefore to encourage the preservation and management of the resource by right holders and communities, commercial abalone rights will be allocated for a period of 10 (ten) years to **divers** and to **legal entities** other than **abalone processing factories**. The duration of the right is closely linked to the time it takes for wild abalone to attain the minimum legal size.

Abalone processing factories will be allocated a 3 (three) year right. The purpose of allocating such a medium term right to the **abalone processing factories** is to enable such factories to become increasingly less dependent on having their own allocations of abalone for the purposes of processing. It is envisaged that after the 3 (three) year period **abalone processing factories** will be capable of being financially viable independent of their own commercial abalone allocations. Upon expiry of the 3 (year) right, no further commercial abalone harvesting rights will be allocated to **abalone processing factories**.

5. A commercial fishery only (No recreational fishery)

The current precarious status of the abalone resource requires a focused management approach. Any further harvesting of the abalone resource is intended to only occur on a commercial basis. The Department will not allow the future of a commercial fishery and the important jobs it creates to be threatened while allowing a recreational fishery to continue to flourish. The commercial abalone fishery sustains thousands of critically important jobs. These jobs will not be placed at risk while a recreational fishery is allowed to harvest significant amounts of abalone.

The abalone recreational fishery will be suspended for an indefinite period – at least until the abalone resource recovers significantly and the commercial fishery is no longer faced with any significant threat of closure.

Suspension of the recreational fishery would also reduce the overall effort on the resource. Surveys conducted by the Department have shown that the previous season's (2001/2002) recreational TAC of 43 tons was grossly exceeded by recreational fishers. The recreational harvest had in fact been 110 tons – approximately one third of the entire commercial fishery. Recreational divers will only be allowed to “dive and not touch”. It is hoped that recreational divers will in fact assist the Department in monitoring and conserving the abalone resource.

6. Quantum allocations

A percentage of the TAC will be set aside for allocation to **abalone processing factories**. The balance of the TAC will be allocated to **divers** and **legal entities** in relatively small commercial amounts (ie. it is unlikely that allocations will exceed 1500 kgs per season, per right holder). These amounts will vary depending on the secondary zone, the TAC set for the secondary zone and the number of successful applicants. The intention of the Department is to allocate commercial rights to as many **divers** and **legal entities** as is reasonably possible.

7. Abalone processing factories

The Department recognises that **abalone processing factories** currently rely to a substantial degree on their own allocations of abalone to supplement their incomes. It is not the intention of the Department to cause unemployment or instability where it can reasonably be avoided. The Department will reserve a percentage of the abalone TAC for allocation to **abalone processing factories**. It is however the intention of the Department to reduce abalone

allocations to **abalone processing factories** over the next 3 years to zero. During this period, **abalone processing factories** should reduce their reliance on having their own abalone allocations, as well as on abalone processing and look to processing other fish stocks instead.

All fish processing establishments that hold a section 18 right to process wild abalone shall be entitled to continue processing wild abalone for the duration of their respective rights.

8. A profile of the intended right holders

The Department will grant commercial abalone rights only to -

- a. **Divers;**
- b. **Legal entities;** and
- c. **Abalone processing factories.**

8.1 Divers

Preference will be given to allocating rights to natural persons who are **divers** and who reside in the coastal community adjacent to the secondary zone in which abalone rights are to be allocated. A natural person applicant must clearly demonstrate that he or she –

- is a qualified diver and is certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993 to be a certified commercial diver;
- has an historical involvement in the harvesting of abalone (ie. that he or she has a history of diving legally for abalone) and who will use assistants experienced in abalone harvesting and who are members of the communities adjacent to the secondary zone applied for;
- is substantially reliant on the abalone resource for 75% or more of his or her annual income;
- has been permanently resident for the past two years in the coastal community adjacent to the secondary zone that is applied for;
- is registered as a tax payer with the South African Receiver of Revenue and all taxes have been paid; and

- has not been convicted of an offence related to the poaching of abalone during the last two years.

Divers that are **historically disadvantaged persons** will be given preference. Preference will be given to divers who are not shareholders or directors of **abalone processing factories**.

Divers that hold a right in another commercial fishery (other than the limited west coast rock lobster fishery) in their own name will not be considered for a commercial abalone right.

8.2 **Legal entities** (other than **abalone processing factories**)

The Department will allow **legal entities** (only South African companies and trusts and close corporations) to apply. However, a right will only be granted to a **legal entity** –

- that demonstrates that it is capable of catching its own allocation;
- that demonstrates a track-record of involvement in abalone catching or processing and marketing;
- that held a medium-term commercial abalone right (2001-2003 abalone fishing seasons);
- that has invested in **suitable vessels**, gear and other applicable equipment. Investment in a vessel does not only mean sole ownership of the vessel but includes joint ownership or part ownership;
- that demonstrates significant **transformation** in both ownership and management (ie. is more than 66% owned and managed by **historically disadvantaged persons**);
- that demonstrates that 75% or more of its annual turnover is derived from the harvesting and / or marketing of abalone;
- that is a registered VAT vendor (if applicable) and is registered with the South African Revenue Services and whose taxes have been fully paid up;

- whose registered place of business for the past two abalone fishing seasons has been in the coastal area adjacent to the zone that is applied for; and
- that has historically complied with the Act.

Prospective applicants that are *legal entities* (other than abalone processing factories) are hereby informed that a real possibility exists that each successful applicant per secondary zone will be granted the same quantum of abalone regardless of whether the successful applicant is a *legal entity* comprising ten members or a single natural person. Whether or not this particular policy is applied, will depend on the number of successful applicants in each secondary zone and the TAC allocated to each secondary zone.

8.3 Abalone Processing Factories

The Department will grant 3 (three) year commercial abalone fishing rights only to those ***abalone processing factories*** that –

- currently hold a fish processing establishment right under the Act;
- have held a medium term commercial abalone right for the 2001/2002 and 2002/2003 abalone fishing seasons;
- currently have the capacity to freeze, can and dry abalone;
- can show substantial investment in factories and equipment;
- that has invested in ***suitable vessels***, gear and other applicable equipment. Investment in a vessel does not only mean sole ownership of the vessel but includes joint ownership or part ownership;
- employ persons who predominantly process abalone. Preference will be given to processors that employ their staff on a permanent basis, have invested in skills development and who comply with the Employment Equity Act of 1998. Preference will be given to processors who provide plans for the re-skilling and re-training of staff employed for the processing of abalone;

- can demonstrate a degree of transformation in both the spheres of ownership and management of the business; and
- has historically complied with the Act.

9. Role of Communities

Communities that are located adjacent to secondary abalone fishing zones derive significant financial benefits from the commercial harvesting of abalone. There are also significant socio-economic benefits, such as direct and indirect employment.

Communities therefore have a substantial interest in ensuring the sustainability and stability of a commercial abalone fishery in their secondary abalone fishing zone. Communities can play a crucial management and oversight role ensuring the sustainability of abalone.

Communities should work with right holders and the Department's marine inspectors. Communities will be provided with lists of names of right holders (and the names of their divers), their vessel details and vehicle details. Only right holders granted a permit for a specific secondary zone will be permitted to fish for abalone in that zone and the community will ensure that only "their" divers dive for abalone in that secondary zone.

10. Access to suitable vessels

Every applicant will have to demonstrate ownership of or a right of access to a suitable vessel. Suitable vessels are vessels that have a maximum overall length of 8m ("loa" as set out in the certificate of safety issued by SAMSA) and that have valid safety certificates issued by SAMSA.

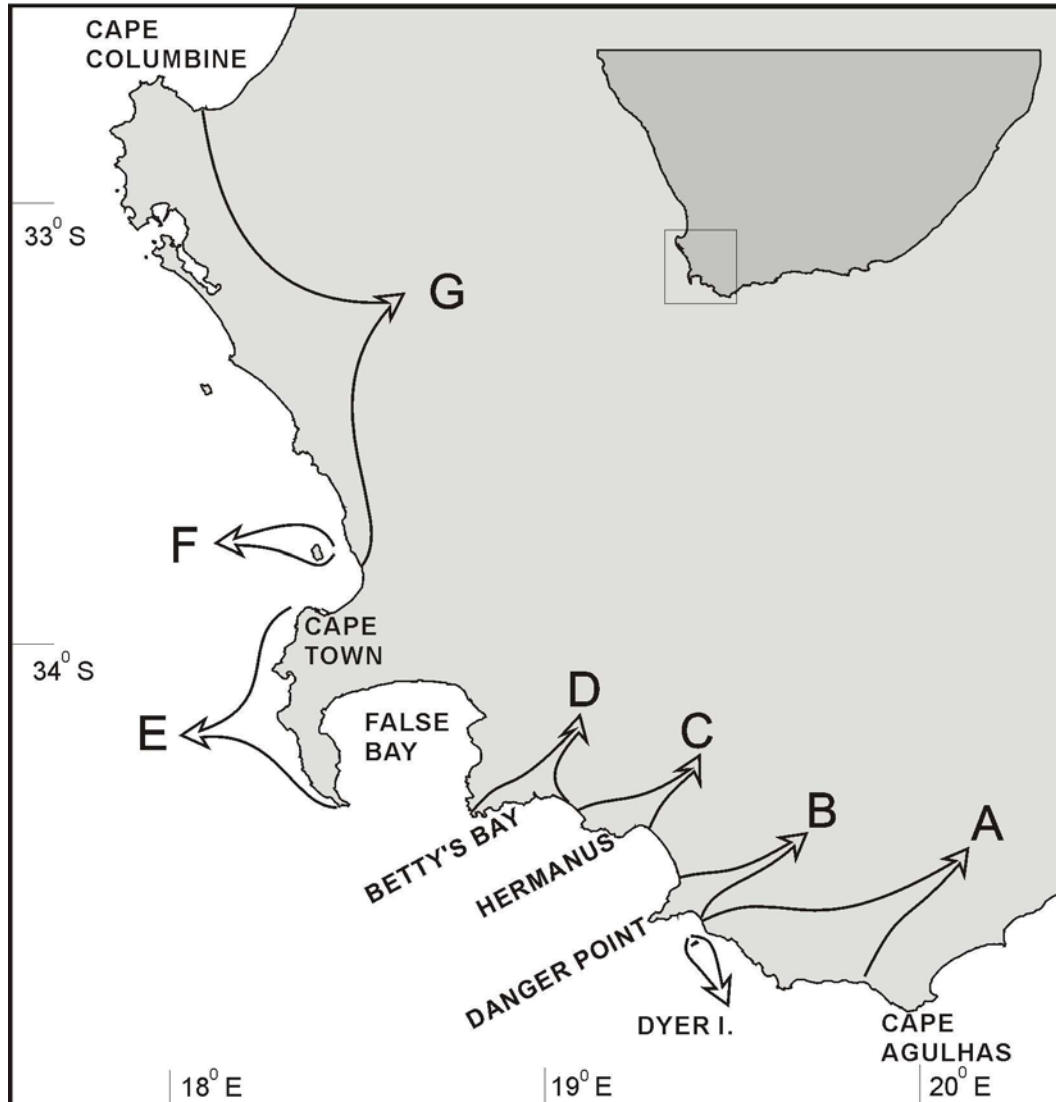
For the purposes of ensuring effective enforcement, a suitable vessel **will exclude** all -

- inflatable boats;
- semi-rigid inflatable boats; and
- vessels equipped with outboard motors will not be permitted to utilise motors of more than 90 hp each.

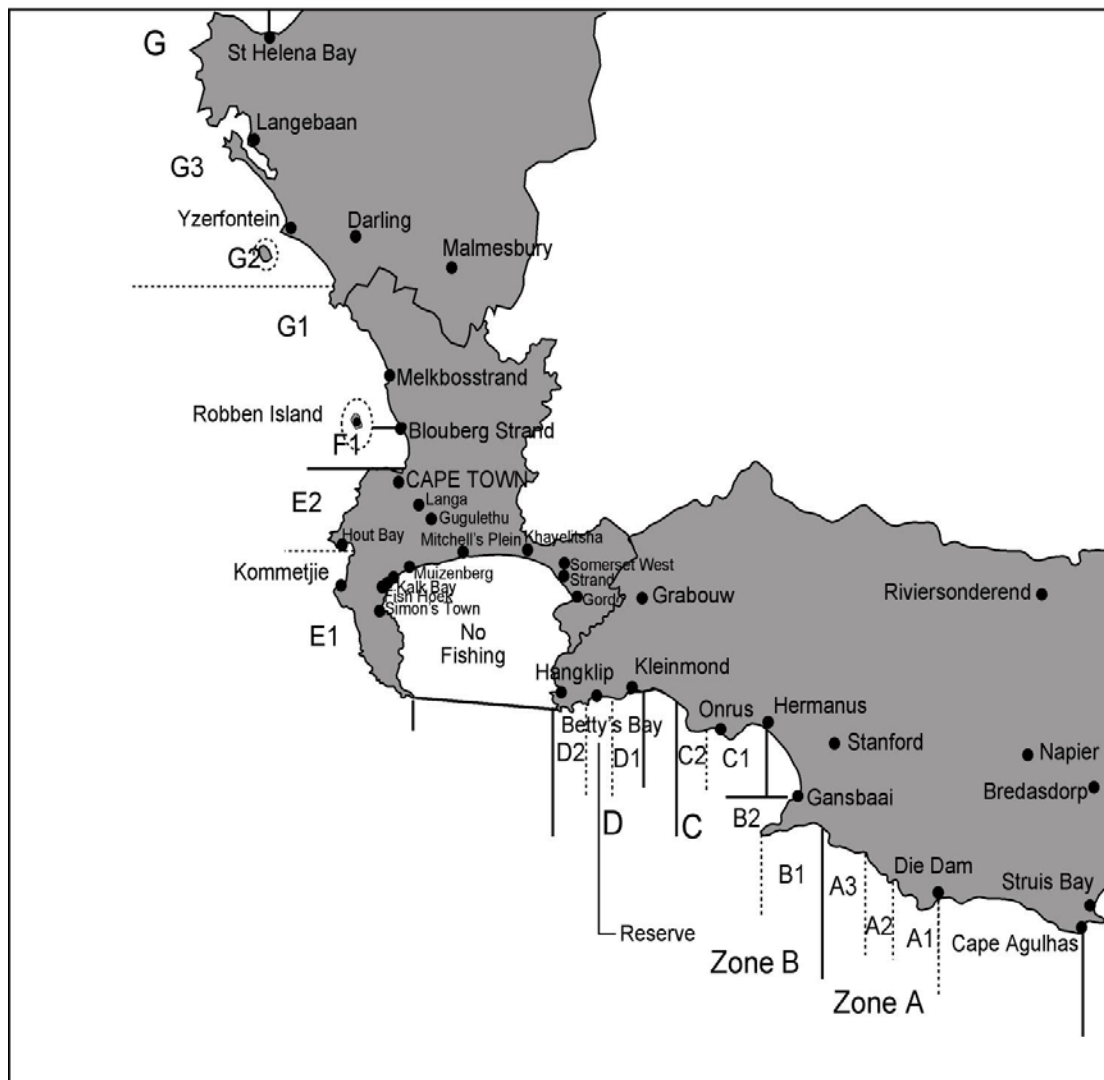
11. Harvesting Areas: The Primary and Secondary zones

Abalone is currently harvested in seven zones. The map in **figure 1** indicates each of the current seven primary zones. The fishing zones extend from Cape Columbine in the west to Cape Agulhas in the east.

Figure 1 (Primary zones)



The Department intends dividing each of these primary zones into secondary zones. The secondary zones will be physically capable of identification as clear markings on prominent natural features such as rock outcrops will be used. The map in **figure 2** suggests the possible extent of each secondary zone and the boundaries of each such secondary zone.



Key to Figure 2

Zone A Secondary Zones: A1, A2 and A3 (excluding Dyer Island)

Zone B Secondary Zones: B1 and B2

Zone C Secondary Zones: C1 and C2

Zone D Secondary Zones: D1 and D2

Betty's Bay Marine Protected Area between Secondary Zones D1 and D2

No abalone harvesting in the False Bay Area

Zone E Secondary Zones: E1 and E2

Zone F: Robben Island ("F1")

Zone G Secondary Zones: Secondary Zones G1, G2 (Dassen Island) and G3

The allocation of commercial abalone rights will only be to **divers, legal entities** or **abalone processing factories** within a secondary zone. Regardless of whether a right is granted to a **diver, legal entity** or an **abalone processing factory**, only the divers permitted by the Department may enter the water and dive. Each right holder will be allocated a secondary zone. It is intended that each secondary zone will comprise a relatively small number of right holders who will only be entitled to harvest abalone in that secondary zone. This secondary zone will effectively be “owned” by the right holders. The community adjacent to each secondary zone will play an important oversight role, ensuring that only “their” right holders dive for abalone in that secondary zone.

With regard to secondary Zone F1 (Robben Island), the Department will allocate the entire zonal TAC to **abalone processing factories**. **Divers** and **legal entities** will not be allowed to harvest in this zone.

Good management of the secondary zone by the right holders and community should result in larger quantities of abalone in that secondary zone. The Minister could reward such good management by increasing the TAC for that secondary zone. Reductions in abalone numbers in a secondary zone could result in a reduction in the TAC or even a zero TAC.

12. Compliance

In order to bolster compliance, the following further measures will be put into place. A failure to adhere to any of these requirements could result in the suspension, cancellation or revocation of the commercial right.

12.1 Suitable Vessels

Suitable vessels must be fitted with an approved and functioning vessel monitoring system (“VMS”). A pole extending 2m above the deck of the vessel must display the vessel and area numbers. In addition, the same vessel and area numbers must be clearly marked on the bow section of the vessel. All identification numbers and letters must be 20cm in height and 2cm in thickness and must be white on black.

Vessels will not be permitted to launch before 08h00 (winter) and 07h00 (summer) and must land before 15h00 so that catches can be inspected, weighed and recorded by the Department's Marine Inspectors before 16h00 each day.

The original permit is to be kept on board the vessel at all times.

12.2 Divers

The number of persons, including right holders, on board the vessel may not exceed the number stated on the SAMSA safety certificate.

12.3 Landing site

Right holders shall only be entitled to land catches at the landing site located nearest to the secondary zone in which they are permitted to harvest abalone. The landing sites for abalone are listed in **Annexure A**. These landing sites / boat launching sites (other than those within proclaimed harbours or ports) will however only be capable of use if licenced in accordance with regulation 7 of GN Regulation 1399 of 21 December 2001.

Permits allocated will stipulate the harbour or landing site at right holders must launch from and at which all catches must be landed. All catches will be weighed at the harbour or landing site. **The weight at the landing site will be the recorded weight for the purposes of quantum control.**

12.4 Sea day restrictions

The Department will impose a sea day restriction. This means that right holders will only be permitted to harvest abalone for a limited number of days during the abalone season. The Department intends imposing the following sea day restrictions:

- 1 day for every 50kg allocated on the west coast (ie. west of Cape Hangklip), excluding Robben Island, where 1 day will be allocated for every 100kg allocated; and
- 1 day for every 100kg allocated on the south-east coast (ie. east of Cape Hangklip).

Upon the expiry of the allotted sea days, the Department will require the right holder to immediately return the "generator" tag (see para. 12.5, below) and all copies of, and the original permit to the Department. Should a right holder subsequently be found to

have continued harvesting abalone, the permit and “generator tag” will not be returned to the right holder and the Department will institute proceedings to have the right revoked, suspended or cancelled.

12.5 Gear and equipment

The Department will only permit the utilisation of the “hookah system” for the harvesting of abalone. The generator that will be used on board the vessel must at all times carry an official Department “abalone generator” tag, which shall be provided by the Department.

Each **diver** will only be permitted one wetsuit or drysuit on board the **suitable vessel**. No assistant may wear or carry a wet suit on board the **suitable vessel**. Each **diver** will be provided with one tag for their wetsuit.

12.6 Vehicles

Every applicant will have to nominate and provide full details pertaining to the make, colour and registration numbers of the vehicles (as well as engine and chassis numbers) and trailers that will be used to launch and tow vessels and transport the harvested abalone.

Only these vehicles may be used by the right holders. Should a vehicle require replacement (whether temporary or permanent), the Department must be notified in writing and prior written approval must be obtained.

Each vehicle that is intended to be used by the right holder to launch and tow the **suitable vessel** and transport the harvested abalone must be clearly marked indicating –

- the right holder’s full name and logo (if applicable);
- the right holder’s permit number;
- the purpose(s) of the vehicle; and
- the make, model, colour and registration number of the vehicle.

The Department will provide the right holder with one set of the applicable markings for each nominated vehicle. Only these markings in their original form will be valid.

12.7 Marine Protected Areas

The marine protected area at Betty's Bay will be closed to all abalone harvesting. No right holder shall be permitted to enter this protected area for the purposes of diving for abalone.

12.8 Dyer Island

The closure of Dyer Island for the purposes of making it a sanctuary is part of a strategy to protect the abalone species. The Bettys Bay Marine Protected Area is no longer considered as being sufficient to provide the only protection to abalone.

It is the Department's view that the abalone species should be afforded further protection in one other "no-take" refuge. This should be a discrete identifiable, population site, and Dyer Island suits this requirement well.

13. Processing, transporting and selling abalone

Only fish processing establishments that hold a fish processing establishment right under the Act to process abalone in wild form shall be permitted to process abalone.

Harvested abalone must be transported and delivered to a fish processing establishment in a whole state by the right holder using the vehicle nominated and registered with the Department. Should any fish processing establishment purchase abalone that has already been shucked, such a fish processing establishment could have its right suspended, revoked or cancelled.

The landed mass of the abalone must be recorded by the right holder. The Department will only allow for a maximum of 3% loss of weight from landing site to the fish processing establishment.

Who may market and sell the abalone shall be for the right holder to determine.

14. Application Fees and Levies

A non-refundable application fee of R6700 will be applicable. Should an application be submitted without proof of the requisite application fee, the application will be refused.

The Department will put in place a compliance related levy or other fee for the sole purposes of funding monitoring and enforcement initiatives. Right holders will be required to pay for such monitoring and enforcement initiatives.

15. Criteria

The criteria stated below are intended to identify the best applicants that may be granted commercial abalone fishing rights. The Department reserves its right to amend these criteria or to add further criteria so as to ensure that it is capable of allocating commercial abalone fishing rights in an efficient and sustainable manner. Criteria however will only be based on information in or documentation required by the application form.

Each application submitted will be required to comply with certain exclusionary criteria. Every application will have to be properly lodged, not be materially defective and will have to demonstrate compliance with the **essential requirements** that pertain to the abalone fishery. These specific exclusionary criteria are clearly stated in the application form and Government Notice inviting applications for commercial fishing rights.

15.1 Divers

Preference will be given to allocating rights to natural persons who are **divers** and who reside in the coastal community adjacent to the secondary zone in which abalone rights are to be allocated. A diver applicant will be considered on the basis of whether he or she –

- is a qualified diver and is certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993 to be a certified commercial diver;
- has an historical involvement in the harvesting of abalone (ie. that he or she has a history of diving legally for abalone) and who will use assistants

experienced in abalone harvesting and who are members of the communities adjacent to the secondary zone applied for;

- is substantially reliant on the abalone resource for 75% or more of his or her annual income;
- has been permanently resident for the past two years in the coastal community adjacent to the secondary zone that is applied for; and
- is registered as a tax payer with the South African Receiver of Revenue and all taxes have been paid.

Divers who are **historically disadvantaged persons** will be given preference. Preference will be given to divers who are not shareholders or directors of **abalone processing factories**.

15.2 Legal Entities

The following criteria are intended to be applicable to the evaluation of applications submitted by **legal entities**. The application must demonstrate that the applicant –

- is capable of catching its own allocation;
- has a track-record of involvement in abalone catching or processing and marketing;
- has held a medium-term commercial abalone right (2001-2003 abalone fishing seasons);
- has invested in **suitable vessels**, gear and other applicable equipment. Investment in a vessel does not only mean sole ownership of the vessel but includes joint ownership or part ownership;
- is significantly **transformed** in both ownership and management (ie. is more than 66% owned and managed by **historically disadvantaged** persons);
- is a registered VAT vendor (if applicable) and is registered with the South African Revenue Services and whose taxes have been fully paid up;

- registered place of business for the past two abalone fishing seasons has been in the coastal area adjacent to the secondary zone that is applied for; and
- has historically complied with the Act.

15.3 Abalone Processing Factories

Applications by **abalone processing factories** will require that they –

- currently hold a fish processing establishment right under the Act;
- have held a medium term commercial abalone right for the 2001/2002 and 2002/2003 abalone fishing seasons;
- currently have the capacity to freeze, can and dry abalone;
- can show substantial investment in factories and equipment;
- that has invested in **suitable** vessels, gear and other applicable equipment. Investment in a vessel does not only mean sole ownership of the vessel but includes joint ownership or part ownership;
- employ persons who predominantly process abalone. Preference will be given to processors that employ their staff on a permanent basis, have invested in skills development and who comply with the Employment Equity Act of 1998;
- can demonstrate a degree of transformation in both the spheres of ownership and management of the business; and
- have historically complied with the Act.

GLOSSARY OF TERMS USED IN THIS POLICY

Note: All words or terms that are in ***bold italics*** in the text above may be found in this glossary.

<i>“abalone processing factories”</i>	means a fish processing establishment that has been granted a right to process abalone, provided such establishment is certified by the South African Bureau of Standards to process wild abalone and has in fact been processing such wild abalone;
<i>“divers”</i>	means an individual who is qualified to dive commercially for abalone and who is so certified in terms of the regulations promulgated under the Occupational Health and Safety Act of 1993;
<i>“essential requirements”</i>	means a requirement that must be satisfied and in the abalone fishery means that applicants must demonstrate – <ul style="list-style-type: none"> • ownership of or a right of access to a <i>suitable vessel</i>; • that he/she owns or has a right of access to the appropriate equipment and gear in order to harvest abalone;
<i>“historically disadvantaged person”</i>	means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women;
<i>“legal entity”</i>	means a close corporation, South African company or trust, other than an <i>abalone processing factory</i> ;

“management”

means being able to participate fully in the management of the entity, including hiring and firing staff, entering into binding contracts on behalf of the entity and being able to sign negotiable instruments on behalf of the entity;

“ownership”

means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity;

“suitable vessel”

means a vessel that is no more than 8 metres in length, SAMSA compliant, fitted with an approved and functioning VMS and is not –

- an inflatable boat;
- a semi-rigid inflatable boat;
- equipped with outboard motors of more than 90 hp each;

“transformation”

means the equitable representation of historically disadvantaged persons in both the ownership and management spheres of an entity.

**ANNEXURE A
LANDING SITES**

1. Buffeljagsbaai;
2. Buffelsbaai;
3. Cape Town;
4. Gansbaai;
5. Ganzekraal;
6. Hermanus;
7. Hout Bay;
8. Kleinbaai;
9. Kleinmond;
10. Maasbaai;
11. Millers Point;
12. Saldanha;
13. St Helena Bay;
14. Witsands;
15. Yzerfontein.