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**DRAFT POLICY ON THE ALLOCATION AND MANAGEMENT OF FISHING RIGHTS IN THE
PATAGONIAN TOOTHFISH FISHERY: 2015**

**THIS POLICY MUST BE READ WITH THE GENERAL POLICY ON THE ALLOCATION AND
MANAGEMENT OF FISHING RIGHTS: 2013
(available at www.daff.gov.za)**

**This document is also available in Afrikaans, isiXhosa and isiZulu
Hierdie dokument is ook in Afrikaans, isiXhosa, en isiZulu beskikbaar
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Lencwadi iyatholakala nangolwimi lwesiBhunu, lwesiXhosa nolwesiZulu**

(In case of any inconsistency, the English text prevails)

TABLE OF CONTENTS

1.	Introduction	3
2.	Profile of the fishery	3
3.	The 2005/2006 long term rights allocation process.....	5
4.	Objectives	6
5.	Granting of fishing rights.....	6
7.	Evaluation criteria	7
10.	Payment of application and grant of right fees	11
11.	Management measures.....	11
12.	Permit conditions	12
13.	Glossary of terms.....	13

1. Introduction

This policy on the allocation and management of fishing Rights in the Patagonian Toothfish sector is issued by the Minister of Agriculture, Forestry and Fisheries ("the Department") ("the Minister") and shall be referred to as the "**2015: Patagonian Toothfish Policy**". This policy must be read together in conjunction with the 2013: General Policy on the Allocation and Management of Fishing Rights ("2013: General Policy") and all other current sector specific Policies including Policy for the Small Scale Fisheries Sector in South Africa and the Policy for the Transfer of Commercial Fishing Rights.

This policy sets out objectives, criteria and, considerations that will guide the application, allocation and management of fishing Rights in the Patagonian Toothfish fishery sector ("the fishery"). This policy will also guide the Delegated Authority in taking decisions on applications in this fishery.

2. Profile of the fishery

2.1 Description of the fishery

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.

The Prince Edward Islands are situated within the Convention area of the Commission for the Conservation of Antarctic Marine Living Resources ("CCAMLR"). CCAMLR is the regional fishery management organisation tasked with, among other roles, monitoring catches of Patagonian Toothfish in the Southern Ocean.

Patagonian Toothfish live for longer than 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.

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.

There has been no indication of IUU fishing in the PEI-EEZ since 2004, however IUU vessels are active on the nearby fishing grounds of Ob and Lena Banks and an IUU vessel was sighted close to the PEI-EEZ in 2015. Therefore there is a concern that, as the resource in the PEI-EEZ recovers, IUU fishing could once again become an issue. The fishery remains commercially sustainable, according to the scientific advice provided by the relevant Department's Scientific Working Group. The Minister has decided to re-allocate long-term commercial fishing Rights in this fishery.

The harvesting of Patagonian Toothfish within the South African EEZ around the Prince Edward Islands (PEI-EEZ) started in 1996 as an experimental fishery until the end of 2005.

2.2 Resource users

Currently, there are five South African Right Holders operating in the PEI-EEZ. The Department has set annual Total Allowable Catch (TAC) limits for this fishery over the period 2001 to 2015.

Fishing Year	Legal			Illegal	TOTAL	TAC
	Longline	Pot	Trotline			
1997	2754.9			21350.0	24104.9	
1998	1224.6			1808.0	3032.6	
1999	945.1			1014.0	1959.1	
2000	1577.8			1210.0	2787.8	
2001	267.8			352.0	619.8	2250
2002	237.3			306.0	543.3	600
2003	251.1			256.0	507.1	500
2004	182.5	34.3		156.0	372.8	500
2005	142.6	141.9			284.5	450
2006	169.1				169.1	450
2007	245.0				245.0	450
2008	88.8		56.4		145.2	450
2009	41.8		30.7		72.5	450
2010	49.2		174.6		223.8	450
2011	1.0		323.9		324.9	400
2012	70.7		205.5		276.2	320
2013	50.0		215.3		265.3	320
2014*	0.0		400.0		400.0	450

* The total catch for 2014 is the *expected* catch for the year as the fishing season is still ongoing, and is assumed to be entirely caught with trotlines

The Patagonian Toothfish fishery is a high-risk and 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.

3. The 2005/2006 long term rights allocation process

Five experimental permits were issued for the fishing of Patagonian Toothfish in 1996. In order to improve the economic gains from the fishery, the 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 effectively pooled their resources. Long-term commercial fishing Rights were allocated to five Right Holders for the first time in 2006. The Patagonian Toothfish fishing Rights will be expiring on the 31st of October 2015.

4. Objectives

- 4.1 The objectives of allocating fishing rights in the Patagonian Toothfish fishery are to:
- (a) promote transformation through allocation of fishing Rights to historically disadvantaged persons which shall include designated groups (youth, women and people with disabilities), broaden meaningful participation (increase participation, value-creation, and linkage);
 - (b) ensure sustainable livelihoods through the promotion of fair permanent employment.
 - (c) promote adherence to fair labour practices and improved working conditions;
 - (d) promote food security and poverty alleviation;
 - (e) prefer applicants who rely on the harvesting of Patagonian Toothfish for a significant portion of their gross annual income above applicants deriving income from sources outside the Patagonian Toothfish fishery;
 - (f) facilitate the recovery of over-exploited and collapsed fish stocks; and
 - (g) achieve optimum utilisation and ecologically sustainable development of marine living resources.

5. GRANTING OF FISHING RIGHTS

Fishing Rights are granted in terms of section 18 of the Marine Living Resources Act (Act No. 18 of 1998) ("the MLRA"). Unless otherwise determined by the Minister, only South African persons shall acquire or hold Rights in terms of section 18 of MLRA. All Rights granted shall be valid from the date of allocation for a period not exceeding 15 years, where after the Rights shall automatically terminate and revert back to the State to be reallocated in terms of this policy. In terms of section 14 of the MLRA the Minister shall determine commercial Total Allowable Catch limits (TAC), Total Applied Effort (TAE), or combinations thereof. It shall be further noted that in terms of section 16 of the MLRA the Minister may suspend any fishing in the fishery or impose effort restriction in order to address a state of emergency.

5.1 Form of Right Holder

- (a) Section 18 of the MLRA provides that only South African persons may hold fishing Rights.
- (b) With regard to the nature of operations and resource accessibility in the Patagonian Toothfish fishery, only the following South African persons will be considered for a right in the fishery:
 - (i) close corporation; and
 - (ii) company;

5.2 Duration of right

With regard to the right allocation process, the status of the fishery and need to encourage investment, fishing rights in the Patagonian Toothfish fishery will be granted for the maximum period of 15 years.

5.3 Total Allowable Catch allocation

Considering the history, current resource users, the sustainable operations and the viability of the fishery, the Delegated Authority will only allocate an initial maximum of 575 tons. It shall be anticipated that individual allocations may decrease should the annual approved TAC decrease. However in terms of section 14(4) of the MLRA, if the allowable commercial catch in respect of which commercial fishing rights exist, increases to more than the initial maximum, the mass of the increase shall be available for allocation by the Minister.

5.4 Transfer of Rights Allocated in terms of this Policy

In terms of section 21 of the MLRA the Minister may approve the transfer of fishing rights in whole or in part. However, Patagonian Toothfish rights in terms of this Policy shall not be transferred within the two years except in the case of death, disability or medical reasons occurring after the right has been allocated. In addition, failure to activate or apply for any permits, declare any catches during the first two years shall result in an automatic cancellation of the right by Minister.

Rights can only be transferred in terms of the Policy for the Transfer of Commercial Fishing Rights (Government Gazette No 32449, 31 July 2009) or relevant amendments thereof.

6. Multi-sector involvement

Applicants in the Patagonian Toothfish fishery will not be precluded from holding commercial fishing rights in other local commercial fishing sectors. This shall mean any person can apply for a Right in any fishery sector regardless of the fact the applicant has applied for a right or holds a right in any fishery sector. However the Delegated Authority reserves the right to grant a right in any sector.

7. Evaluation criteria

Applications for Patagonian Toothfish fishing rights will be screened in terms of a set of "exclusionary criteria". All applicants will thereafter be separately scored in terms of a set

of weighted “comparative balancing criteria”. A cut-off will then be determined in order to select the successful applicants and effort will be allocated to each successful applicant.

7.1 **Exclusionary criteria**

Apart from the criteria described in the 2013: 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) **Compliance**

Applicants, including their members, directors or controlling shareholders that have been convicted of a serious offence of the MLRA (without the option of the payment of a fine) will be excluded. Applicants, including their members, directors or controlling shareholders that have had any fishing Right cancelled or revoked in terms of the MLRA, will also be excluded. Minor infringements of the MLRA, including payment of admission of guilt fines, may be taken into account as a balancing criterion and may also adversely affect an application.

(b) **Paper quotas**

Applications from paper quota applicants, as defined in the 2013: General Policy, will be excluded.

(c) **Non-utilisation**

(i) Applicants that held a Patagonian Toothfish right within the period 2006 to 2014 and did not harvest any Patagonian Toothfish during the entire duration of that right shall be excluded.

7.2 **Balancing criteria**

Applicants will be evaluated in terms of the following balancing criteria which will be weighted in order to evaluate and assess applications:

(a) **Transformation**

The South African population percentage composition of demographic groups (79.6% Black, 9% Coloured, 8.9% White, and 2.5% Asian) may amongst other transformation criteria be used to prefer applicants from others when allocation of fishing Rights and Rights Holder's apportionment of the TAC and/or Total Applied Effort (“TAE”) is being considered.

Applicants will be assessed and scored on –

(i) The percentage of ownership and representation of black, youth and women at top salary, board of directors, members and senior official and management levels;

- (ii) Whether employees (other than top salary earners) benefit from an employee share scheme;
- (iii) Compliance with the Employment Equity Act 55 of 1998 and the representativity of designated groups and Historically Disadvantaged Individuals (HDIs) at the various levels of employment below senior official and management level;
- (iv) Affirmative procurement;
- (v) Compliance with legislation on skills development and the amounts spent on the training of Black persons, youth, women, including people with disabilities, and participation in learnership programmes; and
- (vi) Corporate social investment.

(b) **Fishing performance**

- (i) The fishing performance of applicants holding fishing rights in the Patagonian Toothfish fishery will be examined to determine if they have effectively utilised their fishing Rights. Effective utilisation shall mean activation of the catch permit, landing of catch and subsequent submission of catch data for at least five years during the period 2007-2014.

(c) **Local economic development**

- (i) The Delegated Authority will take into consideration the landing and processing of catches in fishing harbours outside the metropolitan areas to promote local economic development.
- (ii) The Delegated Authority shall, in order to ensure that all fishing communities share in the marine living resources, use landing sites/fishing harbours as scoring or tie-breaking criteria.
- (iii) Applicants are encouraged to land or process fish in harbours and fishing communities that are economically depressed.

(d) **Job creation**

Job creation and increases in jobs as a result of the allocation of long-term fishing Rights will be rewarded, and in particular compliance with the Basic Conditions of Employment Act, 1997 (No. 75 of 1997) (BCEA), such as providing employees with: –

- (i) permanent employment;
- (ii) medical aid, pension / provident fund;

- (iii) safe working conditions in accordance with the applicable legislative requirements; and
 - (iv) an employee share scheme as a shareholding entity of the Right Holder.
- (e) **Access to a suitable vessel**

Applicants will be required to demonstrate a right of access to a vessel suitable for the harvesting of Patagonian Toothfish. Access may be in the form of ownership, part-ownership, catch agreement, charter agreement, or bank guarantee in the case of a purchase of a vessel or to build a vessel. If an applicant intends purchasing a vessel then additional proof of a purchase agreement must be provided. If in the case of a new build vessel then the vessel plans and cost from the vessel building company must be provided.
- (f) **Applicant's involvement and relationship with other applicants**
 - (i) **Entity and their subsidiaries involvement**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Large Pelagic fishery, the Department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Large Pelagic fishery.
 - (ii) **Brother-Sister Corporations**

If two or more companies which are owned and controlled by the same shareholders apply for a commercial fishing right in the Abalone fishery, the department will consider allocating fishing right to one of the companies if two or more of the brother-sister companies qualify for a fishing right in this sector. The department may also consider dividing one fishing right (TAC and/or TAE) to the brother-sister companies if they all qualify for a fishing right in Abalone fishery.

7.3 **Suitable vessels in the Patagonian Toothfish fishery**

- (a) A suitable vessel in the Patagonian Toothfish fishery is a vessel that has a minimum South African Maritime Safety Authority ("SAMSA") registered length of 30 metres, must be over 400GT and is equipped for Patagonian Toothfish fishing using the longline method.

- (b) The Department will require each vessel owner to invest in an acceptable Vessel Monitoring System ("VMS") after the allocation of fishing rights and also that the vessel shall be fitted with such a VMS at all times for the entire duration of the fishing right. The VMS shall be functional at all times during fishing operations.

8. Provisional lists, consultations and representations

- 8.1 The Delegated Authority may issue provisional lists for comment on any aspect relating to an application in any fishery/sector.
- 8.2 The Delegated Authority may request comment on any of the information provided by an applicant and on the basis of the comments received make a final decision.
- 8.3 The Delegated Authority may invite representations regarding the assessment of the applications before making final decisions.

9. Announcement of decisions

The Delegated Authority shall after making a final decision on the applications inform all applicants of the outcome of their individual applications giving specific reasons for such decision. Further General Reasons for decisions in a specific fishery sector will be published informing all applicants on how the decisions were formulated and reached. The General Reasons shall also include an annexure referred to as decision sheet outlining all applicant scores in the Patagonian Toothfish sector.

10. Payment of application and grant of right fees

- 10.1 The fees for this fishery will be determined having regard to:
 - (a) The cost of the entire fishing Rights allocation process, including consultation, receipting, evaluation of applications, verification, appeals and reviews; and
 - (b) The value of the fish being allocated over the duration of the Right.
- 10.2 The non-refundable application fee shall be payable before submitting the application form and only proof of payment shall be brought to the receipting center.
- 10.3 The grant of right fee is payable by all successful applicants upon the granting of rights.

11. Management measures

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

11.1 Ecosystem approach to fisheries

This fishery will be managed in accordance with the ecosystem approach to fisheries ("EAF"). An ecosystem approach to fisheries management is a holistic approach that

maintains or improves the health of an ecosystem and balances the diverse societal needs and values. This approach also defines the ecosystem in its broadest sense and includes ecological, social, economic and governance systems.

11.2 **Observer Programme**

- (a) The right holder of a commercial Patagonian Toothfish fishing right shall accommodate an observer on board the right holder's nominated vessel when required to do so by the department or its agent.
- (b) The right holder may bear the costs of the observer deployment when required by the Department.
- (c) The right holder shall allow the Observer unrestricted access to monitor fishing activity and compliance with permit conditions and all applicable laws.
- (d) Should the Department reasonably believe that an Observer is being prevented from carrying out his or her obligations in any way or threatened in any way while on board, the Department may implement proceeding under section 28 of the MLRA.

11.3 **Performance measuring**

Successful applicants will be subjected to a number of performance measuring exercises for the duration of the fishing Rights. 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.

11.4 **Offences**

- (a) Successful applicants that fail to utilise their Patagonian Toothfish fishing Right for one season without any reasonable explanation or that contravenes the provisions of the MLRA, will be subjected to proceedings of section 28 of the MLRA.

12. **Permit conditions**

Permit conditions for this fishery will be issued annually. The permit conditions will be determined after consultation with the successful applicants in this fishery and will be subject to revision as and when it may be necessary.

13. Glossary of terms

- 13.1 "Application period" means the period commencing with the publication of the invitation to apply for a fishing or harvesting Right in the sector to the date on which the appellate authority finally decides the appeals in the sector.
- 13.2 "MLRA" means the Marine Living Resources Act, 1998 (Act No. 18 of 1998), which is the Act "To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa"
- 13.3 "Rights" means fishing or harvesting Rights granted in terms of section 18 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998).
- 13.4 "Right Holder" means a person that was granted a fishing Right during the period 2005 – 2006 in a specific fishery, or became a Right Holder in a fishery by way of an approved transfer of a fishing Right.
- 13.5 "The 2013: General Policy" means the General Policy on the Allocation and Management of Fishing Rights: 2013.
- 13.6 "The Department" means the Department of Agriculture, Forestry and Fisheries.
- 13.7 "The Minister" means the Minister of Agriculture, Forestry and Fisheries.
- 13.8 "Historically Disadvantaged Person" means a person who belongs to a group of persons that suffered racial discrimination in terms of the system of apartheid and includes women.
- 13.9 "Total Allowable Catch" means the maximum quantity of fish of individual species or groups of species made available annually or during such other period of time as may be prescribed, for combined recreational, small-scale, commercial and foreign fishing.
- 13.10 "Total Applied Effort" means the maximum number of fishing vessels, the type, size and engine power thereof or the fishing method applied thereby for which fishing vessel

licences or permits to fish may be issued for individual species or groups of species, or the maximum number of persons on board a fishing vessel for which fishing licences or permits may be issued to fish individual species or groups of species.

- 13.11 "Ownership" means beneficial ownership, in terms of which the shareholder or member is entitled to participate equitably in the profits of the entity.