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#### 07 March 2022

Marine Living Resources Fund Foretrust Building Martin Hammerschlag Way Foreshore Cape Town 8012



Dear Sir/Madam

#### REPORT ON THE FRAP2020/21 ASSESSMENT STAGE

We were appointed by the Marine Living Resources Fund (MRLF) on 07 July 2021 as an observer to monitor the transparency, openness, and fairness during every step of the FRAP2020/21 fishing rights allocation process. The content in this report provides feedback on the observations noted during the FRAP2020/21 assessment stage.

### **SCOPE**

Our scope for the FRAP2020/21 **Assessment Stage** as per our service level agreement is as follows:

- Monitor and audit transparency, openness, and fairness during every step of FRAP2020/21 fishing rights allocation process;
- Ensure whether communication between the Department/MLRF with prospective applicants is clear, concise, and measurable;
- Monitor service delivery targets of the Department during FRAP2020/21;
- Ensure that there is at least a second-year article clerk representation in all consultation and receipting centers on decentralised venues as well as **during evaluation**, **allocation**, and post allocation of fishing rights;
- Perform random checks on accuracy, completeness, correctness, and validity of information captured for all applicants;
- Participate as independent observers throughout the fishing rights allocation process commencing with public consultations; and
- Compile an audit report certifying whether the process was fair, transparent, and open.

### APPROACH

Observations were done by means of:

- Attendance of assessment meetings;
- Observation of documentation obtained through requests for information (RFI); and
- Physical testing of the application/assessment system.

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Our approach as the observers is to only observe the transparency, openness, and fairness of FRAP2020/21. In order to maintain our independence, we will not implement any processes. We will, however, report significant threats identified throughout each phase of the project.

### **CONCLUSION**

The main aspect of delays caused to the process was the deliverables by the IT service provider. The IT service provider did not deliver entirely on its end from what was expected on the specific deadline dates. These delays were one of the major reasons for the deadline to be moved from 31 December 2021 to 28 February 2022. This did award applicants an opportunity to reassess their submissions and correct where necessary. However, the system was not at 100% functionality with a 0% error rate. This impacted the assessment phase and many of the processes were then performed outside the system by the responsible parties involved until a time during the assessment phase when the IT system was corrected to allow for the teams to fully complete scoring and adjudicating.

Based on the information received from the Department of Environment, Forestry and Fisheries, (DEFF) and the work performed, except for the note mentioned above and the summary of points noted below, we conclude that the observations made by us on the FRAP 2020/21 Fishing Rights Allocation Process has been transparent, open and fair as at 28 February 2022.

### **DISCLAIMER**

- All documentation or records, including this report, are supplied solely for the purposes
  of this assignment and for the benefit of the Department, and as such, no part of any
  such documents may be provided to any other third party other than the
  management of the DEFF unless prior written consent has been provided by the
  Observer.
- This report is based purely on the information provided by the management of DEFF and any information available by the service providers to this project at the date of performing this work.
- There shall be no responsibility placed on or accepted by the Observer due to nondisclosure of information by the DEFF or any other Service Providers.

We would like to thank the management and staff of DEFF and other Service Providers for their assistance and co-operation during the project. Should you have any questions or require further clarification with regards to matters raised in this report, please do not hesitate to contact us.

RAiN Chartered Accountants Inc.
I.E. Pierce
Director

# **SUMMARY OF STATISTICS**

Description	Total
Total number of applicants that created a profile on the application	3430*
system	
Total number of applicants that created a profile then went on to initiate	3125*
an application	
Total number of applicants that created a profile and started the	652*
application process but did not eventually submit at closing date	
Total number of applications that submitted their applications	2473
Total number of applications that were assessed during the	2473
FRAP2020/21 assessment stage	

<sup>\*</sup>Figures are as provided by the Department.

## **DETAILED STATISTICS**

Sector	Total	Total	Total number of	Total Number
	Number of	Number of	applicants	of applications
	applications	applications	allocated rights	excluded
	submitted	assessed	as at 28.02.22	28.02.22
Hake Long line	446	446	86	119
Kwazulu-Natal	16	16	4	6
Crustacean Trawl				
South Coast Rock Lobster	68	68	9	21
Tuna Pole Line	204	204	98	83
Small Pelagic	590	590	120	59
Traditional Line Fish	806	806	290	497
Squid	162	162	73	11
Hake Deep Sea Trawl	175	175	29	11**
Demersal Shark	6	6	1	5

<sup>\*\*</sup> We noted that application number HDT21019 was "unsuccessful" as per the system. This is inconsistent with the published GPR that states that the applicant was excluded. Therefore, the GPR has 12 applicants excluded whereby we observed that 11 applicants were excluded.

# SUMMARY ASSESSMENT OBSERVATION PER SECTOR

Sector	Observations made	Assessment Team
Hake Long	The Delegated authority and the observer were based in the Pretoria	Delegated Authority:
line	office, and the rest of the assessment team were in the Cape Town office.	Khumo Morake-
	It was decided that if the applicant does not indicate where they will	Makhalemele
	land, then they will be excluded as a paper quota holder.	
	The team discovered that for section 2.6, the applicants were confused	Scientists:
	and subsequently some said yes and some said no. The assessment team	Tracey Pamela
	then decided if the applicants said no or not-applicable, they will get the	Fairweather
	maximum points, if they said yes, then they will be scored accordingly as	Larvika Singh
	they then do have other income in the economic units.	Sobahle Somhlaba
	The assessment team experienced time constraints due to the following:	•
	Hake Long Line and Hake Deep Sea Trawl had the same assessment	Driver:
	team members; and	Yolanda Qanda
	The connectivity issues as the delegated authority (DA) met with the	
	scientists virtually	
	The DA made the decision that applications with application fees that	
	was short should be excluded regardless of the materiality of the amount.	
	The basis of the decision was that applicants had the opportunity to pay	
	the correct amount during the extended application period. However,	
	this was later rectified in line with the legal opinion.	
Kwazulu-	Applicants who under paid were initially flagged for advice from the	Delegated Authority:
Natal	legal team. They later received confirmation that they can proceed with	Kim Prochazka
Crustacean	the process from the DDG on the basis that they are rounding up the	
Trawl	amount to the nearest Rand.	Scientists:
	The scientist noted that there is no guidance in the policy that states that	Wendy West
	a right holder is only allowed one effort per right holder.	Kim Prochazka
	It was concluded that the team will look at the nature and history of the	Niel Douw Van Der
	fishery and refer to the assessment of previous rights holders in the past to	Heever
	determine how the rights were allocated to right holders.	
	The assessment team noted that from 2013 to 2020 applicants with	Driver:
	additional (Total applied effort) TAE units did not utilise all of them and	Siyabonga Gongo
	thus the team concluded that they will apply only one TAE per right	
	holder.	
South Coast	Various applicants were identified that own less than 50% of a suitable	Delegated Authority:
Rock Lobster	vessel(s) but they were scored 15 points for this instead of being scored	Kim Prochazka
	10 points. However, this does not change the score of the applicants to	
	change their status from unsuccessful to successful.	
	I.	<u> </u>

entities with less than 50 employees as well as R6 million turnover will not be seen as designated employers. This indicates bias towards larger entities.  The Delegated Authority felt that they should score section 6.12 which is having an employment equity plan and gave points on that.  She wanted to give points on whether employers have an employment equity plan instead.  It is required that when completing the application form, applicants should attach a copy of the reports on the development and consultation of an employment equity plan (EEA2 form) and the progress made to implement the employment equity plan to the Department.  Due to the above argument, it was decided that whether you are a designated employer will be seen as insignificant and the applicants were therefore scored based on their Employment equity plans.  The policy is silent on the above issue raised by the Delegated Authority, it was however confirmed through inspection of the GPR that mention was made of the above matter in the GPR's.  The following was noted for applicant number 21106:  The catching agreement makes mention of a vessel Leantina Maria. This vessel is for the fishing of hake and an Atlantic funa vessel that mentions fishing of funa. It makes no mention of a vessel used for the fishing of SCRL, however the fearn has decided the applicant will still be scored under SCRL despite not having made mention of SCRL in the agreements.  Tuna Pole The DA allocated separate assessment tasks for each fearn member or paired team members to the DA.  Section 6.16 to 6.23 were incorrectly scored by the separate team member to the DA.  Section 6.16 to 6.23 were incorrectly scored by the system and the team had to override the error to ensure applicants are scored correctly.  Driver:  Phumaza Diabathi  Delegated Authority:  and above to be a successful applicant.  • Sardine: An applicant had to have scored an overall score of 40% and above to be a successful applicant.  The Delegated Authority has allocated quanta based on the criteria inten	Sector	Observations made	Assessment Team
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		The Delegated Authority has allocated quanta based on the criteria	Carl Van Der Lingen
and Management of Small Pelagic Commercial Fishing Rights: 2021		intended to achieve the listed objectives of the Policy on the Allocation	Johan De Goede
and management of small loagic continuoud rishing fights, 2021.		and Management of Small Pelagic Commercial Fishing Rights: 2021.	
Driver:			Driver:

Sector	Observations made	Assessment Team
	The quanta allocated to each successful applicant will be expressed as a percentage of the TAC for directed anchovy, and applicants will also be allocated the same percentage of the TAB for juvenile sardine taken in anchovy fishing operations. However, these percentages will not necessarily remain fixed for the duration of the right and may change under circumstances of low biomass.  The assessment team, thereafter had a discussion with regards to the TAC allocations per sector and per applicant, a minimum TAC was set as follows:  Sardines: 250 tonnes and  Anchovy: 1500 tonnes, respectively.	Lindiwe Xhasa
Traditional Line Fish	SAMSA certificates were requested to be uploaded in the application stage.  Later in the assessment phase it was identified that other documents were attached from SAMSA such as Certificates of Fitness and vessel licence which is not the same and was acceptable by the assessment team. It was then discussed that to receive a license there should have been a SAMSA certificate and therefore could be acceptable by assumption.	Delegated Authority: Belemane Semoli  Scientists: Stephen Lamberth Sven Kerwath  Driver:
	Zones selected in applications were compared to residential zones and then changed on the application to match the residential zone. This was not performed consistently as it was generally accepted that the applicant chose the correct zone for fishing and residing.  The coastline is made into 3 zones (A, B and C) ranging from Cape Town to Durban. If you are staying in Cape Town you will fish in zone A and cannot apply for zone C which is in Durban. Thus, it is changed to applicant's residential zone if it does not match your applied for zone. However, this did not have an impact on the outcome of each applicant whether they are successful or not successful.  There was an ID document uploaded which was corrupted and could not be opened. It was accepted that the applicant is a SA citizen without	Mzolisi Benxa  Other members:  Msimelelo Mdledle  Benjamin Mdledle
	<ul> <li>being able to verify the attached ID document.</li> <li>Evaluation phase as a whole took longer than anticipated due to the following reasons:         <ul> <li>Data cleaning took a while as Party numbers for applicants were the same and it cannot be. Each rights holders have a P number as well as a Rights number starting with the right (e.g., LNF210405 (right nr) have a Party number P9386 as a different reference on catch data servers) - Confirmed through enquiry with Mzolisi that Party Number is considered a Permit Number and this is a reference they are given on the MAST system.</li> <li>Applicants had to be moved between the categories as either the applicant themselves did not know what category they are or the system failed to allocate them correctly.</li> <li>Compliance scoring was difficult to determine and majority of the first days of the phases were spent on determining the</li> </ul> </li> </ul>	

Sector	Observations made	Assessment Team
	severity of the compliance sections and how they will be	
	applied and scored.	
	On 24 February 2022 the "Suitable Vessel" link opened up on the	
	system for TLF which needed to be completed for the	
	applications to be considered fully evaluated. This was not	
	picked up as the team did not know this was on the system and	
	was highlighted by IT when they saw that there is not information	
	on the system relating to the suitable vessels. It was concluded	
	that the suitable vessel will only be completed for successful	
	applicants due to time constraints.	
	There were instances identified where the catch performances included	
	by the applicants on the application form manually is not corresponding	
	with the system data collected by the scientists/researchers and cannot	
	be verified as there are no supporting documents attached in the	
	application form substantiating the information of the applicants. (There	
	was no support requested for this section on the application). It was	
	concluded that if an applicant was excluded due to non-performance	
	and would appeal that evidence would then be presented and the	
	applicant will be considered.	
	The application form required that proof of a purchase agreement had	
	to be uploaded as supporting documentation and that when there is	
	someone else catching for an applicant there might have been	
	instances where a catch agreement should have been uploaded but	
	this was not specifically required to be uploaded.	
	The Application form only asked for Purchase Agreement	
	documentation if a vessel is purchased. There are cases where an	
	applicant would "hire" a boat thus a catching agreement should exist as	
	the applicant could either hire a boat and fish themselves or hire a boat	
	with a crew who would do the catching for them and this is where the	
	concern existed.	
	It is therefore possible that there were applicants that had a catch	
	agreement but did not upload it as the application form did not require	
	for it and only required a purchase agreement.	
	The assessment team initially scored applications on an excel document.	
	Category C applicants were assessed adequately for section 1.9 and	
	Section 6, where the assessment team verified the supporting	
	documentation relating to historical involvement.	
	However, when the assessment team was capturing information on the	
	system for category C applicants that uploaded inapplicable	
	documentation under historical involvement, these applicants were not	
	excluded. Applicants that did not upload any documents were	
	excluded.	
Hake Deep	The DA allocated separate assessment tasks for each team member or	Delegated Authority:
Sea Trawl	paired team members. Our observation has been limited to only the	Sobahle Somhlaba

Sector	Observations made	Assessment Team
	presentation/result of the assessments made by the separate team	Scientist:
	members to the DA.	Deon Durholtz
	There were other members who always joined the meetings online and	
	there was no assurance that there was nobody else in their respective	Driver:
	rooms as their cameras were always off at the start of the meetings.	Yolanda Qanda
	Therefore, confidentiality of the information discussed cannot be assured.	
	This excludes DA, Driver and Implementor who were always in the room	
	with observer.	
Squid	When scoring section 5.3 (Value per crew) the team realised that the	Delegated Authority:
	results are skewed since all of the applicants scored 1 while one	Cheslyn Liebenberg
	applicant scored 10. Therefore, the top achiever was removed and they	
	ran the computation again. The same results were derived with one	Scientist:
	applicant scoring the maximum point and all other applicants scored	Dr. Jean Mwicigi
	minimum or very near to. The team decided to award maximum points	
	for applicants with a value per crew greater than 10 million and they will	Driver:
	be removed from the dataset in order to produce a more even	Dyondzo Machimana
	distribution.	
	Blank answers by the applicant for scoring questions were assumed to be	
	"no" as well as answering N/A.	
Demersal	There were no incidents reported for this sector during the assessment	Delegated authority:
Shark	phase.	Dr. Ashley Haidoo
		Scientist:
		Dr. Charlene da Silva
		Dr. Swen Ebo Kerwath
		Driver:
		I .

### SIGNIFCANT MATTERS TO NOTE

- A media article was brought to our attention of an alleged BEE fronting in the fisheries industry. The article allegedly implicates Eyethu Fisheries in BEE fronting. We could not verify nor confirm this information, however, it should be noted by the department for further investigation where appropriate. As at 07 March 2022 the matter was referred to the Forensic Investigators of the FRAP2020/21 Process. The article may be found on <a href="https://www.iol.co.za/the-star/news/alleged-bee-fronting-in-fisheries-industry-ec69802d-f7f6-43c2-be7d-9b491bf7d367">https://www.iol.co.za/the-star/news/alleged-bee-fronting-in-fisheries-industry-ec69802d-f7f6-43c2-be7d-9b491bf7d367</a>
- As a control measure only the delegated authority (DA) and the driver should have the rights to edit information on the system. As part of our scope to check the adequacy of the system we attempted to edit information using SCRL login credentials as an example and we noted not only the delegated authority and driver may effect changes. This was escalated to the project manager.

- There also had to be a lot of manual input and editing of scores on the system as the system in many occasions would not give the correct scoring. The teams opted to using excel spreadsheets for assessing then later input into the system.
- We noted that application number HDT21019 was "unsuccessful" as per the system.
   This is inconsistent with the published GPR that states that the applicant was excluded.
   This could also be a possible reflection of system errors as the GPR reasons were extracted from the system.
- For Hake Long Line there were 3 applicants that were identified as potential brother-sister relations. These applicants were sent for further investigation in order to confirm whether they are truly a brother-sister relationship based on the information of their current shareholding. These 3 applicants were also placed on the reserved list, meaning they were not excluded, but will only be successful pending the outcome of the investigation.

### OTHER POINTS TO NOTE

- It is noteworthy to highlight the perseverance of the Department given the challenges that they were faced with.
- A further item to note is the Departments commitment to completing the
  assessment within the specified time by making use of all available resources
  and also working outside the system to ensure that the smooth continuation of
  the project during assessment phase.