



**MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA**

**GENERAL PUBLISHED REASONS FOR DECISIONS ON APPEAL
IN THE SMALL PELAGIC (ANCHOVY) SECTOR
FISHING RIGHT ALLOCATION PROCESS 2021/2022**

INTRODUCTION

1. These are the General Published Reasons for the Decisions on appeal in the Small Pelagic sector: (Anchovy) 2021/2022 by the Minister of Forestry, Fisheries and the Environment (Minister). This document is titled the “*General Published Reasons for Decisions on Appeal in the Small Pelagic (Anchovy) Sector- Fishing Right Allocation Process 2021/2022*” (the Appeals GPR).
2. The Appeals GPR is structured as follows:
 - 2.1 Introduction;
 - 2.2 Systematic/Cross cutting Grounds of Appeals;
 - 2.3 Quantum Allocation Methodology (QAM);
 - 2.4 Outcome of the Appeals;
 - 2.5 Conclusion; and
 - 2.6 The final allocation of commercial fishing rights in the Anchovy sector is set out in **Annexures A, B and C** to the Appeals GPR.
3. During February 2022, the Department of Forestry, Fisheries and the Environment (the Department) completed the Fishing Rights Allocation Process of 2021/2022 (FRAP 2021/22), in the Small Pelagic (Anchovy) sector. Ms Susan Clare Middleton; the Deputy Director General: Fisheries Management, in her capacity as the Delegated Authority, published her decisions in respect of the FRAP 2021/2022 in the “*General Published Reasons for the Decisions on the Allocation of 2021/22 Fishing Rights and Quantum in the Small Pelagic (Anchovy) Sector*” (GPR).
4. Applicants who were dissatisfied with the Delegated Authority’s decision were entitled to appeal against the decision(s) of the Delegated Authority, in terms of section 80 of the Marine Living Resources Act 18 of 1998 (MLRA), read with regulation 5 of the Regulations to the MLRA, via the Department’s FRAP Appeals online system. The closing date for FRAP 2021/2022 appeals was 29 April 2022. In response to several requests from the fishing industry, the closing date was extended to 29 July 2022. The Department received two hundred and thirty (230) appeals in the Small Pelagic (Anchovy) sector across the different categories of applicants.
5. Appeals are governed by section 80 of the MLRA read with Regulation 5(3) of the Regulations to the MLRA, published under Government Notice R1111 in Government Gazette 19205, dated 2 September 1998.

6. This Appeals GPR addresses the issues raised in the Appellants' grounds of appeal, and it sets out how I, in my capacity as the Appeal Authority in terms of section 80 of the MLRA, dealt with these issues to determine and decide the appeals in general.

7. I note, at the outset, that in making my decisions on the appeals that have been submitted against the decisions of the Delegated Authority, I considered and balanced a wide range of factors. These include, but are not limited to, the following:
 - 7.1 The principles and objectives derived from the Constitution that are relevant to the FRAP 2021/2022;
 - 7.2 The principles and objectives of the MLRA as stated in section 2 thereof;
 - 7.3 The purpose and objectives of the 2021 General Policy on the Allocation of Commercial Fishing Rights: 2021 (the 2021 General Policy) read with the various sector specific policies on the allocation of commercial fishing rights: 2021 (the Sector Specific Policies);
 - 7.4 The need to broaden access to the fishing industry, by introducing new entrants to the various fisheries;
 - 7.5 The need for transformation of the fishing industry to achieve equity and to address historical imbalances;
 - 7.6 The desirability of multi sector involvement, facilitating participation through the value chain;
 - 7.7 The need to minimise negative impacts on the fishing industry, including instability or disruption of existing participation in job creation, and minimising job losses;
 - 7.8 The need for sustainable development of the natural resource through, among other, the determination of the Total Allowable Catch (TAC) and/or Total Applied Effort (TAE);
 - 7.9 The need to address the dynamics of each specific fishery;
 - 7.10 The need to minimise the risk of paper quota holders;
 - 7.11 The adjustments that need to be made where related entities have applied for rights in the sectors;
 - 7.12 The need to assess applicants within a category against other applicants in the same category so that new entrants are not unfairly prejudiced on certain criteria where existing right holders may score higher;
 - 7.13 The desirability of giving successful applicants a reasonable prospect of active and meaningful participation in the fishery;

7.14 The Constitutional Court judgment in the matter of *Bato Star (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others (CCT 27/03) [2004] ZACC*, which provides important guidelines for me to consider when I exercise my duties as gate-keeper of the Department of Forestry, Fisheries and the Environment (the Department).

8. In arriving at my decisions, I also had regard to the following:

8.1 The 2021 General Policy is a guideline document on the allocation and granting of commercial fishing in terms of section 18 of the MLRA. The granting of rights in the Small Pelagic (Anchovy) sector will be guided by the 2021 General Policy on the Allocation and Management of Commercial fishing rights read with the Sector Specific Policy on the Allocation and Management of Commercial Fishing Rights in the Small Pelagic Sector: 2021 (the Sector Specific Policy).

8.2 The 2021 General Policy and the Sector Specific Policy are based on, among other, the Constitution, the MLRA, the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (BBBEEA), the National Empowerment Fund Act, 1998 (Act No 105 of 1998) (NEFA), the Promotion of Administrative Justice Act, 2000 (Act No 3 of 2000), the Promotion of Access to Information Act, 2000 (Act No 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (POPIA).

8.3 The 2021 General Policy and the Sector Specific Policy give effect to the objectives of the MLRA as listed in Section 2 thereof. The objectives identified in section 2 of the MLRA are the following:

- (a) *The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;*
- (b) *the need to conserve marine living resources for both present and future generations;*
- (c) *the need to apply precautionary approaches in respect of the management and development of marine living resources;*
- (d) *the need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;*

- (e) *the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;*
- (f) *the need to preserve marine biodiversity;*
- (g) *the need to minimise marine pollution;*
- (h) *the need to achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act;*
- (i) *any relevant obligation of the national government or the Republic in terms of any international agreement or applicable rule of international law; and*
- (j) *the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.”*

8.4 The objective of transformation of the fishing industry is a constitutional and legislative imperative. The primary vehicle for the promotion of the transformation of the South African fishing industry is the MLRA. Therefore, in exercising any power under the MLRA, regard must be given to the stipulated objectives and principles set out in section 2 of the MLRA with measures to achieve the objective to restructure the fishing industry, to address historical imbalances and to achieve equity within the fishing industry.

8.5 The assessment of appeals is undertaken per the different categories of applicants to ensure that new entrants are not prejudiced when compared to existing rights holders. Those applicants who held rights in the fishery for which they are re-applying during the period 2006 to 2020 are considered as Category A applicants. Applicants who held rights in sectors other than the fishery they are applying for during the period 2006 to 2020 are considered as Category B applicants. Applicants who did not hold commercial fishing rights during the period 2006 to 2020 are considered as Category C applicants. Category B and C applicants are also referred to as “new entrant” applicants.

9 In determining each of the appeals, I considered all relevant factors and the information before me, including but not limited to:

- 9.1 The Marine Living Resources Act, 1998 (Act No 18 of 1998);
- 9.2 The Regulations in terms of the Marine Living Resources Act;
- 9.3 General Policy on the Allocation of Commercial Fishing Rights: 2021;

- 9.4 The Policy for the Allocation and Management of Commercial Fishing Rights in the Commercial Small Pelagic fishery: 2021;
 - 9.5 The FRAP applications;
 - 9.6 The Delegated Authority's GPR dated 28 February 2022;
 - 9.7 The Delegated Authority's decision letters;
 - 9.8 The Appeal forms;
 - 9.9 Regulation 5 (3) reports; and
 - 9.10 Relevant case law
- 10 Where necessary and appropriate, the Appeals GPR refers to individual grounds of appeal. However, the Appeals GPR does not respond to each appeal and to every allegation by individual appellants made therein. Specific grounds of appeals which are not addressed in the Appeals GPR, are dealt with in the individual appeal decisions that will be sent to appellants.
- 11 Each appellant in the sector will receive the following documents:
- 11.1 The individual Appeal Decision, incorporating the reasons for such decision;
 - 11.2 Where applicable, a copy of the adjusted score sheet on appeal;
 - 11.3 Entities who are allocated an Anchovy right on appeal will receive a Grant of Right letter; and
 - 11.4 The Appeals GPR will be published on the Department's website.
- 12 The Appeals GPR is final. However, the allocation of fishing rights is subject to the correctness of the assertions made and information submitted by the applicants / appellants, and performance reviews. If any information in the online application or online appeal process is found not to be true or complete, or if false information is provided, or material information is not disclosed, this may lead to the revocation, suspension, cancellation, alteration or reduction, in terms of section 28 of the MLRA, of any right, license or permit granted on the strength of the FRAP 2021/2022 application or appeal.

SYSTEMATIC/CROSS CUTTING GROUNDS OF APPEAL

Provision of new information on appeal

13 Section 8.4 of the 2021 General Policy regulates information to be considered during the application process and provides *inter alia* that:

8.1 Information to be considered

8.1.1 The approach set out below will be adopted by the Delegated Authority regarding information to be taken into account for assessing the applications:

- (a) ...
- (b) Late information

Information submitted after closing date for applications will not be considered.

14 Whilst the provisions in the various applicable policies are couched in strict terms, I am aware that a policy serves as a guide to decision-making and cannot bind the decision-maker inflexibly. In this regard, I am guided by the Constitutional Court's judgement in the case of *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs*¹ where the court held that an approach to procedural fairness requires that policy not be applied rigidly and inflexibly.

15 Moreover, appeals in terms of section 80 of the MLRA are regarded as wide appeals which entail a reconsideration of the application and may include consideration of additional information.

16 In light thereof, where appellants sought to provide additional information to their application forms, on appeal, based on the wide powers afforded to me in my capacity as the Appeal Authority, I considered such further information, provided that the information was in existence at the time when the appellant submitted its original application. This was to ensure that the fairness of the competitive process was not compromised.

17 Similarly, where appellant's provided information on appeal to address any exclusionary criterion, this information was considered provided that it was valid and in existence at the time of the closing date for applications, and the exclusion was overturned.

¹ (2004 (7) BCLR 687 (CC).

Calculation of Scores

- 18 Several applicants argued that they were not able to test the correctness of the scores which the Delegated Authority allocated to on certain aspects of the application form because they were not clear on how these scores were calculated.
- 19 In my view, the Delegated Authority provided sufficient information on the calculation of scores. These are set on the Delegated Authority's GPR, read with the scoresheets.
- 20 Nevertheless, I have set out below the manner in which certain calculations were applied, relevant to the specific sections appeals were raised in. In addition, an excel file will be published on the DFFE website, which sets out each step in the calculation of scores.

Section 5: Fishing Performance

- 20.1. Fishing performance was assessed for Category A applicants only. Applicants were screened and evaluated on whether, and to what degree, they had utilized their rights allocated during the previous rights allocation period (2006-2020) in the Small Pelagic Sector.
- 20.2. Category A applicants in the Anchovy fishery were separated into two Subcategories: (i) Category A Full - those who had received an annual anchovy allocation in the previous rights allocation period; and (ii) Category A Partial - those who held a Right during the previous period but had not received an annual anchovy allocation because they were sardine-only right holders. The fishing performance of Category A Full applicants was assessed by comparing their confirmed catches with allocations of Total Allowable Catch during the previous rights allocation period. This information was verified using Departmental allocation and catch data for the period 2007 to 2020 only. Data for 2006 was excluded because at that time, the appeal process was not yet finalized and there had been certain periods of fishing exemptions. Data for 2021 was also excluded as this year fell out of the previous allocation period. The limitation of data up until 2020 also avoided recent Section 21 of the MLRA transfer of rights actions (combination of rights).
- 20.3. Allocations and catches were summed for the 2007-2020 period and the ratio of *catch: allocation* was calculated and expressed as a percentage for each applicant. Fishing performance scores for each Category A Full applicants were based on their *catch: allocation* percentage, scaled to the

maximum achieved for all Category A Full applicants, using Table 6, below. Fishing performance scores based on anchovy could not be calculated for Category A Partial applicants, and calculating scores based on their catch: allocation ratio for sardine was not done because it was considered that doing so would positively bias these applicants compared to Category A Full applicants, given the substantially higher utilisation rates in the sardine sector compared to the anchovy fishery. Category A Partial applicants were therefore assigned the average of the fishing performance scores awarded to Category A Full applicants.

Table 6: Awarded scores for different levels of a Category A Full applicant's catch: allocation

1	<u>Catch: Allocation %</u>	2	<u>Score</u>
3	<u><11</u>	4	<u>0</u>
5	<u>>=and <21</u>	6	<u>2</u>
7	<u>>=21 and <41</u>	8	<u>4</u>
9	<u>>=41 and <61</u>	10	<u>6</u>
11	<u>>=61 and <81</u>	12	<u>8</u>
13	<u>>=81</u>	14	<u>10</u>

Section 6: Transformation

20.4. Transformation was regarded as a key criterion and a number of indices were used to evaluate the various levels of transformation achieved by each applicant. Applicants were rewarded for maintaining and/or improving their ownership profile and employment of black people (as defined in terms of the B-BBEE 53 of 2003 and Codes of Good Practice) women, youth and people living with disabilities between 2005/06 and 2020/21. Scores were awarded for employee share schemes, expenditure on corporate social investment, compliance with Employment Equity, affirmative procurement, skills development and enterprise development.

20.5. Question 6.03: Scores were awarded based on an applicant's present transformation level in terms of shareholding/membership interest held by black persons (as defined in terms of the B-BBEE 53 of 2003 and Codes of Good Practice), women, youth and persons with disabilities, for all categories of applicants. Category A and B applicants were assessed on the data for the year 2020, and Category C applicants were assessed on the data for the year 2021. The change in transformation

level was also assessed for Category A and B applicants. This was not done for Category C applicants because many of these are recently formed companies or close corporations. The change for Category A applicants was calculated for the period 2006-2020, and for Category B applicants it was calculated for the longest period for which data was supplied (e.g. 2006-2020; 2013/14-2020; 2018-2020 or 2019-2020).

20.6. Present transformation level scores were calculated for all applicants by: (i) summing the values provided for the percentages of black people, women, youth, and people living with disabilities employed (maximum = 400%; i.e. if everyone employed by that applicant were young, black women living with disabilities) in the appropriate year; (ii) normalizing that sum relative to the maximum sum for applicants in that Category only, such that the normalized value for the applicant with the highest sum in that Category would be 100; and (iii) awarding a score from 1 to 12 based on that normalization whereby applicants that had a normalized value of were awarded 12 scores and those that had a normalized value of <80 were awarded a score of one twelfth (1/12) of their normalized value expressed as a proportion and not a percentage.

20.7 The change in transformation level was calculated for Category A and B applicants only (insufficient data was available for Category C applicants), by: (i) summing the values provided for the percentages of black people, women, youth, and people living with disabilities employed (maximum = 400%) for the start and end years of the assigned period; (ii) subtracting the summed value at the start of the period from that at the end of the period and expressing the resultant value as a percentage of the starting value; (iii) normalizing that value by dividing it by the maximum change in transformation calculated for applicants in that Category only; and then (iv) dividing that normalized value by the average change in transformation value for all applicants in that Category only. The final score for Q6.3 was the sum of the values calculated for present transformation level and change in transformation level, with substantially more weighting given to an applicant's present transformation level than their change in transformation level. A maximum score of 12 could be achieved for this question; applicants who provided no data for this question were awarded a score of zero.

20.8. Applications were scrutinised to ensure that applicants had provided actual numbers on each transformation group and not percentages in relation thereto, or where this information was not provided, information was sought from Question 6.4 of the application form and from the attached

CIPC documents, and where applicable was used to recalculate or calculate their transformation scores.

20.9. Question 6.6: If applicants answered "Yes" to Question 6.5 to having an employee share scheme, system points were awarded as follows based on the percentage supplied by the applicant in response to Question 6.06: 0-10 %=1 points, 11-20%= 2 points, 21-30=3 points, 31-40%= 4 points, 41-50%=5 points, 51-60%= 6 points, 61-70%= 7 points, 71-80% =8 points, 81-90%=9 points, >90%=10 points.

20.10. Question 6.07: All applicants (Category A, B and C) were awarded 2 points for every year during the years 2016 to 2020, in which a capital payment was made to an employee ownership scheme. The points out of 10 were scaled up to 100 and a score was awarded according. Applicants scored zero (0) points for years in which no information was provided.

20.11. Question 6.10, all applicants (Category A, B and C) were awarded points for the percentage of their wage bill that was paid to previously disadvantaged individuals across 4 classes, i.e. Race (Black, Coloured, Indian, Chinese), Gender, Youth and disabled persons according to Table 8 in the Delegated Authority's GPR. Points awarded for gender, youth and disability were doubled and added to the score for race, giving a higher weighting to classes other than race. The total score was normalized to the maximum score across all applicants within a particular category (A, B or C) and scaled up to a score out of 24.

20.12 Question 6.14 and Question 6.15 are interlinked. Scores could not be awarded based on the percentage of an applicant's turnover or profit that was spent on Corporate Social Investment (CSI) in each year over the period 2019 to 2021 as the data provided by applicants in response to Question 6.15 was considered unreliable and in some cases not credible. Scores were thus based on the actual amounts (in Rand) spent on Corporate Social Investment (CSI) that were provided by applicants in their answers to Question 6.15, relative to the average amount expended by all applicants in that Category only. The CSI spend of each applicant in a given year was expressed as a proportion of the average CSI spend by applicants in that Category only for that year, and an average CSI proportion was then determined for each applicant only using years for which data was provided. Applicant scores were based on these average CSI proportions using table 9 on page 29 of the Delegated Authority's GPR. However, because the average CSI spend per category per year was strongly impacted by the small number of applicants that had indicated a substantial

CSI spend in all three categories, almost all proportion values were < 1 , hence values > 1 were set to 1. Applicants that did not provide information for this question received a score of zero.

Section 7- Job Creation

20.13 Category A Full applicants were assessed in terms of their number of permanent employees (Question 7.1 and seasonal employees (Question 7.2) relative to their average anchovy allocation (tonnes) during the period 2018 -2020. The total number of permanent and seasonal employees provided in the application form was multiplied by the proportion of employees in the small pelagic sector for each component and divided by the average allocation (in 1000 t) to derive a jobs/ 1000 t value. This was translated into a score from 1 to 10 for permanent employees based on Table 10 in the Delegated Authority's GPR, and a score from 1 to 5 for seasonal workers.

20.14 Category A Partial, Category B and Category C applicants were assessed in terms of their total number of permanent employees (Question 7.1) and seasonal employees (Question 7.2). This was similarly translated into a score from 1 to 10 for permanent employees and a score from 1 to 5 for seasonal workers, although the ranges over which scores applied had to be adapted to the particular category. Applicants that did not provide information for either of these questions received a score of one.

Section 8- Dividends and Additional Societal Benefits

20.15 Consideration was given to the amount of income tax paid by applicants as well as the annual payment of dividends to shareholders and the percentage of black shareholding. Local economic development and value adding activities were also taken into consideration.

20.16 Question 8.4: All applicants' (Category A, B and C) benefits accrued to society were calculated from data provided on total income tax paid to Revenue Services (in Rand); annual dividends paid to black shareholders (in Rand); annual dividends paid to shareholders (in Rand); the number of issued shares; and, the average share price (in Rand). The annual total income tax paid and annual dividends paid to black shareholders were summed for the period 2007 to 2020, whereas the number of annual issued shares and the annual average share price was averaged over the period 2007 to 2020. The final benefit value was calculated from the sum of the total tax paid, dividends paid to black shareholders and the average number of shares issued, multiplied by the

average share price. For Category A Full applicants, this value was divided by the total anchovy TAC allocation for the period from 2007 to 2020 to derive a benefit per tonne value (Rand per tonne). For Category A Partial, B and C applicants, the value was used as calculated (Rand benefit) and not compared to any previous TAC allocation. Values calculated were converted to a score out of 10 using the category specific values and score in Table 11 in the Delegated Authority's GPR.

Section 9: Investment

20.17 Consideration was given to the amount that an applicant had invested in a vessel(s), marketing and fish processing. In contrast to Section 4: Access to a Suitable Vessel, investment in any type of fishing vessel, whether suitable for operation in the Small Pelagic Sector or not, was scored positively. For Category A Full applicants, the total rand value (insured value) of the applicant's total fixed assets in 2020 in the small pelagic sector was used as the value for investment. This investment value was divided by the total TAC allocation for the applicant summed from 2007 to 2020 to derive an estimate of investment per ton (Rand/tonne). Based on that value, a score from Table 14 at page 38 of the Delegated Authority's GPR, was assigned to the applicant. For Category B and C applicants, the (insured value) of the applicant's total fixed assets in 2020 was used with no consideration of TAC allocations in other sectors. Table 14 in the Delegated Authority's GPR: Awarded points for investment (Rand/tonne for category A Full applicants and Rand for category A Partial, B and C applicants).

Access to Information

21. Several appellants alleged a lack of access to information with respect to the FRAP 2022 and/or reasons to verify their scores.
22. In the relevant Regulation 5(3) reports, the Delegated Authority responded that in the release of information, the Department has complied with the provisions of PAIA and POPIA. The POPIA prohibits the Department from sharing third-party confidential information and details without their consent. Applicants were able to request further information as per the process set out in the Delegated Authority's GPR, in accordance with PAIA and POPIA. I note that spreadsheets were made available on the Departmental website to assist applicants with understanding the scoring

methodology used. The Appellant was also able to request further information via CSCapplications@dffe.gov.za as stated in the in the Delegated Authority's GPR.

23. I am cognisant that section 32 of the Constitution of the Republic of South Africa, 1996, affirms the Appellant's right to access information held by the State;² and that the PAIA gives effect to the constitutional right of access to any information held by the State and enables a person to fully exercise and protect all of its rights.
24. The 2021 General Policy³ and the GPR under section 6 on page 16 give provisions for access to information. The GPR stipulates that every applicant will receive: a notification letter informing the applicant of the Delegated Authority's decision, together with the reason for that decision and the manner in which Appeals must be submitted; a scoresheet indicating the applicant's score; access to the electronic copy of the General Published Reasons. Furthermore, the GPR sets out provisions for accessing other applicants' information by using PAIA. The GPR also prescribes provisions and conditions upon granting access to information for the other applicants' applications.
25. I note that subsequent to releasing the GPR, the Delegated Authority also addressed notification letters to applicants informing them that they may use the scoresheets used to record the assessment of every application in the fishery at the Department's Offices, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town on the Department's FRAP online system.
26. The Department published on its website the relevant score sheets and quantum allocation methodology formulae, albeit in a redacted format, so as to comply with the POPI Act. Considering all this information I find that applicants were indeed provided with all the necessary information and data, in order to determine whether they have, in fact, been correctly scored and whether quantum/effort has been allocated in a reasonable and correct manner. Each applicant also received a notification letter informing them of the Delegated Authority's decision on their application, together with the reason for that decision and the manner in which appeals must be submitted.

² Section 32 of the Constitution of the Republic of South Africa 1996.

³ Clause 9.

27. The letters together with the GPR and the information published on the Departments website was found to be sufficient and reasonable. Appellants were also able to lodge and canvass detailed appeals on their scoring issues undertaken by the Delegated Authority.
28. Furthermore, if an applicant wanted to access application forms of other applicants, they should have taken further steps to request requested such further information in terms of the procedures and provisions of the PAIA, including an appeal in respect of such information granted by the relevant information officer, that it was still dissatisfied with.
29. I note that this Appeals GPR only seeks to address overarching issues that apply to several of the appeals as categorised above. Scoring issues on specific questions by individual entities requires that this document and the calculation formulae explanations provided herein, must be read together with individual Appeal Decisions.

OUTCOMES OF THE DELEGATED AUTHORITY

30. On the comparative balancing criteria, the Delegated Authority determined that Category A applicants with a Final Score 40% would be granted a right and that applicants with a Final Score of less than 40 (i.e. <40) would not be successful. This cut-off level was taken as indicating a poor overall performance by previous Right Holders and was implemented so as to enable the incorporation of New Entrants (including those who were previously active in the Small Pelagic Sector but only fished for sardine) into the anchovy fishery. Rather than excluding poor performers by using a cut-off score of 50, to ensure fairer approach, poor performers had their previous % TAC allocations slightly reduced.
31. The top ten (10) scoring Category B applicants and the top ten (10) scoring Category C applicants (in terms of their Final Score), were examined in detail on the **following criteria**:
 - 31.1. Evidence of developed or in-development methods for anchovy product beneficiation and hence value-adding to industrial fish;
 - 31.2. Demonstrated investment in fishing-related industries;
 - 31.3. Their previous job creation performance;

- 31.4. Their location as broadening access to impoverished coastal regions, particularly on the east coast, was considered important.
32. Ten percent (10%) of the TAC was reserved for appeals.

Category A

59 of the 78 Category A Applicants were successful sharing 93.550 % of the TAC,

Category B

3 of the 94 Category B Applicants were successful sharing 2.97 % of the TAC.

Category C

6 of the 174 Category C applicants were granted rights in this sector with a combined TAC of 3,66 %. The Delegated Authority in awarding rights in this sector recorded the following in the GPR at paragraph

OUTCOME OF THE APPEALS

33. There was a total of 230 (Two hundred and thirty) appeals in this sector. Below is an overview of the outcome:

33.1. Category A

Eleven (11) additional Category A appellants now qualify on appeal to be awarded a right, having scored higher than the threshold. The re-evaluation of all successful applicant/appellants in terms of their performance results in some previous above average performers become below average performers and vice-versa. These adjustments have been incorporated in my appeal decisions.

33.2. Category B

One (one) Category B appellant now qualifies to be awarded a right on appeal

33.3. *Category C*

No additional applicants qualify to be awarded a right on appeal

REVISED CALCULATIONS

34. Where I upheld the grounds of appeal relating to the calculations of the Delegated Authority that had either been incorrectly calculated or the incorrect formula applied for the scores, I did the following:

34.1 To ensure that I achieve a fair and consistent outcome, the calculations of all the applicants in the sector was revised. It was important to revise all the calculation based on the correct formula to ensure that a like-for-like comparison between the applicants per category could be achieved.

34.2 The revised calculations revealed that there was no material impact on any of the applicants in the sense that none of the successful entities were prejudiced.

34.3 Importantly, the revised calculations are separate from the method used to calculate the quantum.

QUANTUM ALLOCATION METHODOLOGY (QAM) ON APPEAL

35. The DA allocated 100% of the TAC to successful applicants but withheld 10% of the TAC tonnage for appeals (100% of 270 000t was allocated instead of 90% of 300 000t).

36. The determination of quanta was based on a TAC of 270 000t with 10% of the 300 000t TAC held in reserve for appeals. 100% of the TAC was allocated.

37. The allocation of TAC was as follows:

- 37.1. The starting point was to consider each successful Cat A's % of anchovy TAC held during the previous rights process;
 - 37.2. Successful Cat A's whose previous %TAC would result in them being allocated <1500 t (the minimum quantum) of the final TAC had their % TAC increased;
 - 37.3. Each applicant was then allocated TAC such that no entity received less than 1500 t;
 - 37.4. the % TAC previously held by unsuccessful/excluded Category A applicants was made available for new entrants;
 - 37.5. The 2 largest successful Cat A right holders (i.t.o their previous allocations) had their TAC values reduced by 10%;
 - 37.6. The next 3 largest successful Cat A's had their %TAC reduced by 8 % so as to make a larger proportion of the TAC available for new entrants and successful Cat A applicants that previously had TACs less than 1500t;
 - 37.7. This reduction in allocation as well as the allocation from Category A applicants that were unsuccessful resulted in 16% of the TAC being available for reallocation to new entrants.
 - 37.8. This TAC was redistributed to the new entrants in the Anchovy Sector per the delegated authority's decision. Of these, 18 entities were Category A applicants who previously held rights in the Sardine fishery only;
 - 37.9. Successful Cat A applicants were divided into 10 percentile (%-ile) groups according to the size of their previous allocations and their performance was evaluated relative to the average of that group. Applicants that performed higher than average had their initial allocation increased slightly whereas applicants that performed below average had their allocations reduced slightly.
38. I note the rationale of the Delegated Authority and the balancing of considerations undertaken in adopting the quantum allocation methodology and the allocation of rights that was undertaken per the FRAP, specifically in homage to the General Policy and the advice of the Assessment team. I have thus followed a similar in having consideration to:
- 38.1. the number of successful applicants in each category;
 - 38.2. the level of access to fishing vessels, investment in the sector and job creation amongst others;
 - 38.3. the anticipated anchovy TACs over the short to medium term; and
 - 38.4. the determination of a minimum viable allocation.

- 38.5. a projected average of 300 000 t was used as it is anticipated that the anchovy TAC will decrease sharply over the next few years as the resource is under strain.
39. On appeal I have decided that the 10% reserved TAC tonnage (30 000t) is to be distributed amongst the 11 successful Category A appellants, and the 1 successful Category B appellant using the DA's allocation method (minimum of 1500t) as well as incorporating the evaluation of performance of Category A appellants during the previous rights period.
40. In order to accommodate these additional entities, the 10% reserved TAC allocation (30 000 t) to be distributed amongst the 11 successful Category A appellants, and the 1 successful Category B appellant using the DA's allocation method (minimum of 1500t, evaluation of performance of Category A appellants during the previous rights period) and that any remaining TAC be distributed pro rata amongst all successful entities who performed above average (apart from the Top 5 largest A's).
41. The re-evaluation of all successful applicants/appellants in terms of their performance results in some previous above average performers becoming below average performers and vice-versa. The % allocation by the DA is therefore no longer supported and all successful applicants/appellant's allocations have been adjusted. As the 10 % reserve for appeals was subsequently released, the previous allocations by the DA had to be reduced by 10% so as to accommodate that release decision.
42. As a result, to accommodate the additional entities successful on appeal, the largest 2 companies (West Point Fishing Corporation (Pty) Ltd and Lucky Star Limited) have their % of the TAC reduced by 19% while the next three largest companies (Pioneer Fishing West Coast (Pty) Ltd, Premier Fishing SA and Amawandle Pelagic (Pty) Ltd) have their % of the TAC reduced by 17.2%. Above average performers have their % TAC allocation increased by 4.046% and below average performers have their % allocations decreased by 37%.
43. Paragraph 4.3 of the Grant of Right letters advised right holders that the TAC "may be reduced or increased, in the manner and circumstances set out in the GPR and after reserved decisions, appeals and reviews have been finalised".

44. The above Quantum allocation methodology seeks to ensure amongst other, a more equitable distribution of TAC across all right holders, whilst maintaining stability in the sector and promoting small to medium enterprises and transformation.
45. The final list of commercial fishing rights holders in the Anchovy sector are set out in:
- 41.1. **Annexure A** (Category A);
 - 41.2. **Annexure B** (Category B); and
 - 41.3. **Annexure C** (Category C).

CONCLUSION

46. This decision will be effective from the commencement of the 2024 fishing season.
47. Section 80 of the MLRA deems me to be the Appeal Authority over decisions of the Delegated Authority and I have wide appeal powers in terms thereof. I have the power on appeal to award fishing rights, and to overturn the decisions of the Delegated Authority to allocate rights, including decisions related to TAC, where such decision-making is rationale, fair and in line with the provisions of the MLRA and specific policies.
48. Should any appellant be dissatisfied with any aspect of my decision(s), it may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA).



MS B D CREECY, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 20/12/2023

