

DEPARTMENT OF ENVIRONMENT, FORESTRY &  
FISHERIES  
INTERNAL AUDIT

**Verification Report**  
**Ad hoc Project**  
**Western Cape Small-scale Fishers**  
**Verification**  
**November 2020**



**Project: 22-2020/21**

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DISTRIBUTION LIST

NAME	RANK	ACTION REQUIRED	
		FOR ACTION	FOR INFORMATION
Mr I Abader	Acting Director-General		✓
Ms S Middleton	Acting Deputy Director-General: Fisheries	✓	
Mr S Phasha	Acting Chief Director: Marine Resource Management	✓	
Mr A Ngqongwa	Director: Small-Scale Fisheries Management (Acting)	✓	
Audit & Risk Committee Members			✓
Risk Management & Ethics Committee Members			✓
External Audit (Office of the Auditor-General)			✓

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**SECTION 1  
EXECUTIVE SUMMARY**

**1.1 Mandate and Background**

The verification review was conducted with the approval of the Audit & Risk Committee (ARC) of the Department of Environment, Forestry & Fisheries' (DEFF) as an *ad hoc* project forming part of the risk-based Internal Audit Plan for 2020/21.

The Regulations relating to Small-scale Fishing (2016) (Regulations), issued in terms of the Marine Living Resources Act (Act No. 18 of 1988), included a process for the recognition of persons from communities as 'small-scale fishers'. The number of recognised small-scale fishers within a community was a requirement for the recognition of a 'small-scale fishing community' which, once recognised in terms of the Regulations, would qualify for an allocated 'small-scale fishing right'.

The erstwhile Department of Agriculture, Forestry & Fisheries (DAFF) conducted a process in 2016 whereby persons in coastal communities applied to be recognised as small-scale fishers. For the Western Cape, this process had not been finalised by 2018.

In 2019, Internal Audit was requested to conduct a verification of the applications for recognition as small-scale fishers, on a sample basis. This initial verification included 1814 applications, 1223 appeals and 137 *ip-off*s (3174 in total). The report on this verification was submitted to the Minister of Environment, Forestry and Fisheries in December 2019.

In 2020, Internal Audit was requested to conduct a second verification of the remaining applications (those not verified in 2019) and provide the Minister with a consolidated report on the accuracy and completeness of the processes followed by the Fisheries Branch in consideration of the applications for recognition as small-scale fishers in the Western Cape.

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**1.2 Objective and Scope**

The objective of the verification review was to determine the completeness and accuracy of the information reported by the Fisheries Branch, pertaining to the applications and appeals assessed as part of the recognition of small-scale fishers' process in the Western Cape.

The review focused on those applications that were not previously verified by Internal Audit in our 2019 verification, and included the following:

- > Verification of applications received and processed;
- > Verification and validation of appeals received; and
- > Review of the process as per the Regulations and Policy.

Based on the numbers of previously tested applications (3174) and the reported total applications (8488), the number of applications that were to be verified during this review was expected to be 5314 applications, including appeals.

**1.3 Approach**

In order to accomplish the review objective, the following approach was utilized:

<b>PLANNING</b>
Obtain an understanding of the Small-scale Fishing (SSF) environment.
Analysis of information submitted by SSF team to verification team
Agree on project timelines.
<b>EXECUTION</b>
Execution of the detailed verification of 5314 applications on-site at the Fisheries Branch office in Cape Town.
<b>REPORTING</b>

Documentation of findings and recommendations in a draft report.

Discussion of the draft report with management after completion of the fieldwork, thereafter the draft report will be updated (if required).

The updated draft report will be discussed with management for the purpose of formalising and finalising the management responses, incorporating management action plans, due dates and responsibility. The final report will be presented to the Department, Minister and Audit & Risk Committee.

#### 1.4 Report Framework

Sections 2 and 3 of this report contain the overview and summary of the verification review results. The legislative framework that we considered is indicated in Section 4 of this report. Detailed observations, findings and recommendations for management's consideration and implementation are included in Section 5 of this report.

#### 1.5 Project Management

Director: BDO PS Advisory Services (Pty) Ltd

Ms Cobie van Antwerpen

Chief Audit Executive

#### 1.6 Management Agreement

This report was issued to the persons below for confirmation of factual accuracy. Management comments on our findings (as listed in Section 5), as well as corrective actions and target dates are included in this report. The distribution of this report is set out on page (ii) of this report.

Mr A Ngongwa  
Director: Sirel-Sohle Fisheries Management  
(Acting)

Signature

Date: 08/12/2020

Ms S Middleton

Acting Deputy Director-General: Fisheries

Signature

Date: 8/12/2020

#### 1.7 Limitations on the use of this report

This report is strictly confidential and is intended solely for the information and use of the management and ARC of DEFF and the officials listed on the distribution list above. This report may not be disclosed to third parties without prior written consent from Internal Audit.

#### 1.8 Fraud and Internal Control

The objective of the verification assignment was to determine the completeness and accuracy of information captured during the SSF processes. Due to our face-value reliance on documents and information captured and processed by a third-party, we do not provide any assurance related to fraud.

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1.9 Limitations on our scope and work

We have produced lists of applicants that may qualify for recognition as small-scale fishers, however, the information we have collated is limited by the following:

- 1.9.1 The verification was conducted on the face value of the application and appeal forms provided per community (both successful and unsuccessful); as filed by the Department.
- 1.9.2 The verification was conducted on the face value of the SMS lists (Lists of communicated outcomes per area), Community Lists (Area, assessments and outcomes); Appeals Lists (Area, decision, Departmental assessment, outcomes).
- 1.9.3 The information as captured by the previous service provider was not altered or corrected;
- 1.9.4 The criteria contained in the Regulations were poorly translated into an application form that was confusing, ambiguous and prejudicial to some applicants. Due to the above, the information provided by applicants was based on their individual interpretations of relevance. As a result, our assessment was based on inconsistent information from applicants.
- 1.9.5 We found a total of 158 additional applications in the area files which resulted in the previous number of 8488 reported applications being perceived as incomplete.
- 1.9.6 We also encountered a batch of 64 applications that were marked as "spoiled". We therefore are unable to confirm the total number of applications received and/or processed and provide no assurance on the total applications received and processed.
- 1.9.7 The headings in the report were used for the sake of convenience only. Any documentation referred to in the report, includes reports, data and records.
- 1.9.8 The scope of work was limited to a review and analysis of the documentation, information provided, and limited consultations undertaken in pursuit of our verification instruction and mandate.
- 1.9.9 If additional or new documentation or information is brought to our attention subsequent to the date of the report, which affect its findings, conclusions and/or recommendations, we reserve the right to amend and qualify same accordingly.

1.9.10 The procedures performed did not constitute an audit or a review in accordance with the International Standards on Auditing or International Standards on Review Engagements (or relevant National Standards or Practices, or the International Internal Audit Standards).

1.9.11 Although the work performed incorporated our understanding of the law as it stands, we do not express an opinion on the interpretation of the law or the legal effect of the facts or the guilt or innocence of any person or party, but have merely stated the facts as they have come to our attention. Consequently, we do not express an audit or legal opinion thereon.

1.9.12 We will not accept any responsibility should this final draft report be disclosed or released to any party, other than the intended recipients. We do not except any liability for any loss, either directly or indirectly, suffered by any third party arising from the fulfilment of our mandate.

1.9.13 At the DEFF's request, we split the lists of applications according to community to determine an error rate per community. Although we have complied with this request, we provide no assurance on the error rate per community due to the lack of adequate integrity in the DEFF's data. Thus, the percentage calculated per community is unreliable and inaccurate.

1.9.14 Where we have indicated that applications or appeals are valid/successful, this is based on a face-value analysis of the information available and assessed in terms of the DEFF's criteria. Given our issues regarding the criteria, management must consider our findings and this report in its entirety before deciding on a way forward.

1.10 Conclusion

1.10.1 Based on our verification of the processes, listings and documents, we have concluded that the process followed in the assessment of the applications for recognition of small-scale fishers was wholly INADEQUATE, and that the results of these assessments cannot and should not be relied on for any decision-making purposes in terms of the Regulations.

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- 1.10.2 Our verification highlighted several weaknesses, inconsistencies, ambiguities, inaccuracies and problems in the overall process that was followed, and the subsequent data captured by the Fisheries Branch.
- 1.10.3 If the information in its current state is relied on, this will lead to inaccurate and incomplete information provided to the Co-operatives which are in the process of being established.
- 1.10.4 Our high-level findings include:
  - i) The criteria as per the Regulations were not accurately developed to the application process;
  - ii) The application form was ambiguous and may have prejudiced many applicants;
  - iii) Additional applications were found during the verification;
  - iv) Several "spoiled" applications were found during the process, which were not captured or listed anywhere. No indications were provided on the assessment of these to be spoilt;
  - v) Successful and unsuccessful applications were incorrectly filed or captured in some instances;
  - vi) Applications were incorrectly assessed by community panel members, even on a conservative application of the criteria;
  - vii) Inconsistent application of the criteria within and amongst various communities during the application/registration process;
  - viii) Inconsistent and incoherent application assessment and appeal process;
  - ix) The data collated by the third-party service provider is so poor that very little reliance should be placed on this information.
  - x) Data was and still remains incomplete and inaccurate. The lists as at date of this report, have not been updated by management to ensure completeness and accuracy at least of the data – let alone the outcomes.

1.11 Recommendations  
 It can be reasonably expected, considering our findings and the current scrutiny of the process, that unsuccessful applicants and appellants may claim that the process was unfair

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and not transparent. To address these legitimate concerns, the following recommendations are made:

- 1.11.1 Our overall recommendation is that the process for the recognition of small-scale fishers in the Western Cape, which is a precursor to the recognition of small-scale fishing communities, should be started afresh with a complete revamp of the assessment tools and processes.
- 1.11.2 We further recommend that a full investigation be initiated into the appointment, management and performance of the external service provider that administered this process under the Fisheries Branch.
- 1.11.3 The Fisheries Branch and ultimately the Minister should consider extending the interim relief fishing rights which were granted until the process has been re-initiated as recommended above.

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1.12 Finding ratings

The following rating criteria have been applied to our findings:

RISK INDICATOR	DEFINITION
	<p><b>Major</b></p> <p>A fundamental and critical control weakness that requires immediate management action. (Baseline controls)</p>
	<p><b>Significant</b></p> <p>Control weaknesses considered to be of a serious nature that should receive management attention in the short term. (Risk related)</p>
	<p><b>Minor</b></p> <p>These weaknesses do not represent a risk to the environment and can usually be corrected at minimal cost. The resolution will lead to an improvement of the operators' efficiency, and/or effectiveness. It is not considered a critical issue.</p>
	<p><b>Performance Improvement Observation</b></p> <p>An opportunity for improvement was identified and brought to the attention of management, as a value-added service. (Value-adding issues)</p>

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**SECTION 2  
SUMMARY OF VERIFICATION RESULTS**

The following information is based on our assessment of the available information, subject to the limitations outlined in paragraph 1.9 above. We have combined our results with our 2019 report to provide management with a consolidated view.

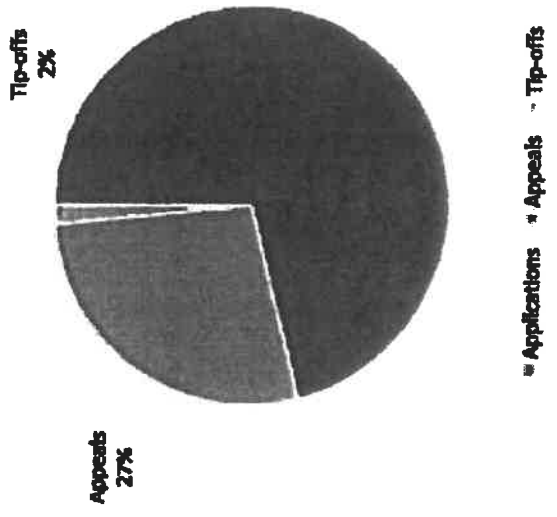
**TOTAL VERIFICATIONS**

	2019	2020	COMBINED
Applications	1814	4323	6137
Appeals	1223	1131	2354
Tip-offs	137		137
<b>Total Verified</b>	<b>3174</b>	<b>5454</b>	<b>8628</b>

	2019	2020	COMBINED
<b>Total Successful</b>	<b>1021</b>	<b>3215</b>	<b>4234</b>
Applications <sup>1</sup>	694	2469	3163
Appeals <sup>2</sup>	327	744	1071

	2019	2020	COMBINED
<b>Total Agreed with Department<sup>3</sup></b>	<b>918</b>	<b>2810</b>	<b>3728</b>
Applications <sup>4</sup>	513	2143	2756
Appeals <sup>5</sup>	305	667	972

**COMBINED**



<sup>1</sup> Annexure A  
<sup>2</sup> Annexure B  
<sup>3</sup> The number indicated as 'Agreed with Department' is based on the Department's interpretation of the criteria, which we applied. We have however raised findings on the criteria and do not support these applications being processed further.  
<sup>4</sup> Annexure C  
<sup>5</sup> Annexure D

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The number indicated as 'Agreed with Department' is based on the Department's interpretation of the criteria, which we applied. We have however raised findings on the criteria and do not support these applications being processed further.

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HIGH-LEVEL RESULTS

#	Description	2019	2020	COMBINED TOTAL
1	Total verifications	3174	5454	8628
2	Total successful small-scale fishers (Applications & Appeals) (IA verified)	1021	3213	4234
3	Total outcomes agreed with Department	918	2810	3728

The below summary indicates our assessment of applications and appeals, as well as the errors detected in the initial assessments:

APPLICATIONS

	2019	2020
Internal Audit Verification	694	2469
Successful Applications	1120	1854
Unsuccessful Applications	1814	4323

TOTAL ERRORS:

Internal Audit Verification	Internal Audit Invalid Assessments Identified	Internal Audit Invalid Assessments Identified%
Errors on Successful Applications	528	8.62%
Errors on Unsuccessful Applications	625	10.18%
<b>Total</b>	<b>1154</b>	<b>10.80%</b>

APPEALS

	2019	2020
Internal Audit Verification	327	744
Successful Appeals	856	387
Unsuccessful Appeals	1223	1131

TOTAL ERRORS:

Internal Audit Verification October 2019	Internal Audit Invalid Assessments Identified	Internal Audit Invalid Assessments Identified%
Errors on Successful Appeals	140	5.95%
Errors on Unsuccessful Appeals	456	19.99%
<b>Total</b>	<b>606</b>	<b>25.74%</b>

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SECTION 3  
SUMMARY OF FINDINGS

The verification review revealed the findings summarised in the table below. Details for each finding are contained in Section 5 of this report.

DETAILED FINDING REF.	FINDING/OBSERVATION	FINDING RATING	MANAGEMENT COMMENTS
5.1	Inconsistencies between the Policy and Regulations		<ul style="list-style-type: none"> <li>The interpretation that the 'additional factors' are part of a criteria to determine whether a person is a small-scale fisher is incorrect. The two factors mentioned by the policy are outside of the set criteria for determining and declaring small-scale fishers. The said factors have been accommodated in the process of small-scale fishing rights allocation and community-based legal entity formulation. If the audit process took the two factors as part of the verification criteria, then the outcome of the report may have grave legal implications as this may have resulted in applications of people with less than 10 years being made successful.</li> <li>The criteria in the policy that says "Must have no permanent other employment; Subsist from their catch or are engaged in the sale or barter or involved in semi-commercial activity" are covered by the criteria in the regulations that says "... derive the major part of his or her livelihood from traditional fishing operations and be able to show historical dependence on fish, either directly or in a household context, to meet food and basic livelihoods needs."</li> <li>Secondly, it would have been logical to interpret or translate the two criteria from the policy to the regulations as they are. The policy was drafted from 2007 and was finalized in June 2012 and the regulations were promulgated in March 2016. Therefore, it took five years to finalize the policy and it took additional four years to have Regulations in place. It would have been illogical and insensitive to translate the criteria as it is. It would have been unfairly prejudicing against those who had to find employment as a form of supplementary livelihood in addition to fishing considering that there was no legal right of access to fishing due to systematic marginalization of small-scale fishers.</li> <li>The 10-year requirement is based on the understanding that the years may not necessarily be continuous and may accumulate over past years. This was further explained on the verification protocol that was used for all communities. Therefore, the interpretation is the same. No one was excluded if they had shown that they missed certain years within, but they had 10 years or more when adding the experience.</li> </ul>

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DETAILED FINDING REF.	FINDING OBSERVATION	FINDING RATING	MANAGEMENT COMMENTS
5.2	Criteria used to assess applicants was not objective and clearly defined		<ul style="list-style-type: none"> <li>• Finding on point four above is incorrect. The Regulations do not create an exclusion if the person owns or part-owns a commercial fishing right. Secondly, this is not part of the criteria to declare a small-scale fisher as outlined in Regulation 4(1). This criterion refers to a form of right holding. This criteria of right holding under Regulation-4 (4)(b) has been considered and applied accordingly as part of the "small-scale fishing rights allocation". It is noted that the report has misinterpreted the entire Regulation 4 as it assumes that this entire regulation refers to the declaration of small-scale fishers even though the heading of the regulations indicates "Criteria for the small-scale fishers, small-scale fishing communities and small-scale fishing rights allocation".</li> <li>• Further to this, the report needs to note that "commercial activity" is vastly different from a "commercial fishing right". Therefore, a person can be active in a commercial fishing activity without having a commercial fishing right. As per the definition of small-scale fishing, small-scale fishers who have experience in commercial activity within the traditional fishing operation were not excluded in line with the regulations and the policy. Those declared small-scale fishers with commercial fishing right have to choose which fishery they want to be in order to effect Regulation 4(4)(b).</li> <li>• The policy covers a broader reach that is, in some instances, outside of the mandate of the principal legislation. However, the Regulations considered the provisions of the MLRA and those of the Policy and hence the conflicts are believed to not exist.</li> <li>• Response to finding 5.2.3 (a): The factor of non-South African citizens is not a criterion of the Policy, but it is a factor that the delegated authority should take into account for consideration. Refer to page 37 and 38 of the policy. Therefore, the criteria in the Regulations and the Policy are consistent in expressing that a small-scale fisher "Must be a South African citizen from the small-scale fishing community".</li> <li>• Similarly, to MLRA and Regulations, the 10 years in the policy refers to total combined years that may not necessarily have to be continuous or consecutive without a break. The 10 years is not limited to 2006-2016. A cumulative includes any experience obtained prior to that period. This was not an exclusionary factor.</li> <li>• It would have been illogical to interpret or translate the two criteria from the policy to the regulations as they are. The policy was drafted from 2007 and was finalized in June 2012 and the regulations were promulgated in March 2016. Therefore, it took five years to finalize the policy and it took additional four years to have Regulations in place. It would have been illogical and insensitive to translate the criteria as it is. It would have</li> </ul>

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DETAILED FINDING REF.	FINDING OBSERVATION	FINDING RATING	MANAGEMENT COMMENTS
5.3	Issues noted between the Small-scale Fisher verification form and the Policy and Regulations		<p>been unfairly prejudging against those who had to find employment as a form of supplementary livelihood in addition to fishing considering that there was no legal right of access to fishing due to systematic marginalization of small-scale fishers.</p> <ul style="list-style-type: none"> <li>The Small-Scale Fisheries Policy is not only focusing on the verification and it needs to be interpreted within the context of a broader policy implementation for the sector beyond verification phases. Certain aspects of the policy are addressed outside of the verification phase of the policy implementation and hence issues such as that of consideration of fishers with less than 10 years of fishing experience are part of the policy implementation where the delegated authority considers them as part of rights allocation for a small-scale fishing community.</li> <li>The criteria in the policy is in line with that of the regulations and hence the application of such is aligned. It is noted the BDO has a different interpretation of the criteria and that in certain instances, includes statements or issues to be considered as criteria in declaring small-scale fishers.</li> <li>In response to 5.2.3.6 the Regulations do not create an exclusion if the person owns or part-owns a commercial fishing right. Secondly, this is not part of the criteria to declare a small-scale fisher as outlined in Regulation 4(1). This criterion refers to a form of right holding. This criteria of right holding under Regulation 4 (4)(b) has been considered and applied accordingly as part of the 'small-scale fishing rights allocation'. It is noted that the report has misinterpreted the entire Regulation 4 as it assumes that this entire regulation refers to the declaration of small-scale fishers even though the heading of the regulations indicates 'Criteria for the small-scale fishers, small-scale fishing communities and small-scale fishing rights allocation'.</li> <li>Bullet point two above was addressed under resolution 5.2.</li> <li>Bullet point two is concerning. There is various demographic information that is require in the form but the report purports that the grants question may have resulted to excluding people. As outlined in the policy and the regulations, criteria to declare small-scale fishers is outlined and it is specific. Therefore, it cannot be that applicants would have been excluded because they earn government grant or they have a certain level of education, as these are not part of the criteria. Therefore, the statement made by the report are unwounded and incorrect. Similarly, most of government applications requires demographic information to profile applicants for the purpose of monitoring government transformation targets.</li> <li>Again, under "Contact Details" the form does require information related to the community in which the applicant resides. However, an applicant would apply to be declared in a community that he/she does not</li> </ul>

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DETAILED FINDING REF.	FINDING OBSERVATION	FINDING RATING	MANAGEMENT COMMENTS
			<p>reside in and that is why there is an alternative section at the beginning of page 2 of 8 in the form. Kindly further note that Regulation 4 (1)(a) which states "be a South African citizen who associates with or reside in the relevant small-scale fishing community"</p> <ul style="list-style-type: none"> <li>Commercial fishing rights are distinctly different from that of small-scale rights/operations as commercial and small-scale rights fall under different Fisheries as per the MLRA. However, this does not mean that if a person had a history of fishing and selling for commercial purpose should be excluded. There is a difference between fishing for commercial gain under SSF and fishing under a commercial fishing right. The MLRA recognizes Recreational, Commercial and Small-scale fisheries. The rights are allocated to these respective fisheries. Commercial fisheries and small-scale fisheries include commercial activities but those of small-scale are traditional fishing operations. The definitions of small-scale fishing in the MLRA, regulations and policy do indicate that "commercial fishing" within the "small-scale" or traditional fishing context.</li> <li>The application form gives sufficient questions that probe information related to the criteria.</li> <li>Further to this, fishers were assisted, through one-on-one interviews, to complete the required information based on the verification protocol.</li> <li>No community was excluded due to distance from the coast. An individual applicant was assessed based on their application only and outcome is based on that information. The policy does acknowledge apartheid structures that may have further caused forced removals and other segregation approaches of the past.</li> <li>The auditor's findings/ verification that may have been different from those of the department are noted. It is acknowledged that based on the total applications and appeals received, certain applications may have been assessed differently due to the nature of information required by the criteria.</li> <li>It is noted that a confirmation mark, such as a stamp, of "successful" or "unsuccessful" should have been used to clearly distinguish applications during assessments.</li> <li>Langa applications were assessed with all the other communities.</li> <li>On appeal all applicants are required to provide supporting information (as per the nature of an appeal). A guiding document was provided to assist fishers with what information is needed for an appeal. This was only required of all applicants.</li> </ul>
5.4	Assessment process was inconsistent and was not fairly and transparently applied		
5.5	Appeals process was inconsistent and may be considered unfair		

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DETAILED FINDING REF.	FINDING OBSERVATION	FINDING RATING	MANAGEMENT COMMENTS
			<ul style="list-style-type: none"> <li>Findings by the audit regarding possible inconsistent assessment of appeals is noted. In future, all appeals will be directed to the delegated authority in order for him or her to put necessary structures to advise on the appeals.</li> <li>Several applications were duplicated i.e. two or more applications were submitted by the same person.</li> <li>An application submitted by one person multiple times would still have been captured by the service provider. There was not system to verify duplications on the database and often each separate application would receive a sequence number when captured in the field.</li> <li>Several applications were incomplete i.e. missing sequence numbers, identity numbers etc.             <ul style="list-style-type: none"> <li>Such application would not be captured and reflected on the database, as it would be considered as an incomplete application.</li> </ul> </li> <li>We found 158 applications that did not previously exist on the community lists.             <ul style="list-style-type: none"> <li>BDO was provided with a SMS list and the entire registration database.</li> <li>The SMS list only reflected the individuals who submitted appeals and their status</li> <li>People who did not submit an appeal is reflected on the entire registration database, as their process would have stopped at registration.</li> <li>All the people listed on Annexure I is on the entire (all-inclusive) database submitted to BDO along with the SMS list</li> </ul> </li> <li>We found 64 applications that were marked as "spoiled" and stored in the files.             <ul style="list-style-type: none"> <li>All spoiled applications remained in the files as received from the field. However, such applications would not have been captured on the database.</li> </ul> </li> <li>The Department notes the incomplete and, in certain cases, incorrect data. However, the incomplete or incorrect information did not have much impact on the assessment of the criteria. Incomplete cell phone numbers and ID numbers had no bearing on the criteria verification.</li> <li>Data is currently being cleaned as part of the co-operative registration process.</li> <li>It should be noted that applications were correctly filed before first audit process in 2018. After the first audit phase, it was noted that the files came back to the department broken and files misplaced, and application forms not placed back in right file. This issue was brought to the attention of the auditors. This prompted the</li> </ul>
5.6	The data records of the applications and appeals processes are grossly inaccurate and unreliable	High	
5.7	Physical records of the process are inconsistent and unreliable	High	

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DETAILED FINDING REF.	FINDING OBSERVATION	FINDING RATING	MANAGEMENT COMMENTS
			<p>department to recheck all the files from scratch. In this process, a number of files had to be taken from one file to the correct file.</p> <ul style="list-style-type: none"> <li>All applications that could not be located by the auditors were located by the department in their respective files. In some instances, the files were misplaced/ filed wrongly by the audit team after the files had been handed over to them. This further refers to applications that were part of this report.</li> </ul>

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**SECTION 4  
LEGISLATIVE FRAMEWORK**

#### 4. LEGISLATIVE FRAMEWORK

Our findings and observations highlighted in Section 5 are based on our understanding of the following legislative framework<sup>6</sup>:

The Marine Living Resources Act (Act No. 18 of 1998) (MLRA) provides as follows:

##### \*1. Definitions

*"small-scale fisher" means a member of a small-scale fishing community engaged in fishing to meet food and basic livelihood needs, or directly involved in processing or marketing of fish, who-*

- (a) *traditionally operate in near-shore fishing grounds;*
- (b) *predominantly employ traditional low technology or passive fishing gear;*
- (c) *undertake single day fishing trips; and*
- (d) *is engaged in consumption, barter or sale of fish or otherwise involved in commercial activity, all within the small-scale fisheries sector.*

##### 19. Small-scale fishing

- (1) *The Minister, in order to achieve the objectives contemplated in section 9(2) and 39(3) of the Constitution, by notice in the Gazette-*

*[...]*

- d) *must prescribe-*
  - (i) *the process and procedures relating to the allocation and recognition or rights of access to small-scale fishers based within small-scale fishing communities;*
  - (ii) *procedures to be applied in the allocation of those rights;*
  - (iii) *the management of the rights of access;*
  - (iv) *the criteria and timetable for recognition of small-scale fishers and small-scale fishing communities; ..."*

The Policy for the Small-scale Fisheries Sector in South Africa, published under Government Notice No. 474 on 20 June 2012 (Policy) provides as follows:

##### \*1. INTRODUCTION AND BACKGROUND

*In line with the broader agenda of the transformation of the fishing sector, this policy provides the framework [own emphasis] for the promotion of the rights of these fishers in order to fulfil the constitutional promise of substantive equality.*

...

##### 6.2.4 Criteria for allocation

*... in addition to applying the criteria set out below when determining whether a community is a Small-Scale fishing community, the decision-maker needs to consider additional factors. These factors may include:*

- a) *paying due regard to affording young adults (between 18 and 35 from within the Small-Scale fishing community) the opportunity to enter the Small-Scale fishing sector, even though they cannot prove that they have 10 years' experience; and*

<sup>6</sup> Only relevant sections have been quoted. The documents referred to in this section of the report have been attached as Annexures Q1-Q3.

b) dealing with requests from non-South African citizens, that meet the criteria listed below, to be deemed eligible for incorporation into a Small-Scale fishing community.

**CRITERIA FOR FISHERS TO BECOME MEMBERS OF COMMUNITY-BASED LEGAL ENTITY**

- Must be South African citizens (male or female) from the Small-Scale fishing community*
- Must be at least 18 years of age (in the case of children headed households, a guardian from the community may be appointed to represent such children as members of the legal entity)*
- Must harvest marine living resources directly or be involved on a daily basis in operations such as processing or marketing the resources (unless physically disabled)*
- Must be able to show direct historical involvement in the Small-Scale fisheries sector (through 10 years' experience at any one time but not necessarily over the past 10 years)*
- Must be able to show historical involvement in traditional fishing operations, which include catching, processing or marketing marine living resources*
- Must derive the major part of their livelihood from Small Scale fishing or traditional fishing operations and be able to show historical dependence on marine living resources, either directly or in a household context, to meet food and basic livelihood needs*
- Must have no permanent other employment*
- Subsist from their catch or are engaged in the sale or barter or involved in semi-commercial activity*

The Regulations Relating to Small-scale Fishing (issued in terms of section 18 of the MLRA under Government Notice No.229 on 08 March 2016) (Regulations) provide as follows:

***"Criteria for small-scale fishers, small-scale fishing communities and small-scale fishing rights allocation***

4. (1) *The criteria to be applied in determining whether a person is a small-scale fisher are that person must-*
  - (a) *be a South African citizen who associates with or resides in the relevant small-scale fishing community;*
  - (b) *be at least 18 years of age;*
  - (c) *historically have been involved in traditional fishing operations, which include catching, processing or marketing fish for a cumulative period of at least 10 years; and*
  - (d) *derive the major part of his or her livelihood from traditional fishing operations and be able to show historical dependence on fish, either directly or in a household context, to meet food and basic livelihoods needs."*
- (2) *A small-scale fishing community shall only be recognised as such if contains a minimum of 20 small-scale fishers.*
- (3) *...*
- (4) *Other relevant criteria include the following:*
  - (a) *Only a small-scale fisher shall be a member of a co-operative;*
  - (b) *a small-scale fisher shall not own or be part-owners of a commercial fishing right;...*

**SECTION 5**  
**DETAILED OBSERVATIONS & FINDINGS**

5.1 Inconsistencies between the Policy and Regulations

**FINDING** **MAJOR**

We examined the Policy and the Regulations and noted the following issues:

- > The Policy provides that additional factors may be considered by the decision-maker. This includes young adults who may not be able to prove 10 years' experience, and non-South African citizens. The criteria in the Regulations, however, specifically excludes those without 10 years' experience and non-South African citizens.
- > The following criteria from the Policy are not included in the Regulations:
  - Must have no permanent other employment;
  - Subsist from their catch or are engaged in the sale or barter or involved in semi-commercial activity.
- > The inclusion and interpretation of the 10-year requirement differs between the Policy and the Regulations. The Policy requires "10 years experience at any one time but not necessarily over the past 10 years" whilst the Regulations requires "a cumulative period of at least 10 years". These interpretations are distinct from each other.
- > The policy refers to "semi-commercial activity", with no clear definition of what this entails. This is especially important as the Regulations creates an exclusion if the person owns or part-owns a commercial fishing right.
- > Considering that the Regulations were gazetted after the Policy, it is assumed that the Regulations replace the policy considerations contained in the Policy. There is however no indication that the Policy, which sought to direct the State's efforts regarding the small-scale fisheries sector, was repealed/withdrawn. In the absence of such repeal/withdrawal of the Policy, it appears that the Policy and Regulations apply concurrently with largely differing provisions.

Whilst we are clear that the Regulations are issued in terms of legislation, the applicability of the Policy versus the Regulations is not absolutely clear, particularly so from the perspective of the Department's officials who seem to apply both sources concurrently.

This results in much confusion around the criteria applicable to the small-scale fisher applications, and the interpretation of these criteria. This may be part of the root cause of the inconsistency and ambiguity of the application tools and assessment processes.

**RECOMMENDATION**

We recommend that:

- Management conducts a full review and revision of the Policy and Regulations to ensure cohesion and that the policy principles are adequately incorporated or repealed, if the policy principles have changed.
- The Regulations be amended to include all applicable criteria, with sufficient detail on the interpretation of the criteria. This will enable clear and objective assessment of applications.

**MANAGEMENT COMMENTS**

- i) The interpretation that the "additional factors" are part of a criteria to determine whether a person is a small-scale fisher is incorrect. The two factors mentioned by the policy are outside of the set criteria for determining and declaring small-scale fishers. The said factors have been accommodated in the process of small-scale fishing rights allocation and community-based legal entity formulation. If the audit process took the two factors as part of the verification criteria, then the outcome of the report may have grave legal implications as this may have resulted in applications of people with less than 10 years being made successful.
- ii) The criteria in the policy that says "Must have no permanent other employment; Subsist from their catch or are engaged in the sale or barter or involved in semi-commercial activity" are covered by the criteria in the regulations that says "... derive the major part of his or her livelihood from traditional fishing operations and be able to show historical dependence on fish, either directly or in a household context, to meet food and basic livelihoods needs."

- iii) Secondly, it would have been illogical to interpret or translate the two criteria from the policy to the regulations as they are. The policy was drafted from 2007 and was finalized in June 2012 and the regulations were promulgated in March 2016. Therefore, it took five years to finalize the policy and it took additional four years to have Regulations in place. It would have been illogical and insensitive to translate the criteria as it is. It would have been unfairly prejudicing against those who had to find employment as a form of supplementary livelihood in addition to fishing considering that there was no legal right of access to fishing due to systematic marginalization of small-scale fishers.
- iv) The 10-year requirement is based on the understanding that the years may not necessarily be continuous and may accumulate over past years. This was further explained on the verification protocol that was used for all communities. Therefore, the interpretation is the same. No one was excluded if they had shown that they missed certain years within but they had 10 years or more when adding the experience.
- v) Finding on point four above is incorrect. The Regulations do not create an exclusion if the person owns or part-owns a commercial fishing right. Secondly, this is not part of the criteria to declare a small-scale fisher as outlined in Regulation 4(1). This criterion refers to a form of right holding. This criteria of right holding under Regulation 4 (4)(b) has been considered and applied accordingly as part of the "small-scale fishing rights allocation". It is noted that the report has misinterpreted the entire Regulation 4 as it assumes that this entire regulation refers to the declaration of small-scale fishers even though the heading of the regulations indicates "Criteria for the small-scale fishers, small-scale fishing communities and small-scale fishing rights allocation".
- vi) Further to this, the report needs to note that "commercial activity" is vastly different from a "commercial fishing right". Therefore, a person can be active in a commercial fishing activity without having a commercial fishing right. As per the definition of small-scale fishing, small-scale fishers who have experience in commercial activity within the traditional fishing operation were not excluded in line with the regulations and the policy. Those declared small-scale fishers with commercial fishing right have to choose which fishery they want to be in order to effect Regulation 4(4)(b).
- vii) The policy covers a broader reach that is, in some instances, outside of the mandate of the principal legislation. However, the Regulations considered the provisions of the MLRA and those of the Policy and hence the conflicts are believed to not exist.

**INTERNAL AUDIT COMMENTS**

We note management's comments. It must be borne in mind that we indicated that these are inconsistencies between the Policy and the Regulations. This is an issue that affects the criteria utilised in the Form (which is issued in terms of both the Policy and the Regulations) and also affects interpretation of the information collected via the Form, which is in turn utilised for assessing recognition as a small-scale fisher. The following points are pertinent with regard to management's comments above:

- i) We did not interpret the 2 additional factors as criteria during the verification process. It is noted that the process referred to by management, whereby the additional criteria is considered in the community recognition process, is not documented and does not form part of the Regulations. Thus, there is no guideline for how these factors would be considered, and when.
- ii) Whilst we agree that these factors may be considered under the dependency requirement in the Regulations, there is no clarity on the definition of "semi-commercial activity" and how this is considered because management specifically indicated during the verification exercise that working experience in commercial fishing companies is excluded from the calculation of the 10-year experience requirement. Further, the Form itself is ambiguous in terms of determining dependency (see Finding 5.3 below).

AM RMC

- ii) Management's comment is at odds with how the assessment was actually undertaken. Management specifically indicated during our verification that any commercial work experience (eg. I&J, Snoekies – working for / buying from) does not accumulate toward to the 10-year experience requirement.
- iv) We agree with management's comment regarding the interpretation of the 10-year requirement i.e. that it was cumulative. The purpose of our finding was to point out the inconsistency between the Policy and the Regulations in terms of this criterion.
- v) The Regulations do create an exclusion from the small-scale fisher categorization if the individual holds a commercial fishing right. Please refer to Regulation 4(4). We also disagree with management's interpretation of its own Regulations. Regulation 4 does not adequately detail the process that management alludes to, and this in itself is problematic as there is no objective mandate/guideline in how these rights are considered and applied. During discussions with management, it was confirmed that the issue of commercial rights is considered "later in the process" when recognizing communities and that small-scale fishers are then given an opportunity to choose which space they want to participate in i.e. small-scale or commercial. This process is not documented or legislated and could pose further problems for DEFF when finalizing this process.
- vi) We disagree with management. As indicated above, management confirmed to us during the verification process that work experience in the commercial sector was specifically excluded from the calculation of the 10-year experience requirement. We followed management's interpretation of this requirement in our verification.
- vii) It is concerning that management confirms that the Policy does not align with the Regulations, which are legislative in nature. This indicates clearly that the Policy and Regulations are not aligned.

**5.2 Criteria used to assess applicants was not objective and clearly defined****FINDING****MAJOR**

We analysed the criteria between the Policy, Regulations and the Form as follows:

**5.2.1 The Policy and Regulations differ in terms of the wording and number of criteria:**

	<b>POLICY</b>	<b>REGULATIONS</b>
1	South African citizen (but may consider non-South African citizens that meet the criteria)	South African citizen who associates with or resides in the small-scale fishing community
2	Minimum 18 years old	Minimum 18 years old
3	Must harvest resources directly or be involved on a daily basis in operations (processing or marketing)	
4	10 years' experience at any one time, but not necessarily over the past 10 years (may consider affording opportunities to young adults who cannot prove the 10-year experience requirement)	Cumulative period of at least 10 years.
5	Must be able to show historical involvement in traditional fishing operations.	
6	Must derive major part of livelihood from small-scale or traditional fishing operations and must show dependence on marine resources for food and basic livelihood needs	Must derive major part of livelihood from small-scale or traditional fishing operations and must show dependence on marine resources for food and basic livelihood needs
7	No other permanent employment	
8	Subsist from their catch or sale, barter or semi-commercial activity	Shall not own or be part-owners of a commercial fishing right.

**5.2.2** As is clear from the above table, the Regulations and the Policy are not aligned, and this creates inconsistency and issues when assessing applications. The Regulations are issued in terms of legislation and, in principle, supersedes the provisions of the Policy, but the confusion is exacerbated by the fact that the Small-Scale Fisher Verification Form indicates that it "is based on the definition of a small scale fisher and based on the criteria set out in the Small Scale Fisheries Policy and the" MLRA. Thus, on the one hand the process is subject to the legislation with one set of criteria, but the applicant is informed that the criteria also emanates from the Policy, which has a different set of criteria. The key question then is, which set of criteria is applicable to the assessment process, and if it is a combination of the two, who decides on the appropriate combination? On this basis alone, the criteria may not be objective nor fair, and could be open to legal challenge from an administrative justice perspective.

**5.2.3 We examined the inconsistent criteria below to highlight the issues we found:****a) South African Citizenship:**

- The Regulations are specific that only SA citizens would be considered as small-scale fishers.
- The Policy however makes allowance for those non-SA citizens who meet the criteria to be considered as small-scale fishers. This is discretionary in the Policy but should be considered by the decision-maker.

**b) Direct harvesting or daily involvement in operations:**

- This criterion in the Policy is not included in the Regulations.
- Requires "daily" involvement in operations which is at odds with the 10-year criterion which does not require the relevant experience in the preceding 10 years. The interpretation of "daily" is not clear.

**c) 10 years' experience requirement:**



- Policy requires 10 years at any one time, which we've interpreted as a continuous period of 10 years involvement during the fisher's lifetime.
  - Policy does not require this experience to have been in the last 10 years. Considering that the process was undertaken in 2016, the experience could have been prior to 2006, and it would also have been possible that there was no experience between 2006 and 2016, yet the fisher could have still qualified.
  - Regulations requires a "cumulative period of at least 10 years", which we have interpreted as any experience accumulated during the fisher's lifetime would count towards the 10-year requirement, irrespective if it was continuous or in staggered periods.
- d) No other permanent employment:
- The criterion is contained in the Policy, but the Regulations does not create any such exclusion.
- e) Commercial activity:
- The Policy allows for "semi-commercial activity". There is no definition of what constitutes semi-commercial activity, and the specific term is noticeably absent from the MLRA and Regulations.
  - The Regulations create an exclusion only if the fisher owns or part-owns a commercial right.
  - It is therefore not clear what the requirement is regarding involvement in commercial fishing.

Aligned to our recommendation in 5.1 above, management should ensure that in reviewing the Regulations and Policy, the criteria are examined and revised to be clear and objective.

- i) Response to finding 5.2.3 (a): The factor of non-South African citizens is not a criteria of the Policy but it is a factor that the delegated authority should take into account for consideration. Refer to page 37 and 38 of the policy. Therefore, the criteria in the Regulations and the Policy are consistent in expressing that a small-scale fisher "Must be a South African citizen from the small scale fishing community".
- ii) Similarly, to MLRA and Regulations, the 10 years in the policy refers to total combined years that may not necessarily have to be continuous or consecutive without a break. The 10 years is not limited to 2006-2016. A cumulative includes any experience obtained prior to that period. This was not an exclusionary factor.
- iii) It would have been illogical to interpret or translate the two criteria from the policy to the regulations as they are. The policy was drafted from 2007 and was finalized in June 2012 and the regulations were promulgated in March 2016. Therefore, it took five years to finalize the policy and it took additional four years to have Regulations in place. It would have been illogical and insensitive to translate the criteria as it is. It would have been unfairly prejudicing against those who had to find employment as a form of supplementary livelihood in addition to fishing considering that there was no legal right of access to fishing due to systematic marginalization of small-scale fishers.
- iv) The Small-Scale Fisheries Policy is not only focusing on the verification and it needs to be interpreted within the context of a broader policy implementation for the sector beyond verification phase. Certain aspects of the policy are addressed outside of the verification phase of the policy implementation and hence issues such as that of consideration of fishers with less than 10 years of fishing experience are part of the policy implementation where the delegated authority considers them as part of rights allocation for a small-scale fishing community.
- v) The criteria in the policy is in line with that of the regulations and hence the application of such is aligned. It is noted the BDO has a different interpretation of the criteria and that in certain instances, includes statements or issues to be considered as criteria in declaring small-scale fishers.
- vi) In response to 5.2.3.e.: The Regulations do not create an exclusion if the person owns or part-owns a commercial fishing right. Secondly, this is not part of the criteria to declare a small-scale fisher as outlined in Regulation 4(1). This criterion refers to a form of right holding. This criteria of right holding under Regulation 4 (4)(b) has been considered and applied accordingly as part of the "small-scale fishing rights allocation". It is noted that the report has misinterpreted the entire Regulation 4 as it assumes that this entire regulation refers to the declaration of small-scale

fishers even though the heading of the regulations indicates "Criteria for the small-scale fishers, small-scale fishing communities and small-scale fishing rights allocation"

We note management's comments, however we reiterate that this finding highlights inconsistencies in the criteria between the Policy and Regulations, keeping in mind that the Form is issued in terms of both the Policy and Regulations. Please note our comments below:

- i) The issue regarding qualifying non-South African citizens has to be considered, but there is no evidence in the Regulations that this would be considered at a later stage by the decision-maker, or at all as the exclusion is very clear in the Regulations. There is also no indication that those applicants that were disqualified for not being SA citizens would be reconsidered after being found "Unsuccessful".
- ii) The wording of the 10-year criteria is specifically different in the Policy when compared with the Regulations. The wording of the two instances would lead to two interpretations of the calculation of 10 years of experience.
- iii) Management's comment is at odds with how the assessment was actually undertaken. Management specifically indicated during our verification that any commercial experience (eg. I&J) does not accumulate toward to the 10-year experience requirement.
- iv) We understand that the Policy is broader than the verification process however, the extended process that management refers to is undocumented.
- v) We disagree with management. The information utilised in the assessment was gathered using the Form which is issued in terms of the Policy and Regulations. We do not agree that the assessment is consistent as outlined in our Finding 5.4 below.
- vi) The Regulations do create an exclusion from the small-scale fisher categorization if the individual holds a commercial fishing right. Please refer to Regulation 4(4). We also disagree with management's interpretation of its own Regulations. Regulation 4 does not adequately detail the process that management alludes to, and this in itself is problematic as there is no objective mandate/guideline in how these rights are considered and applied. During discussions with management, it was confirmed that the issue of commercial rights is considered later in the process when recognizing communities and that small-scale fishers are then given an opportunity to choose which space they want to participate in i.e. small-scale or commercial. This process is not documented and could pose further problems for DEFF when finalizing this process.

As per the above, our findings remain and we urge management to review and revise the legislative framework to ensure alignment of the criteria, and to ensure that the Regulations accommodate all processes clearly and objectively.

## 5.3 Issues noted between the Small-scale Fisher verification form and the Policy and Regulations

## FINDING

## MAJOR

We examined the Small-scale Fisher verification form<sup>9</sup> against the Policy and the Regulations and noted the following issues:

- > The form indicates that it is based on the criteria set out in the Small-Scale Fisheries Policy and the MLRA. As per our finding in 5.2 above, the criteria are uncertain and there is much confusion about the applicable criteria, particularly in the way the form is drafted and how it was assessed.
- > "Required questions" are indicated with a triple asterisk (\*\*\*) however on examination of the form, the following issues were noted:
  - Type of work outside of fishing activities is not a required response;
  - Under "History in fishing", the only question that is required is whether the applicant has 10 years accumulated fishing experience. The questions related to the applicant's various roles in fishing are not required; and
  - No questions under "Current fishing activity" are required.
- > Under "Contact Details", the form only requires information related to the community in which the applicant resides. It makes no allowance for associations with a community, as allowed for in the Regulations.
- > The relevance of the grants and educational level sections is unclear as these are not contained in any criteria. These may be used on an exclusionary basis.
- > History in fishing:
  - The question relates to accumulated traditional fishing experience. As indicated, there is inconsistency between the Policy and the Regulations regarding whether the 10-year requirement is cumulative or not.
  - "Which of the following roles have you fulfilled in the last 10 years?" – this question is problematic as the Policy does not require that the 10-year experience be obtained in the preceding 10 years i.e. 2006-2016. This is true for all sub-questions in the "History on fishing" section.
  - "Worked for commercial fisheries company" – this question may be prejudicial. The Department did not regard work for commercial fishing companies as part of the 10-year experience requirement, however, the criterion for commercial activity is obscure (see 5.2 above). Thus, applicants including commercial experience under this question did so to their detriment.
- > The two questions under the "Dependence on fishing" section are ambiguous and may be interpreted in multiple ways. The first question relates to dependence on marine resources for food and basic livelihood needs. The second question relates to the percentage of the applicant's income from fishing. The possible answer combinations are problematic, particularly from an assessment perspective:
  - An applicant may not be dependent for food and basic livelihood needs but could derive 100% of his/her income from fishing.
  - An applicant may be dependent on fishing for food and basic livelihood needs but derive 0% of his/her income from fishing.
  - The permutations are increased once one considers the various income percentage categories.
  - It was also clear that the Department was not 100% sure on how to interpret the answers to this aspect.
- > The form concludes with a declaration from the applicant, confirming that information contained in the form may be verified. It is unclear how any of the information contained in these application forms was or could be verified, particularly those that were initially found to be successful. With the unsuccessful applications, supporting documentation and information was required which could support the contents of the form, however for those applicants that were initially found to be successful, there was no supporting information to verify the applicant's claims.
- > The Small-scale Fisher verification form is in itself a key factor in our overall conclusion that the process was flawed and open to legal challenge for the following reasons:

<sup>9</sup> Please refer to Annexure R for an example of an Application Form

- The form is not aligned to clear objective criteria. Applicants were therefore not fully aware of the criteria, nor the impact of their responses;
- Some questions are ambiguous and resulted in different responses, based on Interpretation. This may have been prejudicial to some applicants;
- Required questions were not all clearly marked;
- Information requested was not always relevant and may have been prejudicial;
- Assessors examined the form in different ways, which may have prejudiced some applicants.

If the process is started afresh, the Small-scale Fisher verification form must be aligned to clearly defined, objective criteria and designed such that it is not prejudicial to any applicant.

- i) Bullet point two above was addressed under resolution 5.2.
- ii) Bullet point two is concerning. There is various demographic information that is required in the form but the report purports that the grants question may have resulted to excluding people. As outlined in the policy and the regulations, criteria to declare small-scale fishers is outlined and it is specific. Therefore, it cannot be that applicants would have been excluded because they earn government grant or they have a certain level of education, as these are not part of the criteria. Therefore, the statement made by the report are unfounded and incorrect. Similarly, most of government applications requires demographic information to profile applicants for the purpose of monitoring government transformation targets.
- iii) Again, under "Contact Details" the form does require information related to the community in which the applicant resides. However, an applicant would apply to be declared in a community that he/she does not reside in and that is why there is an alternative section at the beginning of page 2 of 8 in the form. Kindly further note that Regulation 4 (1)(a) which states " be a South African citizen who associates with or reside in the relevant small-scale fishing community"
- iv) Commercial fishing rights are distinctly different from that of small-scale rights/operations as commercial and small-scale rights fall under different Fisheries as per the MLRA. However, this does not mean that if a person had a history of fishing and selling for commercial purpose should be excluded. There is a difference between fishing for commercial gain under SSF and fishing under a commercial fishing right. The MLRA recognizes Recreational, Commercial and Small-scale fisheries. The rights are allocated to these respective fisheries. Commercial fisheries and small-scale fisheries includes commercial activities but those of small-scale are traditional fishing operations. The definitions of small-scale fishing in the MLRA, regulations and policy do indicate that "commercial fishing" within the "small-scale" or traditional fishing context.
- v) The application form gives sufficient questions that probe information related to the criteria.
- vi) Further to this, fishers were assisted, through one-on-one interviews, to complete the required information based on the verification protocol.

We note management's comments. Please note that this finding is based on an assessment of the actual Form against the Policy, Regulations and the assessment process. We disagree for the following reasons:

- i) We disagree fundamentally with management's views under Finding 5.2 above.
- ii) The demographic information in the Form is problematic in some instances, for example, where an applicant indicated that they had obtained a Matric certificate and had been fishing for most of the last ten years (which would include the period they were in school), management indicated to us "How can the person be fishing when they were in school?".

Management therefore confirmed during the verification exercise that those applicants were in some instances disqualified as they would have been in school and would not have fulfilled the 10-year requirement. This is a prime example of information requested on the form, although not aligned to a criterion, but being utilised by management to the detriment of an applicant. Please see screenshot below.

**What education level have you received?**

- No formal schooling
- Incomplete primary education (between Gr.1 and Gr.6 / between Sub A and Std 4)
- Complete primary education (Gr 7 / Std 5 completed)
- Incomplete secondary education (between Gr.8 and Gr.11 / between Std.6 and Std.9)
- Complete secondary education (Gr.12 / Std.10 / Metric)
- Tertiary education - Technicon or college
- Tertiary education - University

During our engagement with management, where we sought clarity regarding this matter, on more than one occasion it was stated to us that if someone is 18 or 19 (early twenties even) that if they completed school, there would be no way in which they had 10 years of fishing experience, even if they started at the age of 5.

A further example would be the dependency criteria set in the form. Many instances were identified that the applicant would indicate they are dependent on marine resources to meet food and basic livelihood needs, however would not derive income from sales, but by consumption. Therefore, if half of it was ticked or lower with regards to income, they were disqualified.

**Dependence on fishing:**

Are you dependent on marine resources to meet food and basic livelihood needs?  Yes  No

How much of your income comes from fishing or fisheries related activities?

All of it - close to 100% <input checked="" type="checkbox"/>	One quarter - close to 1/4 or 26% <input type="checkbox"/>
Most of it - close to 3/4 or 75% <input type="checkbox"/>	None <input type="checkbox"/>
Half of it - close to 1/2 or 50% <input type="checkbox"/>	

**Person who can vouch for you:**

The ambiguity in this lies with interpretation again - If you sustain your family through consumptions, you might not be able to derive revenue from sales. Furthermore, many of the applicants were on other government grants also, which would be deemed a source of income.

**Indicate any grants you receive (tick all relevant answers):**

None <input type="checkbox"/>	Social relief of distress <input type="checkbox"/>	Grants-in-aid <input type="checkbox"/>
Child Support Grant <input type="checkbox"/>	Foster Care Grant <input type="checkbox"/>	Care Dependency Grant <input type="checkbox"/>
War Veteran's Grant <input type="checkbox"/>	Disability Grant <input type="checkbox"/>	Grant for Older Persons <input checked="" type="checkbox"/>

Based on the assessment above of Mr. Edwin Edgar Angle, one could perceive his application not being 100 % truthful in the aspect of income derived as he indicates earlier in the form he received "Grant for Older Persons" but then states he receives 100% of his income from fishing / related activities. Again it reflects ambiguity in how people read and understood the form.

iii) Management has not engaged with the actual finding, which is that the Form does require an indication of the applicant's community, however it does not allow for an indication of an "association" with a community, as is allowed

AM RSDC

In the criteria under Regulation 4(1)(a). Thus an applicant would indicate a community where he/she resides and not necessarily a community with which he is "associated". Management's comments do not address the issue of association, and the reference to page 2 of the Form confirms that the questions only relate to residence and not association of an applicant, as is allowed for in the Regulations.

We have extracted sections of the Regulations and the Form to illustrate the point above:

4. (1) The criteria to be applied in determining whether a person is a small-scale fisher are that the person must—  
(a) be a South African citizen who associates with or resides in the [ward] small-scale fishing community;

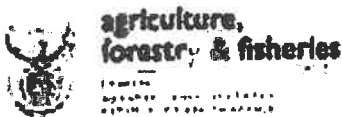
Regulation 4(1)(a)

Contact Details:

"Do you reside in this Community? (Where the application is being made) Yes  No   
If Yes, how long have you been living in this Community? Years:  Months:

Page 1 of 8

Confidential



SECTION A: VERIFICATION FORM  
24 March 2016

Do please give the Name and Full Name of Community (in English):

NAME of Community (in English): WILSONS BAY

Province of Community (in English): NC

Province of Community (in English):  
Eastern Cape  Free State  Gauteng   
KwaZulu-Natal  Limpopo  Mpumalanga   
Northern Cape  North West  Western Cape

Residential address:

A. PRASTON  
2 HUBERTS ROAD

Cellphone number #1:

Cellphone number #2:

Extract from Pages 1 and 2 of the Application Form

iv) We understand the distinction between commercial fishing activities and commercial fishing rights. Management is patently incorrect in its assertion that applicants were not excluded if they had commercial fishing experience. As per our comment in Finding 5.1 above, management confirmed with us during the verification process that experience in commercial fishing companies (eg. I&J, "Snookies") was not considered in the 10-year experience requirement.

We have included some snapshots from the DEFF's datasheets that were utilised for the initial assessments conducted in 2016.

These clearly reflect that commercial working experience was excluded from the experience calculation:

Zone 19 number 11 Lange	U	1	0 does not have 10 years experience, only has 8 years experience
Zone 12-22 Lange	U	1	1 has commercial experience, worked for 18y
Zone 23 no 68	U	1	1 did not state his years of fishing and has commercial experience
Lange zone 23no 5	U	1	1 does not have 10 years experience, stated that he is not dependent
L 39 no 69	U	1	1 traditional experience overlaps with commercial experience

**Extract from Lange assessment**

7 Gentswain Drive		1	0 provide more evidence on marketing fish
81 Gouhu Street		1	1 commercial experience-last active 2010
4 Oost Street		1	0 commercial experience-last active 2010, 5 years traditional experience
53 Bokwe Street		0	0 Yes
71 Faku Street		1	1 commercial experience-last active 2003
63 Bokwe Street		1	1 commercial company
161 Gouhu Street		1	1 commercial fishing experience

**Extract from Kironongaba assessment**

30 school street	U	1	1 traditional experience overlaps with commercial experience, last year of fishing was in 1994
De laan wijk 10	U	0	1 last year of fishing was in 1999, must provide evidence of current involvement
32 the no. 2nd 8122	U	1	1 traditional experience overlaps with commercial experience, last year of fishing was in 1982
11 nuaal wijk 10	U	1	1 does not have 10 years experience, has 5 years commercial experience
Sandberg postbus 18	U	1	1 traditional experience overlaps with commercial experience, last year of fishing was in 1980
Boon street 31	U	1	1 does not have 10 years experience, stated that he is not dependent
10 school street	U	1	1 has commercial experience, last year of fishing was in 1996, stated that he is not dependent
Amstelweg 10	U	0	0 last year of fishing was in 1995 as boat crew, do not fit in the permit and dependency sector
Sportweg	U	1	0 last year of fishing was in 1999 as boat crew, must provide evidence of current involvement
14 wijk 10 8122	U	1	1 traditional experience overlaps with commercial experience, last year of fishing was in 1984
Pk Leopoldville Anasbeij	U	1	1 must provide more information on his catching to bolster on rowing boat and who he crews for
Kuis no. 7 Leopoldville 8122	U	0	0 last year of fishing was in 1994 as a boat crew, must provide evidence of current involvement
Sand baai Postbus 10, 8121	U	1	1 traditional experience overlaps with commercial experience, last year of fishing was in 1990

**Extract from Leopoldville assessment**

- v) Information provided in the additional questions was utilised by management in the assessment of applications eg. Highest school level.
- vi) The assertion that applicants were assisted is accepted, however it is doubtful whether the full assessment process was explained to applicants. This is especially evident with management's interpretation of which species of fish was allowed or not (which is not a defined criteria). Management confirmed during the verification exercise that applicants who declared shark and hake in their applications were automatically excluded. The question is, had this assessment criterion been made known to applicants during the assistance process, would they have declared this? The simplistic answer is "no", because we found several applications that were disqualified due to applicants confirming that they caught shark or hake. This points to the lack of objectivity and transparency in the assessment process, as species of fish previously caught is not a criterion in terms of the Regulations.
- vii) Management has not responded to the issues related to:
  - Ambiguity in the structure and wording of the questions under "Dependence"; and
  - Verification process for the information declared in the Forms.

As per the above, our findings remain and we urge management to review and revise the legislative framework, application tools and assessment process to ensure a fair, objective and transparent process.

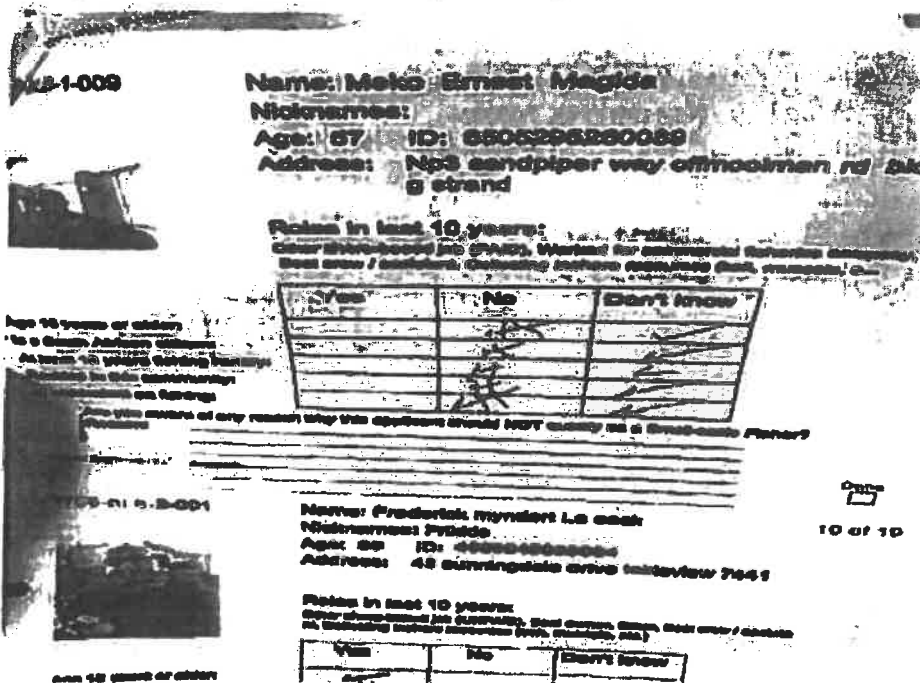
5.4 Assessment process was inconsistent and was not fairly and transparently applied

FINDING

MAJOR

We re-assessed the remaining applications in terms of the criteria and found the following:

- > We identified that community members did not only assist, but fully constituted the panel to evaluate and recognise small-scale fishers.
- > Assessments were not conducted consistently within and amongst the panels and communities:
  - We identified a number of instances during the verification where one community member's assessment would differ totally from the others, especially on assessment of age, which is a very clear criterion.
  - The number of assessors was not consistent, with communities ranging between 2-7 assessors;
  - The assessors in the same area did not assess the same applications. Some applications were assessed by 1 assessor whilst others were assessed by 5 assessors. (Based on the data captured on the listings provided and limited information available on the assessment.)
  - Some applicants (eg. Langa) were not assessed at all by any assessors.
  - Further to the above, an application was deemed unsuccessful if at least one member from 3 / 5 / 7 panel members, assessed a single criterion as "not met". Numerous instances in this regard was identified.
  - Applicants were assessed on types of species declared, and not consistently so.
  - An example of inconsistent assessment is depicted in the picture below.



- > The actual application forms do not stipulate the success of the applicant through a stamp / any form of notation. This issue was particularly important as we identified multiple applications that were not appropriately filed in the successful/unsuccessful files.
- > Some communities which were based more towards inland, were included in the process, however, when applications were submitted, the communities were deemed unsuccessful due to the distance from the coast. The criteria applied in the main was who associates with or resides in the relevant small-scale fishing community which they were not deemed to be compliant with.

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**RECOMMENDATION**

We recommend that the process be revised and started afresh to prevent dissatisfaction in the community and possible legal challenges to the Department.

**MANAGEMENT COMMENTS**

- i) No community was excluded due to distance from the coast. An individual applicant was assessed based on their application only and outcome is based on that information. The policy does acknowledge apartheid structures that may have further caused forced removals and other segregation approaches of the past.
- ii) The auditor's findings/ verification that may have been different from those of the department are noted. It is acknowledged that based on the total applications and appeals received, certain applications may have been assessed differently due to the nature of information required by the criteria.
- iii) It is noted that a confirmation mark, such as a stamp, of "successful" or "unsuccessful" should have been used to clearly distinguish applications during assessments.
- iv) Langa applications were assessed with all the other communities.

**INTERNAL AUDIT COMMENTS**

We note management's comments. Please note that this finding is based on our review of the DEFF's information and documents, and our interpretation of the assessment process. Our comments are as follows:

- i) We agree that inland applications were assessed with other communities. At times we identified that reasons excluding some applications were linked to distance and dependence.
- ii) This issue reiterates the ambiguity in the interpretation of information provided by applicants, which goes back to the structure and content of the Form.
- iii) Noted.
- iv) We dispute management's assertion that Langa applications were assessed. We refer management to its Community List titled "A to L.xlsx", and to the tab marked "Langa". It is clear from this spreadsheet that no assessments are recorded for application numbers 45-160 under Langa. We have included a snapshot here, however the list of applications for Langa for which there are no assessments is contained in Annexure N. The comment on the list stated the following: "Verifier refused to verify those from Langa that were captured in the Catch All process." It also made reference to a letter attached. It should also be noted that these "unassessed" applications had comments in the comment space. Many of these applicants were disqualified for being marketers. Marketing was deemed one of the activities linked to small scale fishers.

- v) Management responded to the issue of community involvement in a separate comment. Management has confirmed that "ONLY the information from the Fisher elected panel was used. The panel only consisted of fishers elected by the applicants on the day of the registration process." This is a serious problem, as the composition of the panels was not consistent and we also found a whole community without any assessment (Langa). We also have a problem with the interpretation of community involvement - the Regulations and Policy require community involvement in the

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assessment, it does not require that the community panel be the ONLY assessment. What role does the Department play then as Regulator and to ensure that the process is fair and objective if the only information utilized is that from the community panels?

v) Management has not commented on the issues highlighted related to inconsistencies in the assessment of applications. Some further examples of inconsistencies and inaccuracies in the assessment process are included as follows:

Regulation 4(1)(c) clearly allows for marketing as being included in traditional fishing operations. In its assessments, the Department disqualified applicants for only being a marketer. This was evident across various areas.

1	1	1	marketer at outbay harbour cleaning	part of catch all
1	1	1	owner of a fisheries company and fish	ing facility part of catch all
1	1	1	buys fish from boat and sells fish part	needs to provide proof
1	1	1	owner of a fisheries company and fish	ing facility part of catch all
1	1	1	marketer in various areas to provide	catch all
1	1	1	marketing fish by vehicles and landing	outbay part of catch all
1	1	1	collected in various resources fish and	using and selling fish part of catch all
1	1	1	marketing fish part of catch all	
1	1	1	marketing fish part of catch all	
1	1	1	no experience should be incomplete	
1	1	1	marketing fish part of catch all	
1	1	1	marketing fish part of catch all	
1	1	1	marketing fish part of catch all buys	
1	1	1	owner of a fisheries company	
1	1	1	marketing fish part of catch all	
1	1	1	marketing fish part of catch all and c	shore
1	1	1	marketing fish part of catch all	

Extract from Nyanga assessment

1	1	1	marketer selling from home needs to provide proof of where he gets his resource from
1	1	1	incomplete form/proxy without valid reason
1	1	1	marketer selling from street needs to provide proof of where he gets his resource from
			boat crew 194-2016
1	1	1	did not indicate dependency only experience cleaning and gutting of fish
1	1	1	marketer/gutting of fish/driver needs to provide more information
1	1	1	only experience is collecting red bait/mussel needs to submit evidence that provides proof of what frequency he collects and what it is used for

Extract from Lavender Hill assessment

- Additional "criteria" were also used in the assessment process, including frequency of fishing activity which is not a criterion in the Regulations.

K40	u	1	Indicate current dependency and frequency of 1 fishing activity
K57 Kleinkeunz Squattarocmp	u	1	Indicate current dependency and frequency of 1 fishing activity
K65	u	1	Indicate current dependency and frequency of 1 fishing activity
K27	u	1	Indicate current dependency and frequency of 1 fishing activity
K45	u	1	Indicate current dependency and frequency of 1 fishing activity
K75	u	1	Indicate current dependency and frequency of 1 fishing activity
K63	u	1	Indicate current dependency and frequency of 1 fishing activity
K20	u	1	Indicate current dependency and frequency of 1 fishing activity

As per the above, our findings remain and we urge management to review and revise the legislative framework, application tools and assessment process to ensure a fair, objective and transparent process.

5.5 Appeals process was inconsistent and may be considered unfair<sup>10</sup>

**FINDING** **MAJOR**

Appeals were submitted by applicants that were found to be unsuccessful during the initial assessment process. Appellants were required to provide "supporting documentation providing evidence affirming your appeal". Certified copies of documents were required, and no new information would be considered, only information in support of what was already included in the initial application.

We found the appeals process inconsistent and possibly unfair for the following reasons:

- > Appellants were burdened with onerous requirements that did not form part of the initial application process, and which were not required from all applicants.
- > During registration, no supporting evidence (certified or not) was required in order to verify the applicants' claims on their application forms. Only on being found unsuccessful and submitting an appeal would an applicant now have to produce supporting evidence. The onus to provide verification evidence therefore only rested with appellants and not all applicants.
- > Appellants were not consistently assessed, with some information being regarded as new information and therefore disregarded.
- > The exclusion of "new information" is considered prejudicial due to our findings on the verification form, which is ambiguous and inconsistent in itself. Thus, an applicant may have provided information initially as he/she interpreted the form which may have resulted in his/her unsuccessful result. On appeal he/she may have better understood the reason for disqualification and provided new information that would still be relevant to determining whether the applicant is a small-scale fisher.
- > The assessment of what constitutes new information was also subjectively and inconsistently applied.
- > By our assessment, a large amount of appeals should never have been found "unsuccessful" in the first place and therefore should not have been required to submit an appeal.
- > The Department's appeal outcome was inconsistent and incorrect, with some appeals that were assessed as "No" by all three officials being recommended as "Successful". The contrary was also found, where all three officials would indicate "Yes", but the appeal was deemed "Unsuccessful".

**RECOMMENDATION**

We recommend that the process be revised and started afresh to prevent dissatisfaction in the community and possible legal challenges to the Department.

**MANAGEMENT COMMENTS**

On appeal all applicants are required to provide supporting information (as per the nature of an appeal). A guiding document was provided to assist fishers with what information is needed for an appeal. This was only required of all appellants.

Findings by the audit regarding possible inconsistent assessment of appeals is noted. In future, all appeals will be directed to the delegated authority in order for him or her to put necessary structures to advise on the appeals.

**INTERNAL AUDIT COMMENTS**

We note management's comments however, our findings remain, particularly with regard to the unfair burden of proof on appellants. This burden of proof was not imposed on applicants, and our findings above highlight the inconsistency in this approach. Further, the actual assessment process for appeals was highly irregular and inconsistent.

<sup>10</sup> Please refer to Annexure S for an example of an Appeals Form

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During a meeting held on 29 October 2020 with management and counsel, we were made aware that small-scale appeals had been finalised and communicated. We are not sure how this process was conducted as we were verifying the appeals that had been submitted, and were not informed of a process finalise appeals and communicate outcomes.

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**5.5 The data records of the applications and appeal processes are grossly inaccurate and unreliable**

**FINDING** **MAJOR**

- 5.5.1 We used the following data sources in our verification process:
  - i) Community Lists (Area, assessments and outcomes);
  - ii) Appeals Lists (Area, decision, Departmental assessment, outcomes); and
  - iii) SMS Lists (Lists of communicated outcomes per area).
- 5.5.2 We combined the lists into consolidated tables, which enabled a broader view of all data.
- 5.5.3 We noted the following issues with the consolidated data:

	DISCREPANCY	NO. OF AFFECTED APPLICATIONS	ANNEXURE REF
1	Fully duplicated applications	108	G
2	Duplicated applicant names	381	H
3	Duplicated identity numbers	308	i
4	Duplicated sequence numbers	1028	J
5	Duplicated applications in different areas	112	K
6	Applications not on the SMS outcomes list <sup>21</sup>	3422	L
7	Applications not previously on community list <sup>22</sup>	158	-
8	Spoiled applications found in files	64	M
9	Assessments not captured on community lists (Langa)	118	N

- 5.5.4 We noted the following issues with the quality of the data captured on the lists:
  - > Identity numbers incorrectly captured, partially captured or not captured at all;
  - > Cellphone numbers incorrectly captured, partially captured or not captured at all;
  - > Names incorrectly captured, partially captured or not captured at all;
  - > Sequence numbers incorrectly captured, partially captured or not captured at all; and
  - > Data was captured on the incorrect applicants.
- 5.5.5 We noted the use of binary code for the assessments conducted on the community lists, where "0" denoted successful and "1" denoted unsuccessful. This was also not consistently applied, with some assessments marked with an "x" or left blank. This created confusion in the interpretation of results.
- 5.5.6 Based on the above, we found that the data records of the entire process are wholly unreliable. For this reason, we provide no assurance on the completeness nor accuracy of the data that we have consolidated from the various sources.
- 5.5.7 We further provide no assurance on the completeness nor accuracy of the overall number of applications and appeals, given that we found an additional 158 applications as well as 64 "spoiled" applications in the files. We are therefore uncertain if the applications that were provided for verification are the full set of applications that were submitted by prospective small-scale fishers.

**RECOMMENDATION**

We recommend that the process be revised and started afresh to prevent dissatisfaction in the community and possible legal challenges to the Department.

**MANAGEMENT COMMENTS**

- i) Several applications were duplicated i.e. two or more applications were submitted by the same person.

<sup>21</sup> We conducted a reconciliation of the applications not found on the SMS Outcome Lists and the Community Lists and found 3088 initial outcomes. We were not able to verify the initial outcomes for 272 applications.

<sup>22</sup> This discrepancy is derived from the initial total applications versus the actual total applications on verification (6646-6488=158).

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- An application submitted by one person multiple times would still have been captured by the service provider. There was no system to verify duplications on the database and often each separate application would receive a sequence number when captured in the field.
- l) Several applications were incomplete i.e. missing sequence numbers, identity numbers etc.
  - Such application would not be captured and reflected on the database, as it would be considered as an incomplete application.
- ll) We found 158 applications that did not previously exist on the community lists.
  - BDO was provided with an sms list and the entire registration database.
  - The sms list only reflected the individuals who submitted appeals and their status
  - People who did not submit an appeal is reflected on the entire registration database, as their process would have stopped at registration.
  - All the people listed on Annexure L is on the entire (all-inclusive) database submitted to BDO along with the sms list
- m) We found 64 applications that were marked as "spoiled" and slotted in the files.
  - All spoiled applications remained in the files as received from the field. However, such applications would not have been captured on the database.
- v) The Department notes the incomplete and, in certain cases, incorrect data. However, the incomplete or incorrect information did not have much impact on the assessment of the criteria. Incomplete cell phone numbers and ID numbers had no bearing on the criteria verification.
- vi) Data is currently being cleaned as part of the co-operative registration process.

**INTERNAL AUDIT COMMENTS**

We note management's comments. Please note that this finding is based on our review of the DEFF's information and documents, and basic data analytics on the body of data available from management. Management also confirmed to us during the verification that no amendments or clean-up of the data had occurred between our initial verification in 2019 and our second verification in 2020, and that we were to utilise the same datasets as previously provided to us.

Our comments are as follows:

- i) Management's comment does not address the fact that there were duplicate applications from individuals, as well as some duplicated across different communities i.e. a single applicant would have an application under multiple communities. Further, the assertion that there was no system to determine duplicates is not acceptable as we conducted our analysis on Microsoft Excel to determine duplicates in the data. Furthermore, adequate controls should have been put in place by the service provider to prevent or highlight duplicates in the data it was capturing. Management should also have reviewed the data. Given that we highlighted data issues in 2019, it would have been expected that some data clean-up exercise would have been conducted in the ensuing year. This was not the case and we were faced with the same data integrity issues as previously.

Some examples of duplications are included for information purposes:

WC6-LOB-18-026	WC	Langebaan	Frederick Basson	618880820	7812045180083
WC6-LAM-18-026	WC	Langebaan	Frederick Basson	618880820	7812045180083
WC6-VDT-17-014	WC	Vetbift	Frederick Basson		
WC6-OPW-18-004	WC	Graafwater	Jan Basson	710981814	4803225130083
WC6-LAM-16-503	WC	Leipoldville	Jan Basson	724510883	4803225130083
WC6-LAM-16-503	WC	Langebaan	Jan Basson	724510883	4803225130083

Please refer to the electronic annexures for the full detailed listings.

*Handwritten signature/initials*

1	Fully duplicated applicants	108
2	Duplicated applicant names	391
		<u>H</u>
		<u>G</u>

v) With regard to the "Spotted Applicants", please refer to Annexure H which indicates comments on some of these applications. From our assessment, some of these should have been unsuccessful and not spotted. What we agree that some of the missing information does not impact the individual assessments of these applications, this is a very narrow view as the overall process can then be called into question.

- Why were applications not recorded appropriately?
- What is the full number of applications that were received?
- How complete is the data and how accurate is the information that has been captured?
- If community and personal information has been omitted or incorrectly captured, how is the DEFF going to recognize committees accurately?

w) Management has not addressed the following serious issues in its comments:

No.	Name	ID	Contact	Status
1	Mark Gilbert	51058110385	277308072	Successful
2	Mark Gilbert	51058110385	277308072	Successful
3	Mark Gilbert	51058110385	277308072	Successful
4	Elizabeth Fortin	75042400805	2771274225	Successful
5	Alfonso Ricardo Solorzano	77081217088	277041222	Successful
6	Alfonso Ricardo Solorzano	77081217088	277041222	Successful
7	Alfonso Ricardo Solorzano	77081217088	277041222	Successful
8	Martha Christine Ledeman	610210004488	2781067184	Successful
9	Martha Christine Ledeman	610210004488	2781067184	Successful
10	Bonnie Law	71021401885	2776230549	Successful
11	Jeffrey Lee	70101508705	2771281927	Successful
12	Duncan Law	87090771805	2776282258	Successful
13	Frank G. Bell	70121950302	2776282258	Successful
14	Robert William Benjamin	63040512804	2776282258	Successful
15	Robert William Benjamin	63040512804	2776282258	Successful
16	Robert William Benjamin	63040512804	2776282258	Successful
17	Robert William Benjamin	63040512804	2776282258	Successful
18	Robert William Benjamin	63040512804	2776282258	Successful
19	Robert William Benjamin	63040512804	2776282258	Successful
20	Robert William Benjamin	63040512804	2776282258	Successful
21	Robert William Benjamin	63040512804	2776282258	Successful
22	Robert William Benjamin	63040512804	2776282258	Successful
23	Robert William Benjamin	63040512804	2776282258	Successful
24	Robert William Benjamin	63040512804	2776282258	Successful
25	Robert William Benjamin	63040512804	2776282258	Successful
26	Robert William Benjamin	63040512804	2776282258	Successful
27	Robert William Benjamin	63040512804	2776282258	Successful
28	Robert William Benjamin	63040512804	2776282258	Successful
29	Robert William Benjamin	63040512804	2776282258	Successful
30	Robert William Benjamin	63040512804	2776282258	Successful
31	Robert William Benjamin	63040512804	2776282258	Successful
32	Robert William Benjamin	63040512804	2776282258	Successful
33	Robert William Benjamin	63040512804	2776282258	Successful
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41	Robert William Benjamin	63040512804	2776282258	Successful
42	Robert William Benjamin	63040512804	2776282258	Successful
43	Robert William Benjamin	63040512804	2776282258	Successful
44	Robert William Benjamin	63040512804	2776282258	Successful
45	Robert William Benjamin	63040512804	2776282258	Successful
46	Robert William Benjamin	63040512804	2776282258	Successful
47	Robert William Benjamin	63040512804	2776282258	Successful
48	Robert William Benjamin	63040512804	2776282258	Successful
49	Robert William Benjamin	63040512804	2776282258	Successful
50	Robert William Benjamin	63040512804	2776282258	Successful
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68	Robert William Benjamin	63040512804	2776282258	Successful
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73	Robert William Benjamin	63040512804	2776282258	Successful
74	Robert William Benjamin	63040512804	2776282258	Successful
75	Robert William Benjamin	63040512804	2776282258	Successful
76	Robert William Benjamin	63040512804	2776282258	Successful
77	Robert William Benjamin	63040512804	2776282258	Successful
78	Robert William Benjamin	63040512804	2776282258	Successful
79	Robert William Benjamin	63040512804	2776282258	Successful
80	Robert William Benjamin	63040512804	2776282258	Successful
81	Robert William Benjamin	63040512804	2776282258	Successful
82	Robert William Benjamin	63040512804	2776282258	Successful
83	Robert William Benjamin	63040512804	2776282258	Successful
84	Robert William Benjamin	63040512804	2776282258	Successful
85	Robert William Benjamin	63040512804	2776282258	Successful
86	Robert William Benjamin	63040512804	2776282258	Successful
87	Robert William Benjamin	63040512804	2776282258	Successful
88	Robert William Benjamin	63040512804	2776282258	Successful
89	Robert William Benjamin	63040512804	2776282258	Successful
90	Robert William Benjamin	63040512804	2776282258	Successful
91	Robert William Benjamin	63040512804	2776282258	Successful
92	Robert William Benjamin	63040512804	2776282258	Successful
93	Robert William Benjamin	63040512804	2776282258	Successful
94	Robert William Benjamin	63040512804	2776282258	Successful
95	Robert William Benjamin	63040512804	2776282258	Successful
96	Robert William Benjamin	63040512804	2776282258	Successful
97	Robert William Benjamin	63040512804	2776282258	Successful
98	Robert William Benjamin	63040512804	2776282258	Successful
99	Robert William Benjamin	63040512804	2776282258	Successful
100	Robert William Benjamin	63040512804	2776282258	Successful

ii) Management's comment is baseless. In our analysis of the data, we found 82 applications without a sequence number, and 73 applications without an identity number. Please refer to Annexure T and U in our electronic annexure to view the lists. This issue of missing information is also completely separate from the issue of duplicated data, of which we had multiple occurrences.

iii) We utilized the data provided by management. Please note the following:

- Our findings regarding the community lists are based on a combined list which is made up of all the community lists provided by management.
- The SMS Outcome List provided by management did not "only reflect the individuals who submitted appeals and their status". This list also included the standard applications and their outcomes and was not limited to appeals (screenshots included below - please refer to columns G and H which indicates that both normal applications and appeals were contained in the SMS Outcome Lists). Further, the SMS Outcome List did not reflect the outcomes for some 3422 applications as reflected in Annexure L.



3	Duplicated identity numbers	366	I
4	Duplicated sequence numbers	1026	J
5	Duplicated applications in different areas	112	K
9	Assessments not captured on community lists (Langa)	116	N

As per the above, our findings remain, and we urge management to review and revise application tools and information systems/methods used in the assessment process. We reiterate that we provide no assurance on the completeness or accuracy of the data and information.

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**5.7 Physical records of the process were inconsistent and unreliable**

**FINDING**

**MAJOR**

The applications and appeals that we verified were sourced from the Department's files. We found the following issues with the physical records:

- > Area names on files did not correspond with area names on the combined data lists eg. Crossroads, Nyanga, Hout Bay.
- > Some applications were found in the incorrect area files.
- > Some applications were incorrectly filed as successful when in fact these were unsuccessful, and vice versa.
- > Applications that should have been available in the Applications files i.e. those that were found to be successful by the Department, were not found on the successful application files. This amounted to some 696 applications (see Annexure O).
- > Appeals that were not on file amounted to 50 (see Annexure P).
- > Several applications were duplicated i.e. two or more applications were submitted by the same person.
- > Several applications were incomplete i.e. missing sequence numbers, identity numbers etc.
- > We found 158 applications that did not previously exist on the community lists.
- > We found 64 applications that were marked as "spoiled" and slotted in the files.

It is therefore clear that the physical records do not correspond with the data that has been captured, and with the issues found on both the data and the physical records, we cannot verify nor provide any assurance on the completeness of the process records.

**RECOMMENDATION**

We recommend that the process be revised and started afresh to prevent dissatisfaction in the community and possible legal challenges to the Department.

**MANAGEMENT COMMENTS**

It should be noted that applications were correctly filed before first audit process in 2019. After the first audit phase, it was noted that the files came back to the department broken and files misplaced and application forms not placed back in right file. This issue was brought to the attention of the auditors. This prompted the department to recheck all the files from scratch. In this process, a number of files had to be taken from one file to the correct file.

All applications that could not be located by the auditors were located by the department in their respective files. In some instances, the files were misplaced/ filed wrongly by the audit team after the files had been handed over to them. This further refers to applications that were part of this report.

**INTERNAL AUDIT COMMENTS**

We note management's comments. We dispute these assertions completely. Our comments are as follows:

- D) The verification team on-site consisted of a Director (Coble van Antwerpen), Senior Manager (Anthony Pillay) and a large team of staff who conducted the verifications. Ms van Antwerpen was directly responsible for and actively controlled the extraction and return of all document files with our assigned liaison, "Puleng", as management was not available for most of the verification exercises. As soon as we identified a file that was broken, we requested Puleng to create a new file. This also applied to broken boxes, which Ms van Antwerpen personally assisted Puleng to tape up. Puleng would then in most cases create the new file/box and be present when we transfer information from the broken file to the new. At the end of the process, Ms van Antwerpen personally reviewed each box, with Puleng in the small boardroom to ensure that every box we returned contained each and every file and in the correct order. The register was signed by both parties acknowledging return and filing of the files (please refer to Annexure V for the

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signed file/box register). Furthermore, during the verification, we did not remove the documents from the files - to review, we paged through the file application by application.

Management indicates that they re-performed the filing before we commenced the second verification. If this was so, we would not have found various inconsistencies in terms of successful and unsuccessful applications / appeals. The finding relates to the fact that applications were not stamped successful and unsuccessful to clearly classify it accordingly within the files. Various instances were found where successful assessments were in an unsuccessful file and vice versa. It is therefore disingenuous for management transfer the responsibility for the obviously poor record-keeping to Internal Audit.

- ii) With regard to the applications highlighted in Annexure O, we confirmed with management that the first version of our draft report and accompanying electronic annexure contained the incorrect list. An updated list with the correct information was provided on 15 October 2020.
- iii) Management has also not addressed the following issues outlined in our finding above:
  - Appeals not on file;
  - Duplicated application forms for the same person;
  - Lack of consistency in community names between the physical documents and the data.

As per the above, our findings remain, and we urge management to review and revise application tools and information systems/methods used in the assessment and record-keeping process. We reiterate that we provide no assurance on the completeness or accuracy of the data and information.

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LIST OF LOCAL FISHERY CONTROL OFFICES IN WC

FISHERY CONTROL OFFICE	TELEPHONE NUMBER	FACSIMILE NUMBER	CELLPHONE NUMBER	CONTACT PERSON
ELANDS BAY	022-972 1706	022-972 1706	082321 2381	J Shouthy
GANSBAAI	028-384 0321	028-3841546/ 0866901202	0833518295	Gilbert Mmerekhi
STRUISBAAI	028-435-6220	028- 435-6383	0835386953	Yandiswa Mguga
GORDONS BAY	021-856 1482	021-856 5222 (alt. fax no)	0792667274	Percy Mabunda
HERMANUS	028-313-2703	028-3130502	0846275144	Nomonde Simon
KLEINMOND	028-271-5256	028-271 5256	0792667274	Percy Mabunda
DORINGBAAI	027-215 1211	027-215 1211	0736717797	Peter Horn
HOUT BAY	021-790 2530	021-7902808 / 021-7901792	0736606280	Lucas Finnish
KALK BAY/ MILLERSPOIN T	0217887471	0217881038	0735116374	Osborn Thela
KOMMETJIE/ WITSANDS	021-783 2295	021-783 5853	0721954957	Dakalo Gadisi
LAMBERTS BAY	027-432 1631/ 027-432 1303/ 027-432 1920	027-432 1228	082321 2381	Wally Cockrill
SALDANHA/	022 – 714 3997	022 -714 3997	082771 8910	Wade Theron

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PATERNOSTE/ JACOBSBAAI				
VELDRIF/ LAAIPEK	022 -783 0447 022 -783 1035	022 -783 0407	082784 6970	William Shilubane
YZERFONTEIN	022 -451 2267 022 -451 2344	022 -451 2267	073008 6192	Johannes Vraagom
LANGEBAAAN	022 - 714 3997	022 -714 3997	082771 8910	Wade Theron
ST. HELENA BAY & PATERNOSTE R	022 -736 1118 022 -736 1188	022 -736 1530	082829 3905	Willem Basson

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INTERIM RELIEF CONTACT DETAILS

Area	fisher/rep/contact persons	contact	Email
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3 Bettys Bay	Celeste April	06281009684	debruyrandojph@gmail.com
4 Blompark/Masakhane	Paul Venter	fax: 0283840185 Cell: 0765977472	venterwp@gmail.com
5 Buffelsjagbaai	Sarah Niemand/ Cedric Zietsman	0827238804	blinkwatersco@gmail.com / sedric.zietsman@gmail.com
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11 Elim	Christopher October	0796893944	cboctober@gmail.com
12 Eluxolweni (Pearly Beach)	Hendrick Latola	0844415515	hendrick.latola@gmail.com
13 Grassy Park	Rameez Gool	0738563123	goolrameez@gmail.com
14 Gugulethu	Major Sokoyi	0631551617 /	mlungeleni.ntswebu@vodadealers.co.za and gugulethufishir
15 Hangberg	Charmaine Phillips	0713226877	chrmpnphillips@gmail.com
16 Hawston	Issac Claasen	0746811231	brownjennilee@gmail.com
17 Helderberg/Strand/Sir lowrys Pass/Macassar/Gordons Bay	Armien Samuels	0725078089	dullahaziz@hotmail.com_helderberfish@gmail.com
18 Hopefield	James Moerat	0722790517	ecook@hotmail.co.za
19 Imizamo Yethu	Mninawe M Nkongolwane	0717456143	houtbay@postnet.co.za
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21 Khayelitsha/Phillipi	Sandi Mbali	0729917521	imateta25@gmail.com, pmateta@gmail.com' and
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30 Masiphumelele	Nelson Mendu	0639619112/ 0722683895 783499259	hildadms3@gmail.com NA

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31	Mitchels Plain/ Strandfontein/Hanver Park	Monre Willimas	719414874	delshawilliams04@gmail.com
32	Mount Pleasant	Gerald Montague	0721834869	montaquevodefon@gmail.com
33	Ocean View	Donovan Williams	0767768007	donovanwilliams856@gmail.com
34	Papendorp	steven donn	0786375956	lynettedon@gmail.com
35	Paternoster	Appolus Victor Duiker	0721558859	victorduiker3@gmail.com
36	Phillipi	Peter Stoto	0728665994	'zilindilegobe165@gmail.com'
37	Pringle Bay	Nico T Bergh	824223536	yolandapringlepvcay@gmail.com
38	Redhill	Nolufefe Ganyaza-Tshandu	732570279	fefetshandu@yahoo.com
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40	Sandy Point	Aiden Keith Adams	0731581963	eigelaarjac0@gmail.com
41	Stanford	Sarah Montaque	0735987911	lawrencelucas69@gmail.com
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