



forestry, fisheries  
& the environment

Department:  
Forestry, Fisheries and the Environment  
REPUBLIC OF SOUTH AFRICA

**SMALL-SCALE FISHING RIGHTS ALLOCATION PROCESS FOR WESTERN CAPE**

**GENERAL PUBLISHED REASONS FOR THE DECISIONS  
ON THE DECLARATION OF SMALL-SCALE FISHERS IN  
THE WESTERN CAPE**

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## 1. BACKGROUND TO THE DECLARATION OF SMALL-SCALE FISHERS IN THE WESTERN CAPE

On 1 September 1998, the Marine Living Resources Act 18 of 1998 (“**Act**”) was promulgated. The Act aims to provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources, and the orderly access to exploitation, utilisation, and protection of certain marine living resources.

The Act regulates fishing in South Africa. Section 18(1) provides that no person shall undertake commercial fishing or small-scale fishing (both of which are defined in section 1) unless the Minister has granted them a right to fish. Before 2014, the Act recognised and provided for rights of access only in the recreational, commercial and subsistence sectors. Many local fishing communities were marginalised by this. These communities were not authorised to operate in any of the fishing sectors regulated by the previous regime, but nonetheless fished on a small scale and as a result, all their operations deem to be illegal.

In 2012, the Policy for the Small-Scale Fisheries Sector in South Africa was gazetted (published under Government Notice No 474 on 20 June 2012) (“**Policy**”).

In 2014, section 19 of the Act was amended to recognise small-scale fishers to provide for community-based and small-scale fishing. The Act, as amended in 2014, defines a small-scale fisher as—

“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.”

The Act provides that small-scale fishing community—

“means a group of persons who—

- (i) are, or historically have been, small-scale fishers;
- (ii) have shared aspirations and historical interests or rights in small-scale fishing;
- (iii) have a history of shared small-scale fishing and who are, but for the impact of forced removals, tied to particular waters or geographic area, and were or still are operating where they previously enjoyed access to fish, or continue to exercise their rights in a communal manner in terms of an agreement, custom or law; and
- (iv) Regard themselves as a small-scale fishing community.”

In 2016, Regulations relating to Small-Scale Fishing were promulgated in GN 229 in GG 39790 of 8 March 2016 (“**Regulations**”) as required by section 19(1)(d) of the Act. The Regulations set out how small-scale fishing rights are to be applied for and granted. The process, in summary, comprises six steps:

- 1.1. **Step One:** Communities register an expression of interest with the Department.
- 1.2. **Step Two:** The Department conducts a verification process of each person claiming to be a small-scale fisher in each of the communities that have registered an expression of interest.
- 1.3. **Step Three:** The Department assists the community with registering the community as a co-operative and identifying suitable species



and fishing areas to be used for commercial purposes and for own consumption.

- 1.4. **Step Four:** The Department assists the verified fishing communities to apply for a fishing right.
- 1.5. **Step Five:** The Department assesses whether rights should be granted to the fishing community.
- 1.6. **Step Six:** The fishing communities may, if they so wish, appeal an adverse decision with respect to their application.

Step one and two commenced in 2016 for the provinces of Northern Cape, Western Cape, Eastern Cape and KwaZulu-Natal. Final lists of recognized and declared small-scale fishers for Northern Cape, Eastern Cape and KwaZulu-Natal were announced with minor complaints.

Between 2016 and 2019, the Department of Environment, Forestry and Fisheries as it was known prior to its restructuring, and the Department of Agriculture, Forestry and Fisheries ("**the Department**"), considered 8646 applications for the recognition of small-scale fishers and communities in the Western Cape.

Following the verification process for Small Scale Fishers in the Western Cape, the Department and the Minister received multiple complaints from community members about the fairness and accuracy of the process.

The Department conducted an audit on the process and its decisions to test the allegations pertaining to the transparency and fairness of the process and the decisions thereof. Following a comprehensive audit of the process of recognition of small-scale fishers, the findings revealed that, in summary:

- The verification Criteria used was not consistent with the legislation;
- The Verification form was ambiguous;
- Community panel members unfairly and deliberately excluded fishers in the process;



- Officials assessing verification information were not consistent;
- Service provider did not capture information correctly;
- The process followed for WC was wholly inadequate and unfair.

As a result, following the audit, it was found that the recognition or rejection of thousands of small-scale fishers was unfair and irregular and not in accordance with the law.

Considering the audit recommendations and consultations with relevant stakeholders, the Minister approached the High Court to review and set aside the process of awarding Small-scale fishing rights in the Western Cape. On 31 August 2022, an order was handed down in the Western Cape High Court, in terms of which the Western Cape small-scale verification process of 2016-2019 was reviewed and set aside. The applications lodged for verification and confirmation of small-scale fishers were remitted for consideration by the Department. As requested in Minister's affidavit, the persons set out in Annexure A (a list of all those who participated in 2016 process) of the notice of motion and Annexure B of the order were also entitled to make application under a new verification process. Pending the outcome of the new verification process, the initial arrangements to ensure that there is access provided to affected fishers remained in force and effect and hence Interim Relief (IR) dispensation continued in the Western Cape.

## **2. APPOINTMENT OF THE DELEGATED AUTHORITY**

The Minister of Forestry, Fisheries and the Environment appointed the Deputy Director-General: Fisheries Management as the Delegated Authority responsible for the allocation of fishing rights in the Small-Scale Fishing Sector in terms of Section 79 of the Marine Living Resources Act, 1998.



### **3. APPROACH TO THE NEW VERIFICATION AND DECLARATION OF SMALL-SCALE FISHERS IN WC**

In preparation for the new verification and declaration process, an independent implementer and observer service providers were appointed. The responsibility of the implementer was to provide administrative support to the Department to ensure a procedurally fair and transparent process aligned to the respective stages, scope and extent of the project. The responsibility of the Observer was to obtain sufficient, independent and appropriate audit evidence to be able to draw reasonable conclusions through the formation of an observer forum that included community leaders from the affected fishing communities and community based organizations (CBOs). The process of identification, verification and declaration of small-scale fishers followed the following steps:

1. Distribution of verification forms,
2. Receipting of verification forms,
3. Assessment of verification forms,
4. Announcing the outcomes of the verification forms.

The following are measure that were put in place in ensuring the new process was fair and transparent:

- Clarification that the criteria is based on the Act and its regulations as opposed to the Small-Scale Fisheries (SSF) Policy;
- A SSF Guidance and Explanation Notes were developed and publicised;
- Criteria used was clarified and all terms were defined in the SSF Guidance Notes;
- The SSF Guidance Notes also provided step-by-step instructions on how the verification form should be completed and what type of supporting documents could be submitted per question. These notes were translated into IsiXhosa, Afrikaans and English;



- The Registration and Verification form was amended and simplified in line with the challenge and recommendations identified by the audit report and the Department;
- To ensure consistency, Protocols for each step were developed for internal use in order to promote consistency,
- Furthermore, an independent Observer Service Provider was appointed to independently observe the entire process of recognition of small-scale fishers. This included formation of an Observer Forum, with recognised Community-Based Organisations, the Distribution and receipting of verification forms,
- Verification forms were issued to fishers in advance (for over two months) before verification at their respective communities;
- There was an emphasis on community mobilization and communication strategy on the process;
- An independent Implementer Service Provider was appointed to roll-out the process on behalf of the Department, and
- All documentation and communication were translated from English to IsiXhosa and Afrikaans.

### 3.1 DISTRIBUTION OF VERIFICATION FORMS

In preparation for distribution, a distribution protocol was developed. The protocol was to ensure that there is consistency in the process followed for all communities. Once the protocol was finalised, teams of over 40 individuals from the implementer and the Department were formed to be responsible for the four regions, namely: Garden Route, South Coast, Cape Metro and West Coast.

Before the commencement of distribution, the Department conducted a series of workshops and meetings with CBOs. This was to ensure that those who are members and represented by their respective CBOs are provided an



opportunity to give inputs to the process while they also receive first-hand information from the Department.

When the distribution process started, the Department ensured that there was sufficient mobilisation in communities. This included placing posters in local languages, sending out bulk SMSs, issuing media statements and public notices and sharing information with CBOs. This was to ensure that those who were eligible to receive verification forms were aware of the process, the dates and venues.

The Department reached over 70 venues to cover 109 communities with 8114 individuals together with individuals that were listed in annexure B of the Minister's Affidavit. This process commenced from 26 September to 07 October 2022.

In distributing the verification forms, the Department explained the outline and contents of the form to all recipients and assistance was availed to people who would have struggled to complete the forms. This was in addition to the fact that the forms were translated into local languages together with guiding notes on how the form should be completed. The Department further requested the CBOs to assist fishing communities, where possible. As agreed, a number of CBOs assisted and they convened workshops, small meeting and one-on-one engagements in a number of fishing villages. Communities were provided 30 days to complete their verification forms before the Department could start the process of receipting completed forms. However, a request to extend the 30 days was received from a number of organisations and individuals. After a meeting with CBOs to discuss the requested, the Department granted an extension of 30 additional days to allow for people to complete their forms.

Additional to the extension, two weeks of 'catch-all' was availed for additional people to collect verification forms and central venues. Individuals were also allowed to provide a proxy for their forms to be collected on their behalf. In total, the Department availed over 2 and half months for each person to



collate supporting documents, complete the form and submit. Out of the 8114 individuals who were expected to collect verification forms, 5271 forms were collected.

**Below is a summary of the receipting that took place:**

	Forms distributed	Language		
		Afrikaans	English	isiXhosa
<b>Week One</b>	2725	889	1673	163
<b>Week Two</b>	2360	1484	790	86
<b>Catch-All-Weeks</b>	186	50	127	9
<b>TOTAL</b>	<b>5271</b>	<b>2423</b>	<b>2590</b>	<b>258</b>

### 3.2 RECEIPTING OF VERIFICATION FORMS

As with all other steps, the first step that was taken was to develop a receipting protocol that was to be implemented by all individuals and the respective teams. This was, again, to ensure that there is consistency in the process. This further provided an opportunity for the Department to use an electronic receipting solution.

Similarly to the distribution phase above, extensive mobilisation took place in communicating the intention of the Department to receive completed forms, what will be required and time and date of the visits per community.

The Department undertook the Receipting Phase of the Registration and Verification Small-scale Fishers from 05 to 20 December 2022. This followed a successful Distribution Phase where the Department distributed 5271 forms to identified fishing communities. A total of 70 venues were reached, covering the 102 responsive coastal identified fishing communities out of 109.

All those who had completed their forms had an option of issuing a proxy to someone else in order for that person to submit a form on their behalf, should they not be available to attend and submit. Furthermore, a person had an

option to submit in any venue that was listed regardless of where a person resided. A person had an option to submit their completed form on any day from 05 to 10 December 2022. Through this time, the Department assisted individuals and the assistance was extended on the day of submission wherein officials went through the form to check completeness.

#### Week One

During week one of the Receipting Process a total of 48 communities were reached in three regions, i.e., Cape Metro, South Coast and West Coast. People submitted forms from all communities. A total of 1694 forms were submitted out of the 3492, translating to only 51% of the expected number.

All the planned sessions took place and fishers came through to submit their application forms in the identified fishing communities. Due to high volumes of individuals attending the sessions, some of the sessions went over the allocated time.

#### Week Two

Week two of the Receipting Phase had 52 communities being serviced in 33 venues by nine teams. The communities were in the Garden Route, South Coast and West Coast regions. A total of 1925 forms were expected to be returned from these communities and only 1578 forms were returned.

#### Catch-All Period

As the Small-scale Fishing Rights Allocation Process is meant to assist as many fishers as possible to access fishing rights, this period was set aside to allow fishers who missed the submission at their own location the opportunity to submit at predetermined central location for 1 or 2 days as per predetermined schedule.



*Table: Catch-All information below is for noting as the figures are captured in the respective communities in Week One and Two.*

Catch-All: Receipting

19 – 20 December 2022	Region	Venue	Received
	<b>Cape Metro</b>	Foretrust Building, Foreshore Cape Town.	67
	<b>West Coast</b>	West Coast Outreach Centre, Saldanha	15
	<b>South Coast</b>	Hermanus Multi-Purpose Centre	30
	<b>Garden Route</b>	D'Almeida, Hornlee and Plettenberg Bay	10
		<b>TOTAL</b>	<b>122</b>

The below is a receipting summary:

	Receipting Venues	Communities Reached	Registered Submission	Unregistered Submissions	Total Forms Collected
<b>Week One</b>	33	50	2178	159	2337
<b>Week Two</b>	33	52	1470	108	1578
<b>Catch-All</b>	4	-	117	5	122
<b>TOTAL</b>	<b>70</b>	<b>102</b>	<b>3765</b>	<b>272</b>	<b>4037</b>

Therefore, including the Catch-All period, a total of 4 037 forms were returned out of 5071. Therefore this means that from those who collected their verification forms, 80% of them completed and submitted their verification forms.

### 3.3 ASSESSMENT OF THE VERIFICATION FORMS AND ANNOUNCEMENT OF THE OUTCOMES

In preparation for the assessment, over 4000 verification forms receipted were scanned and digitised. A Protocol for the Assessment Process outlined how the Assessment Process would be conducted in two separate phases that could be applied concurrently. The first phase of the Assessments consisted of six Assessment Teams for the four regions, which verified all applications and gave an initial recommendation to the Delegated Authority.

Six assessments teams were provided specific regions that they were responsible for to assess application forms from those regions.

The following criteria, as set out in the Regulations relating to Small-scale Fishing (2016), was applied by the Delegated Authority in determining whether a person was a small-scale fisher:

- (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 of fish for a cumulative period of at least 10 years;
- (d) derive the major part of his or 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 livelihood needs;

In the Assessment and Verification process of verification forms, it was important to note that the Small-Scale Fishing Rights Allocation Process is a non-competitive process, and it seeks to include as many Small-Scale Fishers as possible. A principle that was used by Assessment Teams was that “All applicants were successful”, unless they were unable to provide proof that they met all the required criteria as described in the Regulations, which could also be described as the “Negative Marking” principle.

All assessment teams further considered the observations made during the Receipting process and collectively agreed on how to apply the Negative Marking principle so that applicants were not unfairly or unintentionally disadvantaged, but at the same time keeping the assessment process as consistent as possible and within the law. A technical assessment protocol was developed for this.

Acknowledging that there are generally varying levels of literacy in fishing communities and that the completion of application forms may have been a challenge for certain individuals, albeit having access to assistance from fellow

fishers, other individuals, CBOs and the Department, the Assessment teams assessed all the forms from the perspective of a fisher. This means that as much as there were set administrative requirements, a number of applicants may have not followed the prescribed requirements in completing the verification forms. **It is with this reason that the main objective of the assessment teams was to gather information submitted by an applicant, regardless of how the information was presented in the forms. The following are some of the standard approaches that were adopted to accommodate these anomalies:**

1. *If applicants were assisted by one person and the forms were identical with many other applicants' forms due to applicants being assisted by one person and/or Organisations;*
  - ✓ *An application was be assessed as is with an assumption that the information is that of the applicant regardless of what the other application of the other persons have.*
2. *If same supporting documents were submitted for multiple questions, for example, on question 5 and 6, some applicants would have provided one affidavit for the 10 years.*
  - ✓ *If the affidavit was providing a supporting document to the activities indicated in question 5 without the timeframe, the affidavit was accepted;*
  - ✓ *If the affidavit did not make reference to a traditional fishing operation in question 5 but it outline a traditional fishing operation and timeline, this was accepted;*
3. *What happened if the affidavit was self-declaring? I.e., it was deposed by the applicant on his /her behalf instead of a third party as required?*
  - ✓ *this was accepted and considered*
4. *If the affidavit was commissioned?*
  - ✓ *It was accepted and viewed similarly to a letter;*
5. *What if an applicant did not use the Departmental affidavit template and used a different affidavit template?*
  - ✓ *All forms of affidavits were accepted.*

6. What if an applicant indicated that their traditional fishing operation was through factory work?

✓ Working in a factory processing fish is not a traditional fishing operation and hence this activity and its supporting documents were not considered. "Traditional fishing operation" was defined in the Guidance Notes.

7. Did the person who was indicated to be available to vouch for you on the form had to be the same person to depose an affidavit?

✓ No

8. What If the copy of the South African ID was not attached

✓ The decision on the Application was reserved and the Applicants was requested to submit a copy of the ID/ temporary ID within a certain period.

✓ Those who failed to submit ID, their applications were unsuccessful as South African citizen and is 18> of age criteria could not be determined.

9. What if an applicant indicated that they had permanent employment on the form and still indicated that they depend on traditional fishing operations for their livelihood?

✓ The decision on the Application was reserved in order for the Applicant to provide further clarity.

10. What did the assessment teams look for in supporting documents?

✓ The Assessment teams looked for a document confirming the activity stipulated in question 5. for example, if a person says they have been fishing under IR in 2005, they could attach a permit together with its annexure of IR for that year. The annexure would have the name of the applicant as one of the fishers.

✓ A supporting document had to:

- Link to the applicant's name;

- *their activity that it is supporting;*
- *The year it is supporting, and/or*
- *To the name of the person who is vouching for the applicant.*

11. *What if an applicant did not attach any supporting document or attached an irrelevant supporting document such as letters or affidavits from the owner of an establishment, such as a packing factory, wherein the operations are not traditional fishing operations.*

✓ *This was not accepted and the applicant may have be unsuccessful due to this.*

12. *What if on question 5 an applicant completed the first year and did not complete the other years nor did not write "same as above".*

✓ *as long as there is supporting document supporting the activity that is " same as above"*

✓ *If the person ticked an activity together with the years (timeframe) and there were supporting documents, the application was assessed positively.*

13. *If the applicant wants to be recognised under a different community.*

✓ *This was noted in the comments for RoD purposes.*

14. *What happened if a verification form was "Incomplete" in terms of not ticking or answering all the required questions, but had provided all the required information elsewhere. For example, the applicant has not indicated the years of experience in Question 5c, but have indicated the years in the description section in that year.*

✓ *This was accepted.*

15. *What happened if the content in the 10 years' experience affidavit had been mixed up with that of the Dependency affidavit? For example the applicant uses the 10 years' experience affidavit to declare their*



*Dependency on traditional fishing instead of outlining their 10 years' experience in the sector or vice versa.*

- ✓ *In this case the verification was assessed in its entirety, and if the required information was provided in a different document, the applicant was assessed positively.*

16. *What happened if the total number of years indicated in Question 5 on the verification form did not match the years indicated in the supporting documents? For example, the applicant indicates that their 10 years' experience is between the years 2000 to 2010. However, the supporting documents provided show years between 2011 to 2022.*

- ✓ *In this case the assessment team considered the supporting documents and if the information provided in the supporting documents matched the content in the form, although the years did not match, the applicant was assessed positively using the supporting documents.*

17. *What happened if an applicant fully completes Question 5c indicating their 10 years' experience being from 2010 to 2023 but the applicant did not provide supporting documents for all 10 years of their experience? However, the supporting documents provided cumulatively cover 10 years of experience and above. For example, the applicant provides 5 supporting documents (aside from affidavit) and the oldest being from 2003, the second from 2008, the third being 2011, fourth being from 2013 and finally 2016.*

- ✓ *In this case the verification form was assessed in its entirety only if there was an affidavit covering the entire 10 years.*

18. *What if the applicant just indicated "IR" on the form and affidavit without any indication of the traditional fishing operation as defined?*

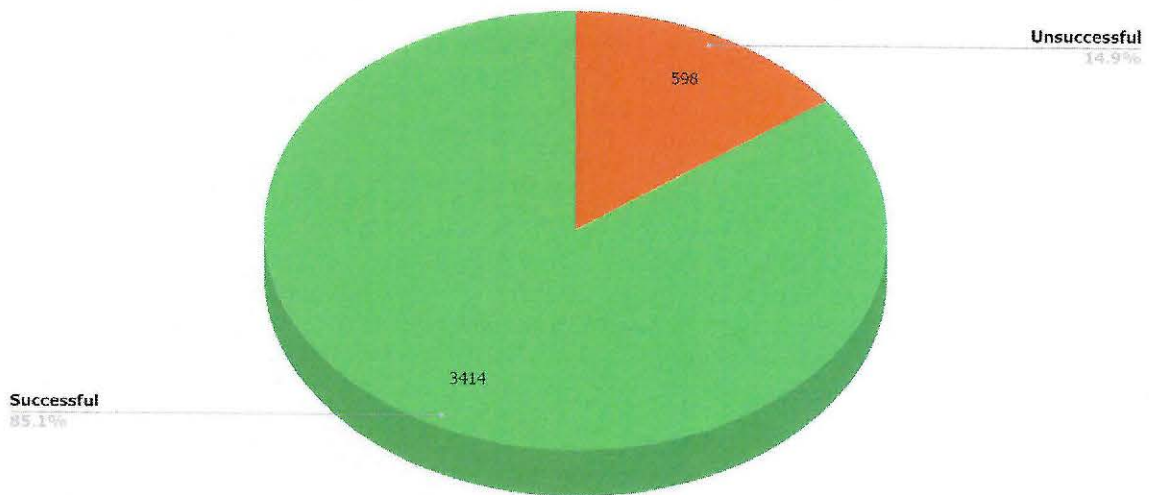
- ✓ *Only if the response indicated traditional fishing operations under IR. This was the case with the affidavit as well.*

19. What happened if an affidavit was altered or tampered with for example names are scratched?

- ✓ The document was not considered if the commissioner of oath did not countersign on the altered/amended part of the affidavit.

After assessing all submitted application forms, the Delegated Authority determined the final outcomes of all applications. The following is a summary of the outcomes of the applications:

**Final outcome of Applications**



REGION	TOTAL	%
CAPE METRO		34,26%
WEST COAST		29,84%
SOUTH COAST (OVERBERG)		32,97%
SOUTHERN CAPE (GARDEN ROUTE)		2,93%
<b>TOTAL</b>		<b>100,00%</b>

GENDER	%
MALE	69,24%
FEMALE	30,76%
<b>TOTAL</b>	<b>100,00%</b>

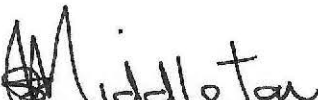
#### **4. RECORD OF DECISION LETTERS**

The formal decision of the Delegated Authority for unsuccessful applicants will be communicated through Record of Decision letters to all Applicants. The letters will specify the criteria that was not met and the specific reason why the criteria was not met. This may be the basis for an appeal should, the unsuccessful applicant wish to appeal the decision of the Delegated Authority. All Record of Decision letters will be accompanied by appeal packs for individuals who may wish to apply. Additionally, verification form of those who are unsuccessful will be made available.

#### **5. APPEALS**

Section 80 of the Marine Living Resources Act, 18 of 1998 as amended read together with Regulation 5 of the Regulations promulgated thereunder makes provision for the applicant to lodge an appeal to the Minister against the decision of the Delegated Authority, 30 days after the announcement of the list of successful small-scale fishers.

The appeal against the decision of the Delegated Authority should be based on the reasons provide on why an applicant was deemed unsuccessful by the Delegated Authority. All the relevant supporting information must be provided when submitting the Appeal Form. Appeals submitted after the closing dates will not be accepted.

  
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**Deputy Director-General: Fisheries Management**

**Designation: Delegated Authority: Small-Scale Fishing Sector**

Date: 6/3/2023