



MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA

**GENERAL PUBLISHED REASONS FOR DECISIONS ON SECTION 4 FOR CATEGORY B ENTITIES IN THE
HAKE INSHORE TRAWL SECTOR**

1. INTRODUCTION

- 1.1 This document sets out the Minister of Forestry, Fisheries and the Environment's (the Minister's) **General Published Reasons for Decisions on Section 4 for Category B entities in the Hake Inshore Trawl Sector** (Appeals GPR) sector in relation to section 4 of the application form (Appeals GPR) in the Fishing Right Allocation Process 2015/2016 (FRAP 2015/ 2016) in accordance with the judgment handed down by Judge Slingers in the Western Cape Division of the High Court on 12 September 2024 in the matters of *Hacky Fishing (Pty) Ltd v Minister of Forestry, Fisheries and the Environment and Others* (case number 18801/2023) and *Minister of Forestry, Fisheries and the Environment and Another v Cyrel Burrel Fishing CC and Others* (case number 2090/2024).
- 1.2 The focus of this Appeals GPR is the Minister's reconsideration of section 4 (suitability of vessels) of the application form in relation to Category B entities in the Hake Inshore Trawl sector during the FRAP 2015/2016, in compliance with the above-mentioned judgment.
- 1.3 The allocation of commercial fishing rights is mandated to the Minister responsible for the affairs of the Department of Forestry, Fisheries and the Environment (the Department/ DFFE) in terms of Marine Living Resources Act, Act 18 of 1998, as amended (MLRA).
- 1.4 Section 18(1) of the MLRA provides that: *"No person shall undertake commercial fishing or small-scale fishing ... unless a right to undertake or engage in such an activity ... has been granted to such a person by the Minister."*
- 1.5 Appeals are governed by section 80 of the MLRA read with Regulation 5(3) of the Regulations published under Government Notice R1111 in Government Gazette 19205, dated 2 September 1998 (MLRA Regulations).
- 1.6 The Minister's powers in terms of section 18(1) of the MLRA were delegated to the Deputy-Director General: Fisheries Management (DDG:FM) for the allocation of commercial fishing rights in the Hake Inshore Trawl (HIT) Sector in the Fishing Right Allocation Process 2015/2016 (FRAP 2015/2016).
- 1.7 In or during November 2016, the DDG:FM as the Delegated Authority (DA) published her *"General Published Reasons for the Decisions on the Allocation of 2015/16 Fishing Rights and Quantum in the Hake Inshore Trawl"* (DA's GPR). The DA awarded rights to the 6 top-scoring compliant applicants in Category B in the HIT Sector.

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- 1.8 Applicants that were aggrieved with the outcome of their applications were entitled to lodge appeals in terms of section 80 of the MLRA, to the Appeal Authority against any aspect of the decision taken by the DA.
- 1.9 Having considered the appeals before him, former Minister Zokwana published his "General Published Reasons for Decision on Appeals Hake Inshore Trawl Sector 2015/2016" (2017 Appeals GPR) on 13 July 2017.
- 1.10 Since the issuing of former Minister Zokwana's 2017 Appeals GPR, the HIT sector has faced several court applications out of the Western Cape Division of the High Court to judicially review, set aside and remit the various appeal decisions that were taken by the former Ministers in the HIT sector.

Litigation and Court Orders

- 1.11 Four court applications were brought challenging the first appeal decisions taken by former Minister Zokwana. Of these, two of the court applications related to the decisions taken on appeals relating to Category B applicants in the HIT Sector. In each of these court applications affecting Category B applications, an order was granted by agreement setting aside former Minister Zokwana's Category B appeal decisions in their entirety and remitting them to the Minister for reconsideration.
- 1.12 In the period between the setting aside and the reconsideration of the appeals, the 6 right holders who were successful on appeal in Category B were permitted to fish.
- 1.13 Former Minister Zokwana finalised his reconsideration of the remitted appeals during December 2018 and his second Appeals GPR was published on 1 February 2019. In terms of the second Appeals GPR, former Minister Zokwana introduced 22 new entrants across Category B and C into the HIT Sector. To accommodate these additional entrants the Total Allowable Catch (TAC) split between existing right holders (Category A) and new entrants (Categories B and C), was changed from 70/30 in favour of Category A to 57.22/42.8 in favour of Category A.
- 1.14 Five Category A right-holders successfully instituted judicial review proceedings out of the Western Cape Division of the High Court for declaratory relief to restore the 70/30 split in favour of Category A right holders, reviewing and setting aside the second appeal decision in its entirety, and remitting only the Category B and C appeals to the Appeal Authority for reconsideration within the confines of the 70/30 split. An order to this effect was granted on 2 August 2019.

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- 1.15 On 15 December 2021, former Minister Creecy, signed her appeal decisions regarding the remitted appeals in the HIT Sector in relation to Category B and C appellants. On 20 December 2021, former Minister Creecy's Appeals GPR was published, in terms whereof she determined that 11 Category B entities would be retained, and Category C would be reduced to 6 entities. Those entities that stood to lose rights were afforded an opportunity in terms of section 80(3) of the MLRA to make representations to the Minister on why their rights should not be revoked. These comments have also been provided to me.
- 1.16 On 25 March 2022, Hacky Fishing (Pty) Ltd instituted an application (case number 7006/2022) out of the Western Cape Division of the High Court, wherein it challenged the score allocated to it in respect of section 4 (access to a suitable vessel). The Western Cape High Court issued a consent order directing the Appeal Authority to reconsider the appeals of Hacky Fishing (Pty) Ltd and the following four (4) respondents that had opposed the judicial review proceedings: Cape Fish Processors CC, Ocean Ukhozi (Pty) Ltd, T&N Visserye CC and Zimele Fishing Enterprises CC, but only on the scoring of these entities in relation to section 4 of the application form (the Hacky court order).
- 1.17 During former Minister Creecy's reconsideration of those appeals that were remitted to her for her reconsideration, it was discovered that other entities not covered by the Hacky court order also did not comply with section 4 of the application form (suitable vessel). These entities are Cyrel Burrel Fishing CC, Risar Fishing CC, Tuna Hake Fishing Corporation Ltd, Sevlac Investments No 51 CC, and Raaff Fisheries CC. It also became apparent that some applicants that had been allocated a right before the rescoring would no longer be eligible to be allocated a right after the rescoring as these entities would fall outside of the top 11 scoring entities.
- 1.18 Minister Creecy issued a Provisional General Published Reasons for her reconsideration of the remitted appeals, and she issued notices in terms of section 80(3) of the MLRA to those entities that were in danger of losing their rights, calling on them to make representations to her on why they should not lose their rights. These section 80(3) comments have been provided to me.
- 1.19 On 15 December 2022, Minister Creecy issued her reconsidered appeal decisions in relation to Hacky Fishing (Pty) Ltd, T&N Visserye CC, Cape Fish Processors CC, Zimele Fishing Enterprises CC and Ocean Ukhozi Fishing (Pty) Ltd. Minister Creecy's appeal decisions have not been challenged and set aside on judicial review. These decisions therefore stand.
- 1.20 Subsequent to Minister Creecy issuing the reconsidered appeal decisions referred to above, Hacky Fishing (Pty) Ltd issued an application out of the Western Cape High Court, under case number 18801/2023, which was premised on Minister Creecy's supposed delay in finalising her decision regarding the allocation of rights in Category B in the HIT Sector.

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- 1.21 The discovery that other entities had also been incorrectly scored on section 4 of the application form necessitated a self-review application in order to allow the Appeal Authority to reconsider this aspect for entities not covered by the Hacky court order, to ensure that all the Category B entities are scored fairly on the same basis. Minister Creecy therefore lodged an application to the Western Cape Division of High Court for a self-review and to set aside her decisions taken on appeal in relation to Category B applicants in the HIT sector, on section 4 of their application forms (case number 2090/2024). Prior thereto, Minister Creecy successfully applied for an interim order directing that the Department is interdicted from granting fishing permits to the following Category B right holders in the HIT sector pending the issuance and outcome of the Self Review application that she would be instituting: - T&N Visserye CC, Cape Fish Processors CC, and Zimele Fishing Enterprises CC. They held a combined Hake TAC of 3,3336% and a combined Sole TAC of 2,2223%.
- 1.22 On 12 September 2024, Judge Slinger of the Western Cape High Court handed down a judgment and order in the cases of *Hacky Fishing (Pty) Ltd v Minister of Forestry, Fisheries and the Environment and Others* (case number 18801/2023) and *Minister of Forestry, Fisheries and the Environment and Another v Cyrel Burrel Fishing CC and Others* (case number 2090/2024) in terms whereof, she ordered, among other, as follows:
- 1.22.1 The scores allocated to Cyrel Burrel Fishing CC, Risar Fishing CC, Tuna Hake Fishing Corporation Ltd, Sevlac Investments No. 51 CC, and Raaff Fisheries CC in respect of section 4 (access to a suitable vessel) of the application form were reviewed and set aside.
 - 1.22.2 The appeal decisions of Cyrel Burrel Fishing CC, Risar Fishing CC, Tuna Hake Fishing Corporation Ltd, Sevlac Investments No. 51 CC, and Raaff Fisheries CC were referred to the appeal authority to reconsider section 4 of the application form.
 - 1.22.3 The Minister was authorised to revoke the rights of right holders in Category B who do not rank among the top 11 scoring applicants after the reconsideration of the appeals mentioned above.
 - 1.22.4 The Minister was authorised to award long-term commercial fishing rights to the entities ranking among the top 11 in Category B.
 - 1.22.5 The court orders outlined above must be finalised by 30 October 2024.
- 1.23 I have reconsidered the remitted appeals per the above judgment and order, specifically in relation to section 4 of the application form, for the entities listed in the court order: Cyrel Burrel Fishing CC, Risar Fishing CC, Tuna Hake Fishing Corporation Ltd, Sevlac Investments No. 51 CC, and Raaff Fisheries CC.

2. RECONSIDERATION PROCESS

- 2.1 The reconsideration process has been completed, and the following entities constitute the top 11 scoring entities in Category B:

No.	Entity	Score (%)
1	Le Tap CC	96,15
2	Mayibuye Fishing (Pty) Ltd	83,56
3	Fisherman Fresh CC	80,15
4	Premier Fishing SA (Pty) Ltd	76,13
5	Full Deck Investments (Pty) Ltd	72,17
6	Offshore Fishing Company (Pty) Ltd	69,43
7	Dazelle Traders (Pty) Ltd	67,34
8	Chapmans Seafood Company (Pty) Ltd	66,43
9	Ocean Ukhozi Fishing (Pty) Ltd	65,06
10	Precious Prospects Trading 110 (Pty) Ltd	64,95
11	Hacky Fishing (Pty) Ltd	64,61

3. 2024 FISHING SEASON

- 3.1 The judgment and order handed down by Judge Slingers requires that the Category B entities who previously did not rank among the top 11 in the sector, but who are now successful on rescoring, should be able to apply and receive permits in the HIT sector before 1 November 2024 should they comply with the prescribed requirements for such permits.
- 3.2 The entities that now rank among the top 11, but previously did not, are Premier Fishing SA (Pty) Ltd, Chapmans Seafood Company (Pty) Ltd, Precious Prospects Trading 110 (Pty) Ltd, and Hacky Fishing (Pty) Ltd.
- 3.3 For the remainder of the 2024 fishing season, Premier Fishing SA (Pty) Ltd, Chapmans Seafood Company (Pty) Ltd, Precious Prospects Trading 110 (Pty) Ltd, and Hacky Fishing (Pty) Ltd will be entitled to fish a share of the unallocated Hake and Sole TAC.
- 3.4 The unallocated 2024 TAC for Hake and Sole will be allocated to these entities as follows:

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Entity	Hake TAC (ton)	Sole TAC (ton)
Premier Fishing SA (Pty) Ltd	66.863	1.133
Chapmans Seafood Company (Pty) Ltd	80.372	1.362
Precious Prospects Trading 110 (Pty) Ltd	80.372	1.362
Hacky Fishing (Pty) Ltd	71.366	1.209

- 3.5 At the commencement of the 2025 fishing season, these entities will be receiving their full share of the TAC as set out in Annexure B to the Appeals GPR.

4. THE REVOCATION OF RIGHTS

- 4.1 Based on the reconsideration done by Minister Creecy and the judgment and order by Judge Slingers, the following 4 entities no longer form part of the top 11 in Category B in the HIT Sector and their rights are accordingly revoked:

- 4.1.1 Cyrel Burrel Fishing CC;
- 4.1.2 T&N Visserye CC;
- 4.1.3 Cape Fish Processors CC; and
- 4.1.4 Zimele Fishing Enterprises.

5. QUANTUM ALLOCATION METHODOLOGY

- 5.1 The quantum allocation was done on the basis that the apportionment of the inshore trawl component of the Hake TAC between Categories A, B and C is retained at 70:12:18. In other words, Category A right holders collectively receive 70% of the inshore trawl hake TAC, Category B right holders receive 12% of the TAC and Category C right holders receive 18% of the TAC.
- 5.2 The apportionment of the inshore trawl Sole TAC is also retained at: Category A 80% of the TAC, Category B at 8% of the TAC, and Category C at 12% of the TAC.
- 5.3 The "sector penalty" is applied as a further reduction of each Category B allocation in accordance with the approach used during the FRAP2015/2016 Quantum Allocation Methodology, which I likewise retained and applied herein:

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- i. Each Category B entity is assigned a "sector penalty" factor calculated as the sum of the points for each other sector in which the entity is involved (2 points for each Cluster A fishery and 1 point for each Cluster B or C fishery).
- ii. The allocation of each entity resulting from table 1 is reduced by twice the sector penalty expressed as a percentage (i.e. $2 \times [\text{sector penalty} / 100]$).
- iii. The balance of the Category B apportionment following these adjustments is then redistributed pro rata among the entities, with the exception of Mayibuye and Fisherman Fresh (to account for these entities being related to Category A Right Holders in HIT).

6. CONCLUSION

- 6.1 This decision will take effect from the start of the next fishing season in January 2025, save insofar as what is stated under the heading **"2024 FISHING SEASON"**.
- 6.2 Premier Fishing SA (Pty) Ltd, Chapmans Seafood Company (Pty) Ltd, Precious Prospects Trading 110 (Pty) Ltd, and Hacky Fishing (Pty) Ltd, in terms of the court order of 12 September 2024, are entitled to apply for permits for the remainder of the 2024 season. The issuing of permits is subject to compliance with prescribed requirements.
- 6.3 This Appeals GPR must be read together with the previous GPR issued by former Minister Creecy, in that this Appeals GPR only substitutes those aspects of that GPR that relate to section 4 of the entities' application form.
- 6.4 The annexures attached hereto provide the list of successful entities in the HIT sector and their respective Hake and Sole TAC allocations.



DR DT GEORGE, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 8 October 2024

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ANNEXURE A

Category A

No.	Entity Name	Application Number	Hake TAC (%)	Sole TAC (%)
1	Ulwandle Inshore (Pty) Ltd	HIT150014	3,892	5,319
2	Irvin & Johnson Limited	HIT150025	17,302	5,153
3	Lorcom Thirteen (Pty) Ltd	HIT150061	2,817	7,501
4	Umoya Fish Processors	HIT150098	1,878	2,099
5	Eyethu Fishing (Pty) Ltd	HIT150121	4,358	4,075
6	Dyer Eiland Visserye (Edms) Bpk	HIT150543	1,878	2,081
7	Seavuna Fishing Co. (Pty) Ltd	HIT150653	25,623	41,268
8	Interfish (Pty) Ltd	HIT150655	1,994	1,577
9	Capenis Investments (Pty) Ltd	HIT151504	1,038	0,99
10	Chetty's Fisheries CC	HIT151508	2,817	1,475
11	Nkunga Fishing (Pty) Ltd	HIT151512	1,409	1,543
12	Ezabantu Fishing (Pty) Ltd	HIT151550	1,878	1,946

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ANNEXURE B

Category B

No.	Entity Name	Application Number	Revised Score (%)	Hake TAC (%)	Sole TAC (%)
1	Le Tap CC	HIT151510	96,15	1,0992	0,7328
2	Mayibuye Fishing (Pty) Ltd	HIT151503	83,56	1,0109	0,6739
3	Fisherman Fresh CC	HIT151514	80,15	1,0309	0,6873
4	Premier Fishing SA (Pty) Ltd	HIT150111	76,13	0,9687	0,6458
5	Full Deck Investments (Pty) Ltd	HIT150567	72,17	1,1427	0,7618
6	Offshore Fishing (Pty) Ltd	HIT150003	69,43	1,0775	0,7183
7	Dazelle Traders (Pty) Ltd	HIT151549	67,34	1,1645	0,7763
8	Chapmans Seafood Company (Pty) Ltd	HIT150033	66,43	1,1645	0,7763
9	Ocean Ukhozi Fishing (Pty) Ltd	HIT150124	65,06	1,1427	0,7618
10	Precious Prospects Trading 110 (Pty) Ltd	HIT150060	64,95	1,1645	0,7763
11	Hacky Fishing (Pty) Ltd	HIT150079	64,61	1,0340	0,6893

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ANNEXURE C

Category C

No.	Entity Name	Application Number	Hake TAC (%)	Sole TAC (%)
1	Ukuloba Kulungile Investments (Pty) Ltd	HIT150067	3	1,440
2	Boloko Trading and Investments (Pty) Ltd	HIT150552	3	1,440
3	Ocean Prince Marine Products (Pty) Ltd	HIT150038	3	1,440
4	Kalmia Trading 1001 CC	HIT151121	3	1,440
5	Atlantis Seafood Products (Pty) Ltd	HIT151108	3	1,440
6	Southern Peninsula Trawling Co. (Pty) Ltd	HIT151128	3	1,440