



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

The Minister of Agriculture Forestry and Fisheries
Minister S. Zokwana, MP

Reference: AP/G&K Fisheries CC

REPORT IN TERMS OF REGULATION 5(3) OF THE REGULATIONS PROMULGATED UNDER THE MARINE LIVING RESOURCES ACT, 1998 (ACT No. 18 OF 1998): APPEAL IN TERMS OF SECTION 80 OF THE MARINE LIVING RESOURCES ACT, 1998 (ACT No. 18 OF 1998) ON THE APPEAL LODGED BY -

G&K FISHERIES CC

SECTOR: SHARK DEMERSAL

APPLICATION NUMBER: DMS 130145

1. Purpose

To submit a report as provided for in terms of Regulation 5(3) of the Regulations promulgated under the Marine Living Resources Act, 1998 (Act No. 18 of 1998) (“the MLRA”), with regard to an appeal by G&K Fisheries CC (“the Appellant”).

2. Introduction

- 2.1 The appellant is a right holder applicant whose application was refused on the basis that its application was “too weak” to justify the allocation of a shark demersal fishing right.
- 2.2 The appellant was scored a total of 34.79%. It requires 50% or more to qualify for a shark demersal fishing right.

2.3 The appellant's original appeal was mislaid and it was duly requested by the Department to re-file its appeal, which was done on 29 July 2015.

3. Grounds of Appeal

3.1 The appellant raises the following grounds of appeal:

- a) That it was incorrectly scored with regard to its submissions regarding the compliance criterion. Appellant claims it should be scored 10% and not - 3.33%;
- b) That it was incorrectly scored with regard to the criterion "catch utilization". Appellant claims that it ought to have been scored a maximum of 15% and not zero;
- c) That it was incorrectly scored with regard to the criterion "job creation and procurement". Appellant claims that it ought to have been scored an additional 0.63%.
- d) The appellant furthermore raises a number of systemic issues related to criteria adopted to score and compare applicants in this fishery; and
- e) The appellant states that the delegated authority provided insufficient information in that it was not provided with the full record of decisions and scoresheets for all applicants. It must be noted that appellants were provided with access to these records, as well as to the application forms of applicants in the respective fishing sectors.

Catching performance

3.2 The appellant was scored **0%** points under the criterion "catch utilization".

3.3 The appellant objects to this score noting that –

- a) it had uplifted its annual fishing permit in the shark demersal fishery in years 2008, 2009, 2010, 2011 and 2012. This is apparent from question 5.2 of the application form. Appellant claims that it ought to have been scored at least 10% as a result;
- b) Although it had not uplifted its permit during the 2007 season, it had uplifted its permit in 2006 and ought to have been scored accordingly. The

Appellant notes that the reason for it not uplifting a permit in 2007 was that it was building a new dedicated shark demersal fishing vessel. The Appellant avers that this reason ought to be “persuasive”; and

c) It was one of the few consistent and diligent performers in the sector.

3.4 In terms of paragraph 8.1(d) of the General Published Reasons: Demersal Shark (“the GPR”), the failure to effectively utilize ones shark fishing right is considered an exclusionary criterion. Read with clause 6.1(c) of the Demersal Shark Fishery Policy (“the Policy”), the failure to effectively utilize a right may result in the exclusion of the right holder applicant where no reasonable explanation is provided.

3.5 Both the GPR and Policy attempt to define what “effective utilisation” or “non-utilisation” is. It must be noted that the Policy speaks about “**non-utilisation**” as being a potential exclusionary criterion. Clause 6.2(c) of the Policy which deals with the Balancing Criteria to be used when scoring applications refers to the “fishing performance” of right holders being a scoring criterion.

3.6 The Acting DDG appears to have misdirected himself when interpreting the Policy and appears to have amalgamated elements of the “non-utilisation” exclusionary criterion and elements of the “fishing performance” balancing criterion.

3.7 Nonetheless, clause 8.1(d) of the GPR states that applicants were scrutinized to determine whether permits were taken out for “four or more years” and/or “caught more than 60 tons of demersal shark over the allocation period from 2007-2012”. It must be accepted that the construction of the above criterion ought to have read “*four or more years*” or “*caught more than 60 tons of demersal shark over the allocation period from 2007-2012*” as it is impossible to logically interpret the criterion as per clause 8.1(d) of the GPR. It is noted that although the reference in clause 8.1(d) is to “60 tons of demersal shark”, clause 10 (“Policy reasons for the allocation of rights and effort”) stipulates a minimum catch performance of 30 tons. I have not been provided with an explanation by the Acting DDG (at the time of the allocations) as to why there is this significant difference. I am therefore obliged to accept the 30-ton minimum catch stipulation.

3.8 According to the Department's records, as well as the submissions made by the Appellant, it had consecutively uplifted its shark demersal fishing permits for the 2008, 2009, 2010, 2011 and 2012 seasons.

3.9 The reason why the appellant had not uplifted its 2007 permit has to be considered as being reasonable and justifiable and the appellant ought not to be penalized for this. Appellant's score should therefore be increased by 15% as it had uplifted 5 of the 6 shark demersal fishing permits between 2008 and 2012 and the reasons as to why it did not uplift the 2007 permit is reasonable.

Compliance

3.10 The Appellant was scored -3.33% for compliance as it had indicated in its application form that it had been charged with an offence under the MLRA and paid an admission of guilt fine for contravening the MLRA.

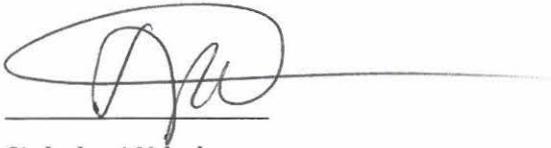
3.11 Appellant claims that despite its acknowledgement that it had paid the admission of guilt fine, it did so despite not having violated any permit provision or provision of the MLRA. Appellant's argument on this score cannot be sustained.

3.12 Appellant does however argue that, based on its submissions as contained in its application form, it ought not to have been penalized under Section 3.1.1 and 3.1.2 as these two answers in the affirmative refer to a single incident. The charge (section 3.1.1) led to the payment of the admission of guilt fine (section 3.1.2). The appellant's argument in this regard is convincing as it would otherwise amount to the appellant being penalized twice for the same violation.

3.13 Appellant's score should therefore be increased by 1,67% points.

4. Recommendation

Having had regard to the Appellant's grounds of appeal, it is recommended that the Minister **accepts** the Appellant's appeal in part by increasing its score to a total of **51.46%**, which is sufficient for a shark demersal fishing right to be allocated to it on the MFV KU-ULA (DTS 3742 A).



Siphokazi Ndudane

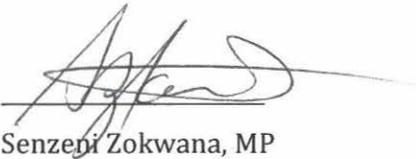
Deputy Director-General (Acting)

Fisheries Management

DATE:

9/9/15

Decision by Minister: Recommendation Accepted / Recommendation Rejected



Senzeni Zokwana, MP

MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES

DATE:

10 - 09 - 2015