



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/Ulwandle Fishing (Pty) Ltd

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 –

ULWANDLE FISHING (PTY) LTD

SECTOR: SHARK DEMERSAL

APPLICATION NUMBER: DMS 130569

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 Ulwandle Fishing (Pty) Ltd (“the Appellant”).

2. Introduction

- 2.1 The appellant is a new entrant 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 40.63%. It requires 50% or more to qualify for a shark demersal fishing right.

3. Grounds of Appeal

3.1 The appellant raises the following grounds of appeal:

- a) That it was incorrectly scored with regard to the criterion "Equity and HDI". In particular, the appellant claims an additional 7.5% for "female management"; an additional 7.5% for "youth management"; an additional 2,5% for "disabled management"; an additional 7.5% for the improvement of its transformation profile; and an additional 2.5% for "other benefits";
- b) That it was incorrectly scored with regard to the criterion "jobs and procurement" and more particularly that it ought to have scored an additional 0.63% for having made donations to charities; and an additional 1,26% because its wage bill had increased between 2007/2008 and 2008/2009;
- c) In addition to the allegations regarding the apparent incorrect scoring of its application, the appellant notes that certain new entrant applicants were granted rights despite not having established a right of access to a suitable vessel;
- d) The appellant contends (incorrectly) that black ownership was not scored and rewarded. The appellant was in fact scored for being a 100% black owned applicant.

Equity & HDI

3.2 The appellant was incorrectly scored on the criterion of "female management" and ought to have received a score of **7.5%** for this criterion.

3.3 With respect to the appellant's contentions regarding "youth management", "disabled management", the improvement of its transformation profile and "other benefits", these contentions should be rejected for the following reasons:

3.3.1 In so far as "youth management" is concerned, Mr CI Mdabula is not employed in any managerial position. This is clearly apparent from the appellant's application form, read with the applicable annexures;

- 3.3.2 In so far as “disabled management” is concerned, Ms N Mdabula is also not employed in any managerial position. Once again, this fact is abundantly clear from the appellant’s application form, read with the applicable annexures;
- 3.3.3 The appellant claims that it ought to have been awarded 7.5% points for the criterion “transformation improved” as it is 100% black owned and a new entrant and as such there was no prior benchmark against which it could be measured. Although the appellant is theoretically unable to improve or increase its transformation profile and therefore obtain the necessary score under this criterion, it is rewarded for its 100% black ownership profile; and
- 3.3.4 With respect to the appellant’s claim for an additional 2,5% for having contributed to “other” employee “benefits”, this should be refused for the following reasons –
- (a) The appellant stated in response to question 6.1.5 that it does not provide any benefits to employees other than a medical aid that is paid on behalf of Mr Xola Mdabula, the appellant’s sole shareholder and director. The appellant was scored in this regard.
 - (b) On appeal, the appellant states that there is a funeral plan in place in favour of Mr Xola Mdabula. However, when this plan is scrutinized, it is apparent that the owner of the policy is Mr Mdabula himself and not the appellant.
 - (c) On appeal, the appellant states that there is a second funeral plan in place in favour of Ms N Mdabula, an employee of the appellant. However, there is no proof of this plan other than an email from Nondumiso Koba. In addition, this email does not specify that the owner of the policy is the appellant. The email does however state that the policy was valid from January 2014 to December 2014 which is after the date of application.
 - (d) The appellant claims that it provides a retirement annuity for Mr Xola Mdabula and proof to this effect is appended to its appeal. It is noted that the appellant was scored 2.5% for having contributed to

“medical/pension” plans. Accordingly, the appellant cannot be scored twice on the same criterion.

(e) Finally, the appellant claims to pay for the university education of Mr C Mdabula but does not provide any proof of this.

Donations

3.4 The appellant was incorrectly scored on this criterion and ought to be allocated an additional **0.63%** as it had made a donation to the Community Chest of the Nelson Mandela Metro.

Increase in Wage Bill

3.5 The Appellant claims that it ought to be scored an additional 1.26% for having increased its wage bill between 2007/2008 and 2008/2009.

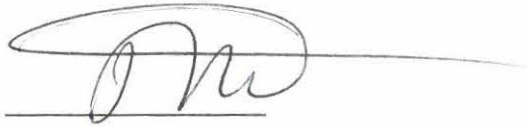
3.6 In support of this contention, the appellant has provided a redrafted table 8.1. There is no further supporting documentation from its auditors confirming the content of appendix H to its appeal.

3.7 However, if one considers Appendix 6I to its application form, which is a tabular analysis of, *inter alia*, salaries paid to the appellant’s staff between 2006 and 2011, read with the appellant’s response in table 6.1 of the application form, it is apparent that the appellant is not being entirely transparent or honest. Table 6.1 for example records a regular decline in salaries paid to “members” / “shareholders” between 2008 and 2011.

3.8 Finally, with regard to the allocation of fishing rights to appellants who had failed to nominate access to a suitable shark demersal fishing vessel, a decision has been taken to review all such decisions and those right holders who were granted rights notwithstanding their failure to nominate access to suitable vessels as defined, will be issued with notices in terms of section 28 of the MLRA.

4. Recommendation

Having had regard to the Appellant's grounds of appeal, it is recommended that the Minister **refuses** the Appellant's appeal as the maximum possible score that the appellant can attain is 48.76%.



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