



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Reference: Karbonkelberg Marine CC – WCOM153484

THE MINISTER

REPORT IN TERMS OF REGULATION 5(3) OF THE REGULATIONS PROMULGATED UNDER THE MARINE LIVING RESOURCES ACT, 1998 (ACT No. 18 OF 1998) (“THE MLRA”): APPEAL IN TERMS OF SECTION 80 OF THE MLRA: KARBONKELBERG MARINE CC: WEST COAST ROCK LOBSTER (OFFSHORE) FISHERY

1. PURPOSE

- 1.1 To submit a report as provided for in terms of Regulation 5(3) of the Regulations promulgated under MLRA, with regard to an appeal by Karbonkelberg Marine CC (“the Appellant”).

2. GROUNDS OF APPEAL

- 2.1 The Appellant’s ground of appeal relates to the fact that it was deemed to be successful when the provisional list was published and was awarded 0.43% of the TAC. In terms of the Final Addendum to the GPR, the Appellant scored 77.41% (above the 60% threshold), but was held to be unsuccessful on the basis of having provided insufficient information in response to the Delegated Authority’s request for additional information. The additional information was provided in the form of an affidavit.
- 2.2 The Appellant argues that the Delegated Authority erred on a number of grounds in the decision that the Appellant should be unsuccessful and that the Minister should set aside this decision and conclude that the Appellant is successful, with a minimum score of 77.41%, or alternatively the higher score motivated by the Appellant in the appeal (83.41% or alternatively 82.84%), and be awarded 0.43% of the WCRL TAC.

2.3 In a letter dated 19 September 2017, the Delegated Authority requested that the Appellant provide additional information by 25 September 2017, which the Appellant did. In a second letter from the DA dated 4 October 2017, the Appellant was requested to provide certain further additional information, which the Appellant provided on 13 October 2017.

2.4 When the final GPR was published on 24 October 2017, although the Appellant scored 77.41% which was above the 60% threshold, the Appellant was deemed to be unsuccessful on the grounds that the response to the Delegated Authority's second request for additional information did not contain sufficient detail.

2.5 The Appellant thus argues that it has five grounds of appeal:

2.5.1 The first ground of appeal is that the DA erred and/or misdirected herself in her interpretation of her powers in terms of the General Policy and Sector Policy as regards the assessment of the rights application, and in the awarding of rights in terms thereof. The Appellant argues that the DA was compelled to grant rights and quantum to successful applicants who scored above the threshold and that the DA's request for additional information is not authorised by Policies.

2.5.2 The Appellant's second ground of appeal is that the DA erred and/or misdirected herself in her interpretation of Section 5.10 of the General Policy, and in respect of her power in terms thereof. In particular, it is argued that the DA had no power to request additional information in terms of Section 5.10 of the General Policy. Rather, the relevant section is Section 5.10.1 of the General Policy where the DA can request further information related to the contents of the application form; was creating uncertainty; in respect of a material issue; and in which the material issue was featured in a substantial number of applications. The Appellant states that the DA had no power in terms of Section 5.10.1 to make the second request, and accordingly the request was unlawful as it was not requested from all applicants.

2.5.3 The Appellant's third ground of appeal is that the DA was misdirected in her finding that the Appellant "had failed to provide sufficient detailed information". The Appellant argues that it complied with the request to

provide additional information to three narrow questions and that the response, in the form of the required affidavit, provided all the information in the company's secretarial records in their possession. It further argues that any failure to provide additional information was minimal and furthermore, the Appellant has an excellent record of involvement in the industry and the refusal to allocate the Appellant a right is having an adverse impact on the Appellant.

- 2.5.4 The Appellant's fourth ground of appeal is that the DA failed to provide adequate reasons for her decision. The Appellant argues that the reasons provided in the notification letter do not comply with the requirement in Section 9 of the Sector Policy that "specific reasons" must be provided for the DA's decision.
- 2.5.5 The Appellant's fifth ground of appeal is that the DA failed to correctly score the Appellant in that the Appellant was incorrectly scored at 77.41% and should have scored a total score of 83.41%, or alternatively, 82.84%. In particular, the Appellant argues that it was incorrectly scored under Section 1.27 where it scored 0% but should have scored 2%; under section 4 (access to a vessel) it should have scored 12% or alternatively, 11.43% and not the 8% it was awarded in this section.
- 2.6 The Appellant finally argues that its appeal must be expedited and not dealt with simultaneously along with all the other appeals due to the urgency and the negative economic impact of it not being awarded a West Coast Rock Lobster right.

3. DELIBERATIONS

- 3.1 The Appellant was a Category A applicant. Category A applicants were classified as applicants who previously held rights in the West Coast Rock Lobster (Offshore) sector during the period 2006 to 2015.
- 3.2 The Appellant correctly states that it was deemed to be successful when the provisional list was published and was awarded 0.43% of the TAC. In terms of the Final Addendum to the GPR, the Appellant scored 77.41% (above the 60% threshold), but was held to be unsuccessful on the basis of having provided

- insufficient information in response to the Delegated Authority's request for additional information.
- 3.3 The Delegated Authority decided to request additional information from the Appellant based on a comment received from a member of the public during the comment period concerning allegations that a number of successful Category A Applicants were effectively fronting for Lusitania (Pty) Ltd. The Delegated Authority was of the view that this allegation warranted further investigation and therefore additional information.
- 3.4 The information provided in response to the first Request for Information was insufficient to determine whether or not the Appellant posed a potential paper quota risk and consequently, a second Request for further Information was made. The Delegated Authority does not support the claim by the Appellant that the second request was unlawful as it was not requested from all applicants. In fact, the Delegated Authority has specific concerns regarding the Appellant.
- 3.5 The Delegated Authority was of the view that the information provided in response to the second Request for Information was still inadequate to prove that the Appellant did not pose a paper quota risk as it did not provide proof that dividends were paid during the ten year period of the right. A decision was therefore taken to make the Appellant unsuccessful.
- 3.6 In terms of the Appellant's claim that it was incorrectly scored under Section 1.27 where it scored 0% but should have scored 3%, the Appellant answered "N/A for section 1.27 and was accordingly awarded zero (0) points. The Appellant argues that it should have received 1 (one) point for vessel owner; and 1 (one) point for marketing. Upon review, the Delegated Authority concedes that it could have scored 1 (one) point for access to a vessel but disputes the additional point under this section as, even upon appeal, the Appellant fails to provide confirmation as to which Annexure this additional information can be found.
- 3.7 In terms of the Appellant's claim that it was incorrectly scored under section 4 (access to a vessel), the Appellant indicated that it owned less than 2%

ownership in a number of vessels and was accordingly awarded 15 points out of a maximum of 25 points. The Appellant was correctly scored in this section. It is therefore recommended that the Appellant's score for Section 4 remains unchanged. It should be noted that the Appellant challenges and questions the methodology used in this section.



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