



# agriculture, forestry & fisheries

Department:  
Agriculture, Forestry and Fisheries  
REPUBLIC OF SOUTH AFRICA

Reference: West Coast Rock Lobster Nearshore Zone F Appeals

## THE MINISTER

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**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:  
WEST COAST ROCK LOBSTER NEARSHORE FISHERY (ZONE F) FOR:**

STEPHEN JOHN MAREE	WCNF150163
RUBEN SAMUEL MAREE	WCNF151032
ALETTA STEVENS	WCNF152501
ASHWELL NICOLAAS GILLION	WCNF151246
GERRIT ANDRIES	WCNF151394
THOMAS GREENWOOD	WCNF150260
JAN SNELL	WCNF152350
MARGARET MATILDA MAREE	WCNF152263
EDWARD THOMAS APPOLLIS	WCNF150100
PIETER SALIES	WCNF150535
CHRISTOPHER JOHN FISHER	WCNF150878
ERNEST JOSEPH COERTS	WCNF151171
ERNEST MICHAEL HENDRICKS	WCNF150053
MICHAEL JOHANNES BARRY	WCNF151884
WILLIAMS BENJAMIN PRINCE	WCNF150444
NTOMBEZIZWE QHANKQUIISO	WCNF150105
MANTENGU MNGQIBISA	WCNF150074
HENDRI VAN DYK	WCNF150755
WILLEM LUCAS	WCNF150085
RICHARD LAWRENCE LAKE	WCNF150350
MARTHA HENN	WCNF151469

## **1. PURPOSE**

- 1.1 To submit a report as provided for in terms of Regulation 5(3) of the Regulations promulgated under the MLRA, with regard to appeals by 21 Appellants in the West Coast Rock Lobster Nearshore Fishery (Zone F) (“the Appellants”).

## **2. GROUNDS OF APPEAL**

- 2.1 The grounds of appeal by 21 Appellants relates to the decision by the Delegated Authority not to allow applicants older than 65 years of age to become successful in the fishery.

## **3. DELIBERATIONS**

- 3.1 In line with the sector-specific policy objectives of promoting access to youth, women and people with disabilities, and further to promote meaningful participation in the fishery through active involvement of rights holders (i.e. to reduce the risk of paper quota holders), while also being mindful that rights are being allocated for a 15 year period, the Delegated Authority decided that applicants older than 65 years of age and/or who have been classified as being medically unfit (excluding persons with permanent disabilities) would become unsuccessful in order to prevent paper quota holders.

- 3.2 In terms of the Employment Equity Act, 1998 (Act No 55 of 1998) as amended defines people with disabilities as people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment.

- 3.3 The applications of the 21 Appellants were unsuccessful in the West Coast Rock Lobster Nearshore fishery due to being older than 65 years are as follows:

- 3.3.1 Stephen John Maree (WCNF150163) who indicated that the decision not to allocate him a right is flawed due to the fact that his score was 94% and he should have been granted a fishing right. The Appellant Appeals to the minister to set aside the decision by the Delegated Authority and grant him a West Coast Rock Lobster (Nearshore) right due to the fact that he scored above the set minimum threshold of 64.8. The Appellant was 67 years of age at the time of application.



- 3.3.2 Ruben Samuel Maree (WCNF151032) who indicated that the exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that his score was way above the set minimum threshold and that should have allowed him to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant contest that the Delegated Authority erred in her decision not to award the right to the Appellant and request that the decision be set aside. The Appellant was 73 years old at the time of application.
- 3.3.3 Aletta Stevens (WCNF152501) who indicated that her score for section 4 should be increased to from 3% to 8%. The Appellant also indicated that she should be awarded full points for section 5 as she activated all her catch permits and tried to harvest all the allocation but due to the lack of resource she could not catch all the allocation. The Appellant also argues that the Delegated Authority should review the scoring methodology, specifically for section 7. The Appellant argues that the scoring in section 7 is not fair in the total number of jobs, only 3 jobs can be created in West Coast Rock Lobster (Nearshore) not up to 90 employees. The Appellant also draws the Minister's attention to the fact that she has been involved in fishing all her life and she views the Delegated Authority's decision not to grant her the right as unfair, unjust and discriminating. The Appellant was 71 years old at the time of application.
- 3.3.4 Ashwell Nicolaas Gillion (WCNF151246) who indicated that his score for section 7 should be adjusted. The Appellant also indicated that he depends solely on the fishing right. The Appellant states that it is unfair and unconstitutional that his application was deemed unsuccessful due to age. The Appellant appeal to the Minister to grant him a fishing right as he depend on it and also harvest his allocation. The Appellant was 73 years old at the time of application.
- 3.3.5 Gerrit Andries (WCNF151394) who indicated he was incorrectly scored in section 5 as he provided catch records for nine (9) years in response to





section 5.2 and that should have awarded him maximum points in section 5 not 66.67%. The Appellant states that exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that his score was way above the set minimum threshold and that should have allowed him to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant further indicates that he is medically fit and harvest his own allocation, also he owns a vessel. The Appellant appeals to the Minister to set aside the Delegated Authority's decision and grant him a fishing right. The Appellant was 71 years old at the time of application.

- 3.3.6 Thomas Greenwood (WCNF150260) who indicated that exclusion of persons older than 65 years old is not in the policy and that decision by the Delegated Authority to exclude applicants older than 65 years old is unauthorized and amounts to a frolic of the Delegated Authority's own doing. The Appellant also states that age was used as a scoring matrix in section 1 where older applicants scored few points than younger applicants. The Appellant states that the decision not to grant rights to persons older than 65 years old amounts to blatant discrimination which is patently unconstitutional. The Appellant further indicates that the Delegated Authority did not follow the policy provision that says "*promote transformation through allocation of fishing rights to historically disadvantage persons, which include persons of designated groups (youth, women and people with disabilities)*". The Appellant states that by failing to grant him a fishing right the Delegated Authority is doing the opposite of the above policy provision. The Appellant further indicates that he is medically fit and directly involved in the fishery. The Appellant appeals to the Minister to reconsider the Delegated Authority's decision. The Appellant was 69 years old at the time of application.
- 3.3.7 Jan Snell (WCNF152350) who indicated that applicants with lower score were deemed successful and he was deemed unsuccessful due to age, while age was taken into account on the scoring matrix. The Appellant also states that this decision is not fair and not reasonable justifiable in an



open and democratic society based on human dignity, equality and freedom. The Appellant further states that if persons older than 65 years of age are unsuitable to be granted rights and that warrants exclusion, such exclusion should have been stipulated in the policy. The Appellant request the Delegated Authority to review his application status and grant him a fishing right in West Coast Rock Lobster (Nearshore). The Appellant was 66 years old at the time of application.

3.3.8 Margaret Matilda Maree (WCNF152263) who indicated that the exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that her score was way above the set minimum threshold and that should have allowed her to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant contest that the Delegated Authority erred in her decision not to award the right to the Appellant and request that the decision be set aside. The Appellant was 70 years old at the time of application.

3.3.9 Edward Thomas Appollis (WCNF150100) who indicated that the decision by the Delegated Authority not to grant the Appellant based on the fact that he is older than 65 years old or is not actively involved in harvesting and/or is medically unfit is unreasonable. The Appellant further indicates that he is medically fit and directly involved in the fishery. The Appellant appeals to the Minister to reconsider the Delegated Authority's decision. The Appellant was 68 years old at the time of application.

3.3.10 Pieter Salies (WCNF150535) who indicated that section 4 and section 7 should be rescored. The Appellant indicates that in section 4 he should have been awarded 8% not 3%. The Appellant argues that the scoring in section 7 is not fair, as right holders only employs 3 crew members in West Coast Rock Lobster (Nearshore) not up to 90 employees. The Appellant indicates that the Delegated Authority's decision not to grant him a fishing right based on the fact that he is older than 65 years is discriminating. The Appellant states that the Delegated Authority should have consulted him prior making a decision with regards to his age. The





Appellant also draws the Minister's attention to the fact that he has been involved in fishing industry for all his life and he views the Delegated Authority's decision to use age as a balancing criteria as unfair, unjust and unconstitutional. The Appellant appeals to the Minister to grant him a right in the West Coast Rock Lobster (Nearshore). The Appellant was 66 years old at the time of application.

3.3.11 Christopher John Fisher (WCNF150878) who indicated that his score for section 5 should be adjusted as he provided catch information for 9 years, therefor he should have scored 100% not 66.67%. The Appellant also indicates that the decision by the Delegated Authority not to grant the Appellant based on the fact that he is older than 65 years old or is not actively involved in harvesting and/or is medically unfit is unreasonable. The Appellant further indicates that he is medically fit and directly involved in the fishery. The Appellant appeals to the Minister to reconsider the Delegated Authority's decision. The Appellant was 70 years old at the time of application.

3.3.12 Ernest Joseph Coerts (WCNF151171) who indicated that he is in the fishing industry all his life. The Appellant indicates that he provides for his children out of the income he generates from the sea. The Appellant further states that for the past 11 years he has been able to provide for his family from the West Coast Rock Lobster (Nearshore) quota. The Appellant states that he is on pension grant but that is only enough to pay his municipal account (House rent and Water bill). The Appellant was 71 years old at the time of application.

3.3.13 Ernest Michael Hendricks (WCNF150053) who indicated that he was scored 8.50 for section. The Appellant argues that he attached a catching agreement for section 4 and that should have allowed him to score more points. The Appellant also argues that he has attached certified catch records for the past 5 years on his appeal. The Appellant states that although he mentioned on his application form at the time of application that he does not provide permanent employment, it can be considered as permanent employment as he employed the same crew every season. The Appellant indicates that he is a bona-fide fisherman all his life and fishing is the only job he performs the duties with passion. The Appellant also states that he is dependent on the income derived from the West



Coast Rock Lobster (Nearshore) right. The Appellant further states that it will be grossly unfair to expect him to go and seek other employment. The Appellant is of the view that the Delegated Authority after considering his appeal will come to a positive conclusion. The Appellant was 72 years old at the time of application.

3.3.14 Michael Johannes Barry (WCNF151884) who argues that in section 7 he was incorrectly scored 0% instead of 10% as he provided in section 7.2 that he employs 5 people. The Appellant indicates that R.S Maree (WCNF151032) was scored 10% with the same number of jobs as him. The Appellant further indicated that the exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that her score was way above the set minimum threshold and that should have allowed her to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant contest that the Delegated Authority erred in her decision not to award the right to the Appellant and request that the decision be set aside. The Appellant was 70 years old at the time of application.

3.3.15 Williams Benjamin Prince (WCNF150444) who indicated that he was incorrectly scored in section 5 as he provided catch records for 9 years in respect of section 5.2 and that should have awarded him 100% not 66.67%. The Appellant further indicated that the exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that her score was way above the set minimum threshold and that should have allowed her to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant contest that the Delegated Authority erred in her decision not to award the right to the Appellant and request that the decision be set aside. The Appellant was 66 years old at the time of application.





- 3.3.16 Ntombezizwe Qhankquiso (WCNF150105) who indicated that she was incorrectly score in section 5 as she is of the view that she activated at least 8 seasons and that she should be awarded full points for this section. The Appellant further states that her score will increase to 77.5% overall and that would mean she would be successful. The Appellant states that she is 100% reliant on the income from fishing and without this income she would be destitute. The Appellant requests the Minister to review the Delegated Authority's decision to not take into consideration the provision of the policy of *considering female applicants who may not personally be involved in the harvesting of the resource but who are dependent on the fishery for their livelihood*. The Appellant was 68 years old at the time of application.
- 3.3.17 Mantengu Mngqibisa (WCNF150074) who indicated that she was incorrectly score in section 5 as she is of the view that she activated at least 8 seasons and that she should be awarded full points for this section. The Appellant further states that her score should be increased to 76% overall and that would mean she would be successful.
- 3.3.18 Hendri van Dyk (WCNF150755) who indicated that in Zone F only 8 people scored higher than him and of the 8 only 6 was successful and 2 was unsuccessful. The Appellant argues that the 135 applicants who are successful in Zone F scored less than the Appellant. The Appellant states that the Delegated Authority infringed his constitutional right by not disclosing that persons older than 65 years old will not be successful. The Appellant states that the Delegated Authority by withholding this important information she denied him the right to make an informed decision, maybe apple for Small Scale or register a company and apply for Offshore where there are no age restrictions. The Appellant further indicated that the Delegated Authority ignored her investment in the vessel and the financial implications the decision not to allocate him a right would have on him and the crew he was working with. The Appellant states that he is 95%+ dependent on the fishing industry. The Appellant states that it can be rectified by granting him a fishing right and he is prepared to comply with additional conditions that may come with a right to prevent paper quota risk (e.g. non-transferability of a right and annual





fitness certificates). The Appellant was 70 years old at the time of application.

3.3.19 Willem Lucas (WCNF150085) who indicated that he was incorrectly scored in section 5 as he provided catch records for 9 years in respect of section 5.2 and that should have awarded him 100% not 66.67%. The Appellant further indicated that the exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that her score was way above the set minimum threshold and that should have allowed her to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant contest that the Delegated Authority erred in her decision not to award the right to the Appellant and request that the decision be set aside. The Appellant was 68 years old at the time of application.

3.3.20 Richard Lawrence Lake (WCNF150350) who indicated that the exclusion of applicants older than 65 years of age should be noted, as pensionable age was not used to exclude applicants. The Appellant put it on record that her score was way above the set minimum threshold and that should have allowed her to be granted a fishing right. The Appellant also indicated that the following applicants were granted rights though they were older than 65 years at the time of application: DC Maree (WCNF151709); PES Kennedy (WCNF151228) and AL Daniels (WCNF150304). The Appellant contest that the Delegated Authority erred in her decision not to award the right to the Appellant and request that the decision be set aside. The Appellant was 66 years old at the time of application.

3.3.21 Martha Henn (WCNF151469) who indicated that she does not agree with the score allocated to her in section 5 because of the late transfer. The Appellant argues that the Department allows rights to be transferred; therefore she should not be awarded average score due to late right transfer. The Appellant also indicated that she does not agree with the score in section 4, stating that her score should be adjusted from 8% to 12%. The Appellant also argues that section 7 of the application should



be compared against West Coast Rock Lobster (Nearshore) right holders only as vessels can only employ 6 crew members according to SAMSA certification. The Appellant states that during FRAP2015/2016 consultation process she was not informed of the applications that will be deemed unsuccessful due to age. The Appellant appeals to the Minister to review and set aside the decision by the Delegated Authority not to allocate the right to her. The Appellant humbly appeal to the Minister to grant her a right in the West Coast Rock Lobster (Nearshore). The Appellant was 74 years old at the time of application.

- 3.4 It is recommended that the decision of the Delegated Authority not to allow applicants older than 65 years of age to become successful in the fishery be upheld.



**BELEMANE SEMOLI**  
**DEPUTY DIRECTOR-GENERAL (ACTING)**  
**FISHERIES MANAGEMENT**  
**DATE: 21 AUGUST 2018**

