



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Fact Sheet: 14 December 2015

General Appeals Methodology adopted by Appeals Team

- Prior to the commencement of the evaluation of appeals in each fishery sector, the appeals team was briefed by the lead scientists responsible for the respective fisheries.
- The appeals team thereafter proceeded to evaluate each appeal filed. Each appeal was scrutinized by at least 2 members of the appeals team to ensure concurrence with respect to the proposed advice.
- Where appeals raised or concerned technical matters such as the suitability of fishing vessels or the substantial re-scoring of applications, the appeals team scrutinized these appeals to ensure compliance with scoring and weighting criteria, policies and the applicable regulatory framework.
- The following evaluation rules were generally used to decide and score applications on appeals:
 - All information submitted on appeal was considered provided that the information had existed as at the date on which applications were due. Agreements and any other data created subsequent to the application submission deadline were not considered;
 - Appellants that objected to their zero score for compliance were re-scored and allocated the scoring and weighting provided for in terms of the scoring and weighting criteria;
 - Appellants had to demonstrate access to a suitable fishing vessel in those sectors where vessels are required. Failure to do so was considered an exclusionary criterion in terms of the Fishery Policy;
 - Where Appellants provided information concerning the under-utilisation or non-utilisation of a fishing right by a current right holder; that a current right holder provided false information in its application form; that a current right holder misrepresented facts and information in its application form; or that a current right holder does not have access to

suitable fishing vessel, the Appeals Team has brought this information to the attention of the DDG so that she may commence proceedings under section 28 of the MLRA and provide the current right holder with the right of reply.

1. KwaZulu-Natal Prawn Trawl Fishery

- 17 appeals were filed in this fishery. Of these, 1 is by a right holder applicant and 16 from new entrant applicants. By 31 July 2015, 2 supplementary appeals were filed.
- The appeals team was briefed by Mr Neil Van Den Heever of the Department's Research Chief Directorate on the biological and ecological status of the prawn trawl fishery; catch data records before the allocation of fishing rights in 2013 and subsequently, effort limitations applicable to the fishery (noting that the fishery is divided between an inshore and offshore fishery) and the various challenges affecting the viability of the fishery, including the substantial incidental by-catches associated with the fishery.
- KZN prawn trawl fishery is a Cluster "A" capital-intensive industrial fishery located in KZN near the mouths of the St Lucia and Tugela River mouths and off the Tugela Banks.
- The fishery is controlled by limiting the number of vessels (TAE) that may operate in the fishery – 7 vessels – 2 offshore and inshore and 5 offshore only.
- The 2013 allocation process did not specify precisely how this effort was to have been allocated but 5 rights (5 vessels) were allocated. Of the 5 rights allocated, 2 were allocated to right holder applicants (Viking and Spray Fishing). It was subsequently determined after consulting with the department's scientist in charge of the fishery, Neil Van Heerden, that these two right holders hold the 2 offshore and inshore rights.
- 3 new entrant applicants were granted rights (Durban Seine Netters (Pty) Ltd / Horap Sea Ventures (Pty) Ltd / Umdibaniso Fishing Company (Pty) Ltd). Although one had uplifted its permit in 2013, none of these new entrant applicants has fished or landed any prawns over the last 2 seasons.
- Prior to the allocation of fishing rights in Dec 2013, the average black ownership profile of the 4 operating right holders was 66%. Immediately after the allocation of rights under FRAP 2013, the black ownership profile of the fishery decreased to 40%.

- Subsequent to the Minister's decisions on appeals, the black ownership profile of the fishery increased to 50%.
- Minister allocated 1 right to Hacky Fishing (Pty) Ltd (100% black owned / has suitable trawl vessel / was previous right holder). 16 Appellants were unsuccessful.
- Re the 1 remaining prawn trawl fishing right, the Minister has decided to invite interested parties to motivate for the allocation of the available right within a stated period (180 days) in terms of section 18 of the MLRA. These applicants should demonstrate the following –
 - Access to a suitable prawn trawl fishing vessel;
 - Access to the requisite capital and finance to operate a prawn trawl vessel, processing facility (or have access to a facility) and access to suitable markets;
 - A viable and ecologically sustainable fishing plan and knowledge of the fishery; and
 - BEE status.

2. Shark Demersal Fishery

- 21 appeals were filed by appellants in the shark fishery. Of these 21 appeals, 3 appeals were lodged by right holder appellants and the remaining 18 appeals were by new entrant appellants.
- At the end of December 2013, the Acting Deputy Director-General: Fisheries Management, decided to allocate a total of 3 fishing rights in this fishery. None of the existing right holders were re-allocated their fishing rights.
- A decision on the right holder applicant, Fisherman Fresh CC, was reserved by the Acting Deputy Director-General: Fisheries Management. The present Acting Deputy Director-General: Fisheries Management will take a decision on this application.
- As was the case with the prawn trawl appellants, the Minister remained concerned about the number of applicants who had lodged applications in this fishery sector without having nominated access to suitable fishing vessels and without understanding the various significant economic and biological issues affecting this fishery.
- The targeted harvesting of demersal sharks by long line is a complex and highly skilled venture. The Minister has noted with concern that the new entrant right holders in this fishery have been targeting and harvesting shark species such as

hammerhead sharks and other CITES listed species. In addition, the quantum of annual landings in this fishery had declined substantially.

- Having considered the 21 appeals, it became apparent that the vast majority of appellants had failed to demonstrate access to a suitable shark demersal fishing vessel. The Minister accordingly refused to grant these appellants their respective appeals.
- The only two appellants that satisfied the requirements set out in the shark demersal fishing policy are Hacky Fishing (Pty) Ltd and G&K Fisheries CC.
- Hacky Fishing (Pty) Ltd is granted a commercial shark demersal fishing right on the *MFV Joe Doe*.
- G&K Fisheries CC is granted a commercial shark demersal fishing right on the *MFV KU-ULA*. This decision will increase the black ownership profile of this fishery from 63.46% to 80%.
- Accordingly, 19 appellants were unsuccessful.

3. Oyster Fishery

- 74 appeals were lodged in this fishery. Of these, 7 of the appellants had been granted oyster harvesting rights but appealed on the basis that they wished to access alternative or additional harvesting areas. Four appellants failed to sign and commission their application forms. Twenty-two appellants are domiciled outside of any of the oyster harvesting areas. These included appellants living in areas such as Jeffreys Bay, Humansdorp, Nyanga, Pretoria, Mafikeng and Stanford.
- Oysters are currently harvested in four harvesting areas namely, the Southern Cape, Port Elizabeth, KZN North and KZN South. Each area is managed by limiting the number of oyster right holders (or pickers) that may operate in each area.
- A total of 145 right holders or oyster pickers may operate in each of the four harvesting areas.

	KZN NORTH	KZN SOUTH	SOUTHERN CAPE	PE	TOTAL
TAE	25 pickers	15 pickers	102 pickers	3 pickers	145 pickers

- The Southern Cape harvesting area is further divided into 3 harvesting sub-areas that have the following limits as to the number of pickers.

A1 Heidelberg	B2/C3 Riverdale /Mossel Bay	D4/E5 George/Knysna	TOTAL
10	58	34	102

- The oyster fishery is a low value, nearshore small-scale fishery. Oysters are principally harvested within the inter-tidal zone by pickers using basic fishing gear such as crowbars, dive masks and snorkels. Pickers will typically harvest oysters for sale to local restaurants and hotels.
- Of the 74 appellants, the Minister decided to allocate oyster fishing rights to 18 appellants. Key considerations when deciding the appeals by new entrant appellants were whether the appellant lived adjacent to or within close proximity of the harvesting zone and our commitment to transformation. With regard to right holder appellants, the Minister also considered the appellant's past performance and whether the appellant uplifted oyster permits and regularly harvested oysters during the period prior to 2013.
- Accordingly, 56 appellants were unsuccessful.
- Of the total rights granted (18 on appeal + 54 initially = 72) in this fishery subsequent to the appeals process, black individuals hold 70.37% of the allocated.

4. White Mussel Fishery

- The Minister considered and evaluated 55 appeals. Of these, 2 of the appellants had been granted white mussel harvesting rights. Both of these appellants appealed on the basis that they wished to harvest mussels closer to the harvesting zones in which they lived. Only one of these appellants succeeded as her harvesting zone was excessively far from her home.
- Harvesting of white mussels is limited to seven (7) harvesting zones along the West Coast of South Africa between Bokpunt in the South and Doring Bay in the North.
- The white mussel fishery is an economically marginal, small-scale fishery, which does not require any harvesting gear such as (snorkels, masks or harvesting

implements) or much skill. Harvesters can typically expect to earn approximately fifty cents per mussel harvested. It is a low impact, low income earning sector ideally suited to women who live in coastal villages and towns adjacent to one of the 7 harvesting zones.

- During the process of considering the appeals, it became apparent that the scoring and weighting criteria that were adopted for this fishery sector by the delegated authority, were entirely inappropriate for this fishery. The consequence of continuing to apply these criteria would be to perpetuate unnecessary hardship and prejudice to a significant number of appellants.
- The Minister accordingly instructed the appeals team to evaluate the appellants according to a revised set of evaluation and scoring rules and criteria. These are explained in detailed in the Minister's Appeals GPR.
- The Minister's decisions in this fishery mark a substantial shift away from the historic way the fishery has been managed. The decisions aims to empower more harvesters by allocating to them section 18 rights.
- Whereas, historically only 7 rights could be granted in this fishery, the Minister has now allocated a total of 20 rights on appeal (total of 26 for the fishery) as follows:
 - In **Zone 1**, the Minister has allocated a total of 6 rights. Each right holder in this zone will be required to harvest his/her own mussels and will not be permitted to employ pickers.
 - In **Zone 2**, the Minister has allocated a total of 1 right. The current right holder, CJ Hugo, has been re-allocated her right in Zone 5, which is significantly closer to her area of domicile (Elands Bay). The new right holder in Zone 2, Ms S Basson, will be permitted to employ a maximum of 6 pickers to assist her in the harvesting of mussels.
 - In **Zone 3**, the current right holder, Ms L Pharo, presently employs 3 pickers. She will be encouraged to employ an additional 3 pickers in order to maximize the right allocated to her.
 - In **Zone 4**, the Minister has allocated an additional 2 rights. The current right holder, together with the 2 additional right holders will be permitted to each employ 1 picker in order to maximize the effort allocation in this zone. The permit conditions issued to the current right holder will be amended accordingly.
 - In **Zone 5**, the Minister has allocated an additional 6 rights, including accommodating Ms CJ Hugo from Zone 2. Each right holder will be

required to harvest his/her own mussels and will not be permitted to employ pickers. The permit conditions issued to the current right holder will be amended accordingly.

- In **Zone 6**, the Minister has noted that the current right holder, Ms M Capes, has employed a total of 9 pickers. This is in excess of the effort limitations set for this zone and the Minister has accordingly instructed the Department to immediately amend Ms Capes' permit conditions by reducing the number of permitted pickers from 9 to 6.
- In **Zone 7**, the Minister has allocated an additional 6 rights. Each right holder will be required to harvest his/her own mussels and will not be permitted to employ pickers. The permit conditions issued to the current right holder will be amended accordingly.
- A total of 26 right holders are now accommodated in the white mussel fishery. Of the 26 right holders, 22 (85%) are black.
- Accordingly, a total of 34 appellants were unsuccessful.

5. **Tuna-Pole**

- 88 applicants had filed appeals against the decision of the Acting Deputy Director-General: Fisheries Management to either refuse them a tuna pole fishing right or in cases where applicants were successful, against the DDG's decision to allocate a specific number of vessels.
- Of these 88 appeals, 31 are from right holder applicants and 57 from new entrant applicants. Of the 57 new entrant appellants, 8 are appeals concerning applications from co-operatives, 3 from individuals and 1 from a trust. Trusts and Individuals were not permitted to apply for a tuna pole fishing right in terms of the Tuna Pole Fishery Policy: 2013. These applications were deemed to have been improperly lodged and the appeals are refused accordingly.
- The appeals by the 8 co-operatives could not succeed either for the reason that co-operatives cannot at present lawfully acquire and hold a section 18 commercial fishing right. Co-operatives may eventually be capable of being holders of commercial and small-scale commercial fishing rights should the Marine Living Resources Act, Second Amendment Act of 2014, be signed into law by the President of the Republic. Until this Second Amendment Act comes into force, the Minister is precluded from granting fishing rights to co-operatives.
- The Minister also points out that he had applied the policy that appellants had to demonstrate access to a *suitable tuna pole fishing vessel* as a peremptory requirement. Failure to demonstrate access to a suitable vessel was considered

an exclusionary criterion in terms of the Tuna Fishery Policy of 2013. In particular, the requirement that nominated vessels had to be commercial fishing vessels as opposed to luxury yachts, recreational vessels or recreational charter vessels was applied. In addition, nominated vessels had to have a valid SAMSA certificate as at the date of the fishing right application.

- The Minister has requested that the DDG institute section 28 investigations against all those current right holders who were granted fishing rights in this fishery despite not having demonstrated access to a suitable fishing vessel and who continue to either under-utilise or not utilise their fishing permits. The Minister wishes to emphasise that fishing performance by right holders in this fishery is particularly important to South Africa's national and regional fisheries interests because it is ultimately our ability to successfully catch and land our internationally set pro-rata tuna allocations that will determine our future tuna catch allowances, which are set at ICCAT, CCSBT and IOTC, respectively.
- The tuna pole fishery is considered to be one of the most "green" fisheries in the world as tunas are harvested using the extremely selective method of poling resulting in little to no by-catch at all. The South African tuna pole fishery targets albacore and yellow fin tunas in both the Indian and Atlantic Oceans.
- The tuna fishing season commences on 1 October and continues until the end of May. As tunas are highly migratory species, the South African fishery is ultimately managed by a number of Regional Fishery Management Organisations (RFMO's), including CCSBT, ICCAT and IOTC, which determine global and country quota allocations. Due to biological concerns about the health of Atlantic Albacore stocks, ICCAT recently reduced South Africa's albacore tuna allocation from 5000 tons to 4400 tons. SA consequently reduced its vessel effort limitation from 200 vessels to 163 vessels (as per current season's total applied effort (TAE)).
- The Minister had elected to decide the applications lodged by co-operatives in this fishery. On 30 December 2013, the DDG at the time decided to reserve his decision on the applications filed by 19 co-operatives. The Minister has decided to refuse each of these applications for the reason that as at the date of the application, co-operatives could not lawfully apply for, acquire or hold a section 18 fishing right in terms of the MLRA. This prohibition continues to apply until such time as the Second MLRA Amendment Act comes into force as stated above.

- The Minister decided to grant the appeals of 36 of the 88 appellants. Of the 36 successful appellants, 20 are right holder appellants and 16 are new entrant appellants. **The Minister wishes to highlight that the finalization of the appeals process in this fishery has substantially bolstered black economic empowerment and transformation.** Prior to the allocation of the current long term fishing rights in the tuna pole fishery, the percentage of black-owned right holders in the fishery stood at 54%. This has now increased to an impressive 69%.
- The Minister's decisions will result in the introduction of an additional 23 vessels to the fishery, which will result in the vessel TAE for this fishery increasing from 133 vessels to 156 vessels. The crew allocations to each successful appellant are based on the maximum crew allowance as per the SAMSA safety certificate for each applicable vessel. The Minister has directed that the 7 latent rights (vessels) remain available for allocation to those right holders who may wish to introduce a new vessel to the fishery as it is the Minister's objective to encourage fishing performance and consequently job creation in this fishery.

6. Squid

- A total of 98 appeals were filed in this fishery.
- Of these, 37 were by right holder applicants and 61 from new entrant applicants. Of the right holder appellants, 7 were unsuccessful applicants (who had continued to fish squid in terms of a section 81 exemption authorization), while the remaining 30 had appealed either on the basis of effort or because they were dissatisfied with the scores allocated to them.
- The Delegated Authority had reserved his decision on 1 application (ie. Kelro Fishing CC) in December 2013. This application will be decided by the present DDG (Acting) as she is the repository of authority to decide current section 18 fishing right applications.
- The squid fishery is one of South Africa's newer fisheries. The commercial jig fishery commenced in the mid-1980's. SA's squid is regarded as one of the finest in the world with up to 100% of the catch exported to Southern Europe.

- The fishery is one of the few commercial fisheries that are based in the Eastern Cape due to the geographic locality of the squid resource. The squid fishery is presently facing serious biological threats, in addition to the serious financial instability in its principal export markets (ie. Greece and Spain).
- Squid catches peaked between 2002 and 2004 with catches in 2004 reaching a record high of just over 12,000 tons, coupled with very good market conditions. From 2009, squid catches have plummeted to under 8,000 tons annually. In addition, prices for frozen squid have stagnated while operating costs have surged. In 2014, more than 60% of the squid fishing fleet did not go sea, which resulted in substantial financial hardships for quota holders and their crews.
- The squid fishery is managed in terms of a TAE formula aimed at ensuring with 95% probability that the squid biomass does not drop below 20% of the average pristine abundance, so that future recruitment success is not jeopardised. The effort is regulated in terms of the following framework:
 - The maximum number of crew permitted to harvest squid across the fishery is set at 2422 crew; and
 - The maximum number of man days fishing during the season should not exceed 250,000 and
 - There are two closed seasons totaling slightly over 4 months; i) A permanent closed period of 5 weeks between October and November to allow for summer spawning; and ii) an additional 3 months in winter to prevent the man-days from exceeding 250,000, which the 2422 crew already granted the right to fish could otherwise readily and substantially eclipse.
- Prior to the allocation of fishing rights in Dec 2013, the average black ownership profile of the right holders in this fishery was 49%. Immediately after the allocation of fishing rights in Dec 2013, the average black ownership profile of the right holders was 62%. Black ownership of the fishery now stands at 61% of all rights issued.
- The 98 appeals have been categorized as follows:
 - Those successful right holder applicants who have appealed against the decision pertaining to the number of vessels and crew allocated by the

DDG on 30 December 2013 (and subsequently corrected in March 2014);
and

- Those successful right holder applicants who have appealed on the basis that they were scored incorrectly and their scores ought to be amended. These appellants did not seek an increase in the number of vessels or crew allocated to them;
 - The appeals lodged by the 7 unsuccessful right holder applicants who have been fishing since 2014 under the authority of a section 81 exemption; and
 - The appeals lodged by 61 new entrant applicants.
- Due to the complexity of these decisions, the Minister has published his reasons and explanations for the decisions in a separate document, which will be made available to every appellant.
 - With regard to the 61 appeals by the new entrant appellants, these appeals have been denied for the following reasons:
 - (a) The squid resource is under tremendous biological pressure. The fishery itself remains in an economically precarious state. To permit any new entrants to the fishery would be reckless and contrary to the objectives set out in Section 2 of the MLRA;
 - (b) The appeals process has resulted in an additional 125 crew rights being added to the fishery, which is extremely close to the upper limit set for the fishery; and
 - (c) The black economic ownership profile of the fishery has improved substantially since 2005. Current right holders have successfully engaged in a process of internal transformation, which has resulted in a 61% black ownership profile for the fishery.

7. Hake Handline

- There are a total of 118 appeals.
- Of these, 84 are by individuals and 34 by legal entity appellants. Of the 34 legal entity appellants, 3 are co-operatives. As co-operatives may not acquire or hold fishing rights under the Marine Living Resources Act, these appellants' respective appeals have been refused.
- The South African hake handline fishery developed in the 1980's targeting inshore shallow-water hakes. The fishery is a small-scale fishery that has historically been exploited by small boats along the Southern and Eastern Cape coasts as far north as Port Alfred.
- While the fishery remained very lucrative during the 1990's and until about 2006/2007, the changing nature of the international market into which the handline caught hake was sold and the biology of the resource resulted in a substantial contraction of the fishery.
- Once shallow-water hake moved further offshore making it inaccessible to the fishery. In addition, European markets for PQ hake contracted substantially resulted in depressed prices, while operating costs (fuel and labour) increased forcing many right holders to abandon their hake handline fishing businesses.
- The fishery currently operates for ± 3 months of the year. However, given that hake are increasingly located in deeper waters, small boats will find accessing the fishing grounds difficult. The fishery is formally managed in terms of a total allowable catch of 5165 tons set in terms of section 14 of the Marine Living Resources Act. Between the 2006 and 2013, the TAC of ± 5000 tons has never been fully landed and in fact less than 2500 tons was the average landing for each season over the period between 2007 and 2013.
- The allocation of many hake handline fishing rights during the FRAP 2013 process to right holders with no boats and to those outside of the hake handline fishing zone has meant that the fishing effort in the fishery has been further reduced as these right holders are unable to harvest hake. The Minister's concern however is that these right holders (at least those with vessels) are

targeting line fish species such as snoek, kob and hottentot to the detriment of the traditional line fishery.

- Of the 87 current right holders in the fishery, departmental records show that in 2014 only 24 right holders uplifted their permits. In 2015, this number declined to 21. Accordingly, only 24% of all right holders in this fishery are presently active and utilizing their rights. This remains a concerning trend for the Minister as it means the fishery remains largely inactive with historical hake handline crew unemployed with few employment options available.
- The Minister has decided to grant hake handline fishing rights to a total of 23 appellants. This equates to an additional 291 crew rights and 26 fishing vessels. Of the 23 successful appellants, 12 are legal entity appellants and the remainder, individual fishers.
- The black ownership profile of the fishery prior to the 30 December 2013 decision was 30%. The current black ownership profile of the fishery now stands at 79% for individual right holders and 46.7% for legal entity right holders.
- Given the exceptionally poor permit activation rate in this fishery during 2014 and 2015, the Minister has instructed the department to undertake the following measures without delay:
 - Commence with a socio-economic investigation aimed at understanding why so few hake handline fishing rights have been activated;
 - Commence with a scientific study to determine whether the fishery remains suitable for small-scale fishing and vessels smaller than ±10m or whether the fishery should instead be considered a part-time commercial fishery that could provide greater economic support to squid operators using vessels larger than 11m in length and capable of targeting once shallow water hakes; and
 - Issue section 28 notices to all those right holders who failed to apply for and uplift their hake handline fishing permits over the past 2 seasons. These section 28 notices and responses (if any) would directly inform the socio-economic investigation.

IMPORTANT: Small-scale fishers on the Southern Cape & Eastern Cape Coasts

- Given that between 2006 and 2013, the 742 hake handline crew have never been able to harvest more than 2500 tons of hake in any one season, the Minister will be considering the viability of expanding this fishery by accommodating an additional 700 crew rights **reserved exclusively** for small-scale fishers and particularly those fishers that crew squid boats and who are domiciled in the Southern and Eastern Cape.
- The intention of this expanded fishery will be to ensure that these squid fishing crew may continue harvesting fish and earning an income during the squid closed seasons or when squid fishing vessels are not operating.
- The decision to expand this fishery will be taken by the Minister once the results of the socio-economic and scientific studies referred to above have been completed and the data analysed.

Traditional Linefish Appeals

- In accordance with the terms of the Deed of Settlement concluded between the SA Commercial Linefishers Association and the Minister (Court Order made 6 November 2015), right holder applicants in the line fishery will be entitled to supplement their appeals.
- The Minister's advisory team met with representatives of SACLA on 27 November to discuss the terms of the settlement order and it was agreed that supplementary appeals would be filed on or before 16h00 on 8 January 2016.
- Further, before the Minister decides the appeals, the Minister will first publish a provisional list of possible successful appellants. Members of the public and the linefishery will be able to provide comment on the provisional lists.
- The Minister will thereafter make a final decision on the appeals.
- It is foreseen that the final decision on line fish appeals will be taken toward the end of February 2016.