



# 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/ Cape Town Harbour Fishermen's Community Trust**

**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 -**

**CAPE TOWN HARBOUR FISHERMEN'S COMMUNITY TRUST**

**SECTOR: DEMERSAL SHARK**

**APPLICATION NUMBER: DMS 130219**

**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 Cape Town Harbour Fishermen's Community Trust ("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 Demersal Shark fishing right.
- 2.2 The appellant was scored a total of 25%. The Acting DDG had decided that new entrant applicants that had scored 50% and more would be granted a fishing right in this fishery. The reason for the refusal of the Appellant's application was

because its application was comparatively too weak to justify the allocation of a right.

- 2.3 The Appellant is a Trust and had failed to demonstrate access to any vessel in its application form, let alone a suitable vessel to Demersal Shark.
- 2.4 The appellant duly filed its appeal on 21 February 2014. The Appellant did not file a supplementary appeal.

### **3. Grounds of Appeal**

- 3.1 The Appellant does not raise any substantive grounds of appeal such as possible errors concerning its scoring or the manner in which any aspect of its application was evaluated or interpreted.
- 3.2 The Appellant's principal grievance as recorded in its appeal is that the information provided to it was insufficient for it to understand the reasons for its failed application. Appellants were provided an opportunity during July 2015 to supplement their initial appeals after being provided with access to the full record of reasons that informed the initial decision-making process. The Appellant did not elect to file a supplementary appeal by 31 July 2015.
- 3.3 The Appellant does not raise any grounds motivating why its score should be reviewed and increased. In addition, the Appellant failed to demonstrate access or even nominate a suitable Demersal Shark fishing vessel. Further, the Appellant / Applicant is a trust. Clause 5.1 ("Form of right holder") in the Demersal Shark Fishing Policy states that –

*"Applications will only be considered from South African-owned companies, close corporations and co-operatives. "*

- 3.4 Accordingly, there is no provision made for applications to be considered from trusts and such a defect cannot be corrected on appeal.

3.5 Finally, the requirement to demonstrate a right of access to a suitable vessel for this fishery is an exclusionary requirement where failure to satisfy this essential requirement results in the application being excluded.

#### 4. Recommendation

Having had regard to the Appellant's appeal, it is recommended that the Minister **rejects** the Appellant's appeal.



Siphokazi Ndudane

Deputy Director-General (Acting)

Fisheries Management

DATE: 09/09/15

#### **Decision by Minister: Recommendation Accepted / Recommendation Rejected**



Senzeni Zokwana, MP

MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES

DATE: 10-09-2015