



MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Tel: (012) 399 8743
Private Bag X9052, Cape Town, 8000, Tel: (021) 469 1500, Fax: (021) 465 3362

TO ALL CATEGORY A RIGHT HOLDERS AND APPELLANTS IN THE HORSE MACKEREL SECTOR

1. Introduction

- 1.1 The Minister of Agriculture, Forestry and Fisheries (“the former Minister”) delegated the authority in terms of section 79(1) of the Marine Living Resources Act, No. 18 of 1998 (“the Act”) to allocate commercial fishing rights and quantum in the horse mackerel sector to the Deputy Director-General: Fisheries Management in the Department of Agriculture, Forestry and Fisheries (“the Delegated Authority”).
- 1.2 The Delegated Authority granted rights to 6 Category A applicants on 10 November 2016.
- 1.3 On appeal the former Minister granted a fishing right to one additional Category A applicant on 24 May 2019.
- 1.4 After the finalisation of the appeals by the former Minister in 2019, Blue Continent Products (Pty) Ltd and two others instituted proceedings against the Minister of Forestry, Fisheries and the Environment (“the Minister”) and thirty-five others under case no. 19974/2019 (“the BCP matter”).
- 1.5 On 3 December 2020 the Western Cape High Court granted an order in the BCP matter.
- 1.6 The order of 3 December 2020 was thereafter varied by the Western Cape High Court on 17 May 2021 and now reads as follows in relevant part:

“1. It is declared that the appeal decision taken by [the former Minister] on 24 May 2019 in relation to all appeals in the horse mackerel fishery, in so far as it –

- 1.1 introduced 30 new entrant applicants to the horse mackerel fishery;*
- 1.2 allocated to those new entrants 62.62% of the total allowable catch for horse mackerel, leaving only 35.54% of the total allowable catch available for allocation to successful Category A right holders; and*
- 1.3 endorsed and implemented [the Delegated Authority’s] Quantum Allocation Methodology,*

was unlawful;

2. *The appeal decision taken by [the former Minister] in relation to all appeals in the horse mackerel fishery filed by Category A, Category B and Category C applicants is hereby reviewed and set aside in its entirety and all of the appeals which form the subject-matter thereof are remitted to [the Minister] for reconsideration;”*

1.7 In the circumstances, and in terms of the varied order of 17 May 2021, all appeal decisions taken by the former Minister have been reviewed and set aside, and have now been remitted to the Minister for reconsideration.

2. **Status of existing rights in the HM sector pending the appeal decision**

Category A applicants who were awarded rights by the Delegated Authority

2.1 All current right holders in Category A who were allocated rights pursuant to the decision of the Delegated Authority will be permitted to continue to fish in terms of the right allocated to them pending the reconsideration of the appeals by the Minister.

Category A applicants who were awarded rights by the former Minister

2.2 The right holder in Category A who was allocated rights by the former Minister on appeal will be permitted to continue to fish pending the reconsideration of the appeals, in terms of an exemption granted in terms of section 81 of the Act.

All successful Category A applicants

2.3 Further to the above, the Department hereby requests that all Category A right holders submit to the Department, within 7 days after issuing of this notice, a completed electronic copy of the “Summary of Landings” form for the catches made for the 2021 fishing season. The form must be submitted to: TrawlMW@environment.gov.za and must list all landings (indicating the name of the vessel, the sailing and docking date/s) and must indicate the distribution of the landed weight among right holders.

2.4 Category A right holders must ensure that all levies on fish landed are paid in accordance with the conditions of their current catch permits and must ensure that all outstanding payments are made prior to the finalisation of the appeals.

3. **Reconsideration of appeals**

3.1 The Minister will reconsider all appeals that were submitted in terms of section 80 of the Act. In respect of category A, this includes:

3.1.1 All current right holders who were granted rights by the Delegated Authority and who subsequently appealed;

3.1.2 All current right holders who were not granted rights by the Delegated Authority, but who were subsequently granted rights on appeal; and

3.1.3 All unsuccessful category A applicants who unsuccessfully appealed against the refusal of their applications by the Delegated Authority.

3.2 Category A right holders who are also appellants are informed that they may within 30 calendar days of the date of this correspondence address written representations to the Minister:

3.2.1 to supplement their appeals; and

3.2.2 to state their case, to the extent that their rights may be adversely affected by the outcome of the appeal decision.

4. The outcome of the appeals will be communicated in due course.

Yours sincerely



MS B D CREECY, MP
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT.

DATE: 1/7/2021