



27 November 2006

GENERAL REASONS FOR THE DECISIONS ON APPEALS WEST COAST ROCK LOBSTER OFFSHORE SECTOR

1. Introduction

The general reasons for the assessments of the appeals in the West Coast Rock Lobster (“WCRL”) Offshore sector by the Minister of Environmental Affairs and Tourism (“*the Minister*”) are set out in this document, which will be referred to as the “*Appeals GPR*”.

The Delegated Authority prepared a report (“*the R5(3) reports*”) on each appeal submitted in the sector, as required by Regulation 5(3) of the General Regulations promulgated in terms of the Marine Living Resources Act 18 of 1998 (“*the MLRA*”) as GN 1111 in Government Gazette 19205 of 2 September 1998. The R5(3) reports deal with specific arguments made by appellants for an increase of their own scores. This Appeals GPR is concerned with complaints of a more systemic nature and with appellants’ complaints about the scores awarded to others in the WCRL Offshore sector. Given the large volume of complaints and submissions received during the appeals processes, it is not possible to deal with each and every contention. Complaints that have no merit are therefore not dealt with in this GPR.

Each applicant in the sector will receive the following documents by mail:

- the notification letter and the R5(3) report, if the applicant appealed, informing the appellant of the Minister’s decision on the appeal together with the reason for that decision;
- the applicant’s scoresheet after the results of the appeals were taken into consideration; and
- the Appeals GPR.

Copies of the Regulation 5(3) reports used to record the assessment of each appeal in the sector and copies of the score sheets of all the applicants at the sector will be made available on the Department’s website www.mcm-deat.gov.za and for inspection at the Department’s Access to Information Centre (“*ATIC*”).

The Minister approved the R5(3) reports. The reasons for the Minister's decisions are accordingly contained in the R 5(3) reports, the score sheets, this Appeals GPR and the notification letter. The Minister also considered legal memoranda and legal opinions. The contents of these documents are confidential and privileged and will not be released without the consent of the Department of Environmental Affairs and Tourism: Branch Marine and Coastal Management (*"the Department"*) and the Minister.

2. Appeals process

The decisions in the WCRL Offshore sector were announced on 28 February 2006. Appeals had to be submitted by 2 June 2006. A total of 436 appeals were submitted in the sector.

On 12 May 2006, all the appeals were made available for comment in terms of section 80(3) of the MLRA. The appeals were available in the ATIC on the 2nd Floor, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town from 12 May 2006 to 15 May 2006. Comments on the appeals had to be submitted by 26 May 2006.

Access was also granted to the original applications of all the applicants in the sector, unless the applicant objected to the release of specific parts of its application. In terms of the notification letter sent to the applicants, such objections had to be lodged by 2 May 2006. If the objection was lodged after this day, it was only taken into account in respect of subsequent applications for access to information. No access was granted to documentation contained in the confidential folder. Requests for access to the confidential folder or for access to parts objected to were dealt with in terms of the Promotion of Access to Information Act 2 of 2000.

During the assessment of the appeals, it became apparent that a number of appellants did not correctly apportion jobs and investments between sectors or members of the economic unit and that the transformation information was also not properly merged. A number of letters (almost 40) were sent to applicants, requesting clarity on these aspects. The responses to the letters had to be submitted by Friday, 6 October 2006.

The Minister was assisted by the Delegated Authority; legal advisors; the RVU; IT specialists; and administrative and project management specialists.

3. Changes to Criteria, Weightings, the Scoring System and the Quantum Allocation Mechanism

Changes were made to the criteria, weightings, scoring systems and the quantum allocation mechanism when it was decided that an appellant's submissions had merit or after considering the advice of the Delegated Authority, the Department's legal advisors or external legal advice, or after considering the advice of the project management team and the IT specialists.

The **exclusionary criteria** were not changed in the Cluster B fisheries, but, after considering legal advice, the Minister decided that the failure to sign the declaration and to have it attested to by the authorised representative of the applicant, and if applicable, the authorised representative of the Holding Company, the Sister Company or the JV Partner(s), could be cured on appeal.

In the WCRL Offshore sector, the **comparative balancing criteria and weightings for medium term right holders** were changed in the following manner:

- 3.1 The reliance criterion and its weighting were abandoned on appeal. This means that the scores awarded for reliance played no role in the appeal decisions. The Delegated Authority and the Minister felt that the information presented by applicants and appellants regarding their reliance on the WCRL Offshore resource was unreliable and, since the assessment of this aspect affected all the applicants in the sector (and not only the appellants), it would have taken too long to obtain greater clarity on this issue by means of requests for further information. Another problem was that the questions in the application form were not clear, and the Queries and Responses, the explanatory notes and schedules did not provide sufficient assistance to the applicants. The reliance criterion also became difficult to apply in the case of joint ventures and groups of companies where a member of the economic unit was more (or less) reliable on the WCRL Offshore resource than the unit itself. There was a significant risk that scores given for reliance would prejudice applicants that operate in the form of a single entity rather than through a group of companies.
- 3.2 Use of medians instead of means: The Minister instructed the IT specialists to use “*medians*” where “*means*” were previously used. The former was regarded to be a safer assessment tool than the latter.
- 3.3 In terms of the criteria announced with the GPR, applicants had to answer “yes” to questions 6.21, 6.23 and 6.24 to be awarded points for affirmative procurement. There was no question 6.24 in the application form and the system accordingly scored applicants 0.5 points for answering “yes” to questions 6.21 and 6.23.
- 3.4 All applicants were awarded 1 point for Skills Development if, instead of submitting an annual training report (“*ATR*”) and a skills development plan (“*SDP*”), they participated in a skills development programme through the SETA in 2004 such as an SMME Support Strategy programme. Applicants were not awarded additional points if they scored the maximum of one point for the submission of the ATR and the SDP.

The comparative balancing criteria for new entrants were changed in the following manner:

- 3.5 Use of medians instead of means: For the reason set out above, the Minister instructed the IT specialists to use medians where means were previously used.

The scoring system for both medium term right holders and new entrants in the WCRL Offshore was changed in the following ways:

- 3.6 In the first round of allocations, applicants that did not respond to a section were not assessed in terms of the “*comparatively balancing method*” against other applicants. For example, if there were 17 applicants and only 10 provided a response to a section, then the 7 were excluded and the 10 were ranked. The Minister instructed the IT specialists to revise the system so that for applicants that did not provide a response the value was assumed to be zero or the response least favourable to such an applicant. In the above example, it means that all 17 applicants would be assessed against one another even though all of them did not provide a response.

- 3.7 In the first round of allocations, the default database calculation of “*percent ranks*” was used. This meant that where tied values existed, the percent rank was calculated at the first occurrence of the value, and then all applicants with this value were placed at the lowest value. For example if there were a large number of applicants that were 100% black owned in a particular sector, the first occurrence of this value would fall below the top percentile. The Minister decided that this calculation method did not meaningfully give effect to the criteria and weightings. The calculation method has been revised as follows:

- Applicant(s) whose assessed response for the section is the worst (minimum) of all the applicants’ responses is allocated a percent rank score of 0.
- Applicant(s) whose assessed response for the section is the best (maximum) of all applicants’ responses is allocated a percent rank score of 100.
- Applicants whose assessed responses for the section are greater than the worst (minimum) and less than the best (maximum) of all applicants’ responses are allocated a percent rank score of between 0 and 100.

- 3.8 One of the criteria, percentage training budget spent on black employees between 2001 and 2004, was not scored. This error has been corrected and the criterion is now scored.

The quantum allocation mechanism was not changed.

4. **Systemic complaints not accepted**

This part of the Appeals GPR deals with some of the systemic complaints that were not accepted and that, accordingly, did not result in a change of the criteria, weighting, scoring system or quantum allocation mechanism.

Procedure: reserving right to appeal any change in score or quantum

4.1 **Complaint:** A change in various scoring criteria may cause a movement in percentile placements and if an applicant is affected by such a change, it must be granted an opportunity to appeal the change and must be given access to the appeal(s) that gave rise to the change in its score.

4.2 **Response:** This allegation is misconceived. Comparatively balancing is done on the basis of raw (real) data that all applicants could comment on. There is no merit in the argument that an applicant must “*first see the effect of changes to their score*” before it can meaningfully comment on the raw data of others or, for that matter, the Delegated Authority’s assessment of that data or their own data.

Procedure: insufficient information provided

4.3 **Complaint:** The Delegated Authority has not provided sufficient information to applicants to allow them to consider the assessment of their applications and in particular their scores. Where applicants were scored against the “*mean*” the mean should have been provided and similarly the calculations for percentile placements.

4.4 **Response:** Applicants were provided with this information on 15 May 2006 prior to the closing day for appeals. It should be kept in mind that in the WCRL Offshore sector external benchmarks were used in respect of ownership (race) and not comparative balancing. In other words, an applicant were given X points for being Z% black owned, regardless of the black ownership figures of others. The percentile placements were accordingly not provided. The number of points to be awarded can be easily established with reference to the GPR.

Transformation: calculation of values for EE profile

- 4.5 **Complaint:** Appellant does not get the same values if it applies the formula given in the footnote to the GPR. Appellant also not sure what was meant with a “*New EE scoring model*”. It is also not clear what the purpose of the “*calculated values*” is as opposed to the “*applicant response*” in this section.
- 4.6 **Response:** The calculations have been carefully checked. Anomalies proved to be the result of rounding up errors on the part of the applicants. The system was therefore changed to calculate on the basis of actual values (i.e. number of people in each group in each level) rather than to rely on the percentages calculated by the applicants themselves. The “*New EE Scoring Model*” was simply a rule description, which calculates exactly as described in the GPR. The figures in the “*Calculated Value*” column do not correspond with those in the “*Applicant Response*” column because the figures have been cut-off as the column is not wide enough to accommodate the decimal places. However, in the case of this criterion, the “*Calculated Value*” column is irrelevant as no amendments were made to the data, save that some applicants were of course disqualified from scoring under this heading.

Transformation: Broad-based black economic empowerment

- 4.7 **Complaint:** The Delegated Authority erred by not adopting the criteria and weightings for the assessment of black economic empowerment (“*BEE*”) set in the Broad-Based Black Economic Empowerment Act 53 of 2003 and the Codes of Good Practice. The Delegated Authority focussed unduly on certain pillars of BEE and either ignored or gave too little consideration to other nationally recognised pillars of BEE. The Delegated Authority erred by adopting a scoring system that allocated points to applicants for their relative positions rather than in accordance with their objective BEE achievements.
- 4.8 **Response:** This issue is dealt with in paragraph 7.3 of the General Policy. The Codes of Good Practice were not followed as they had not been formally adopted when the policies were written and the criteria and weightings designed. The level of transformation in a cluster and sector and the reliability of information received from applicants were considered when designing the criteria and weightings. The relative scoring system was preferred over external benchmarks, for the reasons set out in the General Policy. It is believed that the competitive nature of the system resulted in applicants verifying the information submitted by others to a much greater extent than in the past, which adds to the credibility of the results.

Transformation: close corporations and employee share scheme

- 4.9 **Complaint:** Close corporations cannot have employee share schemes. The members' profit sharing arrangement should be deemed an employment share scheme.
- 4.10 **Response:** Disagreed. While not common, there is no reason why a close corporation could not have a scheme in terms of which its workers could qualify for membership interest. The members' profit sharing arrangement is obviously not the equivalent of an employee share scheme.

Transformation: increase in black ownership

- 4.11 **Complaint:** The IT system used is defective in that it is incapable of calculating a percentage increase from 0% black ownership.
- 4.12 **Response:** This issue has been addressed by changing the assessment from percentage increase to the difference between the percentage black ownership in 2005 and 2001.
- 4.13 **Complaint:** Appellant contends that black ownership was measured and determined on a completely different basis in 2005 as compared to 2001. In 2005 applicants were obliged to exclude pension funds and public entities from the calculation black shareholders. In 2005 applicants were obliged to adopt a flow-through principle which differed materially from that followed in 2001. In the circumstances, appellant contends, there was a markedly different basis for the calculation of black ownership in 2001 and 2005. Appellant contends that it is not rationally possible to compare the results of two different methods of calculation.
- 4.14 **Response:** It is agreed that the methods of calculating black ownership are different. However, in order to determine whether there was an increase in black ownership, the comparison should now be done on the 2005, flow-through basis. In other words, the 2001 percentage of black ownership should be done on a flow-through basis and then compared to the 2005 figures.

Vessels should be allowed to be utilised in other sectors

- 4.15 **Complaint:** The requirement that a vessel should only be utilized in the WCRL sector is highly prejudicial. It will leave many vessels under-utilised because vessels are able to harvest the allocated quantum within months.

4.16 **Response:** The decision to insist on a dedicated West Coast rock lobster offshore fleet was based on resource management, fishing effort management and fishery performance measurement considerations as well as compliance issues.

IT3(A) and IRP5 employees

4.17 **Complaint:** IT3(A) should also be considered proof of permanency of employment in the same manner as IRP5 employees.

4.18 **Response:** While IT3(A) employees may be considered “*permanent employees*” (in the sense of total less seasonal employees) the system could not be changed on appeal to equate IT3(A) employees with IRP5 employees. This would affect all other applicants’ comparative position and data regarding the former were not requested in the application form.

Migrants from limited commercial

4.19 **Complaint:** The WCRL Offshore policy states that the fishery is optimally exploited and there is no room for additional participants. The delegated authority erred by recognising a new category of medium-term right holders called “*migrants from limited commercial*”. This category is not recognised in the sector policy, which only makes provision for new entrants and WCRL MTRH applicants. The limited commercial applicants should have been treated as new entrants.

4.20 **Response:** It was made clear in the Queries and Responses that the former WCRL limited commercial right holders would be treated as medium term right holders in the Offshore sector. There was some overlap in the fisheries before. Most importantly, some full commercial operators were permitted to harvest in the inshore area with bakkies and hoopnets. It is therefore not correct to say that the fisheries were totally separate before. More importantly, some link between the two fisheries had to be created in order to allow some WCRL limited commercial right holders to enter into the more capital intensive offshore side of the fishery.

Non tax deductible donations should be recognised

4.21 **Complaint:** Complainant gives donations to the community. States that it is unfair that small BEE right holders should be expected to make tax deductible donations.

4.22 **Complaint:** Inappropriate to limit the determination of CSI to tax-deductible donations.

4.23 **Response:** It is certainly true that many non tax-deductible donations are very sincere CSI efforts. Some would argue that these efforts are even more praise worthy precisely because they are not deductible. However, it was not possible to recognise non tax-deductible donations due to the unreliability of the information received. The fact that SARS recognised the donation was an important safeguard, given the limited ability to verify information. It would also have been very difficult to determine whether some forms of non tax deductible donations amount to CSI. For example, in the WCRL nearshore sector, donations made to political parties were claimed as CSI, donations to schools and to churches were claimed, loans made to individuals were claimed.

Investment in processing

4.24 **Complaint:** Appellant contends that the same number of points were given for very little investment as compared to significant and effective investment. Applicants that made significant and appropriate investments should be favoured.

4.25 **Response:** It proved to be too difficult to distinguish between applicants on the basis of the quality and extent of the investment. This issue is partially addressed by allocating a separate score for investment per ton.

Non payment of levies

4.26 **Complaint:** The WCRL Offshore policy provides that right holder applicants will be penalised if their levies are outstanding. This was not done.

4.27 **Response:** After the data was received, considerable time and effort was spent investigating the possibility of using the data regarding non payment of levies to penalise applicants. It was not possible, within the time available for the finalisations of the allocations, to verify the information provided by the applicants and to take into account all the factors necessary to ensure that applicants were not unfairly penalised.

Value adding not rewarded

- 4.28 **Complaint:** Appellant submits that the delegated authority should have rewarded value adding. Paragraph 8.2(e) of the sector policy provides that the delegated authority may have regard to the ability of the applicants to add value.
- 4.29 **Response:** It was decided not to reward value adding as too little value adding takes place in the sector for it to serve as a distinguishing factor.

Quantum allocation: no recognition of regional needs

- 4.30 **Complaint:** “*The formula*” does not take into account regional needs and does not make provision for differences in the underlying economics of the various communities along the West Coast. Differentiated quantum amounts should have been allocated to applicants in “*unique regions*” in order to prevent job losses.
- 4.31 **Response:** The policy does not require geographic justice to be taken into account in this way.

Catching, processing and marketing capacity not considered when allocation quantum

- 4.32 **Complaint:** Capacity to catch, process and market should be considered when allocating quantum.
- 4.33 **Response:** Disagreed. The WCRL does not require catching capacity to be directly considered when allocating quantum – to do so would undermine transformation in the form of a redistribution of quantum to right holder with smaller quotas who are transformed and performed well.

Exclusion of new entrants

- 4.34 **Complaint:** The Appellant contends that the previously disadvantaged communities have been discriminated against as the majority of the new entrants originate from these communities. Appellant questions the Department’s decision to call for applications from new entrants when a decision had already been taken by the Delegated Authority that no new entrants would be given a right.
- 4.35 **Complaint:** Appellant contends that the Delegated Authority did not apply and implement the policy guidelines regarding new entrants correctly. The Delegated Authority should have allocated rights to new entrants if some of the MTRHs were unsuccessful. As there were more than 60 MTRHs that were

unsuccessful, the Appellant believes that it should have received a right. Appellant notes further that it scored above the MTRHs cut-off point and performed well in terms of investment made and job creation, unlike the MTRHs that were unsuccessful.

4.36 **Complaint:** The 63 top scoring new entrants should have replaced the 63 unsuccessful MTRHs, who clearly under-performed in the fishery.

4.37 **Complaint:** It is an infringement on the applicants' constitutional rights that they were invited to apply for a WCRL right but were refused on the basis that they were new entrants. This constitutes unfair and inequitable treatment.

Response: The reason the delegated authority decided not to allocate WCRL Offshore commercial fishing rights to any new entrants has been fully dealt with in the GPR. The reasons for this decision are briefly as follows:

- The WCRL Offshore sector policy provides that the fishery is optimally exploited and that there is no room for additional participants.
- The delegated authority decided that the best course of action was to admit a limited number of Limited Commercial MTRH applicants, rather than to allocate rights to new entrants. It was felt that the MTRH applicants that proved themselves in the limited commercial sector over the medium term period should be preferred over applicants that have never participated in the harvesting of WCRL and in order to encourage a migration from the Limited Commercial sector to the Full Commercial sector.

5. Approach to assessment of information

This part of the Appeals GPR deals with complaints about the assessment of information.

Investment: Method of scoring investment inaccurate

5.1 **Complaint:** The methodology used for scoring investment does not accurately reflect the significant investments made by the appellant. To deny appellant points on the basis of the lack of insurance, results in the anomalous situation where its investment is disregarded. Alternative valuations of the appellant's assets for investment purposes can be taken from either the book value or market value of

these assets or a combination of the two to arrive at a fair valuation. The Department's decision to assess this criteria based on insured asset value is patently unfair as it unjustifiably disadvantages applicants in the position of the appellant.

- 5.2 **Response:** In the Queries and Responses, applicants were specifically instructed that the market value (based on valuation) may be used instead of the insured value (if the investment is not insured).

Insured value of investments

- 5.3 **Complaint:** Some applicants provided "*depreciated insured/assessed*" value for its vessels at the applicable date. Others provided "*replacement insured/assessed*" values. Furthermore, "*insured values*" may bear no resemblance to the actual value of assets and depending on company policy may vary greatly from one applicant to another for almost identical assets.

- 5.4 **Response:** As was indicated in the Queries & Responses, ultimately, what the Delegated Authority and the Minister was trying to ascertain was an accurate estimate of the worth of the asset. If this was not correctly reflected by the insured value, an applicant was entitled to motivate why a different value should be used.

Members of close corporations as employees

- 5.5 **Complaint:** Members of close corporations should be recognised as employees and amounts paid to them should be recognised as part of the applicant's salary bill.

- 5.6 **Response:** This issue was dealt with on a case by case basis. In general, members were not recognised as employees and amounts paid to them were not recognised as part of the applicant's salary bill, unless the applicant described the nature of employment and clearly and convincingly showed that the members were *bona fide* employees of the applicant or the joint venture entities.

Medical Aid, ATR and WPSP provided by the joint venture

- 5.7 **Complaint:** Applicants should be scored if medical aid benefits, annual training reports and work place skills plans, were provided by the joint venture (as opposed to the applicant itself).

- 5.8 **Response:** Agreed.

Claiming of jobs and investment not used in sector

5.9 **Complaint:** It is argued that applicants should only be permitted to claim jobs and investments “*actually*” employed in the fishery.

5.10 **Response:** The explanatory notes makes it clear that applicants that are involved in more than one sector must submit a breakdown of jobs and investment on a per sector basis. Only a rough estimate for this was required provided that the same apportionment was used across all sectors. It was not required that an investment had to be used exclusively or predominantly in a sector or that an employee had to be employed pre-dominantly in a sector, in order to allocated to the sector. This meant that, unless there was double counting, the apportionments provided by applicants were accepted.

Black ownership : determination of neutral shareholding

5.11 **Complaint:** It submitted that it is incorrect to classify “*unknown*” shareholders as “*white*”. Instead, their shareholding should be classified as “*neutral*”.

5.12 **Response:** Agreed, provided that the applicant provide an explanation why the status of the shareholder could not be determined.

Compliance with Employment Equity Act 55 of 1998

5.13 **Complaint:** If turnover is more than R 2 million, but the applicant does not have any employees of its own whatsoever, then compliance with the Employment Equity Act is not required.

5.14 **Response:** Agreed, but positive points may not be scored if a joint venture partner or the holding company (but not the applicant) complies with the Employment Equity Act.

Re-apportionment of jobs and investment and re-merging of transformation data

5.15 **Complaint:** If jobs and investments were not properly apportioned between sectors or joint venture partners and the members of an economic unit, and if it was not clear to the Delegated Authority how to correct the apportionment, the job creation score and the investment score of the members of the unit, were reduced to zero. The same approach was followed in respect of the failure to properly merge

transformation data. Affected applicants often presented a re-apportionment of jobs and investments on appeal or re-merged the transformation data. The new apportionment or merger did not always correspond to the ones presented in the application forms, but appellants nevertheless contended that it should be accepted.

- 5.16 **Response:** Every attempt to re-apportion jobs and investments or re-merged transformation data was assessed on its own merits. In many instances, the reason for the re-apportionment or re-merging was because the instructions were not understood when the forms were completed. In such instances, applicants were accommodated. The Minister instructed that attempts by appellants “*to trim their sails to the wind*” should not be allowed.

Information relating to events falling outside specified period

- 5.17 **Complaint:** A number of appellants contended that the Minister should recognise, for example, investments made, jobs created, learnerships provided and the like, outside of the period (mostly after) specified in the application form.

- 5.18 **Response:** This issue was dealt with on a case by case basis. In principle, in order to be fair, applicants had to be compared to one another at a fixed point in time or over a specified time period. However, some flexibility was needed in order to prevent the system from operating unfairly in respect of certain applicants. Events that took place after the specified date or outside the specified period were taken into consideration if this was not unfair to other applicants; and if the information related to the medium term period; and if the action was not artificially taken purely for purposes of rights allocation.

Right obtained by transfer

- 5.19 **Complaint:** Appellant argues that the Delegated Authority adopted an overly mechanistic approach to the assessment and scoring of the appellant, and as a result failed to properly assess the appellant’s application. The Delegated Authority failed to consider the fact that the appellant only received its medium term right by transfer of right in July 2005. The questions posed were designed to elicit information from MTRHs that could show a history of participation in the sector, thus excluding the appellant who was not assessed on its strengths. As 45% of the score was placed on job creation, investment and reliance, it was not possible for the appellant to obtain any points for those three sections. The Department’s decision to transfer the right to the appellant in July 2005 is indicative of the fact that the Department regarded the appellant a suitable candidate for the right therefore it should

have been clear to the Delegated Authority, that even though the appellant did not fulfil the criteria completely, it is a suitable candidate and has the necessary ability and infrastructure to successfully manage a WCRL right.

- 5.20 **Response:** Appellant could have submitted a motivation for it to rely on the information of its predecessor. The approval of the transfer application in itself is not an indication that a long term right would be allocated to the transferee. As the process was competitive, it was not possible to assess each application in light of the unique circumstances applicable to it.

6. Complaints about the scores of others

This part of the Appeals GPR deals with complaints made by appellants about the scores given to other applicants.

Black ownership of Oceana Group of Companies

- 6.1 **Complaint:** If the flow through principle is properly applied, the beneficial black ownership of companies forming part of the Oceana Group of Companies, should be assessed at 5.3%.
- 6.2 **Response:** This issue was the subject of an oral hearing held on 15 June 2006, various internal legal memoranda and two external legal opinions. For the reasons set out in R5(3) report concerning applicants forming part of this group of companies, the beneficial black ownership was assessed at 19.57%.

Askala Visserye

- 6.3 **Complaint:** Askala Visserye failed to divide their total investment (R 220 000) by the tonnage allocated to them (8.021 tons).
- 6.4 **Response:** This was corrected.

Sir Lowry's Pass Fisheries

6.5 **Complaint:** Sir Lowry's Pass Fisheries failed to perform the calculation properly. $R\ 480\ 000 / 8.356\ \text{tons} = 57443.75$ and not 71 805. Instead of 9.6 permanent employees this applicant claimed 10.6. The per ton should be 1.15 permanent employees per ton.

6.6 **Response:** This was corrected.

Premier Group companies

6.7 **Complaint:** John Quality should be calculated at $144\ 500 / 7.351 = 19\ 657.19$ and not at 202 837.93. Salary spend per ton of the five applicants forming part of the Premier Group were reduced from R114.93 per ton to 27.67 but Chapman's Peak was somehow increased to R 25 676.33 per ton.

6.8 **Response:** The Premier Group companies was re-assessed on appeal. See, in this regard, the relevant R5(3) reports.

Sederzee

6.9 **Complaint:** Sederzee indicated that it has 2 permanent and 4 seasonal employees but then when calculating jobs per ton claimed all 6 as permanent. Total less seasonal jobs should be 0.37 and not 1.12 per ton.

6.10 **Response:** This was corrected.

Fantique Trading 486 CC

6.11 **Complaint:** Fantique Trading 486 CC claims investment per ton in landbased assets of R 6,753,719 which translates into investment of over 30 million.

6.12 **Response:** This was corrected.

Pesce Smokers CC's

6.13 **Complaint:** Pesce Smokers CC's permanent jobs per ton was recorded as 18.17 jobs which would result in a total employment of 75.49 persons in a sector with only a 4 ton allocation.

6.14 **Response:** This was corrected.

Tuna Hake Fishing Corporation

6.15 **Complaint:** The Tuna Hake Fishing Corporation claims a salary bill of R 367,440.78 which skews the data.

6.16 **Response:** This was corrected.

7. The Decisions on Appeals and the Allocation of Quantum

The Minister decided to allocate 50 additional rights on appeal, bringing the total number of successful Medium Term Right Holder applicants to 245. The Minister agreed with the quantum allocation mechanism adopted by the Delegated Authority. A spreadsheet list of the allocations made to the applicants in the sector, after the decisions made on appeal were incorporated, are annexed marked "A".

The delegated authority decided not to allocate rights to any new entrant applicants. The Minister agreed with the reasons provided by the Delegated Authority in his GPR on this aspect.

Prior to the allocation of long term commercial fishing rights, the black controlled (50% + 1) of the TAC was at 66%. After appeals, the black controlled ownership of the TAC is 61.6% and the beneficial black ownership of the TAC is 64.8%.

MCJ van Schalkwyk

Minister of Environmental Affairs and Tourism