

Are you a Paper Quota Holder?

By
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Over the past few months, MYLES MINNAAR has received many enquiries about the profile of a paper quota holder. Many right holders who have fishing rights for 15 years are gearing up for FRAP2020. They are looking at their structures and profiles to make sure that they don't fall within in the ambit of the definition of a paper quota.

In terms of the gazetted timelines of FRAP2020, we will see the final draft policies published on 12 October 2020 for comment.

Pierre Heistein, 2011 defined a paper quota holder perfectly – *'The existence of 'paper quotas' i.e. sale of permit by rights holders to existing firms. In this way paper quota holders earn a rent from their allocation without the need to invest or carry risk. This behaviour is illegal as it circumvents the State's goals of empowerment and HDI ownership of factors of production. It creates an administrative and efficiency burden on the industry without benefitting any of its goals.'*

Guidance

As our current policies are under review and the definition of a paper quota may change, until we have the final draft policies published and gazetted, here is some guidance regarding paper quota holders.

A paper quota risk is further defined in the General Allocation Policy as an applicant who:

- has no intention to share full risk of their participation in the industry
- has no intention to engage in the main activities required in exploiting the right
- appears to be a front for another organisation (possibly less transformed for example) who will accrue most of the benefit flows from the right

Sea Harvest's CEO, Felix Ratheb, in his OP-ED Government must learn from mistakes in handing out fishing rights article, wrote:

'One of the biggest problems with allocating rights to a large number of new entrants is that individual rights are very small. This means that new entrants are unlikely to secure the finance necessary to invest in a vessel, build factories or participate in the fishery in a meaningful way. Instead, they rent their quotas to established companies, pushing up the cost of raw material and compromising the business models of the processing factories.'

From the above it is clear that the paper quota model is prevalent in our fishing industry, and that a paper quota holder adds no value to the fishing industry as it has no intention to participate in the industry. These quota holders therefore limit others of the opportunity to get involved in the fishing industry.

Paper quota are right holders who 'rent' out their fishing rights to fishing companies, who in return compensate them for their quota. They are not involved in the fishing process. From harvesting, processing to marketing, they merely receive a payment for their quota. This has no benefit to the fishing industry.

Proof of involvement

In the 2015/16 FRAP Application Form applicants were required to show proof of involvement in the fishing industry. This by showing ownership or access to a fishing vessel, and in the sector policy investment in the fishery included investment into fixed assets, processing capacity and marketing.

Applicants were required to show that they are willing to assume the risk involved in entering the fishing industry. This was to prevent the existence of paper quotas where persons would apply for permit with the intention of leasing it to existing firms in the market in exchange for direct payments or shares. In this way investment criteria were used as a further screening device to ensure that applicants had fishing ability and long-term intent in their application for rights.

General Policy

Below is the extract out of the 2013 General Policy on the Allocation and Management of Fishing Rights. It is clear that the delegate authority has a responsibility to prohibit the inclusion of an application that poses a paper quota risk.

1. The delegated authority will exclude applicants considered to be fronts;

2. Withdraw rights of right holders who paper quota holders are; and
3. Revoke rights by right holders who fail to utilise their rights in the first year after being granted rights.

Fronting is when an application is made by an ostensibly transformed entity with the intention that the main benefits will flow to an untransformed entity.

Ask yourself the following:

Here are a few questions to ask yourself as a right holder to determine whether you are a possible paper quota risk?

1. For the duration of your right, have you invested into the fishing industry?
2. For the duration of your right, have you been involved in the fishing cycle – harvesting, processing and marketing?
3. For the duration of your right, have you handed over your right to a fishing company and have no input into the management thereof?
4. For the duration of the right, are you involved in meetings and discussions regarding your right?
5. Do you have a long-term agreement where your fishing right is harvested and managed by a vessel owning company, and you are not involved in the management thereof?

If any of the above questions are answered no, you are a possible paper quota holder. This could negatively impact the renewal of your fishing rights in FRAP 2020/21.

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