



25 January 2023

# Agriculture, Aquaculture & Fishing sector ALERT

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## You can fish for fun, but leave your drones at home: The legality of using bait-carrying drones when fishing

The Marine Living Resources Act 18 of 1988 (Act), along with the Regulations in terms of the Act, 1998 (Regulations) must be interpreted in such a way that it promotes the Minister of Agriculture, Forestry and Fisheries' (Minister) constitutional obligation to ensure that the impact of fishing activities does not negatively affect the stability of the fish population. This was the argument of the respondents in the case of *Gannet Works (Pty) Ltd and Others v Middleton N.O and Another* (14880/2022) [2022] ZAGPPHC 250 (12 April 2022).

In this matter, the applicants were in the business of marketing and selling bait-carrying drones, bait-carrying remote-controlled boats and the like. However, on 24 February 2022, the first respondent, in her capacity as Chief Director: Fisheries Operations Support, issued a public notice to the effect that the use of certain fishing devices, such as drones, is illegal, that transgressions will be prosecuted, and that such devices used by fishermen will be forfeited in favour of the state. This led to an almost immediate decline in the sales of the aforementioned fishing devices. Accordingly, the applicants approached the court seeking a declaratory order that the use of bait-carrying drones, bait-carrying remote-controlled boats and other remote operated devices is not prohibited in terms of the Act and the Regulations, and that the first respondent be directed to publicly withdraw the public notice.

### Definitions in the Act

The Act defines the act of fishing as including various activities such as searching for, catching and harvesting fish, amongst other things. The Act further provides that the act of fishing includes "the use of an aircraft in relation to any activity described in this definition". In turn, an aircraft is defined to mean "any craft capable of self-sustained movement through the atmosphere and includes a hovercraft". It was the applicants' submission that bait-carrying drones squarely fit into the definition of an aircraft, arguing that the only difference between a drone and a normal aeroplane is that a drone is manually operated by a person on the ground, whereas an aeroplane is manually operated by the pilot who is seated in the cockpit of the plane.



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The Act also defines “gear” as including “any equipment, implement, or other object that can be used in fishing, including any net, rope, line, float, trap, hook, winch, aircraft, boat or craft carried on board of a vessel, aircraft or other craft”. Once again, the applicants argued that the definition of “gear” encompasses a bait-carrying drone.

It was noted, however, that the Regulations introduce a new term which is not found in the Act. The Regulations define “angling” as “recreational fishing by manually operating a rod, reel and line or one or more separate lines to which no more than 10 hooks are attached per line”. The applicants argued that this definition does not preclude the use of bait-carrying drones, as the fishermen who use the drones must still manually operate the rod, reel and line with hooks attached.

The applicants further argued that the respondents put forward an emotive argument on why drones should be prohibited, and were simply attempting to bypass the process involved in amending the Regulations by intimidating the public into believing that making use of bait-carrying drones or other similar devices is a criminal offence.

The respondents, on the other hand, argued that the question is not whether bait-carrying drones can be seen as fishing in general, but rather whether bait-carrying drones are authorised by the relevant permit for recreational fishing endorsed for angling. Their argument was that angling only authorises fishing by manually operating a rod, reel and line. Therefore, bait-carrying drones are not authorised by angling permits.

### Complex nature of fishing legislation

The final arguments by the respondents included the principle of judicial deference whereby they claimed that, due to the complicated nature of legislation regulating fisheries management, which falls exclusively within the legislature’s expertise, the court should not seek to interfere with the interpretation and application of the legislation. Furthermore, the respondents sought to rely on a comprehensive description of the constitutional interpretation of legislation, especially in relation to the protection of the environment and the constitutional obligation of the Minister to regulate the fish population.

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In the final few paragraphs of the judgment, the court emphasised that the legislature has not left room for any ambivalence in what constitutes legally permissible fishing. However, instead of making any ruling on the interpretation of the relevant legislation and Regulations, the court noted that the matter was before it right ahead of the Easter holidays. It cannot be ignored that holidays and weekends are the most active times for recreational fishing. The court held that the economic impact of a judgment in this case, favourable or unfavourable, was bound to be irreversible. Furthermore, even though the definition of angling is only found in the Regulations, the legislation itself prescribes that the Regulations form part of the Act. Therefore, considerations of judicial deference motivated the court to simply dismiss the application.

The consequence of this dismissal by the court was that the Chief Director: Fisheries Operations Support's notice on the legality of bait-carrying drones, bait-carrying remote-controlled boats and other remote operated devices still stands. Accordingly, recreational fishers should think twice during these murky times as to whether they want to attach their fishing bait to a drone.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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