

The legacy of apartheid

In the post-apartheid era, South Africa is striving for a less insular and more equitable fisheries policy

The new South Africa, reborn after the harsh years of apartheid and oppression, has been swept by gusts of change in several areas of its economy and social fabric. One of the many encouraging signs of change is the way the fishing industry is approaching the inevitable restructuring of its institutions and patterns of operation and administration.

For many months before the election of the new democratic government, the fishery sector took the initiative for meaningful dialogue between representatives of all interested parties. This was done through a Fisheries Forum that brought together leaders of groups as disparate as trade unions, large companies, universities, administrators, researchers, politicians and coastal communities.

Some major companies had already instituted their own affirmative action programmes, and radical groups like the trade unions were producing well-reasoned documents advocating policies which would help maintain the profitability of the industry while simultaneously improving the conditions and prospects of its workforce.

This degree of goodwill and readiness to listen to one another are features that bode well for the future. This may surprise foreign observers who have become used to media accounts of tension and occasional violence in some parts of this large and populous country. Members of Parliament and trade unionists who had served time in jail for their political activities were sitting around the table with businessmen and bureaucrats who, if they had not actually supported apartheid, had definitely benefited from the regime. While views differed considerably, all sides displayed a very

genuine interest and willingness to compromise in order to reach workable agreements for the long-term good of the fishing industry and its people.

It would be less than honest to gloss over differences or to play down the difficult and complex nature of the problems faced. Fundamental changes in policy and the sharing of wealth and power cannot come about without some pain or resistance. It is to the credit of the long-established fishing companies that they agree that some changes are necessary, but their view of appropriate change would not go as far or as deep as that of the trade unions or the African National Congress (ANC).

The new government is still debating its fishery policy, but, in its final shape, it is likely to be related to the four objectives the ANC saw for the fishery sector in the run-up to the elections. These were to:

- restructure the industry and its institutions to allow more equitable access to the resource and to introduce community participation, transparency and accountability in decision-making;
- review the system of quota allocation to promote security and stability in the industry;
- promote the management of stocks on a sustainable yield basis and the development of new species and techniques for harvesting and culture;
- improve the quality of life in fishing communities by increasing employment opportunities, and improving wages, health, safety and job security.

While the policy debate is continuing, the government and the industry are tackling some serious injustices being currently faced. Access to resources is a major concern for disadvantaged groups.

These include the coastal fishing communities, who believe that they have been excluded by past governments which favoured the large white-owned fishing companies. The Quota Board regularly granted large quotas to the big companies, and very little to the coastal fishermen.

Among the arguments used by the Quota Board was the one that coastal fishermen were not equipped to harvest offshore stocks. This was partly true since they lacked suitable boats, gear and fish-handling facilities. Coastal communities also felt that affluent, recreational fishermen were permitted too much access to lobster fishing around their villages.

One issue that crystallized much of the dissatisfaction was the ban on long-lining for hake. Most of the South African hake catch is taken by large bottom-trawlers. Small boats could catch some by using lines, but this was prohibited on the rationale that longlining would be harmful to the stock of both hake and kingklip. For readers unfamiliar with fishing techniques, it should be said that

the claim sounded absurd to North Atlantic fishermen and scientists who would tend to say the reverse long-lining is a passive method of fishing, but bottom-trawling could be harmful to stocks if allowed without strict controls.

South Africa's small-scale fishermen (mostly black or coloured) felt that the ban on long-lining was just another form of discrimination which used fallacious arguments to give it an apparently scientific rationale.

Tuna pole-and-line fishermen were particularly hurt by the ban. They fished for seven months of the year for tuna, but had to tie up and lose income the rest of the year because they were not permitted to fish for hake.

Insignificant catch

Also, the amount of hake which the tuna boats could catch by long-lining would be insignificant, compared to the enormous hake catch taken by the trawler fleet. So, poor, hard-working fishermen were deprived of income for five months of each year in order to make trawling companies even more profitable.

So, one of the first interventions of the new government in the fishery sector was to authorize a feasibility study on long-lining for hake. This was agreed to, although there was enough external evidence from many other fishing

countries that the ban on long-lining was unjustified.

A Hake Long-lining Management Committee had been established in 1992, and the issue was discussed at a workshop in Stellenbosch in February 1994. Two areas of research were identified. One was on operations, headed by David Japp of the Sea Fisheries Research Institute, and Doug Butterworth of the University of Cape Town.

The other was on the economics, headed by Jacques van Zyl of Sea Fisheries. This group is now measuring and comparing the economic and socio-economic benefits of long-lining with trawling.

The Japp-Butterworth group has just completed its study of the selectivity of long-line operations, compared with trawling. This report will go to the Hake Long-lining Committee and into public forums for informed debate.

The feasibility study operations involved 40 tuna boats, which were allowed to catch up to 30 tonnes of hake each, and four large company boats which were allocated study quotas of up to 1,200 tonnes each.

To protect other species, particularly kingklip, a limit of 20 per cent by-catch was placed on the operations. Half of this was for kingklip and the other half for line-fish and shark.

Now that part of the total study is complete, it will be interesting to note the results of the feasibility trials, and to obtain views and analyses from scientists and fishermen.

The assessment of foreign fishery scientists will also be useful to be placed alongside the rather insular views of those within South Africa who had little external contact with other fishery bodies during the apartheid years.

Hopefully, these and other approaches to fishery issues in South Africa will eventually result in the establishment of a more just and equitable administration of fisheries for the benefit of all of South Africa's peoples. 

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A Marine Fisheries Policy

The White Paper on South African fisheries, released on 19 June, spells out the following management policy objectives

It is a policy objective that South Africa should develop and maintain a cost-effective fisheries management structure with a broadly recognized acceptability that ensures that:

- fisheries management in South Africa, within the constraints of limited human and financial resources, be conducted on a multidisciplinary basis and make use of the best available knowledge. Special attention should be given to broadening the scope and increasing the effort of fisheries research within economic, social, cultural and other relevant non-biological disciplines, and to integrating their results with those of numerical and biological studies in order to advance a well-balanced, comprehensive basis for important decisions on policy options;
- all fisheries sector practices conform to relevant international standards, laws and treaties; opportunities for meaningful co-operation between South Africa and those countries interested in helping development of the local fishing industry and its associated infrastructure be investigated with a view to enhancing the industry's development;
- levels and patterns of exploitation, determined on the basis of best available scientific information, do not jeopardize the soundness of the resource, its environment or the ecosystem on which biodiversity and long-term optimal depend; sustainable yields
- long-term management plans, which include operational management procedures, be developed to ensure optimal utilization of all significant living marine resources;
- the harvesting of one species does not endanger the continued existence, or cause the substantial depletion of any other species, and that a variety of regulatory measures be introduced to avoid such dangers, including the full protection of species, MPAS (Marine Protected Areas), restrictions on fishing gear and methods of harvesting;
- fishing sectors be subject to environmental audits where applicable, and investigations on potential detrimental effects on marine and estuarine species and their environment from activities causing environmental disturbance or pollution be initiated or continued;
- implications of an economic and socioeconomic nature, ensuing from various policy options, are properly identified, analyzed and taken into account when decisions are made;
- the principle of national co-ordination and control over the use of South Africa's living marine resources and related research activities be entrenched, but on a basis of involving other authorities in cases of non-mobile marine resources, which occur relatively

- nearshore and which do not overlap boundaries. When this is practicable, it may be necessary to involve networks of scientific institutions to assist in the process. The inherent potential of introducing co-management structures shall be given special attention in this respect;
- cost-effective capability and capacity is put in place to enforce fishery regulations effectively, to exercise adequate overall monitoring, control and surveillance and to provide for sufficient contributions to public education, to ensure that the extent and practices of all exploitation of South Africa's living marine resources are consistent with the principle of optimum sustainable utilization. A well-functioning Vessel Monitoring System, tailored to be compatible also with future regional needs in Southern Africa, is considered an essential tool in this respect;
 - institutional structures of fisheries management in South Africa adequately meet functional demands linked to the core role of providing the capability and the capacity for the effective implementation of the fisheries policy by sound management. Furthermore, institutional structures should minimize bureaucracy but allow adequate opportunities for user and interest groups to raise concerns and make inputs to decision making, and should also promote the necessary research, advice and channels of communication for the implementation of responsible fisheries management through national and provincial participation and representation. Empowerment of authority and lines of communication between institutional levels and bodies should reflect realities of policy and management responsibility, thereby fostering realistic management accountability and transparency;
 - an ethic of training in its broadest sense be promoted within the fishing industry and its associated community;
 - adequate consultation take place with representative, visible industry organizations and democratic public bodies, allied to open, transparent administrative procedures;
 - an integrated strategy of development and a coherent plan of strategy implementation, including the addressing of appropriate funding schemes, be developed in order to create a favourable environment for fisheries sector development. Some of the features of a fisheries sector development strategy should be, first, to adopt short-, medium- and long-term perspectives, realizing that processes of development are difficult and complex and that they take time, and second, to support the establishment of an adequately funded specialized unit for fisheries and mariculture sector development (UFMD). Special attention should be given through this development plan to schemes of, and support for, education, training and transfer of technology; the organizing of some decentralized structure of advisory service units to cater for, for instance, support to improving local capacity of organizing and managing small business enterprises, disseminating information related to the supply of goods and services, markets, research, fisheries, mariculture and other governmental management institutions;
 - the establishment of basic infrastructure facilities in order to minimize post-harvest loss, improve on the soundness of working conditions, product range and product quality;
 - the undertaking of a comprehensive study on potential opportunities of developing a wide range of mariculture and/or fish farming/sea ranching activities, with a view to adopting any new technology continuously becoming available worldwide to

prevailing South African conditions. Possibilities of attracting external donor financing and expertise to facilitate such a study should be investigated.

It must be emphasized that all these need to be put in place to achieve the long-term sustainable utilization of all natural living marine resources of South Africa, and of the environment in which they exist and in which mariculture activities may occur, to the benefit of the country as a whole,

The human resource needs of the fishing industry are multidisciplinary in nature. A culture should be encouraged where labour is seen not merely as a cost of production but as mankind with the dignity this entails. Good labour relations will be promoted.

Fair, humane and acceptable labour practices, workers' rights, job creation and security, sound working conditions, health and safety, and welfare benefits of employees in the industry will be encouraged and, where appropriate, regulated. It is necessary to register all fisherfolk. Therefore, it will be necessary to find suitable parameters in order to establish a clear definition of a 'fisher' and the level of activities which make him or her eligible for registration as a full-time,

or if deemed appropriate, a part-time fisher.

It is a policy objective that holders of fishing rights and other fishing industry operators should provide acceptable conditions of employment for all employees.

Within the Government's administrative structures, policy matters related to labour and employment in all sectors of the economy are the special responsibility of the Department of Labour.

The Ministry and the Department will, however, within the constraints of its specified statutory terms of reference, its scarce human and financial resources, and its obligation to give priority to core activities and responsibilities, continue to lend support to efforts at fostering improved relations between fishing industry employers and their labour force. If required, it can also contribute in a facilitating and liaising role to improving communication and relations between the Department of Labour and representative organizations in the fishing industry.

Legal report

The full legal report identifies the instances in which it will be necessary to amend the present Sea Fisheries Act in order to achieve the policy objectives. It also indicates those instances where the

policy recommendations are not achievable by means of legislation.

The more important changes proposed to amend the Act include inserting in the Act, a statement of policy objectives and principles in order to ensure that the Act would be interpreted and applied in accordance with the policies identified in the policy itself, specifically with regard to the RDP and certain recent developments in international law; specific recommendations are also made for legislative changes to achieve the policy's objectives in respect of access rights, in particular commercial access rights, recreational fishing, subsistence fishing, foreign fishing and mariculture.

With regard to Institutional Structures, the Legal Task Team based its findings on the provisions contained in the original proposal submitted to the Minister in June 1996, because an approved version of the White Paper dealing with this topic was not available when their report was being drafted. Certain changes of a philosophical nature would now be necessitated.

On resource management, the Legal Task Team recommended the incorporation of management plans into legislation.

Certain changes are also proposed to strengthen the enforcement aspects of the present Act. These include strengthening the penalties available and increasing the powers of fisheries inspectors, introducing provisions on the use of evidence gained from vessel monitoring systems, as well as the inclusion of a new offence of failure to stow fishing gear correctly.

A considerable number of amendments would be required to bring the present Sea Fishery Act into line with the policy objectives.

If these amendments are introduced, they would be of such a technical nature that they would have the effect of introducing further complexities to the Act.

The Department accordingly recommends that the present Sea Fishery Act be repealed and that a new law with

respect to utilization of living marine resources be drafted. However, it is further considered, in any event, that a new Act is justified in view of the new policies that need to be introduced.

An example would be the need to establish a Commercial Public Company, as outlined in 4.6.1.1. New policies will only be fully effective in the context of a new Act. With a new Act, it will be possible to achieve both the necessary degree of transparency as well as ensuring effective participation in the decision-making process.

This is excerpted from the White Paper on a Marine Fisheries Policy for South Africa, prepared in May 1997, and officially released on 19 June 1997.



Straddling the colour barrier

Policymakers in post-apartheid South Africa have the unenviable task of resolving conflicting interests in fisheries

The government of South Africa, led by Nelson Mandela, is currently considering a major restructuring of its fisheries policy to ensure greater participation of the non-white communities in the marine capture fisheries. A White Paper on the fisheries policy of the post-apartheid government has just been prepared.

To understand this process in the backdrop of major issues in marine fisheries, to follow-up on ICSF contacts and to co-operate with fishworker initiatives in South Africa, I visited several important fishing centres in Western Cape and Eastern Cape, the provinces that account for almost the entire marine fish production of South Africa. The trip provided opportunities to meet with established trade unions in fisheries; local, regional and national associations of fishers that are not affiliated to unions; managers of big business groups, and lawyers. There were also meetings with the Fisheries Desk of the African National Congress (ANC), parliamentarians, policymakers and members of the judiciary and press.

With a seaboard of 3,000 km, South Africa produces about 580,000 tonnes of fish in liveweight (valued at US\$400 million). Fisheries contribute to nearly half a per cent of the Gross Domestic Product. The access to resources is distributed mainly through a combination of quotas (for fish such as hake, abalone, rock lobsters, anchovies and pilchard) and permits (for tuna and squid). The sector employs about 30,000 fishworkers (around 20,000 fishers and about 10,000 processing workers).

The Directorate of Sea Fisheries, the department responsible for fisheries matters, has been shunted from ministry to ministry. Originally under the Ministry of Economic Affairs, it was later shifted to

the Ministries of Industries and Agriculture. Since 1983, it has been under the Ministry of Environmental Affairs. Until 1990, access rights and fishing licences were given by the Directorate of Sea Fisheries. The Quota Board was formed in 1990 and, since then, it has been awarding quotas on the advice of the Sea Fisheries Advisory Committee. The allocation of non-quota species is still made by the Department of Sea Fisheries.

There are 25 deep-sea hake quota holders, of which 13 are for trawling. The biggest eleven belong to the South Africa Deep-sea Trawling Association. They caught about 165,000 tonnes of fish in 1995. Three companies control over 78 per cent of the deep-sea hake quotas of South Africa. There are about 56 vessels with a combined tonnage of 43,500 GRT valued at US\$80 million, which is the largest investment in the fisheries of South Africa.

About 80 per cent of fresh and frozen fish consumed in South Africa comes from this sector, which reports annual sales worth US\$160 million, including about US\$50 million from exports. It is the largest foreign exchange earner in fisheries. (Some of the world's finest hake products come from South Africa and a substantial proportion consists of products with a high local value added component.)

Code of conduct

Around 2,000 fishers are employed in the deep-sea sector and another 6,000 in permanent or non-seasonal work. The workers in this sector subscribe to a code of conduct. In addition to remuneration, they are entitled to fishing commissions, bonuses and company contributions to employee benefit schemes. In the inshore—defined as waters below 110 in depth contour—there were 11 quota holders in 1995. They belong to the

Southeast Coast Fishing Association and function in multi-species fisheries. They also hold quotas for hake and aguilhas sole, and catch about 15,000 tonnes.

The inshore trawling sector uses vessels 14 m to 32 m in length. There are now about 34 vessels in operation (down from 54 in 1982). The sector provides employment for 300 fishers and 800 land-based workers. The workers are entitled to pension, provident fund, housing assistance and freedom of association, and they are affiliated to several unions. The majority of workers come from the South East Cape region.

The quota system for pelagic stocks was introduced in South Africa in 1974. The quotas were given to factories and not to private boatowners. Large companies control the pelagic fishery, from production to retail trade. More than half the Total Allowable Catch (TAC) for pelagics is apparently controlled by six companies (the TAC for pilchard is 23,000 tonnes and for anchovies, 256,000 tonnes). Tuna is also harvested, with a TAC of about 3,000 tonnes.

There are about 73 purse-seiners in South Africa. Apart from a small proportion of pilchard canned for human consumption, and some used as bait, most of the landings are processed into fish oil (sold to the food products

industry) and fishmeal (sold locally to poultry farms). The pelagic fisheries generate employment for over 1,000 workers at sea and about 4,000 workers on land. The tuna industry employs about 2,600 fishers.

Jigging for squid (called 'white gold'), the most recent fishing industry in South Africa, began in 1986. It is based on permits issued on the basis of annual performance. There are about 278 vessels, of which 112 are between 10-20 m and 19 between 20-30 m in length. The fishery is worth US\$15 million. It employs about 4,000 people at sea and 1,000 ashore.

Line-fishing comprises several sectors, ranging from full-time commercial operators to recreational fishers. While it provides seasonal and occasional employment to about 19,000 fishers, it is also a source of recreation for hundreds and is the key support to marine-related tourism. The species fished include snoek, kob, yellowtail, hottentot and carpenter. The commercial operators sell these fish to hawkers on the quay. There are about 2,364 hand-line boats. Of these, about 1,000 are less than 6 m and four are over 50 m in length.

Abalone fishery

The abalone fishery is a shallow-water one, where TAC quotas have been issued to six companies for 615 tonnes. There is also an extensive recreational fishery

associated with abalone. It employs 58 boats and about 200 fishers. Rock lobsters are found at depths less than 80 m isobath. Traps and hoop nets are used in this fishery, which has a TAC for 2,000 tonnes. There is also a South Coast rock lobster harvested at depths of 100 m to 200 m isobath.

This fishery has a TAC of 452 tonnes. In the peak season, it employs 218 boats of lengths ranging from 6-40 m, and around 5,000 fishers. Most of the informal fishermen of South Africa (about 5,000) make a living by illegally catching rock lobster.

Fishermen's Community Trusts (FCTs) were established in 1992 to uplift and develop the fishing communities along the west coast. A certain proportion of the deep-sea hake TAC was set aside for allocation to FCTs. In 1995, about five per cent of the hake TAC and four per cent of the anchovies TAC were set aside for FCTs. Since the harvesting of hake requires highly technical and expensive equipment which the FCTs do not have and can ill afford, they are unable to participate in the harvesting, processing and marketing of quotas. Their quotas are, therefore, sold to established fishing companies.

An 1830 painting, *Fishmongers*, by HC de Meillon in the Cape Town Museum shows vendors carrying fish on wooden poles across their shoulders, as can be seen in Southeast Asia. This suggests a local food fishery in South Africa in the 19th century, perhaps with the participation of the original slaves from Indonesia. Commercialization of the South African fishing industry, however, was initiated at the turn of the century by Messrs Irvin and Johnson, two British nationals, who set up a vertically integrated firm for the export of deep-sea hake.

Unlike in the rest of Africa, Asia or Latin America, South Africa has the rare distinction of having developed an industrial fishery much before the growth of an artisanal or small-scale fishery. Almost the entire catch comes from industrial trawling and purse-seining. Mainly controlled by white companies, these have a highly skewed ownership pattern. For instance, in hake, the most

important fisheries in South Africa, three white companies controlled 72 per cent of the TAC in 1996. Irvin & Johnson Ltd., set up by the pioneers, continues to be one of those three companies.

There are about eight large firms that control the fisheries of South Africa. These also have business interests in food products like potato chips, canned tomatoes and olives. Some of them are also involved in diamond and gold mining. These companies are essentially subsidiaries of big South African multinationals and are controlled by a handful of families.

The non-white groups participated in the coastal fishery in a rudimentary capacity for the local market, in addition to working on board white-owned fishing vessels and processing plants. A small-scale fishery, very limited in scope and mainly for the local market, thus co-existed with an industrial fishery for the export market.

This situation changed to some extent in the 1970s, when a quota system was introduced in South African fisheries. The access enjoyed by the non-whites to lobster fisheries was then suddenly taken away by the apartheid regime and given to the white companies. This forced many people from the coastal communities to fish illegally for rock lobster and supply clandestinely to the black market at cheaper prices. The right to fish non-quota species like snoek, however, is still open to all, both non-whites and whites.

With the demise of apartheid, there have been new entrants into the quota-managed fishing industry from the coloured, black and Indian communities. In 1995, for example, about five per cent of the TAC for hake and four per cent for anchovies were set aside for the non-white communities. The quotas were insufficient to undertake viable investments and were nick-named 'paper quotas' since, in most instances, they were sold to the white companies.

New fisheries policy

Unlike the Sea Fishery Act of 1988 that focused on conservation of the marine ecosystem and orderly utilization of living marine resources, the new fisheries policy

of post-apartheid South Africa advocates the utilization of such marine resources is undertaken on a long-term, sustainable basis, with optimum social and economic benefits to the people. There is a great deal of discussion and debate on what ought to be the new policy in relation to equity.

While the big companies and rich labour unions of non-whites are unanimously for the continuation of the existing system, coloureds, blacks and Indians are divided on what ought to be the focus of the new policy. These groups are essentially three:

the Informal Fishing Community, an association of fishers from the unorganized artisanal sector, that makes a living by illegally fishing for rock lobster and abalone in the nearshore waters; the Food and Allied Workers Union (FAWU), the biggest union of food workers which also represents industrial fishworkers, including women; and

the cluster that includes interest groups like the Fisheries Development Unit, the Port Elizabeth Fishing Forum and several other regional and local associations of coastal communities encompassing a variety of interests, ranging from wage workers to quota and licence holders.

The various perspectives on allocation of fisheries resources in the post-apartheid

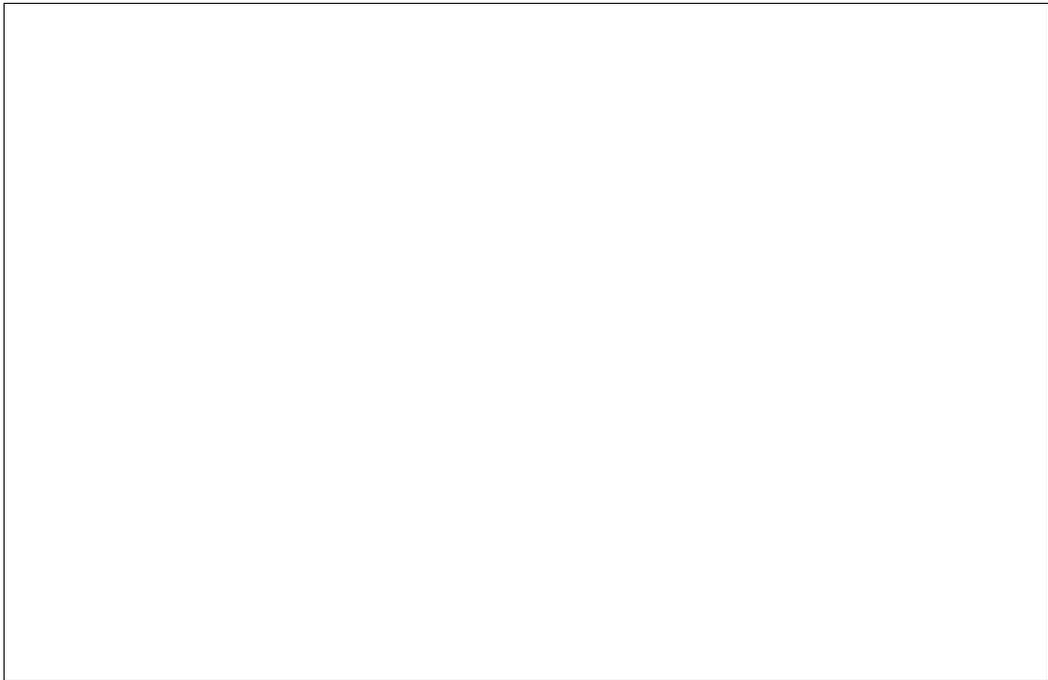
era can be classified into four categories. This classification, however, does not imply that there is no overlap between these categories.

In what can be labelled the 'restructuralist' school, there is first the FAWU that demands restructuring of all sectors of fisheries, including production, processing and marketing for all commercially valuable fish, from a holistic perspective, through a transparent and participatory process.

It wants this to be done without losing existing employment opportunities and also by taking into consideration the Reconstruction and Development Programme (RDP) of the Republic of South Africa. It also wants to 'address the wrongs of the past', which include the discriminatory practices of the apartheid regime, such as the exclusion of informal fishers from fishing activities.

Black elites

This group is against redistribution of quotas by the Quota Board to the 'black elites', fearing that such acts will only exacerbate the problem of restructuring the industry. Also, it thinks that giving unviable quotas would only result in the new quota holders selling tern to big companies. It regards the Quota Board's distribution of quotas to non-whites as a rent a black' policy and considers it an initiative that misses the wood for the



trees. FAWU also insists that attempts at restructuring should also apply to the 'newcomers', meaning non-white quota holders.

Mandla Gxanyana, General Secretary of FAWU and facilitator of the Fisheries Policy Development Committee (FDPC) constituted by Dr. Dawie de Villiers, Minister of Environmental Affairs and Tourism, in late 1994, for developing a new fisheries policy for South Africa, feels that both processing workers and fishers should benefit from restructuring. He wants the problems of fishing communities (including both harvesters and processors) to be addressed.

He thinks a non-quota system that will empower the harvesting workers without affecting the chain of workers in processing and marketing may be desirable. He does not want people without any history in fisheries to get quotas. He thinks area-based and national associations should have a larger stake in capture fisheries. He would prefer some demarcation of fishing grounds: those earmarked for deep-sea fisheries and those set aside for bona fide fishermen from the coastal communities.

The interests of those who are marginalized, the bona fide fishermen, have to be looked after. The policy should be to enrich neither a few blacks nor a few whites. The current way of reforming fisheries, unfortunately, does not address the basic problem, says Gxanyana.

The 'abolitionist' school is made up of non-white groups, mainly the Informal Fishing Community, who are fighting to abolish the existing system of quota allocation. Their main concern is unconditional access to coastal fisheries for rock lobster and abalone. They fear that any redistribution of the TAC, short of levelling the playing field and abolishing the current access regimes, would not do justice to their concerns. The demands of the Informal Fishing Community are also supported by FAWU.

In its *Submission to the* FDPC on Access Rights, the Informal Fishing Community argues basically for a *laissez-faire* approach to fisheries, except in the case of abalone.

It believes in the fairness of the market system and does not want any government intervention in fisheries, except for conservation and monitoring of catch (to make sure that landings do not exceed the TAC). It considers current estimates as politically motivated and would like objective assessments of stocks that could act as the basis for deciding the TAC. It believes that access to fisheries resources should be governed only through a fee based on the size of the fishing vessel, in the context of abalone fishery, however, it proposes greater control and something like a territorial use rights regime.

The third group is the 'redistributionist' school comprising other non-white groups who demand greater redistribution to non-white fishing communities of the quotas enjoyed by white companies. They are interested in viable quotas (meaning quotas that would enable them to economically invest in fishing capacity) for important fisheries like hake, anchovies, abalone and rock lobster. This group seems to be mainly represented by the Fisheries Development Unit in the Western Cape and Port Elizabeth Fishing Forum in the Eastern Cape region.

There is also another perspective within this group, especially among some in the Eastern Cape, who feel that non-white quota holders should share their quotas with poor fishers from the same communities. They see the attitude of the majority of new quota holders, who refuse to share the newly acquired quotas with their poor non-white neighbours, as similar to the behaviour of white companies under the apartheid regime.

The mosaic of new claimants to fishery resources from within the non-white fishing communities include:

- fishermen with quotas but who have no fishing capacity;
- fishermen who have both quotas and fishing capacity;
- fishermen from the informal sector, not legally recognized as fishermen;

- retired fishermen from fishing companies;
- fishermen made redundant by fishing companies;
- widows of fishermen; and
- women processing workers.

In addition, there are several interest groups outside the fisheries sector which would like to partake of the quota system.

According to the redistributionists, putting an end to the quota system, as demanded by the abolitionists and restructuralists, would only lead to open-access regimes and depletion of commercially valuable fish stocks. The Fisheries Development Unit thinks that controlling access through a quota system is a necessary prerequisite to ensure the sustainability of the resource. While wanting to retain the quota system, they are for the abolition of the Quota Board, which is seen as a relic of the apartheid past. In its place, they want a Namibian system of quota management, where the bulk of the quotas are believed to have been given to non-whites.

In a memorandum dated 14 May 1996 to the Minister Designate, Pallo Jordan, the Informal Fishing Community contends that allowing access to those currently excluded from fisheries will ultimately benefit only the big companies. This is because no attempt is made to redress the fundamental imbalance arising from the concentration of harvesting and processing capacity in the hands of a few. Given the technical capability of the white companies, and the lack of it among non-white communities, any situation of open access may understandably benefit the old players more than new entrants.

Finally, in the *status quo* school are those companies which wish to maintain the *status quo*. They are supported mostly by unionized fishermen, including coloureds and blacks, who fear that any restructuring would negatively affect their current earnings from fishing operations like trawling and long-lining. They are called 'sweetheart unions', a derogatory term for unions that are close to big business. The main difference

between FAWU and these unions is that whereas FAWU tries to take on board the interests of unorganized fishers, the latter support only their own self-interest.

The redistributionists have dismissed the new Marine Fisheries Policy of South Africa as a *status quo* policy since it does not propose to change the highly skewed ownership pattern in fisheries and since it makes no mention of redistributing quotas currently enjoyed by the white companies to non-whites.

There is thus a divide between the non-whites in the organized sector who support the *status quo* and the non-whites who demand change. There are further differences among those who demand a change, often based on altered perspectives. These affect the unity of the non-whites and also add new complications to the present situation.

Not convinced

Some of the labour, especially those who do not have any complaints against the existing conditions of work and remuneration in the industrial fisheries, are yet to feel convinced that their rights will be protected and their earnings maintained if there is a radical change in the system. In one instance, on 13 May 1996, there was a physical clash between two sections in Cape Town, with one side shouting, "You want to take our jobs

away!", and the other shouting back, "You are pawns of the big companies!"

The apprehensions of the organized labour force are also perhaps based on the fact that very few of the non-white claimants to the quotas have their own capacity to fish. They are also yet to learn the ropes of fish processing and marketing.

Also adding to the confusion is the minority of migrant blacks from tribal homelands who work as wage labourers in the seasonal squid fishery of Eastern Cape. They are perhaps the poorest and are far removed from the debate on fisheries restructuring or redistribution of quotas. Their main demand is for greater diversification of fishing operations and for round-the-year employment.

The positions of the Informal Fishing Community and that of FAWU seem to converge at several points. Both seem to be against the quota system and share the concern that the redistributed quotas are basically falling into the wrong hands. They also seem to agree upon a demarcation of fishing grounds between coastal and deep-sea fisheries. Both demand that only bona fide fishers among the new claimants should be allowed to participate in fisheries.

The inference that could perhaps be drawn is that activities not labour-intensive at the stage of harvesting or processing (like harvesting and processing of abalone and rock lobster) could be reallocated to bona fide fishers in the informal sector. Other activities which are more labour-intensive should, by and large, remain as they are.

In other words, the message seems to be that the biggest union of fishers and processing workers, while willing to uphold the livelihood rights of non-white coastal communities who are dependent on fisheries, is not keen to support the business aspirations of the non-whites, except those of the workers themselves.

The reluctance of formal unions to support the redistributionists might arise from the present position of organized labour in South Africa. The condition of work and remuneration of South African

fishworkers is fairly good in big companies. These workers might fear that hard-earned benefits would get dissipated in any transition from the known present to an unknown future.

Clearly, there is need to have a set of criteria for allocation of resources and an enabling legislation to implement it. While it is easy to identify the distinct capital and labour interests among those who favour the *status quo*, it is, however, too early to differentiate the interests of those who favour change.

It is also too early to say who among the non-white communities will largely benefit if the government changes the norms for quota allocation. The 'haves' on both sides of the colour barrier seem to be mobilizing the numerous 'have-nots' to fight for their respective interests. There is, however, tremendous distrust and questioning of motives.

Difficult situation

In such a difficult situation, the policymakers' role is rather unenviably delicate. There has to be greater clarity on who among the interested parties could best serve the goals of long-term sustainable utilization of marine resources and livelihood interests of coastal communities. ¶

This report was written by Sebastian Mathew, Executive Secretary, ICSF, after a trip around South Africa from 7 to 14 March 1997.

The roar of the sea lion

When nature conservation efforts grow irrational, the results can be disastrous, as shown by the case of the sea lions off Peru

According to FAO, there are 116 species of marine mammals in the world. Of these, 60 are found in the South East Pacific (Ecuador, Chile, Peru). It is commonly recognized here that the pinnipeda compete with fish for resources. The pinnipeda in Peru comprise the southern fur seal (*Arctocephalus australis*) and the southern sea lion (*Otaria byronia*). The latter, because of their great numbers, pose a huge problem for the artisanal fisheries.

In Peru, this is a particularly significant problem and, since 1970, when the Ministry of Fisheries was created, it has received greater government attention. Yet, 27 years after the creation of the Ministry, only three multisectoral official commissions have been constituted to tackle the problems created for fishermen by the sea lion.

Since 1991, Peru's artisanal fishworkers have been represented by the Federation for the Integration and Unification of the Artisanal Fishworkers of Peru (FIUPAP). The Federation is very actively involved in developing and promoting the artisanal sector. It has a representative in the seven-member official commission (with the National Director of Artisanal Fishery as chairman) constituted to determine "actions to diminish the interference of the southern sea lion in the artisanal fishery."

According to the census by FIUPAP and IMARPE (Instituto del Mar del Peru) in 1995-96, there are 6,258 artisanal fishing vessels, of which 2,500 have an average capacity of 2.5 gross registered tonnage (GRT), using drift-nets to fish for species like Peruvian silverside, eastern Pacific bonito, lorna drum, cabinza grunt and palm ruff. Peru's artisanal sector includes vessels up to 30 GRT.

The total population of Peru's artisanal fishworkers, including those in the coastal and continental areas, is 45,000. Of this, 40 per cent fish without vessels,

A comparison of the figures for the number of artisanal fishing craft and southern sea lions justifies the call to regulate the growth of the southern sea lion population through a rational cull.

| Year | Artisanal Vessels | Sea Lions |
|------|-------------------|-----------|
| 1971 | 4,700 | 30,054 |
| 1981 | 5,171 | 49,185 |
| 1990 | 5,960 | 103,562 |
| 1997 | 6,258 | 195,000 |

IMARPE recommended the harvest of 2,800 and 4,500 sea lions in 1984 and 1992 respectively, based on the principles of a Plan of Global Action for Marine Mammals developed between 1978 and 1983. During a meeting of experts in Costa Rica in 1995, the Peruvian delegation, represented by IMARPE, recommended legislation for a programme to control the population of southern sea lions and also to curtail their interaction with the fisheries through means that do not negatively affect their population.

Environmental groups

However, these recommendations have not been applied in Peru, mainly due to pressures exerted by national environmental groups which resist any action to control the population of southern sea lions. Worse, these groups do not furnish alternative solutions for this problem.

Granted that these days the trade-environment nexus is an important and controversial subject internationally. Yet, in the application of unilateral

measures under the pretext of environmental protection, there seem to be forces working against the commercial interests of Peru. The access of its artisanal fishery products to the markets of developed countries would be affected.

The southern sea lion does not figure in international conservation agreements because its survival is not in danger. On the other hand, the negative economic impact on the incomes of the fishworkers and communities of Peru is not taken into account, nor is the significant contribution of artisanal fishery to global nutrition security.

A preliminary study by FIUPAP has estimated the annual damage caused by the southern sea lion to the artisanal fleet at US\$64 million. FIUPAP is now evaluating the economic impact on other techniques of fishing, so as to assess the larger economic consequences.

Although Peru's artisanal fishery receives support from FONDEPES (National Fund for Fisheries Development), there is very little investment in credit programmes for equipment, vessels or diversification of the fishery. In 1995 and 1996, these investments amounted to only US\$3 million and US\$6 million respectively.

Considering that fishing is the second most important economic activity after mining, the negative impact of the sea lions on the incomes of Peruvian fishermen is considerable. Artisanal fishworkers are those principally concerned with maintaining an adequate ecological equilibrium in marine areas. The survival of these communities depends on the availability of marine resources. While we recognize the rights of marine mammals to live in the sea, we must not forget to maintain some sort of equilibrium.

In Peru, however, no such equilibrium is sight. The situation appears set for a struggle for survival, in which the greatest damage would be precisely to the environment. In such a scenario, the blame should not be hurled at artisanal fishworkers but at the mercenaries of the conservation movement, who misunderstand the relationship between conservation and development. 

This article written by Manuel Milla, an artisanal fisherman from FIUPAP (Federation de Integracion y Unificion de los Pescadores Artesanales del Peru), has been translated by Luz Pisua of Instituto Huayuna, Lima, Peru

Peru



Don't repeat others' mistakes

This open letter addresses some of the critical issues relevant to a marine fisheries policy for South Africa

The new White Paper on South Africa Marine Fisheries marks an important step in the process of redistributing and sharing more equitably South Africa's marine resource wealth. It sets out to right the wrongs and injustices of the past, and is a serious attempt to establish a basis for the sustainable and equitable development of South Africa's fisheries resources. Its particular emphasis on intergenerational equity and long-term sustainability; the allocation of access rights in a fair and equitable manner; and the redistribution of income and employment opportunities in favour of the poor are important objectives. It is an initiative of great significance, and is to be welcomed.

However, some of the reform proposals raise serious issues of concern. In our view, the highly idealistic goals which the White Paper sets out to achieve are contradicted by several of the actual reform mechanisms detailed in the text.

In particular, we are concerned that the new fisheries policy makes no mention of restoring the fishing access or livelihood rights of the artisanal fishworkers, which were forcibly deprived from them in the 1970s. Criminalized under the apartheid regime and branded as poachers, and categorized today as 'subsistence fishermen', the artisanal fishworkers' livelihood rights are still severely curtailed. The reference to artisanal fishermen as 'subsistence fishermen' recognizes only their subsistence rights. The conditions set out in the White Paper, under which artisanal fishermen have to operate, deny them their rights to fully engage in their traditional way of life, to benefit from equal access to resources, and prejudices their rights to equal employment and income opportunities. These are serious shortcomings, and

unless addressed, the stated ideals of the new fisheries policy to broaden participation in the fishery and to allow greater access to resources by those who have been denied access previously, will remain utopian. It is also of concern that the White Paper states that "non-reliable information is available with regard to employment in the subsistence sector." We feel that this is tantamount to denying the existence of this important sector and the rights of its members to participate in the fishery. We feel that this lack of information and understanding needs to be remedied as a matter of some urgency.

The emphasis of the White Paper on 'real rights' which can be purchased through a transparent and competitive process against payment of an appropriate fee is also a cause for concern. Such cash- or market-based quota allocation systems have disenfranchised artisanal fishermen in many other parts of the world, where Individual Transferable Quota (ITQ) systems have concentrated access rights and ownership of quotas in the hands of a few large companies.

There are other, more equitable ways of allocating quotas and establishing access rights, for example, through Territorial Use Rights and Community Allocated Quotas. These systems allow for much greater participation, and provide important checks against the accumulation of quotas.

Ways of recouping

We would like to suggest that, while it is both desirable and fair that stakeholders who share in the wealth of the seas should contribute in some way to the management and regulation of marine resources, there are ways of recouping management and administration costs other than through the payment of fees.

For example, the White Paper highlights the participation of local communities in resource Management (Section 3.8). Co-management not only offers the possibility of greater participation in resource management, but also provides a mechanism through which administration and management costs can be shared with stakeholder groups. Allocating resource access through a fee-paying mechanism immediately introduces a bias in favour of the haves over the have-nots. It has the potential to prevent economically vulnerable groups from getting a foothold in the industry, and could hinder the redistribution of income and other benefits to the poor.

In our view, the White Paper makes the fundamental mistake of confusing fishermen with fishing capacity. By placing greater emphasis on the small-scale sector, and by the judicious selection of technology, we feel that it will be possible to restructure the fishery in ways which provide greater employment opportunities.

In this regard, we also feel that there is insufficient importance given to selectivity and diversity of fishing gear, and that a combination of seasonality, selectivity, capital and labour can be used to reduce fishing effort, while increasing Income and employment opportunities for the disadvantaged sectors. We feel that these aspects, together with the establishment of an exclusive fishing zone within the 110-fathom depth contour for the artisanal sector, should be given greater emphasis.

We feel that greater emphasis also needs to be placed on the small-scale processing sector and associated markets for fish in Africa, so that protein-rich fish can be used to feed people rather than intensively farmed livestock.

The emphasis the White Paper places on larger, vertically integrated canning, freezing and reduction industries limits the scope for income and employment opportunities. In other parts of Africa, the artisanal processing of fish through curing (smoking, salting and sun drying) provides the basis of thriving and vibrant labour-intensive industries, as well as providing an important source of

low-cost protein for the masses. In our view, better use could be made of the rich pelagic fisheries (pilchard, anchovy, and horse mackerel) and the by-catch from trawl and purse-seine fisheries by artisanal processing, both in terms of employment generated and human food provided than is currently the case in the canning and reduction industries.

In our experience, such centralized, relatively large-scale industries employ far fewer people and concentrate the benefits in far fewer hands than small-scale, decentralized processing industries. We feel that small-scale decentralized industries have much greater potential to redistribute fishery benefits in favour of the poor than the 'rainbow managed' companies described in the White Paper (Section 4.6.1.3). However, the development of such artisanal processing is severely handicapped by the constraints applied to 'subsistence' fishermen, and the limitations placed on the sale of their catch.

In our view, a noticeable omission in the White Paper is an intervention or floor price for fish. Such a mechanism could provide further protection to artisanal fishermen faced with unscrupulous buying practices of traders, and market price fluctuations caused by supply and demand factors.

In our experience, unplanned and unrestricted development of mariculture has led to the destruction of valuable coastal environments, the depletion of biodiversity, and the loss of traditional access rights of coastal people to the sea in many parts of the world. We urge you not to repeat the costly mistakes made in other parts of the world where, in the name of short-term financial gain, long-term development prospects have been severely damaged.

Fishery agreements

Finally, (and although not explicitly covered in the White Paper), we would like to voice our concern over the signing of fishery access agreements with third countries. In our experience, such agreements have tended to encourage the export of overfishing from Europe and elsewhere, and we urge you not to repeat

the mistakes of other African countries. Foreign fishing fleets, often heavily subsidized by their national governments, can seriously damage the development prospects of fisheries by using fishing patterns and technologies which effectively strip-mine and export valuable but vulnerable living marine resources.

The dire situation in West African fisheries, which have a long history of third country fishery access agreements, is graphically illustrated by the FAO in its report on the State of World Fisheries and Aquaculture, 1996: "...offshore stocks are heavily overfished... - in one area, recent assessments show a decrease of about 50 per cent of total biomass... most demersal stocks are fully exploited" (page 99).

In our view, foreign fishing fleets (fishing both legally and illegally) have contributed to this. Thus, in Senegal, the EU, having fished out first shrimp, then tuna and now demersal stocks, is currently targeting pelagic stocks in the classic strategy of 'fishing down the food chain', characteristic of so many industrial distant-water fishing fleets. We voice these concerns in the spirit of cooperation and solidarity and wish you the very best of success in redirecting South Africa's fishing policy in favour of the people whose livelihoods depend on living marine resources.

This letter, dated 15 August 1997, and addressed to the president of South Africa, was written by Brian O'Riordan, Fisheries Technology Policy Officer, Intermediate Technology Development Group, Rugby, UK

A new apartheid?

The transformation process in South Africa's fisheries is a tale of chaos and corruption

Cape Town, South Africa: the small knot of men hanging around the dock gates hardly attracts a second glance. To the casual observer they are just like any other group of chancers trying their luck for work in the port. However, this group is not just any old flotsam of washed up job hunters. They are members of the Cape Town Harbour Fishermen Co-operative, part of a new quota owning elite in South Africa. They are some of the new quota owners, so-called 'new entrants' to the fishery, and the intended beneficiaries of the transformation processes set in motion in the fishing sector just prior to 1994.

Since 1994 under the leadership of Nelson Mandela, the South African government has been attempting a major restructuring, or transformation of its fishing industry. However, there are three major constraints to achieving transformation.

First, the 'Sunset Clause' in the new constitution requires that no official in the apartheid administration is removed from office for at least five years. Thus there is tremendous administrative inertia to change the status quo. Second, the constitution obliges the government to negotiate transformation with the existing stakeholders. This means that any redistribution of wealth and power must be negotiated with the large fishing companies, and, more importantly, with the financial institutions that are the major shareholders in these industries. The government's ability to deliver transformation is therefore severely restricted by these two aspects of the constitution

In the third place, to a significant number of people, transformation means restitution. In the 1960s, under the Group

Areas Act, large segments of the population were shifted out of their coastal homes to townships several miles in-land. Their movement back to the coast to pursue their former livelihoods was restricted by their geographical isolation, and also by the Pass Laws. They, therefore, expect the restitution of their rights to earn their livelihoods from fishing. Any compromise deal falls short of their expectations.

The Cape Town dock workers are one such group. But these men have neither vessels nor equipment, and have been denied access permits from the Department of Sea Fisheries. They, therefore, have no means to convert their quotas directly into livelihoods. In any case, the token quotas provided to them would not go far amongst the 450 registered members. Most of them live in townships some distance from the coast, and their sole source of meagre income is from uncertain casual work as crew members aboard the longliners and trawlers based in Cape Town Docks. They can not even afford the bus and train fares to come to work each day, let alone the costs of investing in, or running, a small fishing business a basic requirement of the quota application.

Quotas have become the main tool for transformation in the fishing sector. They are the means through which South Africa's fishery wealth is to be redistributed. By making quotas transferable, the system aims for a wider group of new stakeholders to cash in on South Africa's marine wealth.

Unmanageable

However, the system is clearly unmanageable. There are many more applications than available quota, and there is insufficient capacity in the

Department of Marine and Coastal Management to process the thousands of complex application forms.

The quota system is also based on an unrealistic model of the South African fishing sector. First of all, it requires all applicants to establish a commercial company, complete with a business and marketing plan—quotas will thus only be awarded to certain types of corporate structures. Secondly, the geographical, social and economic isolation of fishing communities has resulted in low levels of literacy and education.

Most new quota applicants, therefore, have to seek help to fill in the forms, and this has often led to their applications getting hijacked. In many instances the quota awarded has been of a token amount, and recipients have been advised to sell to larger business interests. This has fuelled the market for paper quotas, and resulted in the access rights merely passing back into the hands of big business.

Ministers' wives, politicians, business leaders and other people of influence have all received handouts of quota ahead of genuine fishermen. The corruption was initiated under the auspices of the Quota Board prior to 1994, and continued by the Fisheries Transformation Council set up by the new Marine Living Resources Act. This has severely discredited the transformation process.

Over the last year, court cases have been filed against the government by former quota holders for illegal and unconstitutional quota allocations. As a result, a significant part of the South African fishing sector has ground to a halt. For example, legal wrangling in 1998 prevented the Minister from allocating new quotas for hake and anchovy for fear of court action from disgruntled former quota holders. It was only a compromise deal with the industry that allowed 40 per cent of the hake quotas to be allocated and fished in 1998/99. Some new entrants had to wait until 17 December, when 75 quotas for 4,000 tonnes of hake were finally allocated. This gave them only around five weeks before the last day of the season. As these quotas were distributed in

quantities of 50 and 100 tonnes, most were quickly sold and passed back into the hands of the large companies.

The 1999 fishing season has also been severely disrupted by court cases. In one such landmark case, in May 1999, it was ruled that the allocation of crayfish quotas for the 1998/99 season (November to July) made by the minister was irregular. This meant that no crayfish quotas could be allocated to small fishermen, but that the lion's share had to be allocated only to the previous recipients. Deputy Minister Mokaba criticized the ruling, pointing out that: we remain with unreconstructed courts they did not look at the intention of the law the interpretation of the court did not take into account the spirit of the new legislation.

The issue of access is fundamental to the transformation process, but there is a wide divergence of view on who should have access. In most fishing communities, it is felt that priority access should be given to those who get their hands wet. They need direct access to the resources in order to earn their livelihoods. For social reformers, access means opening up the fisheries sector to non-white - mainly 'black' - interest groups. For them 'black empowerment' is the main objective. For others, access means having a share of the marine wealth in a form they can use or convert into cash.

The new Marine Living Resources Act is not a very successful attempt to reach a compromise on these divergent views. The Act only recognizes three kinds of fishermen: subsistence fishers, recreational fishers and commercial fishers. Essentially, subsistence and recreational fishers are 'second-class fishers', whose activities and movement in the sector are highly restricted. The Act seriously omits to mention the artisanal fishing sector, or how fisheries can be incorporated into, and contribute to, the development of the wider coastal area.

Wider issues

The issue of quotas goes beyond access rights. According to a senior Fisheries Department Official, quotas are now used to meet three key objectives of South Africa's Marine Living Resources Act: redistributing resource access rights so as

to redress social imbalances in the fisheries sector; ensuring the sustainability of the resource base; and maintaining stability in the industry.

The story of the Cape Town harbour fishermen illustrates how the quota system is, at best, not working, and, at worst, is being used to benefit a few at the expense of the many. Gerry Phakoe, a spokesman for the Cape Town Workers, says angrily, "My father lived Simonstown and was a fisherman. That was until we were forced to move to the townships. We were called bergies (vagrants), and were exploited by the boatowning fishing companies. We have seen our brothers drowned at sea, and die in misery and poverty. However, in 1993, we realized that we had certain rights, and that we could claim these from Sea Fisheries (now the Department of Marine and Coastal Management)."

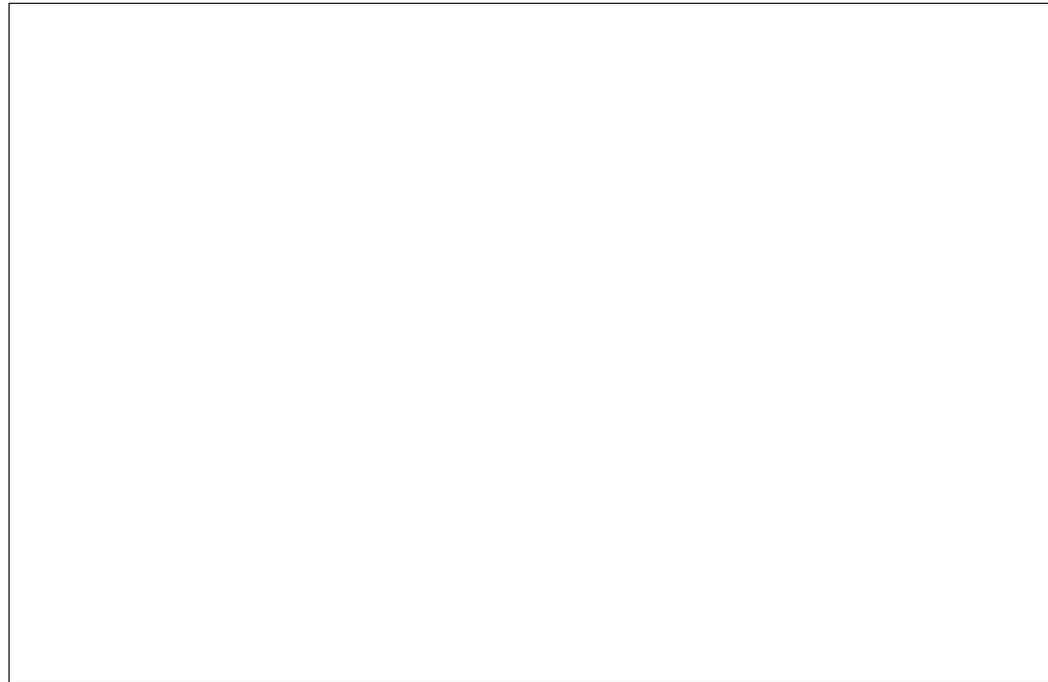
According to Gerry, in 1993, 355 Cape Town Docks fishworkers got together, and, in 1994, they were allocated 63 tonnes of hake quota. This was increased to 951 tonnes, after protests. However, they were denied access permits, and were advised by a senior fisheries official to sell their quota to a company nominated by him. They also sought legal advice, and were advised to set up a 'Community Trust' to invest their quota money in local community services. However, the lawyer they hired, together with the department

official, drew up a flawed document, and, as a result, only a part of the quota money was released - Rand 500,000 (about US\$ 8,500). Each fishworker received Rand 400, and the rest of the money was misappropriated. Frustrated and angry, they attacked the lawyer and broke into the Sea Fisheries offices.

In the court case that followed, their claims against the lawyer and Sea Fisheries officials were over-ruled. A subsequent court ruling declared that quotas could not be allocated to Community Trusts as these were not properly constituted companies. In the course of events, they met up with Andrew Johnston, a lobster fisherman, who was trying to unite all small-scale and 'informal' (unrecognized) fishers under one banner. His vision was to establish a fisherman's co-operative that would act on behalf of its members to acquire and distribute the quota, and process and market the fish catch. He travelled all over the country, and persuaded 17 organizations to join him. These were then registered as co-operatives with the Registrar of Co-operatives.

New company

With legal advice, they set up the South African Commercial Fishermen's Corporation Pty Ltd (SACFC), which applied for quota on behalf of the now 25 members (including the Cape Town Harbour Fishermen Co-operative Ltd).



What the co-operative members did not bank on was the legal and official interpretation of the General and Transformation Criteria for quota applications: that quotas would only be awarded to companies with 'Closed Corporation' or 'Pty' structures. Their lawyer therefore appointed himself as Chief Executive Officer, established a holding company which now owns SACFC, and took control of the business. The company has an authorized share capital of 10,000 shares of Rand 1.00 each, which is distributed amongst the member organizations according to the size of their membership.

According to Matthys Mocke, Chief Executive Officer, in its first year of operation (1998/99), SACFC was allocated quotas for hake (800 tonnes), crayfish (130 + 59 tonnes), and abalone (20 tonnes). It was also allocated 40 squid permits. A business arrangement has been struck with one of the large fishing companies, OCEANA. This has "assisted with cash flow problems", and allowed SACFC to use one of its processing factories.

Yet, shareholders are up in arms. They fear that this is just another ruse to deprive them of their access rights. They have seen quotas hijacked in the past by clever lawyers, school teachers, civil servants and businessmen. In Hawston, for instance, the quota awarded to the Fishers Co-operative was sold off by the person

who applied on its behalf. In Saldanha Bay, Denburg Fisheries Pty Ltd, formed by the local fishermen to apply for quota, has also had its quota hijacked.

The quota allocation system does not take account of the immediate and ongoing needs of the fishworkers and their dependents: fishermen need access to the sea, and regular food and income from fishing activities. The system now in place can, at best, only meet their immediate and short-term needs, if they sell off their quota.

Despite over five years of democratic government and transformation, the pre-1994 status quo prevails in South Africa. Around 70-80 per cent of the ownership of the access rights remains concentrated in the hands of the five largest players. Racial apartheid has been replaced by economic and social apartheid, with coastal communities and local economies still effectively excluded from the fishery.

This article is by Brian O'Riordan, a Member of ICSF

Not an easy task

These comments on the implementation of South Africa's new fisheries policy are a rejoinder to an earlier SAMUDRA Report article

In SAMUDRA Report No. 24 (December 1999), Brian O'Riordan presents an extensive review of the situation in South Africa's fishing sector. It is rather depressing reading: "a tale of chaos and corruption". Even for people who have spent more than two weeks touring the fisheries sector, there are disturbing trends and accounts, running completely counter to the goals of equity and the redressing of historical imbalances. Nevertheless, the article shows a poor understanding of the process, and it is even poorer in advancing "sweeping and enlightened reforms". Therefore, a few comments from another outsider, who has followed the process since 1994.

The policy process leading up to the Marine Living Resources Act (MLRA) of 1998 was a long and complicated one, from the first ANC-based initiatives in 1994, through almost five years of negotiating within the Fisheries Policy Development Committee, leading to the White Paper and the MLR Bill and then to the final MLR Act, approved by Parliament in May 1998.

Of course, a lot of things could have been done differently, but, by and large, this was an open process, incorporating a large number of actors, who had never met before. More groups could have been consulted and more effort could have been put into publicizing the final Act, but this would hardly have changed the result.

The fisheries policy of South Africa, just as in most other countries, is a compromise, where the outcome is defined by the political strength of the contending forces. Compared to the situation in most other African countries and quite a few European ones as well, the fisheries policy process in South Africa was transparent

and inclusive. The most crucial issue all through the policy planning was the extent to which the transformation process should be allowed to disturb the existing industrial set-up. Noting, as O'Riordan rightly does, that most resources are fully utilized, redistribution means taking away from Peter in order to give to Paul.

The greatest impediment to a large-scale redistribution has, of course, been 'big business', but not alone! Organized labour played along with big business all the while. Not surprisingly, the fishworkers' union (FAWU) and other unions would like to protect the employment of their members, thus emphasizing industrial stability. (That the same unions would now like to operate as quota owners as well is an interesting paradox, implying all the familiar problems that go with wanting to sit on both sides of the table. But this is a general phenomenon in South Africa, not limited to the fishing industry alone.)

At the end of the day, the South African fisheries policy is a 'negotiated revolution', just like the rest of the 'revolution' leading to ANC's remarkable rise to power in 1994. Parts of the negotiations precisely ensured that established owners and workers had a certain security and a 'sunset clause' for the bureaucrats. That we can lament, but to little avail. The challenge is to see what can be accomplished, given these limitations.

Pros and cons

A lot can be said of quota systems and their usefulness in small-scale fisheries. It was, nevertheless, the system preferred by a great majority of politicians in the South African Parliament, including the ANC representatives. It could have been much

worse! In the White Paper, a suggestion was made to hand out transferable fishing rights for perpetuity, while, in the final Act, we are dealing with fishing rights leased to the operators for a maximum of 15 years duration. Furthermore, all transfers have to be authorized by the State, thereby limiting the freedom of the established owners.

Again, there were alternatives, but the alternatives presented by the small-scale fishers never succeeded in attracting any political support. Open access within fixed TACs never caught on because such a system is a waste of effort, bad for marketing and generally benefits only the established 'highliners', that is, the most clever and efficient fishers. Other alternatives were rather unclear as to who should have the right to fish. That also applies to the idea of community quotas, which had been an administrative catastrophe in the past. Whatever the case, it is important to stress that South Africa has got a system rather different from what was originally envisaged, based on the ITQ systems of New Zealand and Iceland.

No doubt, there has been a tremendous interest for acquiring quotas. More than 5,000 have applied for the 1999/2000 fishing season. When one out of ten is successful, no wonder rumours quickly start circulating about corruption and undue influence. It is still worth having a historical perspective of this process. In the past, until 1998, the so-called apolitical Quota Board allocated the quotas. Then, friends and cronies of the Minister and members of the National Party were quite successful, and, later, also people with good ANC contacts. Today, it is clearly stated that the allocation of quotas is a political responsibility, where the Minister is accountable, together with the government.

There are, furthermore, criteria as to who should get access, and there has been established a process of redress for the unsuccessful. According to our investigations, there are very few cases where the Minister has actually intervened, overruling the recommendations of the Chief Director, based on the screening process in the Directorate of Marine and Coastal

Management (MCM). These procedures can, no doubt, be improved, but they are considerably better than the old, at least seen from the perspective of the new entrants.

Allocations, according to the new Act, have only been done for the last two years, so far with relatively modest results. If we start calculating from 1994, when the new dispensation got into power, the redistribution would constitute approximately 25 per cent of the important hake quota and 31 per cent of the West Coast rock lobster quota, to mention only two of the most disputed fisheries. A relatively large number of new entrants have been brought into the industry, with small quotas per entrant.

The large companies are still dominating, holding the lion's share of the total quotas, but the trend is definitely working in the direction of a more diversified ownership. Whether this is good or bad depends entirely on what the new entrants are doing with their quotas. At present, we have a number of 'paper quota owners', people who have been allocated a small quota and who then sell or lease it to established operators for cash. That is to be expected, since the two years needed to acquire equity is too long a period if you have no access to capital other than the value of the quota(s).

Whatever the result of the redistribution process, there are bound to be a large number of dissatisfied applicants. Everybody can not possibly receive a quota. In 1999/2000 alone, there were more than 900 applicants for West Coast rock lobster. If all, excluding the old operators but including the recent new ones, should have an equal share, this would have turned out to be 1.6 tonnes per operator, to be diminished every year, as new entrants enter the race. This is hardly the quantity that would make for a viable industry.

Difficult aim

Implementing a new and rather ambitious policy is difficult, and it will probably take years before the new administrative system is up and running. (Why do we expect wonders from a Third World country like South Africa, when even European fishing nations would have

problems of standing up to the same standards?) Unfortunately, the ideas put up by the Artisanal Fishers Association are not very helpful, even if they may have a considerable potential for political mobilization.

I certainly agree with O’Riordan that apartheid destroyed the artisanal fisheries of South Africa, but precisely for this reason, restitution is not a viable route. (After 40 years, who should be making restitution and with what?) Looking forward is, therefore, more productive. As of year 2000, there are at least five major problems which have to be solved:

The most important task at the moment is to get a transformation schedule or plan, outlining the political vision by year 2000/2001 and then, five years from now, set specific targets on how much is going to be reallocated in each of the 17 fisheries. Such a plan has been missing all along the process, creating considerable insecurity among established operators, and confusion among new entrants as to what is realistic or possible in terms of reallocation. Such a plan should also contain where (in which sector) new entrants can most easily be accommodated. It goes without further saying that certain sectors like West Coast rock lobster, abalone, longlining, etc. require much less capital than others like trawling for deep-sea hake.

Secondly, it is necessary to strengthen the capacity and competence of the unit dealing with applications in the fisheries directorate (MCM). This should also include the establishment of a watchdog unit to check the validity of the information forwarded by the applicants and for follow-up, to see that organizational entrepreneurs do not kick out the true fishermen as soon as they have secured a fishing right. Furthermore, it is necessary to simplify the allocation criteria, so that the process appears as transparent as possible.

Thirdly, there is an urgent need to establish training schemes, especially in business skills. Many of the new rights holders do not have even the most rudimentary business skills and, therefore, fall easy prey to established

owners in all types of ‘joint ventures’. If business entrepreneurs are the ones going to transform the South African fishing industry, they certainly need assistance also in terms of easy credit. The requirement of obtaining equity within two years based on the fishing right as the only collateral is clearly unrealistic. Assistance to create more efficient organizations should also be considered, keeping in mind that a number of programmes are much more efficient if run through organizations comprising the target groups.

Finally, there is a need to introduce a resource fee. In the MLR Act, there is a provision for introducing a leasing fee for the fishing right. This has not yet been introduced, probably due to heavy resistance from established operators. Nevertheless, a resource fee is, in the end, what society gets back from the fishing industry for having the privilege of using a national resource. Experiences, lately from Iceland, show the weak legitimacy of a policy where the national resource is handed out for free, benefiting only the original operators.

O’Riordan’s account ends with the moving in of a team of investigators, looking into the alleged corruption of the present fisheries administration. Today, we know that most of the fuss was due to certain bureaucratic shortcuts and had little to do with personal enrichment through bribery. I do not deny the possibility of bribes (quite common under the old dispensation), but I do think this is often too easy a way out of a dilemma, that is, of explaining why everybody can not get a quota! In South Africa, just as in Norway or the EU, the challenge is to weigh social equity against biological sustainability and economic efficiency. That is a truly political task, with few fixed answers.

This response comes from Bjørn Hersoug of the Norwegian College of Fishery Science, University of Tromsø, Norway (email: bjoernh@nfh.uit.no)

Response

WSSD

Tracks for the future

The Fisher People's Forum at the World Summit on Sustainable Development provided an alternative platform

On 22 August 2002, 240 participants from fisher and coastal communities in the Western Cape of South Africa boarded the 'Fisher People's Train' at Cape Town station and departed for the United Nations World Summit on Sustainable Development (WSSD) in Johannesburg.

There they were joined by 34 fishers and fishing activists from all over the world who had come for the Fisher People's Forum at the WSSD. This Forum was hosted by Masifundise Development Organization, with support from the Artisanal Fishers Association of South Africa and the World Forum of Fisher People (WFFP). Masifundise is a non-governmental organization (NGO) operating within the rural coastal communities of the Western Cape. It is affiliated to the Trust for Community Outreach and Education (TCOE), a national coalition of rural NGOs.

The Fisher People's Forum formed part of Masifundise's long-term campaign to support these communities in their struggle to realize their rights to marine resources and sustainable coastal development. As a result of past discrimination on grounds of race, class, gender and geography, significant disparities exist in the access and control of the sea in South Africa. Prior to the 1990s, black communities did not have equal access to marine resources through the fishing rights allocation system. The transformation of the fishing industry since the elections in 1994 has been very minimal and has failed to address the needs of subsistence and artisanal fisher people. The new fishing rights allocation policy has left many small-scale and subsistence fisher communities with no access to marine resources or, at best, with unsustainable fishing quotas. This group

has also become increasingly marginalized within the global context in which the South African fishing industry is located.

The WSSD provided an opportunity to protect and promote the rights of fisher people and coastal communities to marine resources and sustainable coastal development. The Summit, the largest conference of its kind in the world, brought together representatives from governments and NGOs to discuss and debate a wide range of issues pertaining to the global development environment. It was a unique opportunity for the coastal communities to utilize the WSSD platform to achieve the following objectives:

- raise the visibility of the fisher people;
- increase awareness about development issues facing fisher people;
- network with other regional and international fishers and extend their understanding of the issue of sustainability as it pertains to marine resources; and
- gain exposure to the range of global trade and finance policy issues that impact on local fishing industries and coastal economies.

Colourful banners

The Fisher People's Train was met at Johannesburg Station by the international group of fishers, led by Thomas Kocherry from India and Andy Johnston from South Africa, with colourful banners and posters. South African fishers were presented with badges from the WFFP and, for the first time, they gained a sense of the global links between fisher people around

the world. This was one of the most significant gains from the Summit.

The fisher people arrived at Nasrec, south of Johannesburg, for the Global Forum the following day, carrying banners and singing, encouraging all the delegates arriving to note their presence.

After officially registering all the fisher people with the WSSD Civil Society Secretariat, the Fisher People's Forum was officially opened at 11 am in the Administration Auditorium at Nasrec on Saturday, 23 August 2002, with the local fishers singing and dancing to celebrate the event. Elize Petersen welcomed all the international fishers, in particular Thomas Kocherry. After the international delegates had introduced themselves, each local leader then introduced his or her delegation.

In his keynote address, Thomas Kocherry highlighted the problems faced by local fishers in the context of globalization. This presentation elicited considerable comment and questions, as the local fishers expressed their understanding of the similarity between their problems and those faced by others around the world.

Several of the international delegates expressed their support for the South African fishers and a sense of the strong, united nature of the bonds beginning to be

developed could be felt across the auditorium.

In the second session, Karen Sack from the Antarctic and Southern Ocean Coalition (ASOC) talked of global trade and fishing. Her input highlighted critical issues of the current nature of global trade in fishing, in particular, the use of subsidies and the impact of this on fishing stocks and livelihoods around the world. This input was well received and again elicited considerable discussion and questions as delegates grappled with the implications of these issues at the local level.

After a late lunch, the conference resumed with a panel discussion comprising key fishing activists from around the world. Herman Kumara from Sri Lanka and N. D. Kohli from India, together with Zoe from Madagascar, presented the key challenges facing subsistence and artisanal fishers in their regions.

Plenary session

These inputs were followed by lengthy discussions in a plenary session, as many delegates wished to question the panelists and also to comment on the similarities with their situation. Following the discussions, it was agreed that the Forum would march peacefully to the Nasrec gates to highlight the concerns that had emerged during the day's discussions. The marchers sang as they trooped towards the gates, but were stopped by



the police who informed them that they were not permitted to walk together singing and carrying banners. After expressing their determination to have their voices heard, the fishers were allowed to proceed to the gates.

The highlight of Day Two of the Fisher People's Forum was an extremely informative and warm panel discussion with key women activists. Chandrika Sharma from the International Collective in Support of Fishworkers (ICSF) presented the implications of globalization for millions of fishworkers around the world. She emphasized the particular negative implications of the very gendered nature of the fishing industry for women workers and how this impacted at the level of the household, community, market and the State.

Maria Cristina Maneschy brought insights from Latin America, in particular, from her own country, Brazil, which echoed the concerns experienced in India, particularly about the discrimination experienced by women, both by their exclusion from certain aspects and from the unequal way in which they are included in the industry. Margaret Nakato from Uganda presented the experiences of women in her country. Her presentation too supported the previous presentations, but emphasized the way in which women's experiences of

discrimination within the fishing industry is indivisible from their experience of political, sexual and economic exploitation and oppression in all other areas of their lives.

At this point, Thomas Kocherry welcomed Pauline Tangiora from New Zealand to great applause from the audience. Tangiora is a leading indigenous people's activist and also a member of the WFFP. She encouraged the South African delegates, in particular the women, to be strong and to take up the challenges facing them, with support from the international community of fishers. A great deal of discussion followed as delegates, particularly the women, engaged the panelists on key issues facing them in the fishing industry around the world.

This discussion was followed by a lively panel discussion led with presentations from John Kearney from Canada, Harekrishna Debnath from India and Andy Johnston, focusing on critical issues of alternative policies and approaches, most notably, the use of community-based fisheries management systems.

In the second session for the day, TCOE Director Merica Andrews presented the critical challenges facing the Fisher Forum on how to take their struggles forward. This laid the foundation for the discussions in commissions that followed. Each commission was asked to consider the key issues facing fishers, the key demands and strategies that they should use, and the structure that could take these issues forward and which organizations they should form alliances with. The commissions met until late in the afternoon and, subsequently, the leaders from each commission continued working late into the night. The key demands that emerged were then presented and discussed, and a strategy developed for presenting these demands before the government officials who had been invited to the closing event.

Closing event

The Fisher People's Forum gathered at Nasrec on Monday 26 August for a press conference and the closing event. The keynote speaker was the chair of the TCOE

National Board of Trustees, Wallace Mgoqi. The fisher people had selected key representatives to tell their stories and present their demands to Monde Mayekiso, a representative of the Ministry of Environmental Affairs and Tourism. Thomas Kocherry read the outcome of the Fisher People's Forum in the form of the resolutions and demands developed by the delegates. Monde Mayekiso was requested by delegates in the audience to respond to these demands. However, he declined.

The frustration of the delegates was very tangible and several expressed it directly to the Ministry's representative, pointing out that the ministry's failure to listen to the fisher people and communicate with them was cause for much concern. They requested the representative to commit himself to meeting with them at a later date in order to discuss the issues. However, Mayekiso said that he was not able to do so and excused himself from the event.

Wallace Mqogi congratulated the fisher people on the hosting of the event and their participation at the WSSD. The fisher delegates spoke out loudly and proudly about their experiences, sharing the impacts of the current policy on their livelihoods and increasing levels of poverty within their communities. They emphasized how their participation at the WSSD and their contact with the international fishers had strengthened their resolve to tackle the following issues:

- access and rights to the sea and marine resources through changes to national fishing policies;
- preferential rights for bona fide fisher people;
- challenging unfair global trade and finance policies that affect fishing;
- provision of fishworkers' rights through the extension of the Basic Conditions of Employment Act and other labour protection and benefits, including safety regulations to cover subsistence and small-scale fishers;

- access to means of sustaining families and livelihoods in the off-seasons;
- provision of subsidies to subsistence, artisanal, small-scale and limited commercial fishers, as currently only the big companies, not the small-scale fishers, get fuel subsidies and tax breaks;
- provision of infrastructure such as jetties, slipways and roads and access to finance for equipment, cold storage facilities and markets;
- participation in the management of marine resources;
- organization of fisher people for adequate representation to ensure that their issues are addressed;
- democratization of the fishing industry; and
- increasing the visibility of women in the fishing industry. 3

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WSSD

Where are the fishworkers?

The Plan of Implementation finalized at the recent World Summit on Social Development was a sore disappointment for artisanal fishers

The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, provided the fundamental principles and a programme of action for sustainable development. The Plan of Implementation finalized at the World Summit on Social Development (WSSD), held from 26 August to 4 September 2002, in Johannesburg, South Africa, was to further build on the achievements since UNCED and to realize many of the remaining goals.

Paragraph 6 of the Plan of Implementation recognizes that eradicating poverty is the greatest global challenge facing the world today, and is an indispensable requirement for sustainable development.

According to the Food and Agriculture Organization of the United Nations (FAO), in 1996, more than 30 mn people were directly dependent on fishing for a livelihood. The majority live in the artisanal and small-scale sector of Asia, Africa and Latin America. The total number of people dependent on fisheries today is likely to be over 150 mn.

In the developing world, the lives of artisanal and small-scale fishworkers in coastal fishing communities are, in general, characterized by poverty and a high degree of social and economic vulnerability. The reasons are varied and include:

- insecure access rights to land and sea resources (to which these fishing communities have traditionally enjoyed access);
- great dependence on fisheries for a livelihood;

- uncertain fish harvests as a result of, among other things, natural fluctuations and overfishing due to poor fisheries management; and
- lack of skills and opportunities for alternative employment.

Without appropriate policies for fisheries and coastal area management, the activities of these fishing communities, in some cases, contribute to an even greater pressure on resources. Given this context, and the special focus on poverty, one would have expected the WSSD's Plan of Implementation to focus more on specific issues that concern artisanal and small-scale fishworkers in the developing world.

However, disappointingly enough, 'fishers' are mentioned only once in the Plan, under 'Poverty Eradication', wherein is stated the need for action to "transfer basic sustainable agricultural techniques and knowledge, including natural resource management, to small-and medium-scale farmers, fishers and the rural poor, especially in developing countries, including through multi-stakeholder approaches and public-private partnerships aimed at increasing agriculture production and food security."

Environmental focus

Paragraphs 29 to 34 of the Plan of Implementation on oceans and coasts highlight several aspects including, among others, the need for better co-ordination between the UN and other agencies working on coastal and marine issues, time-bound implementation of various international legislation, and plans of action for conservation and sustainable management of coastal and marine resources, regulation of fishing

capacity and of illegal, unreported and unregulated fishing, and control of land- and marine-based sources of pollution. These aspects are undoubtedly important and imperative.

There is no mention, however, of the artisanal and small-scale fishworkers, who depend on these resources for their livelihoods and whose lives, as mentioned earlier, continue to be characterized by a high degree of social and economic vulnerability. Environmental aspects need to be looked at in conjunction with social aspects, if the twin goals of poverty eradication and sustainable development have to be met. The Plan fails to recognize that in poor, labour-surplus fishing economies, selective artisanal and small-scale fisheries are the vehicles for poverty eradication and sustainable development.

The only reference to small-scale fishing is in Paragraph 29(g), which states the need to “assist developing countries in co-ordinating policies and programmes at the regional and subregional levels aimed at the conservation and sustainable management of fishery resources, and implement integrated coastal area management plans, including through the promotion of sustainable coastal and small-scale fishing activities and, where appropriate, the development of related infrastructure.” As a consequence, there is no clear strategy to support the subsector.

One basic conceptual issue is the clubbing together of fishers and farmers. Farmers’ issues are dealt with under the section on agriculture; however, the Paragraphs under this section do not specifically mention fishworkers, nor are they suitably phrased to take into account their specific contexts.

Paragraph 38(i), for example, speaks of the need to “...adopt policies and implement laws that guarantee well-defined and enforceable land and water use rights, and promote legal security of tenure, recognizing the existence of different national laws and/or systems of land access and tenure, and provide technical and financial assistance to developing countries as well as countries with economies in transition that are undertaking land tenure reform in order to enhance sustainable livelihoods.”

In the context of fishworkers, what is required is to adopt policies, and develop and implement laws that guarantee artisanal and small-scale fishworkers and their communities well-defined, non-transferable (although inheritable) and enforceable rights to coastal and marine resources, and that promote legal security of tenure, to enhance sustainable livelihoods.

Similarly, Paragraph 6(h) stresses the need for land-tenure arrangements that recognize and protect indigenous and

common-property resource management systems. In the context of artisanal and small-scale fisheries, the need is clearly for tenure arrangements that recognize and protect indigenous and common-property resource management systems over coastal and marine resources.

Fishers and farmers, undoubtedly, have many issues in common; but there are issues specific to fishworkers that are crucially important for the sustainability of fisheries resources and for the lives and livelihoods of artisanal and small-scale fishworkers and their communities. These include, among others, the need to:

- ensure fair and equitable fisheries arrangements that protect both marine fisheries resources and the interests of artisanal and small-scale fishing communities that depend on them;
- explore the possibility of providing preferential access on specified terms, to artisanal/small-scale fishing vessels from neighbouring coastal States, especially in fishing waters where there has been a tradition of migration of artisanal fishermen;
- evolve, on a priority basis, necessary mechanisms for the release and repatriation of

fishermen arrested for trans-border movement into the waters of other States; and

- put in place seafood export policies that regulate free trade of fish and fish products in countries without effective management measures, to protect fisheries resources and fishworkers' livelihoods in the exporting countries.

These concerns ought to have found mention in the WSSD's Plan of Implementation, but they were conspicuous by their absence.

Thus, from the point of view of artisanal and small-scale fishworkers, the Plan is a disappointment. It fails to consolidate and take further the recognition artisanal and small-scale fishworkers have won in earlier international processes, including UNCED, the FAO Code of Conduct for Responsible Fisheries and the Convention on Biological Diversity (CBD). Chapter 17 of UNCED's Agenda 21, for example, took into account several concerns of the artisanal and small-scale fisheries sector put forward at Rio. Articles 17.81 and 17.82 are specifically relevant in this context.

These articles stipulate:

17.81. Coastal States should support the sustainability of small-scale artisanal

fisheries. To this end, they should, as appropriate:

- (a) Integrate small-scale artisanal fisheries development in marine and coastal planning, taking into account the interests and, where appropriate, encouraging representation of fishermen, small-scale fishworkers, women, local communities and indigenous people;
- (b) Recognize the rights of small-scale fishworkers and the special situation of indigenous people and local communities, including their rights to utilization and protection of their habitats on a sustainable basis;
- (c) Develop systems for the acquisition and recording of traditional knowledge concerning marine living resources and environment and promote the incorporation of such knowledge into management systems.

17.82. Coastal States should ensure that, in the negotiation and implementation of international agreements on the development or conservation of marine living resources, the interests of local communities and indigenous people are taken into account, in particular their right to subsistence.

The UNCED process also influenced other international instruments and voluntary codes that strongly emphasize the protection and management of coastal resources and the rights of fishworkers to these resources. Relevant in this context are Articles 6.18 and 10.1.3 of the FAO Code of Conduct for Responsible Fisheries.

Article 6.18 of the Code states, "Recognizing the important contributions of artisanal and small-scale fisheries to employment, income and food security, States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction."

Article 10.1.3 says, "States should develop, as appropriate, institutional and legal frameworks in order to determine the possible uses of coastal resources and to govern access to them taking into account the rights of coastal fishing communities and their customary practices to the extent compatible with sustainable development."

Similarly, Article 10 (c) of the CBD asks parties to, "protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements."

As far as the artisanal and small-scale fishworkers are concerned, therefore, the lack of focus on their sub-sector and on the social aspects of coastal and marine fisheries management in the WSSD Plan of Implementation, is, indeed, unfortunate and even regressive.

Hopefully, however, the recognition of their concerns in Agenda 21 and other processes will get reflected in the programmes and projects to be implemented in the post-WSSD period. 3

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Sometimes my hands don't work

An account of the life of John, which captures the hardships of black artisanal fishers of South Africa

Artisanal fishing has a distinctive history in South Africa, shaped by the way in which race and class have woven an intricate net of social relations along the shores of the country. There are records of subsistence harvesting of marine resources by indigenous coastal inhabitants for many centuries, but it was in the 18th century that marine capture fisheries really began along the southern African coast. From the onset, the emerging industry was dominated by white merchant capital, which used a range of strategies to consolidate its control over the labour and production processes. The country quite quickly developed a relatively highly industrialized and capitalized fishing industry with a sophisticated management system that eclipsed the subsistence fishing activities of coastal dwellers.

In addition to the subsistence fishers living along the coast, a small-scale and artisanal fishing sector developed in the limited space around the competitive edge of the growing deep-sea sector and the inshore trawling sector in the Western and part of the Eastern Cape. This sector, comprising predominantly coloured fishers, was completely marginalized in the apartheid years following the Second World War, when the State and industry institutionalized a system of racial discrimination, differentiating between 'white', 'coloured' and 'African' fishers. Most of the labour in the white-owned industry was provided by coloured and African fishers. The Western Cape province was declared a 'coloured labour preference zone' and it was extremely difficult for African citizens to live and work in this province. The artisanal fisheries, therefore, comprised mainly coloured fishers who lived in the fishing villages along the Western Cape coast and

who supplied the local markets. A few of them owned their own wooden rowing boats, but many worked as crew on white-owned boats on a share basis. The fishing management system that was introduced by the apartheid State ignored the existence of these subsistence and artisanal fishers and focused on regulating the growing commercial sector and, to a limited extent, the recreational sector. These small-scale fishers were considered illegal and were not accommodated by any legislative provisions.

Notwithstanding the strict, racially based influx control laws, poverty in the rural areas of the country forced African rural dwellers to seek work in the growing fishing industry of the Western Cape. Fish merchants and factory owners also actively recruited migrant workers from the impoverished African homelands, regarding these workers as a 'cheap' form of labour.

These workers were usually African males who came to the Cape without their families, and hence their employers did not have to pay them a family wage or provide family accommodation. They could also employ them just for the fishing season. Labour recruiters would travel to the rural areas, promising a better life in Cape Town and the prospect of cash earnings. Some of these fishworkers found their way into the artisanal fishing sector, particularly in the fishing villages close to the urban areas.

Fishers' rights

The election of the first democratic government in South Africa in 1994 and the introduction of a new fishing management policy in the country held promise for subsistence, small-scale and artisanal fishers who hoped that, for the

first time, their rights would be recognized. This hope has not been realized.

The new regime has consolidated the property regime first introduced with the quota system in the 1970s, and the individual quota system now determines access to nearly all marine resources. While limited measures have been adopted for a narrow category of 'subsistence' fishers, to date, the new dispensation has failed to accommodate artisanal fishers in any way, and this category of fishers is not recognized. These fishers now move in a very constrained space, rarely qualifying for the very competitive commercial rights, and remaining dependent on working on other right holders' boats where they can, or by catching fish illegally; they have failed to gain access to marine resources in their own right.

These travails are reflected in the story of John, an artisanal fisher, whose life captures the hardship that black artisanal fishers in South Africa have faced, and continue to face. John is a 49-year old Xhosa-speaking male. The Xhosa culture is one of the dominant African cultures in South Africa. John was born in 1954 but does not remember exactly when, in a small rural village in the Transkei. The Transkei was a rural homeland, designated a 'black area' by the apartheid planners who intended that 13 per cent of

the country would be set aside for the black population, despite the fact that black citizens comprised 87 per cent of the population. As a result of the poverty and systematic underdevelopment of this area, life in the Transkei became unsustainable for many who were forced to seek work as migrant workers in the gold mines or other growing industries elsewhere, thereby becoming a cheap labour source for white capital interests.

When he was 21, John came to live in the Western Cape. He says he was forced to come and seek work, as there was no way of sustaining life in the Transkei. He came to the Cape as his brothers worked as contract workers there and told him about the work opportunities available. "The only way you could get work in the Cape if you were black was if you came as a contract worker; otherwise, one would be intimidated and harassed by the police, if you could not show your permit," he recalls.

Contract worker

Initially, John got work through his brothers as a contract worker offloading boats in the Cape Town harbour. He worked there for one year and then, in 1976, went to Saldanha Bay, 120 km north of Cape Town, where he was employed by a fishing company as a contract worker on their stockfish trawlers. He worked for this company for 12 years. During this time, he lived in the company hostel

where a large number of male workers lived together under difficult conditions.

The crew went to sea for approximately 10 days at a time, returned for two, before setting out to sea again. John earned approximately 300 rands per 10-day trip. He only travelled home to see his family once a year. He felt that he was not earning enough money and hence, in 1988, he left this work and moved back to Cape Town and began working for a small fishing company based in a fishing village on the outskirts of Cape Town, pole-fishing for tuna. There they worked on a share basis, the owner getting slightly more than half the share.

During this period, he lived with friends in the informal settlement in the area, now known as Imizama Yethu. They lived in a corrugated iron shack, surviving by supporting one another with their meager earnings. About six years ago, John moved to another fishing village near Cape Town, Kalk Bay, as he felt that the linefish and snoek fishing was a better proposition. In Kalk Bay, he has no fixed place of abode but usually sleeps in one of the boats moored on the harbour. He goes out to sea on one of the boats at 4 a.m. in the morning and returns at 1 p.m. He has worked on the same boat for some time now, but works within the 'pan-a-pan' system, which is a casual system where he can work on any boat that is available. The boats work on a 50:50 share system, whereby the crew can sell half of their catch and the owner takes the other half. They are not provided with any clothing or gear, which they have to purchase themselves, as well as food. They catch snoek, cob, yellowtail and hottentot.

John and the other crew listen on the boat radios to learn where the fish are heading and then decide where to go. He will regularly go to Ysterfontein, a small seaside village approximately 60 km out on the west coast, when the snoek are running. In order to get there from Cape Town, he catches a late train from Kalk Bay to the city centre, then a taxi to a petrol station on the outskirts of the city. He sleeps outside the petrol station overnight and then hitches a ride with a boatowner the following morning. He says that the boatowners know him now and give him

a lift. He will stay in Ysterfontein, catching snoek for between seven to 10 days. There are normally about 10 men who work on the snoek boats. In Kalk Bay, there are about 16 men who work on the boat with him. John says, "It's a terrible life, but I can't help it as I am poor. It is better in Kalk Bay, there are different fish there, it's better money... geelbeck and Cape Salmon ...so the money is better. I move around when the snoek runs....I go to Imizama Yethu in Hout Bay if it's good, then back to Kalk Bay."

John has a partner and two young sons, aged four and two years, who live in Langa, one of the oldest African 'townships' in Cape Town. ('Township' is the term used to describe a residential area that was designated a 'black residential area' under the 'group areas' legislation of the apartheid era.)

Due to the transient nature of his work, John is forced to move from one fishing village to another; however, he returns to Langa to spend time with his partner and sons when he has the opportunity to do so and considers this 'home'. Langa was an area designated African during the apartheid years of group areas, when legislative restrictions limited certain racial groups to specific residential areas.

Although these restrictions have long been repealed, the legacy of apartheid planning remains and Langa is a very poor area with few community resources, and the standard of housing is generally poor. John and his partner live in a renovated hostel flat. They have one room and they share communal washing and toilet facilities with at least 12 other families. They pay relatively little for this flat, however, and the greatest expenditure is on his travel to and from the harbours.

Co-operative work

John explained that they work on the 'gazat' system whereby fishers from the township work co-operatively by jointly paying for a taxi to get from the township to the harbour in the hope of work. If they do not get work, then they cannot pay the taxi driver. When they finally get work, even if it's a few days later, they will have to pay the driver. The cost of transport is a huge problem for them.

There is no social security system for artisanal fishworkers in South Africa and because of their status as 'independent contractors', they are not protected by basic legal conditions of employment and other recently introduced labour legislation.

Years of fishing and working in very cold conditions have taken their toll on John's health. He says his body feels very tired and he has been experiencing problems with his fingers and hands as a result of working in wet conditions for so many years. He says, "In the morning, sometimes my hands don't work and my legs don't want to work as well." There are toilets at the harbour but there are no showers or other rest rooms for the fishers. There are no formal death benefits for fishers in Kalk Bay; however, John says that an informal system operates whereby the boatowners do have a policy of paying a death benefit of 3,000 rands in the event of the loss of a fisherman at sea. The fishing community will pass the hat around for all to contribute, if this happens. If, however, a fisher is injured or disabled, he has no disability cover.

John says that it is difficult to state what his income is per month or year as it varies from week to week, depending on the weather and season and fish catches. In the summer months, from October to February, the catch is good and they can earn up to 4,000 rands per month.

During the offseason, however, they can earn as little as 30 rands per day and only be able to work eight days per month. On average, spread over a year, he estimates that he earns between 800 and 1,000 rands per month.

The new fishing rights allocation system introduced after the democratic elections aimed to redistribute rights within the industry by encouraging previously disadvantaged individuals and new black entrants to apply for quotas. In 2001, John and a group of nine other artisanal fishers were assisted by a boatowner to apply for a crayfish quota. In 2002, they were allocated a relatively small crayfish quota of 800 kg. In the first year, they were each paid out a portion of the quota, and John put aside some money towards a down payment on a boat, as it has been a long-cherished dream of his to have his own boat. The boatowner then brought five of his own friends and family members into the group and, in the second year, redistributed the gains amongst these individuals as well, even though they were not on the original application.

No money

When John complained, the boatowner refused to catch his full quota for him and, as a result only, 120 kg of the quota was caught, and John and his group have not received any money this year. John's experience in this regard is not unique. The new system has enabled those with

resources such as access to boats and ability to 'work the system' to use poor black fishers and apply for quotas in their names. A system of 'paper quotas' exists, with many of the bona fide fishers not receiving the benefits that they are entitled to.

John is very disillusioned about the current fishing rights allocation policy. He says that the fishing authority, Marine and Coastal Management (MCM), has not consulted the fishers and has ignored their demands. He was part of a protest to MCM several years ago and feels that this did not help. He says, "The new policy is terrible, it's worse than before, terrible for fishermen in the township, for the black fishermen."

He explained that a lot of the white and coloured boatowners have not received licences in the recent allocations and, as a result, there are many fishers out of work. (The fisheries authorities have recently introduced a licensing system in the snoek and handline sectors that has greatly restricted the number of small-boat owners able to put a crew out to sea. The rationale was the marine scientists claim that the resources are threatened. This has had a considerable impact on the livelihoods of artisanal fishers.)

John feels that the MCM is unfair to withhold licences from the small boatowners, while still allowing the large trawlers to operate big quotas, as they are the ones affecting the sustainability of the resource. One of the other problems, he says, is that "there is still a lot of racism amongst the fishers. The coloured boatowners often have meetings with the coloured fishers but do not invite the African fishers to these meetings."

John would very much like to buy his own boat and work with his own crew. He is trying to do a skippers course and a safety course. These courses are run in Cape Town over two weeks and cost approximately 1,000 rands. John has to pay for the course fees and also for transport to the course. He is concerned as he will not be able to work for this period and hence this makes the feasibility of doing a course limited. John recognizes, however, that, given the current policy that prioritizes commercial

enterprises and those with existing resources, the only way he will ever succeed is if he tries to compete in this already highly competitive market. ❧

This article is by Jackie Sunde (jackie@tcoe.org.za) of Masifundise, Cape Town, South Africa

The Simonstown Declaration

The Simonstown Declaration by Small-scale Fishers was adopted at Cape Town on 5 November 2004

We, the representatives of civil society and small-scale fishers and fishing communities* from the SADC region gathered in Cape Town, take note of the existence of the SADC Protocol on Fisheries, its objectives in Article 3, and, in particular, the content of Article 12, as well the formal endorsement of this protocol by the respective SADC governments in August 2001.

(* Small-scale fishers and fishing communities refer to all men and women who are involved in all aspects of small-scale fisheries, regardless of their geographical location.)

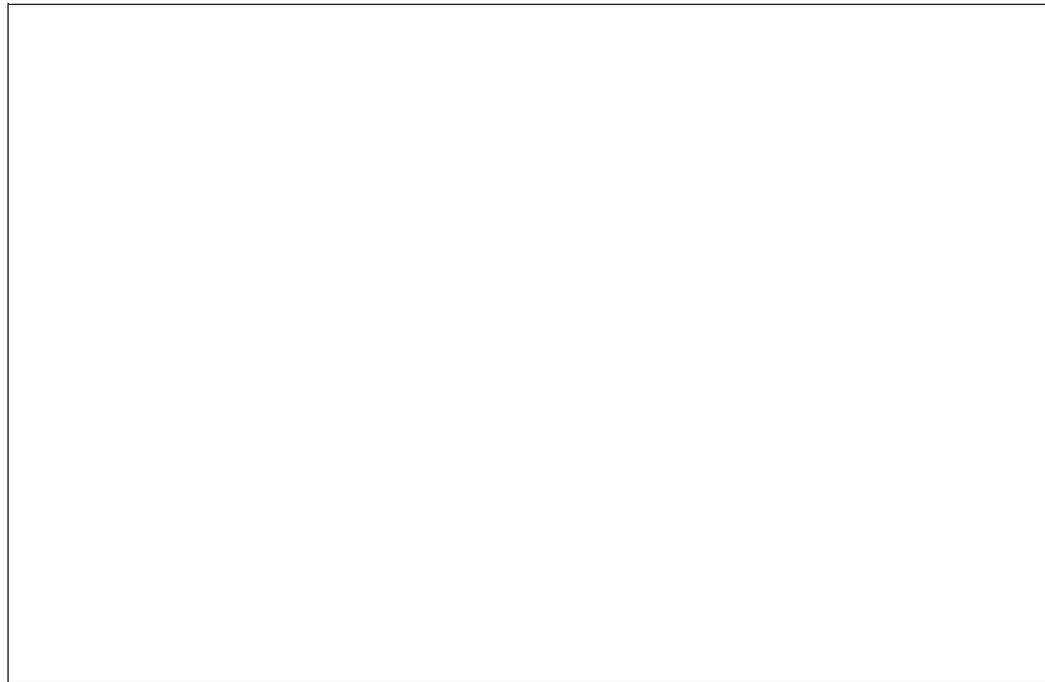
This conference notes the following:

- the lack of legal recognition of artisanal and traditional fishers in certain SADC countries.
- the lack of recognition of the dignity and integrity of artisanal and traditional fishers in certain SADC countries.
- the failure of certain governments to protect the sustainable livelihoods of artisanal and traditional fishers as required by the protocol.
- that many governments have largely not protected artisanal and small-scale fishers against the social and economic impacts of globalization, that is, increased marginalization and poverty.
- the absence of equitable and sustainable access to inland and marine aquatic resources in certain countries.

- the cumbersome and bureaucratic licensing procedures in South Africa and Namibia, in particular.
- the lack of involvement and participation of the small-scale fisher community in the policy formulation and related decision-making processes in certain SADC countries.
- the lack of access to credit facilities, infrastructure and subsidies on fishing inputs.
- the continued marginalization and unfair treatment of women in all sectors of the fisheries.
- the absence of health, safety and fair labour practices.
- the absence of concrete steps to put in place measures regarding shared aquatic resources in certain SADC countries.

We call on our SADC governments:

- to urgently take responsibility to secure the following rights for small-scale fishers:
 - equitable and fair access to living aquatic and fishing resources
 - social security measures for small-scale fishers
 - food security for small-scale fishers
 - sustainable livelihoods for small-scale fishers.



- active participation in policy formulation and related decision-making processes
- to recognize, respect and ensure dignity of traditional and artisanal fishers.
- to incorporate indigenous knowledge systems of small-scale fishers into resource management processes.
- to take concrete and practical steps to involve the traditional and artisanal fishers in the management of aquatic resources and ensure fair distribution of costs and benefits among beneficiaries.
- to ensure that the forthcoming NEPAD fisheries conference takes cognizance of this declaration and makes provision for the participation of fisher representatives in the NEPAD process.

We further call on our SADC governments:

- to assist in empowering and building the capacity of small-scale fishers through:
 - regional exchange visits and networking
 - promotion of micro-financing enterprises
- to safeguard the livelihoods of artisanal fishers against the social and economic impacts of globalization.
- to ensure harmonization of law and regulations, and the fair distribution of resources in respective countries.

This conference resolves:

That, considering that fishing communities are particularly vulnerable areas for HIV/AIDS transmission, governments and civil society organizations should take a leading role in the following areas:

- provision of health facilities
- supply of anti-retroviral drugs
- awareness and educational campaigns
- provide infrastructure support to orphans and the aged

This conference further resolves:

- to maintain this network of small-scale fishers within the SADC region on an ongoing basis.
- to request Masifundise, together with Coastal Links, to play an interim secretariat role for this network.
- to undertake the following activities in our respective countries:
 - disseminate and share information (with the support of WWF, Masifundise, PLAAS and ICSF)
 - engage with the ILO process towards developing new labour standards for the fishing sector, with a view to reaching a greater portion of the world's fishers, particularly small-scale and artisanal fishers
 - raise awareness of the NEPAD fisheries process and advocate for the full participation of fisher representatives in this process
 - advocate and lobby for programmes to improve the plight of small-scale fishers
 - mobilize and organize small-scale fisher groups and networks in all our countries
 - constructively collaborate with respective governments in terms of the implementation of the protocol
 - exchange visits and lessons learned

This declaration was adopted on 5 November 2004 at the Southern African Small-scale Fishers' Conference at Cape Town

Marine protected areas

Making local communities visible

There are issues surrounding marine protected areas and the livelihoods of coastal communities within them

Marine protected areas (MPAs) or marine parks are increasingly being used as a way of protecting coastal and marine resources, based on scientific principles of safeguarding the ecological resource, in the context of widespread marine resource depletion. As such, they are a potentially positive intervention, as they seek to achieve the conservation of coastal resources as a whole for current and future generations of people. Claims are made about the benefits of MPAs for the environment and for local people, including that they can provide an increase in stocks in less restricted fishing areas adjacent to the protected areas, as well as indirect benefits through tourism. However, such benefits only occur if MPAs are properly managed—yet figures from the World Wide Fund for Nature—or, as it is known in North America, the World Wildlife Fund (WWF)—estimate that 80 per cent of MPAs worldwide are protected in name only and are not being managed actively or effectively.

In some cases, protected areas in general (including land-based ones) have failed to sustain the wildlife populations they were designed to protect, while, at the same time, having a negative impact on the food security and livelihoods of local people. They have, in practice, been associated with forced displacement and loss of access to natural resources of those living in and around them, with inadequate or no compensation.

Numerous studies have found that it is often the poorest households that are most dependent on natural resources. Protected areas have, therefore, often led to further impoverishment of those living in poverty. This inattention paid to the livelihoods and socioeconomic situation

of local communities reflects a general trend in environmental conservation, despite a growing consensus that poverty and weak governance are two of the most significant underlying threats to conservation.

This article examines the issues around marine protected areas and livelihoods of coastal communities within MPAs, with reference to examples in South Africa. Findings were drawn from across the three coastal provinces of the Western Cape, Eastern Cape and KwaZulu-Natal, using a range of key informants and available literature.

International and national guidelines for the setting-up and management of MPAs include a strong emphasis on stakeholder involvement. However, in practice, provisions are weak, and local coastal communities are often effectively invisible in the MPA process, despite having traditionally fished in the protected areas for centuries or more, and despite the fact that many rely on fishing for their livelihoods and food security.

In the context of concerns over equity in marine resource allocation, the increased regulation of fishing that accompanies the creation of marine parks often disproportionately affects under-resourced local fishing communities, compared with other stakeholders.

Local communities

Furthermore, in South Africa, little effort has been made to find out the impact of MPAs on local communities. The lack of data on the impact on livelihoods is problematic, considering the obvious connection between the socioeconomic characteristics and attitudes of local communities, and the type of

management and enforcement of marine resources required within protected areas.

Those living adjacent to MPAs in South Africa have been adversely affected in many cases by a rollover of spatial patterns resulting from land dispossession and the setting up of protected areas during the apartheid era. Local communities' access to coastal resources has been affected by removals as part of apartheid and colonial spatial legislation, and, more recently, by the growth of the tourism industry and the real estate/property boom. In many cases, MPAs have retained some protected area boundaries set up during apartheid, reinforcing discriminatory land ownership and access. Although this may be for sound environmental reasons, it has led to resentment in local communities, especially where there has been limited participation in decisionmaking.

Current management of MPAs, in general, is inadequate, both internationally and nationally. A joint WWF-Marine and Coastal Management (MCM) report found that only seven out of 19 MPAs in South Africa had formal management agreements in 2003—those without formal agreements appear to be faring worse. Many MPA authorities lack the capacity for effective enforcement and management funding for MPAs has not been a government priority and budgets have been cut. In many cases, staff

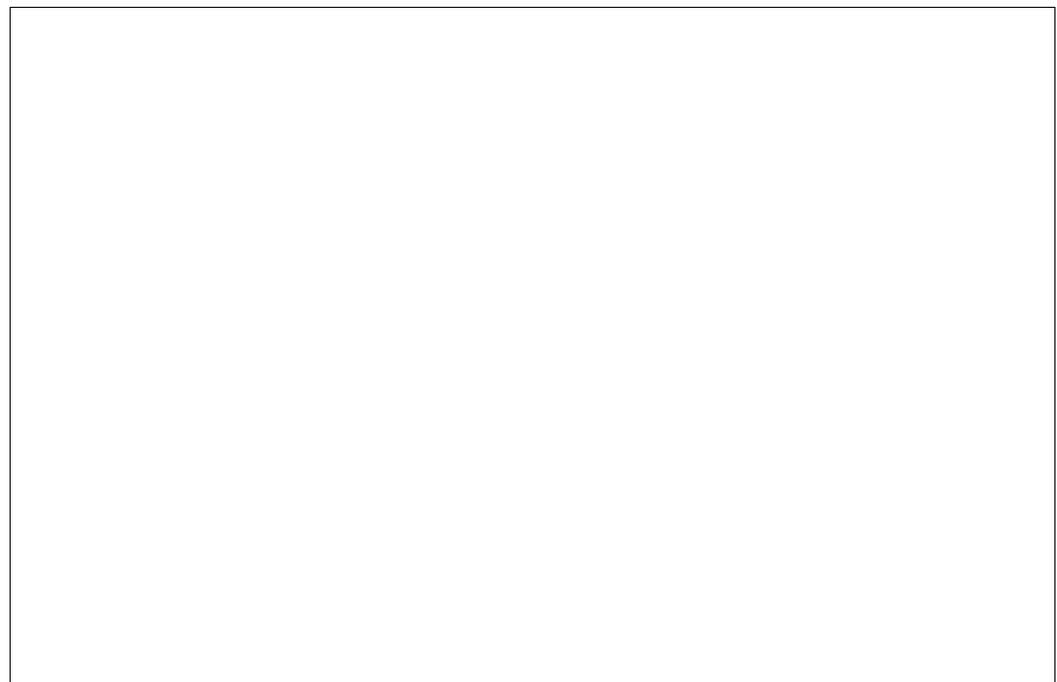
capacity is insufficient for effective management. Performance and monitoring requirements in the national legislation are also weak. Furthermore, existing management agreements between national parks/MPA authorities and MCM are predominantly concerned with enforcement against illegal fishing, not other aspects of management. Nevertheless, illegal fishing or poaching was stated to be a problem in all the MPAs investigated, in many cases jeopardizing the state of the resources. This included small-scale to large-scale poaching.

The evidence points to the fact that genuine increased community involvement has a beneficial effect on conservation aims in MPAs, with increased community buy-in and respect for regulations. National and international legislation now requires the consultation or public participation of stakeholders in the setting up and management of MPAs.

However, the mechanisms by which participation is to be carried out are not specified, and, therefore, real involvement has been limited, especially where the MPAs continue protection of an area that was set up when local participation was not required. This has caused conflict or protest action in many MPAs.

Recent MPAs

For some MPAs declared more recently, such as the Table Mountain National Park



(TMNP), the level of consultation has been higher. The TMNP has sought to impinge as little as possible on major fishing areas for permit holders, albeit imperfectly for small-scale fishers. In several other MPAs, multi-use zoning—which allows fishing in certain areas—has not been embraced, and buy-in to this principle from MCM has been inadequate.

Although the current discourse emphasizing involvement of local communities in the management of protected areas does bring benefits to those communities, in many cases, the limits placed on the level at which participation takes place means that it is unlikely to adequately compensate them for their exclusion from access to the natural resources in those protected areas. This includes the vast majority of government livelihoods and poverty alleviation initiatives, which lack sustainability.

In most cases, only brief consultation of specific stakeholders has been implemented rather than genuine local involvement in decisionmaking, with the result that such consultation can be used to legitimate top-down decisionmaking. This extends to what is termed 'co-management' of natural resources in South Africa—this has generally meant very little involvement in decisionmaking regarding resource utilization. For example, in

Dwesa-Cwebe MPA, where local people are supposedly co-managing marine resources, no fishing at all is permitted. Furthermore, where fishing is allowed in the protected areas, in most cases, the subsistence level and low-value resource use allowed by marine park authorities do not satisfy basic needs or livelihood requirements, including rent, school fees and basic services, where available. Even subsistence fishers operate in a monetized economy, and, therefore, if insufficient alternative livelihood opportunities are available, illegal fishing is likely to occur when subsistence fishing does not cover basic needs.

In practice, public participation can be fraught with problems, and requires a genuine, long-term commitment on the part of the relevant authorities. Capacity constraints and communication gaps have meant that communication among government departments and agencies, and between government and communities, has generally been inadequate, leading to the conflation of issues of land, marine resource and general service provision by communities, and a resulting lack of co-operation with government.

Access denied

In the context of a denial of access, people in local traditional fishing communities still have a very strong social and cultural connection with the sea and with fishing.

Changes that have been enforced relatively recently, and visibly extended within the last decade of democracy, have brought to the fore a fundamental clash of cultures—between predominantly ‘traditional’, communal ways of managing and harvesting natural resources, and ‘modern’ (industrial), individual, private property-based quotas. MPAs are one manifestation of the enforcement of the State as the effective owner of all natural resources, an idea that many people in local coastal communities would contest.

Furthermore, fishermen feel that their indigenous knowledge and traditional methods, including rotation of areas and resources, are not being recognized by scientific measures or government regulations.

Recreational fishers and industrial companies, with their better resources and greater political influence, can much better lobby government on access and policies than small-scale fishers and poverty-stricken communities, leading to greater resentment among the communities in the MPAs researched. Government authorities are reluctant to jeopardize access for recreational fishers since they are a major source of revenue in the form of tourism in MPAs. Furthermore, recreational fishers have escaped regulation and enforcement to a large extent in the past.

Levels of poverty in coastal areas in South Africa are significant in most areas where MPAs are situated—with the highest average levels in the Eastern Cape province (48 per cent), followed by KwaZulu-Natal (26) and the Western Cape (12), representing the percentage of people whose household expenditure was R800 (approx. US\$119) or less per month. The Wild Coast in the Eastern Cape has one of the highest levels of poverty in the country—between 60 per cent and 80 per cent.

However, such figures hide huge disparities between rich and poor—in most provinces, inequality is increasing, particularly in the Western Cape, where many people in coastal areas are unable to enjoy the benefits of the burgeoning, but highly capital-intensive, tourism

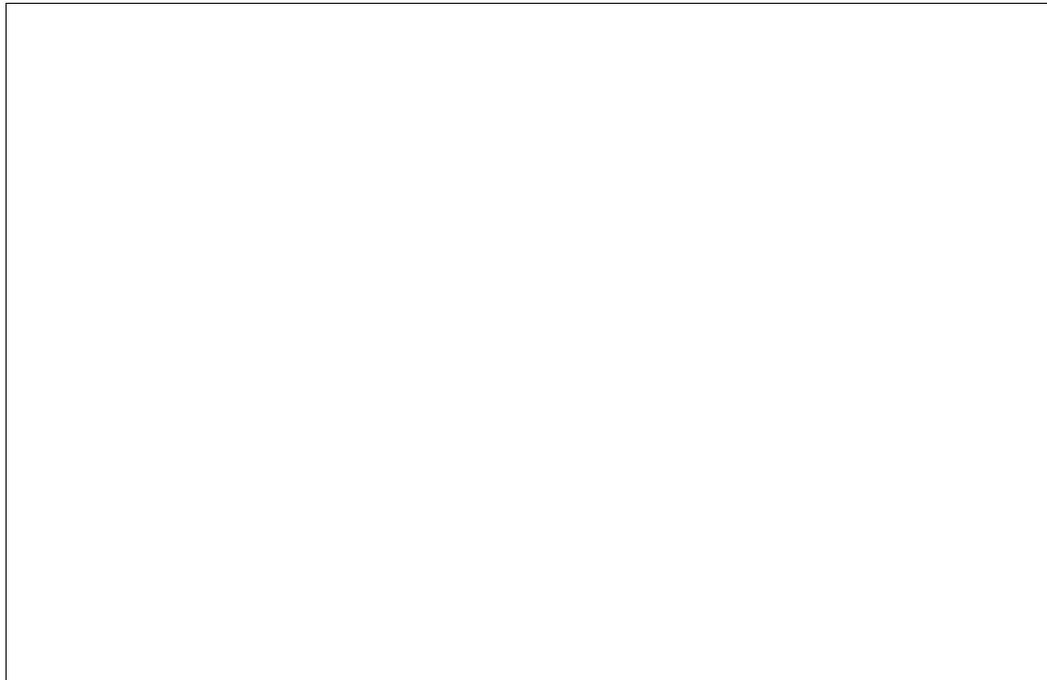
industry. In towns surrounding the West Coast National Park, over 40 per cent of people were recorded as having no income, according to the 2001 census. The Eastern Cape province, where five MPAs are situated, has suffered particularly from racially defined apartheid spatial policies, although other provinces have also been considerably affected. Severe lack of investment in certain areas, combined with restrictions on movement and land ownership elsewhere, meant that specific areas such as the Wild Coast became overcrowded and were systematically denied access to resources and services, resulting in high levels of poverty and reliance on marine resources. Therefore, the pressures of high population and poverty, as well as poor land and coastal management outside the reserves, are detrimental to the state of the natural resources, and has direct impacts on MPAs.

Without improved management of restricted areas, policy developments in South Africa are likely to further endanger the livelihoods of fishers living adjacent to marine parks, since the department responsible for fisheries has expressed its intention to substantially increase the no-take zones within marine park areas from 1 per cent to 20 per cent of protected areas.

The emphasis on environmental concerns in MPA management hides a predominance of considerations of growth and profit at the macroeconomic level (including foreign currency revenue for the State), over the socioeconomic concerns of livelihoods and poverty alleviation for local people.

Legitimacy issue

MPAs cannot be considered in isolation from the areas and communities surrounding them—the marginalization of local communities puts the legitimacy of MPAs at stake, and has serious consequences both for the management of protected areas and for the ecological resource itself due to increased incidences of poaching. Issues around management of MPAs, in general, exacerbate this problem. While MPAs have an important contribution to make, their strategy alone is unlikely to provide the solution to all management and resource access



problems MPAs are only one of a range of suitable management tools.

We, therefore, propose a more equitable sharing of the costs and benefits for stakeholders involved in MPAs, so that local communities and the socioeconomic impacts of MPAs are made visible, and local people are genuinely involved in management decisionmaking. If managed effectively to include local communities in genuine partnership with managing authorities—and if alternative livelihood opportunities are provided—MPAs could address both socioeconomic and environmental conservation concerns. 3

This article, by Carolyn Petersen (C.J.Petersen@sms.ed.ac.uk), Naseegh Jaffer (naseegh@masifundise.org.za) and Jackie Sunde (jackie@masifundise.org.za), Masifundise Development Trust, Cape Town, South Africa, forms part of a longer paper presented at the first International Marine Protected Area Conference (IMPAC1) held in Australia in October 2005

Shifting gear?

Not enough progress has been made in reallocating quotas to previously disadvantaged groups in the South African fishery industry

The African National Congress (ANC) contested the April 1994 elections in South Africa on the basis of a vision of 'a better life for all', to be achieved through its people-centred Reconstruction and Development Programme (RDP) policy framework. This created expectations that many in the 'marginalized' fishing communities would secure their own fishing rights and small businesses. It was hoped that the revised fisheries policy would deliver on these expectations, while, at the same time, maintain an internationally competitive fishing industry.

Due to pressure from established economic interests, in 1996 the new government shifted its macroeconomic policy to a 'homegrown' structural adjustment programme called the Growth, Employment and Redistribution (Gear). The new framework abandoned the key principles and policies of the RDP, and instead adopted neoliberal economic principles, including privatization, subsidy removal and downsizing of the public sector; and encouragement of small black entrepreneurs.

Gear was aimed at achieving equity and redistribution through economic growth and job creation. The authors of Gear imagined poverty alleviation would be achieved through the 'trickle-down' effect of a new group of entrepreneurs who would establish labour-intensive small, medium and micro-enterprises (SMMES).

This was in direct contrast to the RDP's approach of redistributing wealth through interventionist State policies based on socialist ideology. The shift to Gear resulted in large numbers of bona fide fishers being excluded from the formal allocation process because they could not demonstrate their

entrepreneurship through being able to complete application forms and engage in related bureaucratic procedures without help.

In order to understand how the transformation process was supposed to contribute to poverty alleviation, one needs to understand the capital-accumulation/wealth-generation and safety-net functions of enterprise development and job creation. In this article, we will use the concepts of poverty, vulnerability and entrepreneurship to look at the contribution (or failure) of fisheries to the improvement of the livelihoods of coastal communities, including the proposed mechanism of co-management.

The shift in macroeconomic policy was an important factor in relation to 'transformation' of the fisheries sector in that the focus for transforming the sector moved from re-allocation of access rights to one of promoting black economic empowerment (BEE). BEE was focused mainly on addressing racial and gender imbalances within the industry.

It took the form of offering ownership of shares in established enterprises to historically disadvantaged individuals (HDIs) organized in empowerment groups and/or labour unions, transferring technical and management skills to HDIs, and promoting HDI employees to positions of management decisionmaking.

New fishing rights

The focus was not on the vulnerability of the workers within the existing established companies under BEE schemes, and new rights holders and the SMMES that were established after achieving access to fishing rights.

'Transformation' is not defined in the Marine Living Resources Act (MLRA) of 1998 or in any other legislative or policy document. The vision of the government's new policy is probably what was meant by 'transformation' in the Act:

the marine resources are a national asset and part of the heritage of the people of South Africa, present and future, and should be managed and developed for the benefit of the country as a whole, especially those communities whose livelihoods depended on these resources; and that the allocation of the resources would be made on an equitable basis, with a view to ensuring the long-term sustainability of the resources and their healthy condition for present and future generations.

Two approaches to transformation were being used: the broadening of access rights to new rights holders (individuals and companies) through State intervention (external transformation); and market-led change within State BEE policy (internal transformation). The Department of Environmental Affairs and Tourism (DEAT), a branch of Marine and Coastal Management (MCM), was given the responsibility for external transformation.

The new Constitution with its 'Bill of Rights' and the new fisheries policy paved the way for new entrants to the sector, but MCM struggled with managing and administering the process. A complicating factor was that the sector was already oversubscribed—making space for new entrants would have required cutting existing allocations. Internal transformation was to take place through market-based reforms within companies through change in ownership, giving workers more benefits and share schemes, assisting in the empowerment of new rights holders, and so on.

This market-based intervention had an impact on the extent of State intervention from the start, leaving little room for a more community-based empowerment option for transformation in the industry. The responsibility of the State through MCM is to ensure that equity and redistribution are achieved without endangering the economic stability of the

industry and sustainability of the resource.

From the very beginning, it was clear that the goals of transformation would be in conflict with the principles of resource management since meeting the expectations of the many potential new entrants would not be in line with the limited room for expansion that sustainable resource management entailed. Adding to this was the fear among the established companies that allowing too many new entrants could create chaos and result in economic instability in the industry. Several factors impeded—or were used to block or slow—transformation, especially by those already in the industry.

The following were the constraints to transformation in the early years:

Unwilling sellers, unwilling buyers: As a matter of principle, HDIs and HDI groups were unwilling to 'buy' fishing rights that they felt they had been dispossessed of under apartheid. There were expectations that government would put this travesty right by simply taking these rights back from established companies and redistributing them to HDIs after the advent of democracy. The established companies were equally unwilling to share, sell or give up their fishing rights, arguing that they had spent decades building up their companies.

Foot-dragging tactics: Established companies used foot-dragging tactics to delay redistribution by employing leading lawyers to find loopholes in the new fisheries policy and to litigate on all large-scale cuts in their quota allocations. Many courts ruled in favour of the established industry, hindering government from taking large portions of their quota allocations to accommodate new entrants to the industry.

Court challenges on administrative grounds: Numerous allocations by the former Quota Board under the old Sea Fisheries Act were successfully challenged in court on administrative grounds from 1993, following the promulgation of the 1993 Quota Board guidelines. The constitutional entrenchment of the right to just

administrative action reinforced the strength of administrative remedies, as evidenced by the number of court cases after 1996. For example, the first quota allocations made under the MLRA were successfully challenged and set aside for reconsideration on various administrative grounds.

Alliances between large companies and labour unions to oppose transformation: Established companies were able to secure the support of their largely black labour unions to oppose transformation using the slogan “A cut in our quota allocations will result in a cut in jobs”. The unions (especially the Food and Allied Workers’ Union—FAWU) traded their support for maintaining existing quota allocations for better working conditions and improved benefits for their members (pension funds, shareholding schemes, medical aid, and improved health and safety).

The irony was that FAWU is an affiliate of the Congress of South African Trade Unions (Cosatu), one of three partners in the ruling ANC Alliance. The alliance between unions and employers against redistribution of fishing rights further marginalized poor bona fide fishers who had expected fishing rights after apartheid.

Constitutional protection of property rights: The Constitution provides that

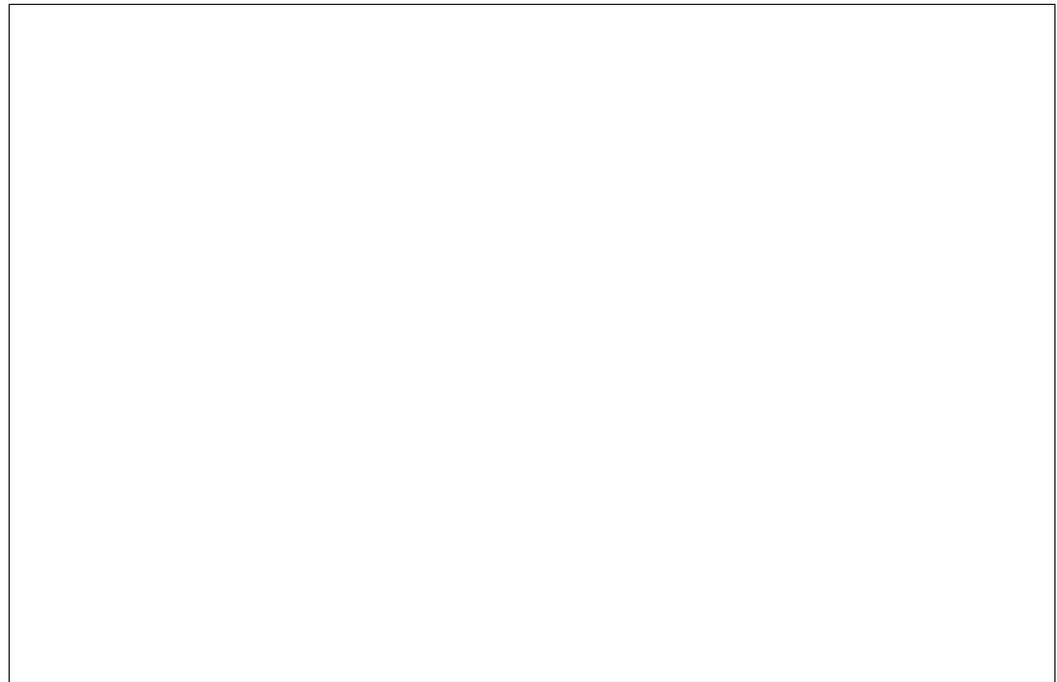
nobody may be deprived of property except in terms of law of general application (the ‘property clause’). This, together with the government’s commitment to support market forces, effectively gave established companies a veto against the reform of the fishing industry.

Most established companies claim to have implemented internal changes that meet the requirements provided by DEAT guidelines. The established industry quickly responded to internal transformation requirements.

For example, Oceana Fishing Group sold half of its equity to a black empowerment consortium, while Premier Fishing shares ownership with Sekunjalo and Pamodzi/Foodcorp owns Marine Products.

Allowing a larger degree of black ownership strategically put such companies in positions of strength for maintaining or even increasing their quota holdings, since most of these empowerment groups had good political connections.

Companies like Sea Harvest and Irvin & Johnson started on a fairly small scale, offering limited shareholding ownership for employees at favourable prices. Although employee shareholding



constituted a small percentage of the total stock, the symbolic effect was considered important. The established companies wasted no time in bringing in HDI leaders in an attempt to transform the leadership structures of their companies.

Within the labour unions, this was regarded as a window-dressing exercise, since some of these individuals were given the privileges of power but not the right to make crucial decisions.

The major dilemma that faced many new entrants was the lack of infrastructure (vessels, processing facilities and marketing networks) and business knowhow. A possible, seemingly obvious, solution to this dilemma was the formation of joint ventures and business partnerships as promoted by the new fisheries law (the MLRA).

In spite of all this, most new entrants complain that there has been no change in the power dynamics in the industry as a whole or within individual companies. Since established companies own most of the infrastructure, they retain control of fishing, processing and marketing operations, even where new entrants have entered into joint ventures with them.

The prices charged for these services make it very difficult for new entrants to

succeed. Established companies recoup their transaction costs through reduced prices for fish from new entrants or inflated costs for their services. The top management of most companies remains largely white.

Where blacks have been given top positions, their ability to make management decisions is frequently constrained or absent. Most 'internal transformation' appears to be window dressing.

The lack of infrastructure and business knowhow among new entrants and the lack of real black ownership and power within established companies leaves black workers and entrepreneurs vulnerable to manipulation and exploitation. Eventually, everyone, including the established companies, had to accept that some re-allocation of rights was unavoidable. MCM's major indicator of transformation has been quantitative—that is, the number of new individuals (mostly HDIs) or HDI fishing companies that have been granted access rights. MCM's stated achievements after 10 years of 'transformation' are, for example, in the abalone, West Coast rock lobster, small pelagic and deep-sea hake fisheries.

Commercial allocation

In the abalone fishery, the number of rights holders increased from five in 1992 to 271 in 2002. The five original

quota-holding companies retained 49.5 per cent of the total commercial allocation, while original abalone divers received 17.5 per cent. The 228 new entrants under the limited commercial category got the remaining 33 per cent in allocations of 202 quotas of 430 kg and 26 quotas of 200 kg. Individuals held 95 per cent of the limited commercial allocations.

A total of 87.5 per cent of the companies holding commercial abalone quotas were classified as SMMES. According to DEAT, 90 per cent of the global abalone total allowable catch (TAC) was allocated to SMMES in 2002.

In the West Coast rock lobster fishery the number of rights holders increased from 39 in 1992 to 745 in 2002. While the top 10 companies held 57 per cent of the quota in 1992, this had been reduced to 36 per cent in 2002.

Ninety per cent of right holders were classified as SMMES and 66 per cent of these companies were HDI-owned. In 2003, a further 274 individuals were awarded limited commercial fishing rights in the east of Cape Hangklip area. In the limited commercial sector, the allocations ranged from 200 kg to 1.5 tonnes (average: 712 kg).

A total of 91.5 per cent of the limited commercial quota was awarded to HDI or HDI-owned micro-enterprises. Thus, 70 per cent of the global TAC was HDI-controlled. Whereas there were only 12 rights holders in the small pelagics sector in 1990, by 2002, the number had grown to 91 sardine and 70 anchovy rights holders. About 85 per cent of these were considered to be SMMES. Furthermore, 73 per cent of the rights holders were HDIS and these held 75 per cent of the pelagic TAC. Most of these got 0.3 per cent of the TAC as their annual quota for the duration of the medium-term rights.

This means the access of HDI rights holders to the pelagic sector had increased tenfold (from 7 per cent to 70 per cent) over the 10 years 1992–2002. Despite this, the established companies have maintained their allocation (in terms of volume) of anchovy and sardine due to the increase in TAC. While only 21 predominantly white-owned companies had rights to exploit deep-sea hake in 1992, the number

of rights holders had increased to 56 by 2000. The top five companies held 92 per cent of the TAC in 1992.

This had been reduced to less than 74 per cent by 2002. Furthermore, government claims that the large companies had been compelled to transform in terms of their ownership and management structures. In addition, 42 per cent of companies in the sector were classified as SMMES, and 74 per cent of rights holders were deemed to be majority HDI-owned and managed by 2002. According to DEAT, HDI shareholding in the sector had increased from 0.5 per cent in 1992 to 25 per cent in 2002.

These reported results need to be compared to the extent of internal transformation that took place within the established companies, that is, the link between HDI ownership and quota allocation. External transformation is directly linked to internal transformation and it is situated in the need to maintain stability and efficiency within the fishing industry.

A consequence of the direct link between internal and external transformation means that there was very little TAC left for MCM to allocate to the new entrants. The industry's long-term economic viability could have been compromised by the short-term political goal of MCM—that is, to show the extent to which it has allocated rights to new entrants.

Impressive as these figures would appear, they do not describe the realities on the ground. The guidelines for award of medium-term rights outlined the objectives and assessment principles for re-allocation of fishing rights as being: “ability of applicants to invest in the industry and to demonstrate that they would be actively involved and committed to the industry”; “past performance and capacity to harvest and process the resource”; “potential for significant impact on local community economies and development”; and “the degree of risk of new entrants becoming paper quota holders”.

Categoric commitment

DEAT categorically stated that while the department was committed to bringing in

new entrants into the industry, the potential of such new entrants to enter, participate in and share the risks of the industry had to be examined in the light of the degree of their knowledge, experience, their fishing plans and business acumen.

It was further stated that where joint ventures had been entered into, these had to be capable of validly empowering the rights holders.

In reality, most new entrants are finding it very difficult to establish themselves in the industry. A number of reasons have been put forward for the problems they are encountering:

- the quotas that they receive are too small to set up, establish and operate economically viable fishing businesses;
- banks do not accept fishing quotas as collateral for loans, making it difficult to raise investment capital;
- new entrants lack the technical and managerial skills to survive in the industry and no assistance is being provided in this regard; and
- it is very difficult for new fishing companies to compete with or break into the monopolistic

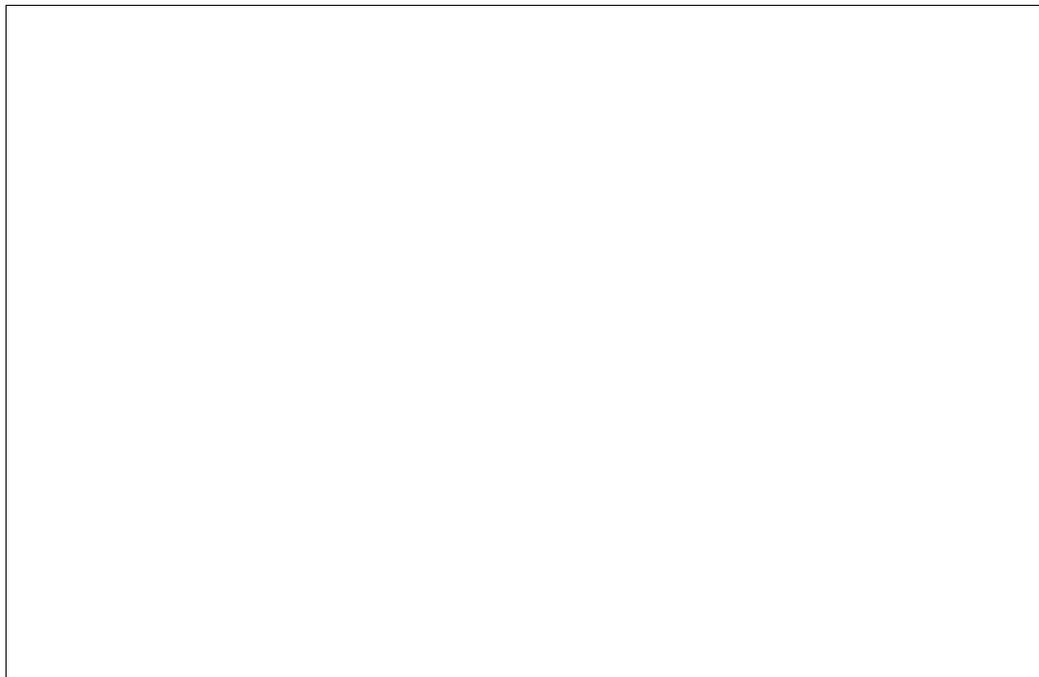
business systems and structures that established large companies have created and fiercely guard in order to maintain their competitive advantage.

In view of the foregoing, the new entrants have adopted four main survival strategies:

- entering into joint venture agreements involving catching or processing or marketing with established companies;
- pooling their quotas with other right holders and jointly obtaining a vessel to exploit the pooled quota;
- selling their fishing rights outright to someone (usually an established company) with the ability to make use of the quota as their own (such rights holders are referred to as 'paper quota holders'); and
- acquiring fishing rights for several species (if they own a vessel) in order to create an economically viable quota 'package'.

Active participation

Because the first three strategies are the most common, the number of rights holders actively taking part in fishing



operations is actually at least 50 per cent lower than the official number of rights holders. One analysis suggests that approximately 25 of the 51 new anchovy fishing rights holders sold their quota to vessel owners or processing companies. This accounted for about 25 per cent of the TAC.

In deep-sea hake trawling the 53 rights holders have been consolidated into less than 20 operational clusters through joint venture agreements. Joint-venture arrangements were being used by both sides for their own benefit.

For new entrants, this would demonstrate that they were actively involved in the industry, while, for the established companies, joint ventures provide increased raw material for processing. If the motivation for joint ventures was the transfer of skills in management and operations, it has rarely been successful—most new entrants are not gaining any skills that would enable them to stand on their own as independent and thriving companies.

As pointed out earlier, government's policy goal was to award rights to new (mainly black) entrepreneurs. In turn, these could form viable fishing businesses in rural coastal areas and so contribute towards poverty alleviation by creating jobs. Little progress has been made so far.

Apart from the lack of skills transfer, another major stumbling block has been that the sizes of quotas that have been awarded to most new entrants do not meet the criteria of being minimum viable quotas (MVQ). For example, most new entrants in the abalone and West Coast rock lobster fisheries were awarded quotas under the 'limited commercial' category.

Under this category, the maximum size of individual quotas is 430 kg (minimum 200 kg) for abalone and 1.5 tonnes (minimum 200 kg) for West Coast rock lobster.

The rights holders point out that these quotas are fished up within a month or two. Since one fisher could not apply to fish for more than one species, there was no other source of livelihood as soon as the annual quota had been exhausted.

In the small pelagics, most new entrants got quotas equivalent to 0.3 per cent of the TAC. In an industry based on high-volume, low-profit economics, such quota sizes are hardly big enough as basis for investment and future planning.

MVQs were seen as being necessary if government intended to eliminate 'paper quotas'. The pooling of quotas by some new entrants could be seen as an attempt to create MVQs. But most new entrants were very unwilling to pool quotas.

As entrepreneurs, they would prefer to go it alone, but they face enormous constraints such as lack of capital, infrastructure, support systems and skills. An economic sectoral study of the industry concluded that pooling of resources (as most new entrants were forced to do) went against that grain of entrepreneurship that is usually based on taking business risks.

By allowing too many rights holders into the industry and spreading the cake too thin without any support systems, the government had set up the new entrants for failure. As a result, the majority of new entrants have been forced, *de facto*, to become paper quota holders or have been forced to make investments that were not based on firm business calculations, but rather to demonstrate activity with their quotas in order to qualify for the next round of quota allocation. The non-viable quotas made new entrants vulnerable and easy targets for exploitation by those in more powerful positions.

External transformation primarily focused on allocating fishing rights to established industries and to SMMES. In the process, a large number of bona fide fishers had fallen by the side, as they could not get into either of these groups.

Interim relief

In the 1990s, the government had attempted to include this group through various interim relief measures, such as the community quotas of 1993, subsistence permits to fishers in the Western Cape in 2001, the Eastern Cape and KwaZulu-Natal, and linefish interim relief measures in 2003. The abolishment of the subsistence sector for abalone and West Coast rock lobster and

institutionalization of the 'limited commercial' category in the Western Cape resulted in most members of this group being excluded.

In a province where livelihoods from the sea has been extremely important historically and culturally, this is proving absolutely debilitating for such coastal communities. It is this category of bona fide fishers (who had been excluded through the formal processes) that are currently in litigation with government over their rights to a livelihood from fishing.

The basis of the litigation is that government should recognize and protect their historical and cultural rights (and entitlement) to a livelihood from fishing (with an option to sell their catch) as provided for under the Constitution.

Additionally, they argue that the transformation process that favoured commercial enterprises has so far been unsuccessful in job creation in their communities. They propose that a two-mile zone should be allocated exclusively for coastal communities for livelihood purposes. Most of those who are supposedly benefiting from internal transformation efforts in established companies describe the changes that have taken place as 'cosmetic' and mere 'window dressing'. The external transformation efforts of the State aimed

at increasing the numbers of new entrants to the fishing industry. However, since most of the beneficiaries have been allocated economically unviable quotas, the result has been a multiplicity of 'paper quota holders' who usually sell their rights to the established companies. Both internal and external transformation can thus largely be labelled as cosmetic.

The lack of clear transformation objectives in government and its inability to provide direction for transformation for the established companies gave the companies *carte blanche* to restructure their enterprises the way they chose to. Many have, therefore, merely tinkered with their existing profiles in order to create the impression that they have changed.

The lack of real change within established companies can be attributed to the lack of political will on the part of the State to force through real changes using quotas as leverage. The introduction of neoliberal macroeconomic policy enhanced the position of established companies by providing them with the argument that their ability to change the way they do business was limited because stability is vital for them to remain internationally competitive in the age of globalization.

Assessment needed

A future direction for fisheries in South Africa must be based on an assessment of how effectively internal and external

transformation processes have addressed poverty, job creation and entrepreneurship. Government's policy for poverty alleviation has been through promotion of SMMES that could new create jobs. This has not been much of a success.

With regard to the workers within the established companies, the process of negotiation between labour unions and established companies, which started in 1995 to improve working conditions and secure jobs for workers, seems to have run its course.

According to FAWU, many permanent jobs are being lost in the fishing industry. Established companies have followed the trend towards casual, temporary and contract employment. Women engaged in processing fish have been most affected by 'casualization' in the industry.

A number of interventions are necessary in order for genuine transformation to occur and the fishing industry to contribute towards poverty alleviation. Many of the new operators in the industry did not have any access to credit (other than the value of the quota when sold). Government intervention is necessary to support new entrants in becoming more competitive and visible in the industry through providing access to affordable sources of capital.

There is an urgent need to establish training, especially in entrepreneurial skills. If the aim is to level the playing field, MCM has a responsibility to provide training, in co-operation with non-governmental organizations (NGOs) and other interested parties. Training should be a requirement for all successful new applicants. The established industry should be made to share in this responsibility.

One way of addressing the training needs of the new entrants is the introduction of a resource fee for leasing a fishing right, which can be used for capacity-building programmes for new entrants. A resource fee is a means by which society can benefit from giving the fishing industry the privilege of using a limited national resource. Since most of the marine resources in South Africa have been utilized to the maximum capacity, only a

few can be given commercial fishing rights.

Such a tax could be used for general development projects like education, health and housing, and the provision of welfare, especially in fishing communities that unsuccessfully applied for fishing rights.

It is clear from the experience of the last 10 years that there is a definite need for institutional support to new entrants. Interestingly, such an approach was used in the 1940s by the government of the time. The Fishing Industry Development Corporation (FIDC) was established to, among other things, establish rivals to Irvin & Johnson in the deep-sea hake trawl fishery by granting fishing rights to a limited number of rights holders in order to enable them to develop vertically integrated, economically viable companies. What later became Sea Harvest only materialized because the FIDC was able to support skills development and provide capital. Similar human and financial support is needed for emerging companies to be able to ably compete with established companies.

Although a verification unit was established for the technical vetting and verification of applications for medium-term rights, it appears that no unit has been in place thereafter to audit progress in internal transformation in established companies and ensure new entrants are genuinely engaging in the industry. Such a unit is supposed to have been vital for vetting this progress as part of the process for awarding the proposed long-term rights from 2006.

In order to avoid having the kind of 'fox in the henhouse' situation that led to the Enron scandal in the United States, it is important that the verification unit is completely independent. An independent verification unit must have the ability to audit internal transformation within companies, joint ventures, as well as 'paper quota holders' in a credible and transparent manner.

Bona fide fishers

The inshore resources could have largely been left aside for bona fide fishers. Government could have used this as a

bargaining chip against the arguments of the established companies for maintaining their rights in the commercial sector.

This would have gone a long way in providing a source of livelihoods and so contribute towards poverty alleviation for these fishers and their communities.

Regarding capital-intensive fisheries, government could have followed the advice from the Access Rights Technical Committee and acknowledged that it would be very difficult to transform these fisheries.

Instead, these fisheries could have been seen as a generator of funds for the development of coastal communities or society at large by imposing a special levy on fishing rights, like the resource tax charged in Namibia.

Established companies would most likely have argued that they already pay tax on profit and a levy on fishing rights would thus be unfair. It is clear, though, that, under the medium-term rights, established companies were willing to buy and pay for fishing rights under many different arrangements. By institutionalizing transformation through, for example, a Trust Development Fund, the transaction costs for the established industry to acquire

access rights would have been substantially lower.

In South Africa, as elsewhere in the world, fisheries co-management has become a frequently used term to refer to involvement of fishers and fishing communities in order to improve their livelihoods in a consultative/ collaborative manner. However, as with the concept of transformation, there is no clear definition of co-management in a South African context, even though it appears to be seen as a panacea by government and academia for the sustainable utilization of fisheries resources and the economic development of fishing communities.

Experiences so far with fisheries co-management in South Africa indicate that the existing co-management arrangements have primarily focused on management of the fish resources rather than being a mechanism for facilitating economic development within fishing communities.

Livelihoods issue

Except for KwaZulu-Natal, the government has generally not taken its responsibility for collaborative management seriously. In addition, one cannot expect poor communities and individuals to buy into the concept if they cannot see that it would improve their livelihoods. Thus, it will be important that

poverty reduction strategies are embedded in co-management arrangements.

The government's intention for the redistribution of fishing rights was for fish resources to contribute towards poverty alleviation in coastal communities. Allocating fishing rights to new entrants was a necessary step to start addressing the legacy of apartheid's economic and social deprivation of black communities.

The shift to Gear meant that government's poverty alleviation approach focused on poverty prevention (through SMMES) and poverty reduction (through job creation). It envisaged giving fishing rights to entrepreneurs within fishing communities who could start businesses using their rights, thereby creating jobs within these communities. While rights would act to reduce poverty for the rights holders and entrepreneurs, the creation of jobs would prevent poverty for a few. It is clear, though, that the market solution (Gear) has been insufficient in effective transformation and contributing towards poverty alleviation in coastal communities. It is imperative, at least for the time being, that government should still play an interventionist role in order to ensure that transformation genuinely contributes to poverty alleviation. 3

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Fishing in Times of High Prices

Recent events show how vulnerable world fisheries are to increases in fuel costs, but those most affected personally are the small-scale fishing people of the South and their families

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During the first decades of the second half of the 20th century, 'appropriate technology' for fishermen of developing countries had become a big issue. The various bilateral and international development agencies, busy at that time in 'technology transfer' projects, became eventually aware that large chunks of the machinery and equipment they were introducing in Third World countries had turned into rusty heaps. Still, such projects that mainly benefited the equipment

materials, and installed OBMs in their canoes, *kattumarams*, *janghadas* and other traditional craft, and small diesel engines in their various boats, dories, skiffs and *dhow*s. Perhaps they did all this too fast, equally quickly doing away with their sails, oars and paddles. With the passing of years, increasing numbers of sea-going fishermen began shifting from OBMs to diesel engines.

One consequence of the motorization of small craft has been an increase in the loss of life at sea; with motorized crafts, fishermen tended to travel greater distances offshore, which put them at greater risk if the engines failed. Those who once employed sails stopped taking them to sea, while most of the younger fishermen—of the second and third generations of engine users—were never trained in sailing and would hardly know how to handle sails in an emergency. Thus, the art of sailing, an important skill, has been lost in the fisheries of many developing countries.

The other consequence of motorization of craft is a new one: dwindling of fishing people's incomes due to the spiralling rise in fuel prices, the cost of fuel being, in most fisheries, the main financial factor of production. In the North, fishermen have been holding strikes in protest against rising diesel prices, which have increased by 240 per cent since 2004. While the recent events in the North show how vulnerable world fisheries are to increases in fuel costs, those who are the most affected personally are the small-scale fishing people of the South and their families. Let us not forget that

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manufacturers and their agents, but hardly the local 'recipients', have been promoted for years. The artisanal and commercial small-scale fishermen were often blamed for being conservative, stubborn and dumb not to embrace the technology wonders parachuted upon them by the well-meaning development agents.

But this allegation has been belied by the swift adoption of synthetic twines and nets and outboard motors (OBMs) throughout the small-scale fisheries all over the Third World, an expansion that occurred both with and without outside technical assistance. As it appears, fishermen were wise and fast enough to grasp the economic benefits of motorization and advanced

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about 40 mn small-scale and artisanal fishermen—whatever term we choose to use—represent some 90 per cent of the people employed in the fishing trade worldwide.

All over the world, small-scale and artisanal fisherfolk are now also hit by the rising prices of food. While this problem is not specific to fishing peoples and their communities, it certainly does not miss them out.

In South Africa, small-scale fishermen, including about 30,000 subsistence fishermen who rely exclusively on the sea to survive, and already struggling with uncertain catches, tougher fishing policies and quotas, have been hit hard by the rocketing fuel prices. The surge in both diesel and petrol prices is adding to their woes, making it difficult for them to earn a living. Although most attention has been given to diesel fuel prices, it is petrol that runs the OBMs of most of the artisanal fishermen worldwide.

Petrol prices have risen at a rate parallel to that of diesel. In Australia, for example, two years ago it used to cost around A\$12.50 to fill a tank of fuel for an OBM; last June, a full tank cost A\$40. Fuel price rises forced many artisanal fishermen throughout the world to work closer to shore and try to scrape out a living with meagre catches. In industrialized countries, some fleets that use less fuel and can charge higher prices for fish may just about cope...so far. But in countries where hundreds of thousands of fishermen beach their craft to deliver their catches to fish-processing women and market fishmongers, often far from the end consumer, price increases, as a rule, dissipate among the intermediate stages. Thus, many small-scale fishermen have recently decided to fish with hooks-and-line from shore or from small paddle boats, and keep their larger fishing craft beached or in the harbour. Others have just given up fishing to wait for better times.

Artisanal fishermen have never been spoiled by their governments, though recently fishermen in Thailand have been promised some discount on fuel price by their government. In many countries, fleets of local and foreign industrial fishing vessels that

are supposed to be fishing offshore are considered, for the purpose of fuel pricing, as merchant fleets and enjoy tax-free or discounted-tax fuel prices. Not so local small-scale fishermen who have to purchase fuel, especially petrol for their OBMs, at the same prices as private car owners. For example, during the introduction of the 'deep-sea fishing policy' in India in 1991, the government made it possible for foreign vessels to avail diesel fuel at the rate of Rs 2 per litre whereas domestic fishermen in Kerala in south India had to pay Rs 7.62.

The situation of fishing people in the developed North is anything but bright. In Europe, some of their representatives are saying that chunks of the fishing fleet may increasingly be forced to tie up at the dock because of fuel costs.

Standard of living

Fishworkers in industrial fleets are more sensitive to such crises. Most of them do not have the 'African option' of boarding old, small dugouts and paddling out to handline for fish, even if only to feed their families. They are living at quite a different—and much higher—standard of living, which makes them quite alarmed at any threat to their material comfort.

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A fishing boat in South Africa's Calk Bay. Increasing diesel and petrol prices are adding to the woes of South Africa's fishermen

The cost of diesel fuel for fishing vessels is the burning issue of the day. A couple of years ago, owners of a small 'artisanal' shrimper would spend 30-40 per cent of their total running expenses on fuel. Today they would have to spend twice as much. Yet the prices of their shrimp catches have not increased proportionally, due to the ever-increasing supply of farmed shrimp in the market. Fishermen thus

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have to deduct the cost of fuel spent on the fishing trip from the money earned from selling their catches and search, often in vain, for what is left. Reports from south and southeast Asia and even from Japan, where the price of fuel oil is 2.7 times the price it was five years ago, talk of hundreds of small-scale fishing vessels, including diesel-powered trawlers and shrimpers, tied to the dock, because they could not go on fishing viably. Fishermen are getting bitterly angry and frustrated as they are forced to stay at home, deprived of their ability to make a living.

A report from Florida, United States (US), says that up to 80 per cent of shrimp fleets are tied up at different ports and every water-related activity is suffering because of the sky-rocketing price of diesel fuel. Soaring prices are also hurting North Carolina's commercial fishermen, squeezed by low dockside prices for catches and mounting fuel bills. The Statewide average price of a gallon of diesel was up 65 per cent from what it was a year ago. Although fishermen were getting better prices for some of their fish, most prices have not kept pace with fuel costs, which is why shrimpers, crabbers and gillnetters are staying in port, waiting for better times. All along the east coast of the US, 20 to 40 per cent of the commercial fishing boats have been tied to the docks from the beginning of the year.

The situation on the west coast and Alaska, where diesel fuel prices have increased more than 50 per cent over the past year, is not any better. In the meantime, many fishing people who depend on fishing as their only income, say that they can no longer afford to fuel their boats and cannot earn a living. However, in the US, they know exactly whom to blame, when they turn to the Congress for legislative help: the speculators and the owners of, and lobbyists for, the oil companies. American legislators obliged and introduced The Fisheries Fuel Tax Relief Act of 2008, which, if approved, is supposed to go a long way towards helping fishermen.

In the European Union (EU) fisheries provide a livelihood for some 400,000 people, mainly in Spain, France, Italy and Portugal. In numbers they make up fewer than one per cent of the world's fishing people, but in terms of fish catches, their share of value in the world's fish yield is much higher.

In Britain, between 2007 and 2008, the cost of diesel fuel doubled and is expected to rise further as analysts predict crude oil prices rising to US\$150 per barrel, and possible spikes up to US\$200 per barrel. Consequently, fish prices on British markets would increase between 7 and 50 per cent, with the average price increase across all species being 23 per cent.

Europe's angry fishermen have staged protests against the increasing fuel prices. Demonstrations turned violent at the EU headquarters in Brussels. The European and American fishermen's advantage over their poorer brethren in the South consists of their strong organizations, electoral power, and physical presence and protest actions in the ports of their countries.

Ports blocked

In some 20 ports, fishing vessels plugged harbour entrances and blocked oil tankers and other ships from loading or unloading, while on land fishers blocked roads. Their main grouse is that their governments are taxing fuel at the same rates as they did before the shattering price rises, which gives the governments enormous financial gains, but offers only losses for the fishers.

The protests spread to ports in the Atlantic, the English Channel and the Mediterranean. Fortunately, these fishers live in countries where such protesters are not fired on or incarcerated without proper trial.

The Northern governments are sticking to the notion that any reduction of taxes is tantamount to a subsidy; they hope to use the fishing industry's financial difficulties to reduce fishing effort and capacity, in a kind of Organization of Petroleum Exporting Countries (OPEC)-induced fishery management. According to EU's Fisheries Commissioner, Joe Borg, it is illegal for the EU to subsidize fuel. This "would do nothing to solve underlying problems", according to Borg. And the solution? Shrink the fleets. So the EU Fisheries Commission has already proposed a package of assistance to fishermen who stop fishing or modernize their boats with fuel-saving equipment. There will be no tax reliefs, but there is talk about short-term financial assistance, which may not be immediately forthcoming, of course.

The well-organized Japanese fishermen submitted a petition to their government seeking fuel cost subsidies, easier terms for new loans, and tax breaks. Though the government originally refused to subsidize the increases in fuel costs, it now appears that the government is likely to extend emergency financial aid to fishery operators to alleviate the impact of soaring oil prices. This is not very surprising, in view of the protest actions taken by thousands of Japanese fishers and their boats, and the incessant daily demand for fish in this avidly fish-eating nation. The Japanese government may also consider an expansion of funding for fishery businesses that introduce energy-saving measures.

The upsurge of fuel prices worldwide has thrown diverse fishing people into a single common dilemma: how to keep making a living under drastically changed conditions? And this is not the first time that people are wondering how to reduce the use of fossil fuel by the fishing industry.

The solutions to this dilemma would differ with various types of

fisheries—small-scale, medium-scale, industrial—and according to the countries or regions they are based in, and the natural and socioeconomic conditions under which they operate. There are some obvious solutions like using lower horsepower (hp) engines or using existing engines at moderate revolutions per minute (rpm). Other solutions could be:

(1) the use of auxiliary sail-power to get to, and from, fishing areas;

(2) shifting to any passive fishing methods that are less fuel-guzzling than trawling, dredging, etc. Purse-seining, for example, although a very active fishing method, does not need to consume heavy amounts of fuel, if the fishing operations take place close to fish-landing centres;

(3) navigating only at cruising speed, except in emergency;

(4) trawlers should use the benefit of the increased towing power of propeller nozzles to save fuel rather than increase the towing speed; shift to drag-reducing fishing gear/methods: hydrodynamic trawl-boards (for example, cambered, oval, slotted); stronger but thinner twine in netting (for example, Dyneema); two-boat trawling and Danish seining instead of otter trawling; shift to double-rig trawls (using only one pair of doors);

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(5) keep in mind that smaller catches nearby may be sometimes more economic than larger catches in distant fishing grounds; and, finally,

(6) don't fish on your Sabbath—spend the time with your family.

Rule-beating

The folly of regulating fishing capacity by boat length results in 'rule-beating'—10-m-long monsters that are almost half as wide and deep as they are long. Wiser regulation would force boat designers to consider the physical law that

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Using lower horsepower (hp) engines or using existing engines at moderate revolutions per minute (rpm) can cut fuel costs

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length/displacement is proportional to speed/hp; in other words, with other parameters remaining constant, the longer the boat, the less power it needs to attain the same speed.

The measures taken by fishermen to cope with the rise in fuel prices include an increase in the use of static gear like gillnets, pots and traps, longlines and handlines, which do not require the fishing vessel to tow gear through the water; more fuel-efficient engines; and less trawling. Measures such as these can improve the ratio of fish caught per unit of fuel used, making fishing financially more efficient.

Trolling, in most cases, is fuelwise an inefficient method, except for some more expensive and abundant fishes. Fishermen who power their canoes and other displacement-hull craft with OBMs and small diesel engines should keep in mind that each boat has a cruising speed at which the distance-to-fuel consumption ratio is best. 'Speeding up' the engine beyond cruising speed results in relatively small gains in speed and great waste of fuel. Increasing the speed of a large canoe from, say, 7 knots to 9 knots may raise fuel consumption by more than 50 per cent.

Fuel can be saved not only in running engines. In Africa's Lake Victoria, for instance, fishermen from Mbita, a small fishing centre on the Kenyan side of the lake, who use light bulbs to attract fish,

can now recharge batteries for fishing lamps and other electrical appliances at low cost at a solar energy station set up by the company that sells energy-saving lamps. For the fishermen this offers a great potential for saving both fuel and money, and for the company, it is an opportunity to make profits because around 175,000 fishermen currently use kerosene lamps in night fishing.

Incidentally, this is not the only recent case in which the interests of fishing people and equipment companies coincide; the introduction of mobile phones to inshore and coastal fishermen in several parts of the world, including many developing countries, has considerably improved both safety at sea and fish-marketing opportunities.

The spiralling increases in the cost of energy in fisheries in the last few years have produced a chain of consequences that were hardly possible to envisage some time ago. One can only hope that the world's small-scale fishing people—who constitute over 90 per cent of the manpower in fisheries worldwide and provide over half of the world's food fish—and their communities will somehow manage, with or without much help from their governments.

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For more



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More Japanese fishermen go on strike over fuel prices

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Diesel price hike leaves Indonesian fishermen high and dry

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Fishworkers in industrial fleets are more sensitive to such crises. Most of them do not have the 'African option' of boarding old, small dugouts and paddling out to handline for fish, even if only to feed their families. They are living at quite a different—and much higher—standard of living, which makes them quite alarmed at any threat to their material comfort.

MENAKHEM BEN-YAMI



A fishing boat in South Africa's Calk Bay. Increasing diesel and petrol prices are adding to the woes of South Africa's fishermen

The cost of diesel fuel for fishing vessels is the burning issue of the day. A couple of years ago, owners of a small 'artisanal' shrimper would spend 30-40 per cent of their total running expenses on fuel. Today they would have to spend twice as much. Yet the prices of their shrimp catches have not increased proportionally, due to the ever-increasing supply of farmed shrimp in the market. Fishermen thus

...many fishing people who depend on fishing as their only income, say that they can no longer afford to fuel their boats and cannot earn a living.

have to deduct the cost of fuel spent on the fishing trip from the money earned from selling their catches and search, often in vain, for what is left. Reports from south and southeast Asia and even from Japan, where the price of fuel oil is 2.7 times the price it was five years ago, talk of hundreds of small-scale fishing vessels, including diesel-powered trawlers and shrimpers, tied to the dock, because they could not go on fishing viably. Fishermen are getting bitterly angry and frustrated as they are forced to stay at home, deprived of their ability to make a living.

A report from Florida, United States (US), says that up to 80 per cent of shrimp fleets are tied up at different ports and every water-related activity is suffering because of the sky-rocketing price of diesel fuel. Soaring prices are also hurting North Carolina's commercial fishermen, squeezed by low dockside prices for catches and mounting fuel bills. The Statewide average price of a gallon of diesel was up 65 per cent from what it was a year ago. Although fishermen were getting better prices for some of their fish, most prices have not kept pace with fuel costs, which is why shrimpers, crabbers and gillnetters are staying in port, waiting for better times. All along the east coast of the US, 20 to 40 per cent of the commercial fishing boats have been tied to the docks from the beginning of the year.

The situation on the west coast and Alaska, where diesel fuel prices have increased more than 50 per cent over the past year, is not any better. In the meantime, many fishing people who depend on fishing as their only income, say that they can no longer afford to fuel their boats and cannot earn a living. However, in the US, they know exactly whom to blame, when they turn to the Congress for legislative help: the speculators and the owners of, and lobbyists for, the oil companies. American legislators obliged and introduced The Fisheries Fuel Tax Relief Act of 2008, which, if approved, is supposed to go a long way towards helping fishermen.

In the European Union (EU) fisheries provide a livelihood for some 400,000 people, mainly in Spain, France, Italy and Portugal. In numbers they make up fewer than one per cent of the world's fishing people, but in terms of fish catches, their share of value in the world's fish yield is much higher.

In Britain, between 2007 and 2008, the cost of diesel fuel doubled and is expected to rise further as analysts predict crude oil prices rising to US\$150 per barrel, and possible spikes up to US\$200 per barrel. Consequently, fish prices on British markets would increase between 7 and 50 per cent, with the average price increase across all species being 23 per cent.

Europe's angry fishermen have staged protests against the increasing fuel prices. Demonstrations turned violent at the EU headquarters in Brussels. The European and American fishermen's advantage over their poorer brethren in the South consists of their strong organizations, electoral power, and physical presence and protest actions in the ports of their countries.

Ports blocked

In some 20 ports, fishing vessels plugged harbour entrances and blocked oil tankers and other ships from loading or unloading, while on land fishers blocked roads. Their main grouse is that their governments are taxing fuel at the same rates as they did before the shattering price rises, which gives the governments enormous financial gains, but offers only losses for the fishers.

The protests spread to ports in the Atlantic, the English Channel and the Mediterranean. Fortunately, these fishers live in countries where such protesters are not fired on or incarcerated without proper trial.

The Northern governments are sticking to the notion that any reduction of taxes is tantamount to a subsidy; they hope to use the fishing industry's financial difficulties to reduce fishing effort and capacity, in a kind of Organization of Petroleum Exporting Countries (OPEC)-induced fishery management. According to EU's Fisheries Commissioner, Joe Borg, it is illegal for the EU to subsidize fuel. This "would do nothing to solve underlying problems", according to Borg. And the solution? Shrink the fleets. So the EU Fisheries Commission has already proposed a package of assistance to fishermen who stop fishing or modernize their boats with fuel-saving equipment. There will be no tax reliefs, but there is talk about short-term financial assistance, which may not be immediately forthcoming, of course.

The well-organized Japanese fishermen submitted a petition to their government seeking fuel cost subsidies, easier terms for new loans, and tax breaks. Though the government originally refused to subsidize the increases in fuel costs, it now appears that the government is likely to extend emergency financial aid to fishery operators to alleviate the impact of soaring oil prices. This is not very surprising, in view of the protest actions taken by thousands of Japanese fishers and their boats, and the incessant daily demand for fish in this avidly fish-eating nation. The Japanese government may also consider an expansion of funding for fishery businesses that introduce energy-saving measures.

The upsurge of fuel prices worldwide has thrown diverse fishing people into a single common dilemma: how to keep making a living under drastically changed conditions? And this is not the first time that people are wondering how to reduce the use of fossil fuel by the fishing industry.

The solutions to this dilemma would differ with various types of

fisheries—small-scale, medium-scale, industrial—and according to the countries or regions they are based in, and the natural and socioeconomic conditions under which they operate. There are some obvious solutions like using lower horsepower (hp) engines or using existing engines at moderate revolutions per minute (rpm). Other solutions could be:

(1) the use of auxiliary sail-power to get to, and from, fishing areas;

(2) shifting to any passive fishing methods that are less fuel-guzzling than trawling, dredging, etc. Purse-seining, for example, although a very active fishing method, does not need to consume heavy amounts of fuel, if the fishing operations take place close to fish-landing centres;

(3) navigating only at cruising speed, except in emergency;

(4) trawlers should use the benefit of the increased towing power of propeller nozzles to save fuel rather than increase the towing speed; shift to drag-reducing fishing gear/methods: hydrodynamic trawl-boards (for example, cambered, oval, slotted); stronger but thinner twine in netting (for example, Dyneema); two-boat trawling and Danish seining instead of otter trawling; shift to double-rig trawls (using only one pair of doors);

The solutions to this dilemma would differ with various types of fisheries—small-scale, medium-scale, industrial—and according to the countries or regions they are based in, and the natural and socioeconomic conditions under which they operate.

(5) keep in mind that smaller catches nearby may be sometimes more economic than larger catches in distant fishing grounds; and, finally,

(6) don't fish on your Sabbath—spend the time with your family.

Rule-beating

The folly of regulating fishing capacity by boat length results in 'rule-beating'—10-m-long monsters that are almost half as wide and deep as they are long. Wiser regulation would force boat designers to consider the physical law that

MENAKHEM BEN-YAMI



Using lower horsepower (hp) engines or using existing engines at moderate revolutions per minute (rpm) can cut fuel costs

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length/displacement is proportional to speed/hp; in other words, with other parameters remaining constant, the longer the boat, the less power it needs to attain the same speed.

The measures taken by fishermen to cope with the rise in fuel prices include an increase in the use of static gear like gillnets, pots and traps, longlines and handlines, which do not require the fishing vessel to tow gear through the water; more fuel-efficient engines; and less trawling. Measures such as these can improve the ratio of fish caught per unit of fuel used, making fishing financially more efficient.

Trolling, in most cases, is fuelwise an inefficient method, except for some more expensive and abundant fishes. Fishermen who power their canoes and other displacement-hull craft with OBMs and small diesel engines should keep in mind that each boat has a cruising speed at which the distance-to-fuel consumption ratio is best. 'Speeding up' the engine beyond cruising speed results in relatively small gains in speed and great waste of fuel. Increasing the speed of a large canoe from, say, 7 knots to 9 knots may raise fuel consumption by more than 50 per cent.

Fuel can be saved not only in running engines. In Africa's Lake Victoria, for instance, fishermen from Mbita, a small fishing centre on the Kenyan side of the lake, who use light bulbs to attract fish,

can now recharge batteries for fishing lamps and other electrical appliances at low cost at a solar energy station set up by the company that sells energy-saving lamps. For the fishermen this offers a great potential for saving both fuel and money, and for the company, it is an opportunity to make profits because around 175,000 fishermen currently use kerosene lamps in night fishing.

Incidentally, this is not the only recent case in which the interests of fishing people and equipment companies coincide; the introduction of mobile phones to inshore and coastal fishermen in several parts of the world, including many developing countries, has considerably improved both safety at sea and fish-marketing opportunities.

The spiralling increases in the cost of energy in fisheries in the last few years have produced a chain of consequences that were hardly possible to envisage some time ago. One can only hope that the world's small-scale fishing people—who constitute over 90 per cent of the manpower in fisheries worldwide and provide over half of the world's food fish—and their communities will somehow manage, with or without much help from their governments.

3

For more



<http://www.icsf.net/icsf2006/ControllerServlet?handler=EXTERNALNEWS&code=getDetails&id=37816&userType=&fromPage=>

Japan fishermen strike over fuel

www.icsf.net/icsf2006/ControllerServlet?handler=EXTERNALNEWS&code=getDetails&id=38139&userType=&fromPage=

More Japanese fishermen go on strike over fuel prices

<http://www.icsf.net/icsf2006/ControllerServlet?handler=EXTERNALNEWS&code=getDetails&id=38104&userType=&fromPage=>

Diesel price hike leaves Indonesian fishermen high and dry

Seeking Protection

A recent workshop held at Langebaan, South Africa, dealt with how communities can be themselves protected as marine protected areas are increasingly developed

How can we be protected from protected areas? This has been the refrain from small-scale fishing communities up and down the South African coast over the past ten years whenever they have come together to share their experiences of conservation and fisheries management policy. Small-scale fishing communities along the South African coastline, without exception, have a collective history of displacement, dispossession and marginalization due to the declaration of marine protected areas (MPAs). While the distinctive experience of this differs from area to area, MPAs have been viewed with fear and mistrust, rather than as one of several management tools that has the potential to protect the resources that these communities have traditionally depended on for their food security, their livelihoods and for a rich array of customary and spiritual practices that sustain their cultures.

It was towards this potential that Masifundise Development Trust, with support from the International Collective in Support of Fishworkers (ICSF), organized a workshop titled "Protecting Community Rights in Marine Protected Areas" in Langebaan on the West Coast of South Africa during 14-16 April 2010. The two-day national-level workshop was attended by 39 participants, including men and women community representatives living in, or adjacent to, existing or planned MPAs in all four coastal provinces, non-governmental representatives, government officials from the Directorate responsible for MPAs in the Department of Environmental

Affairs, the South African National Parks Authority and KZN Ezemvelo Wildlife, and researchers working on MPA issues within a local university. This was the first-ever workshop of its kind in the country that aimed to include communities themselves in dialogue with a range of stakeholders, to identify the impacts of MPAs on fishing communities and raise awareness of the rights of small-scale communities in the planning, management and implementation of MPAs.

The workshop took place at a most opportune time as the department

South Africa has a lengthy history of space-based measures for the protection of marine biodiversity and fisheries management.

responsible for developing the first-ever policy on MPAs is currently drafting it, and the official responsible for the process attended the workshop. Similarly, the fishers are participating in a process of developing a new small-scale fisheries policy for the country, which will be finalized in the coming months. The workshop thus provided a critical opportunity to ensure that these two policies are integrated and will both promote and protect the rights of small-scale fishing communities in the future.

Marine biodiversity

South Africa has a lengthy history of space-based measures for the protection of marine biodiversity

*This article is by **Jackie Sunde** (jsunde@telkomsa.net), Member, ICSF, and Researcher at the Environmental Evaluation Unit, University of Cape Town, South Africa*

MANDLA GQAMLANA



A participant at the workshop shares her group's feedback on the key issues facing small-scale fishing communities living in, or adjacent to, MPAs

use, which tends to be, however, extremely limited. Several of the MPAs are complete no-take areas and communities were physically removed from these sites and relocated outside the reserves.

The Langebaan workshop created an opportunity for communities to share their stories about the impacts that MPAs have had on their lives and livelihoods. It was notable that all of the 16 coastal communities represented at the workshop told of histories of dispossession, and loss of access, lack of consultation, lack of equitable benefits, and lack of communication, and expressed bewilderment as to how they, as traditional small-scale communities, could be restricted within these areas, while they look on as MPAs have become havens for poachers, and recreational and commercial fishers who are able to enjoy the benefits of these areas.

William Blake, a traditional net fisherman of the West Coast National Park, recalled that he was born on the edges of the Langebaan Lagoon, and that his family was forced to leave their home due to the declaration of the National Park. He and several of his brothers lost their customary rights to fish, and he was forced to seek work elsewhere. While the MPA in the Lagoon has been zoned for sustainable use, the number of fishing permits allocated to the net fishers who depend on the resource for their livelihoods has been restricted to ten. In contrast, recreational fishing in the Lagoon has increased considerably over the past few decades and these fishers appear to have few restrictions. The perceived inequity of a system in which recreational and commercial fishers have less stringent restrictions was a theme that dominated the fisher participants' presentations at the workshop. This was highlighted in the presentation from Hout Bay, in an MPA in which commercial fishing companies have enjoyed the right to continue harvesting a quota of lobster, under the guise of it being an experimental quota, while the local traditional fishing

and fisheries management. The first marine reserve was declared in 1934, with the aim of protecting the commercial fishing industry's lobster interests. Currently, 21 per cent of the coastline is under protected area status, and the country boasts 24 MPAs declared under the Marine Living Resources Act of 1998, which is also the legislation that governs all fisheries management. The country's history of MPAs, like that of terrestrial protected areas, reflects the political economy of the country.

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The perceived inequity of a system in which recreational and commercial fishers have less stringent restrictions was a theme that dominated the fisher participants' presentations at the workshop.

A combination of colonial and apartheid land, conservation, mining, forestry and fisheries management policies over the past 100 years resulted in traditional fishing communities being dispossessed of land and their access to natural resources along the 3,000 km of coastline. Most of the country's MPAs include no-take sanctuaries as well as restricted-use zones, within which there is some sustainable

community has been denied all rights to fish in the area.

Lack of consultation and communication between traditional fishing communities, the traditional authorities within their areas, and conservation and government fisheries agencies was highlighted by the community representatives from iSimangaliso, one of South Africa's largest World Heritage Sites that incorporates two contiguous MPAs and lies adjacent to a recently declared transboundary MPA extending along the South Africa-Mozambique coastline. Ironically, this area received much attention during the World Parks Conference, held in Durban in 2003, yet the indigenous and local communities living within this Park are struggling to assert their right to the land adjacent to the coast that they have traditionally owned, and to use and manage the marine and coastal resources that their communities have depended on for generations. In protest, one of the communities in this Park has recently cut down a fence that was erected around their lands without consulting them.

The establishment of a missile testing range within an MPA has confused fishers from the fishing village of Arniston on the south coast. Many of these fishers were forced to move from this area to make way for the nature reserve, and they are now prohibited from fishing in the waters adjacent to the Park. Understanding that this was in order to protect these resources, they find the activities of the missile testing range understandably confusing. They resent the lack of information, and query the impact of the missile testing on the fish stocks in the surrounding waters.

The confusing permit regulations surrounding MPAs was raised by several participants. The fishers noted that in several MPAs, large industrial fishing activities, and, in some instances, mining, are still permitted both within the MPA or adjacent to the MPA. The fishers queried the logic and rationale for MPAs if destructive

practices are permitted to continue while their relatively environmentally friendly fishing methods and gear are prohibited. Willie Smith of Mkambati highlighted the impact of the declaration of the MPA on the livelihoods of 50 families who have lost their access to the sea. Two of the other fishing communities represented face the declaration of MPAs in their

The fishers queried the logic and rationale for MPAs if destructive practices are permitted to continue while their relatively environmentally friendly fishing methods and gear are prohibited.

areas and spoke of their experiences of the consultation processes. These processes are perceived as being 'top-down' and failing to include the fishers' own local knowledge in the planning processes.

In the opening input to the workshop, Jackie Sunde provided an overview of the international and national policy and legislative framework governing MPAs. She highlighted the commitments within the Convention on Biological Diversity (CBD) Programme of Work on Protected Areas (PoWPA) to the rights of indigenous and local communities

JACKIE SUNDE



Langebaan fishers met at the workshop to evaluate the social impacts of MPAs on their lives and livelihoods

The Langebaan Statement on Marine Protected Areas

We, representatives from small-scale fishing communities, Masifundise and other organizations working with, and in support of, fishers in South Africa, having participated in the workshop "Protecting Community Rights in Marine Protected Areas" in Langebaan, 14-16 April 2010,

We are committed to contributing towards sustainable marine biodiversity and sustainable, equitable coastal livelihoods in South Africa.

We are very aware that our coasts are very important, ecologically rich and diverse marine environments, of critical importance for the biological diversity of the country as a whole for current and future generations as well as being a source of important economic, social and cultural resources.

We see MPAs as one of several important tools in order to protect our marine environments in the future. We believe that MPAs are very important but they need to be planned and managed in such a way that they balance the needs to protect the marine environment while promoting poverty alleviation, integrated livelihoods and a human-rights approach to development along the coast.

Our vision is of an equitable, sustainable and biologically rich and diverse marine environment that promotes small-scale fisheries, working towards poverty alleviation and sustainable local economic development.

We note that our small-scale fishing communities up and down the coast have lengthy histories of using and managing our marine resources as the basis for our life and livelihoods. We have developed extensive indigenous and locally based knowledge of the marine environment, and many of our customary, social and cultural practices are closely linked to our coastal livelihoods and use of marine resources. Our traditional fisheries thus have important cultural heritage value and are an integral part of the marine biodiversity systems in our coast.

We also note that in the past many MPAs have been imposed on local communities, dispossessing them of their access to resources, their local social and cultural rights and opportunities, and this has created a negative perception of

MPAs amongst many fishing communities. The way in which MPAs are currently being managed has meant that local communities have not benefited equitably. In some instances, MPAs have negatively impacted local communities' livelihoods.

We are concerned that unsustainable fishing practices, especially those of the industrial and recreational sectors, coupled with land- and sea-based pollution, unrestricted tourism development along the coast as well as the influence of climate change, are impacting the sustainability of our marine environments. We believe that this requires an integrated approach to marine and coastal management, using a range of management tools. We note the international and regional biological diversity commitments to which South Africa has committed itself, most notably, the Convention on Biological Diversity (CBD), as well as a range of international fisheries management laws and policies, such as the Code of Conduct for Responsible Fisheries.

We urge our government to ensure that the new MPA policy and the new small-scale fisheries policy will work towards realizing the principles embodied in these international instruments as well as towards the principles contained in our Constitution and National Environmental Legislation. We call for a human-rights-based, environmentally sustainable and integrated approach to MPAs based on the following:

- recognizing the rights of bona fide small-scale fishing communities living in, or adjacent to, MPAs and granting them preferential access to marine resources in these areas;
- recognizing the right to participation and the full involvement of fishing communities in all stages of planning and decisionmaking in all MPAs, recognizing their role and valuing their indigenous knowledge in the research involved in the planning process;
- recognize the importance of gathering information on the potential social, cultural and economic impacts on the local communities living in, and adjacent to, the area;
- affirming the principle of co-management and decentralization of decisionmaking, establish the

to participate fully in the planning and implementation of MPAs and to benefit equitably from such areas. Drawing on the experience of the Endorois community in Kenya, which has won their right to return to their ancestral land and inland waters following their forced removal to make way for a nature reserve, Jackie emphasized the importance of fishing communities' awareness of their rights, and the need for communities to advocate for these rights.

Mbulelo Dopolo, the manager of the South African National Parks

Marine Programme, suggested that MPAs could have significant socioeconomic and ecological benefits for small-scale fishing communities but that, currently, the threat of pollution, overexploitation of fish stocks, tourism developments, and lack of adequate data threaten the benefits of MPAs. The fishers welcomed his openness in engaging with them on these issues, and commented that he was one of the first conservation scientists they had met who had actually admitted that government had very little

necessary and appropriate institutional arrangements such as forums at local, regional and national levels that will work towards progressively achieving a partnership between government, communities and other stakeholders, including for each MPA. The development of MPA policy and planning must include representatives from fishing communities;

- involve local government municipalities and local and provincial forums and ensure integration of these structures with MPA planning and management at this level, where appropriate;
- ensure that governance and decisionmaking in MPAs is transparent and accountable;
- ensure that co-management committees and local forums are given the necessary power that they require in order to manage local resources effectively;
- ensure that the planning of offshore MPAs is done in an integrated way and is linked to the planning and management of inshore MPAs;
- ensure that local communities benefit equitably from MPAs, particularly from the introduction of non-consumptive use-related livelihood opportunities;
- involve communities in local monitoring of fishing and other activities in MPAs, drawing on the local knowledge of these communities;
- the design and planning of MPAs must take into consideration the specific needs of each area and design specific management plans for each area;
- design MPAs using zonation flexibly to maximize protection and benefits for both the marine ecosystem and local small-scale fishing communities, while creating opportunities for a wide range of users to enjoy the benefits of the marine environment;
- working towards restricting the use of all destructive practices such as industrial trawling, mining and weapons testing within MPAs;
- build the capacity of local communities and leadership to establish democratic process and representative structures

at the local level, conduct training and raise their awareness about the objectives of MPAs;

- train young people from local communities and create opportunities for them to share their indigenous knowledge with visitors to MPAs;
- take specific steps and establish particular mechanisms to provide opportunities for women and youth to be involved and benefit from MPAs through education and alternative livelihood opportunities;
- take specific steps to create opportunities to educate children and to create bursary or funding opportunities for them to become involved in protected area management;
- provide financial support and subsidies to small-scale communities to develop their fisheries sustainably and appropriately;
- promote the exchange of skills and lessons across MPAs and communities living in, or adjacent to, MPAs;
- ensure the free flow and availability of information to local fishing communities;
- commit to the use of local labour in all projects to ensure equitable benefits for local fishing communities;
- commit to co-operative governance and intra-government co-operation across all three tiers of government and between all departments to work effectively together towards an integrated, sustainable approach to marine conservation and fisheries management. Ensure effective compliance and enforcements in each MPA to ensure that illegal harvesting is eliminated;
- build in systems that ensure there is regular feedback and reviews of the MPA and its impact on the local community and marine ecosystem; and
- ensure that government allocates sufficient human and other resources to manage this effectively.

—*This Statement was made at Langebaan, South Africa, on 16 April 2010*

data to support some of the claims that are made in the name of MPAs.

Serge Raemaekers, a researcher currently involved in facilitating a co-management approach to the planning of a biosphere on the South Cape coast, shared the experiences and lessons from this project, in which the participation of all stakeholders, especially the local fishing community, is seen as key to its success. Serge highlighted the potential for MPAs to be designed in such a way that they can actually strengthen the

access rights of small-scale fishers through tools such as preferential access arrangements, and how they can be used to address land- and sea-based pollution and to restrict the use of destructive gear. An important aspect, in this context, has been the involvement of all levels of government in order that an integrated approach can be implemented.

A key input to the workshop came from the Director responsible for MPA policy within the Department of Environmental Affairs, Alan Boyd,

who thanked the fishers for sharing their experiences and acknowledged the extent of the frustration and mistrust that the fishers were experiencing. He was at pains to respond to their grievances, and began his presentation with a summary of the key issues that he had identified in the fishers' presentations.

These included the very disruptive impact of apartheid and the continued exclusion, which means fishers' longstanding relationship with the sea

... because of the South African government's very top-down approach to fisheries management, the customary institutions and management practices of traditional communities have been undermined.

is under threat; lack of communication; restricted access to historical fishing grounds, which has been compromised by the way MPA zoning has been done; restricted access to launching sites; ongoing poaching in MPAs; failure to include fishers in research; the lack of policy alignment between the forthcoming MPA policy and the new small-scale fisheries policy and the need for the Department to adopt a more flexible approach to the use and planning of MPAs in the future. Boyd acknowledged the need to ensure that restrictions on access are more equitably managed in future and that there is broader consultation. He committed to a more flexible zonation policy and to promoting sustainable use, where appropriate.

During the workshop the participants divided into small groups both to explore a range of issues pertaining to the existing policy and approach to MPAs as well as to propose solutions for the problems that the fishers are experiencing. It was noted that because of the South African government's very top-down approach to fisheries management, the customary institutions and management practices of traditional communities have been undermined. The fishers' called for a

co-management approach to fisheries management and marine conservation in future, and noted the importance of ensuring that the new MPA policy is closely aligned with the new draft small-scale fisheries policy, in which they have proposed a community based approach to fisheries management.

The fishers began to envisage the use of MPAs as one of several management tools that could potentially be designed in such a way that they protected and promoted the rights of small-scale fishers vis-à-vis the industrial fishing sector. They developed proposals for a new MPA policy that would have a human-rights-based approach to fisheries management and conservation. The proposals arising out of the group discussions were synthesized by a small task group and a draft statement prepared. This statement was then further refined in plenary and accepted by the workshop (see box).

In his closing statement to the workshop, Masifundise Director, Naseegh Jaffer, noted that the workshop was a historic one. He said that while the workshop had highlighted the gap between government policy and communities' experiences of MPAs, he was confident that it had helped to contribute towards the development of a more appropriate policy on MPAs, one that would ensure that small-scale fishing communities participate in the governance of MPAs and are able to benefit equitably from the social and ecological benefits of these areas. 3

For more

mpa.icsf.net

Marine Protected Areas: Local and Traditional Fishing Community Perspective

www.masifundise.org.za

Masifundise Development Trust

www.environment.gov.za

Department of Environmental Affairs, South Africa

Mere Window Dressing

South Africa's draft small-scale fishing policy seems situated outside current realities of fisheries governance and management in fishing communities

In 2007, an Equality Court in the Western Cape of South Africa ordered the national fisheries authority, together with representatives from the small-scale sector, to devise a national sector policy specific to the needs of artisanal fishers. After the circulation of numerous drafts of varying quality and credibility, the current draft small-scale policy was gazetted in August 2010. A month later, the newly appointed fisheries authority within the Department of Agriculture, Forestry and Fisheries (DAFF) presented the draft to fishers along the Cape Peninsula through a series of road shows. As invited spaces of public participation, the road shows were ostensibly represented as participatory interactions, where the government could debate the draft with resource users. Those events represented a potentially crucial interface between the State and the citizens in whose interests the small-scale fishing policy was drafted.

The road shows were held in areas commonly associated with small-scale fishing. Through their inclusion in the proposed policy, it is envisaged that these 'fishing communities' will have their historic rights to marine resources restored, and be eligible for developmental support from the State. With the exception of one senior scientist who attended the Kalk Bay road show, none of the officials facilitating these events were in high-ranking positions, nor did they have the decision-making power necessary to revise the policy in line with views expressed by fishers. No other government departments were represented. This was problematic because the policy emphasizes a

developmental approach that relies upon collaboration between different government agencies. Another important absence was that of the policy's key architects. By presenting the policy in a descriptive, technical manner, without being able to explain the process behind its design, the DAFF officials acted as messengers, effectively playing the role of de-politicizing the road shows.

Though most fishers in the Western Cape speak Afrikaans, the draft was presented in English. Fortunately, a DAFF employee managed to provide

Considerable anxiety was expressed at the road shows about the follow-up process...

some clarification in Afrikaans. The draft itself was written and presented using a technical discourse that was virtually impenetrable to the average artisanal fisher. Terms and phrases such as 'holistic', 'bold new paradigm shift', 'implementation', 'empowerment', 'progressive realization of livelihood rights', and 'integrity of ecosystems' echoed through community halls without sufficient explanation. The technical jargon presented in PowerPoint slides led one woman at the Hangberg road show to comment: "We don't understand this 'nice' stuff".

Follow-up process

Considerable anxiety was expressed at the road shows about the follow-up process, with one woman arguing that without meaningful integration

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of their input, “this policy is nothing but window dressing for my people”. The official presenting the draft was only able to relay his instructions in this regard. These were simply that “all comments will be considered”. As a senior DAFF official emphasized, “We are not here to debate the policy; after the road show, we will take account of your comments”. The mandated role of road shows is to facilitate rational and democratic interaction between fishers and the State. Though the DAFF should be acknowledged for creating these participatory spaces, it must be noted that there was little meaningful communication.

The draft policy rests on principles and objectives that reflect a human-rights-based approach by recognizing the cultural, political and economic rights of small-scale fishers. The inclusion of these principles and objectives is significant in the context of South Africa’s colonial and apartheid history, during which the rights of artisanal fishers were not formally recognized by the State. For this reason, the small-scale fishing policy process is symbolically significant.

The draft claims to represent a “paradigm shift” in the way artisanal fishing in South Africa is governed. This fundamental shift is encapsulated

in the policy’s emphasis on ‘community’ as the principal unit of small-scale fisheries governance. The key components of the draft constellate around this focus on community. They include the fostering of co-management between fishers and the State, the allocation of fishing rights on a collective basis, and the possibility of formalizing the preferential access of local fisher groups to coastal and marine areas adjacent to them. These policy components are all part of the policy’s “developmental approach” that seeks to increase the capacity of small-scale fishers to have greater control of their own fishing activities, from compliance to post-harvest processing and marketing. This developmental approach depends fundamentally on a particular conception of community.

The policy implies that a community is spatially distinct and socially bounded. Point 5.4.2 of the policy states: “Small-scale fishing rights must be allocated to community-based legal entities. The community-based legal entity will be made up of members who are individual persons that make up a small-scale fishing community”. While this conception of community may be more appropriately applied to parts of South Africa like the rural coastal villages of the Eastern Cape, it remains the case that the ideal type of the spatially bounded community has no empirical basis. The Western Cape, broadly, and the Cape Town Metropole, in particular, provide stark examples of this fact. Here, small-scale fishers often reside far from the coastal settlements where their fishing activities are based. They move between different areas to live and to fish—social and economic networks and relations flow between different places, contradicting the idea of a spatially bounded community. It is in the urbanized Cape Metropole in particular, that the paradigm shift towards community-based fisheries management will be most difficult to implement.

In addition, the draft policy requires that social boundaries be

OLIVER SCHULTZ



Commercial west coast rock lobster boats moored in Kalk Bay harbour, Cape Town. These vessels represent a sub-sector that is included in the draft small-scale fishing policy

drawn to designate small-scale fishing communities, who are expected to function as the basic unit for achieving pre-determined governance outcomes outlined in the draft. The assumption of socially bounded communities reveals another flaw in the conception of community implied by the language of the draft policy, namely, that in community there is significant unity and cohesion. The people who fall within, and between, the constructed borders of a particular community are not homogeneous in their interests or aspirations. As with the problem of imposing artificial spatial and social boundaries on small-scale fishing communities, the assumption of social cohesion is in tension with the reality experienced by small-scale fishers on the Cape Peninsula and in the Western Cape, more broadly.

Here, the history of poverty and social fragmentation among urbanized artisanal fishers has undermined not only their organizational capacity, but also their collective solidarity in a more dramatic way than in coastal towns and villages in rural areas. Yet the draft emphasizes the role of communities in co-management committees, and community-managed fishing rights, both of which require a substantial degree of social cohesion and organization. For example, the policy states that “the members of the small-scale fishing community will draw up a list with the names of the fishers who, in their view, may be entitled to harvest or fish for marine living resources”. The policy’s neglect of power relations and spatial complexity within a constructed small-scale fishing community means that this burden of self-identification will likely exacerbate pre-existing fault lines. Yet point 5.4.8 stipulates that the government will not mediate community disputes: “[N]o appeal is available to the Minister”. For all other disputes, individuals must make use of internal conflict resolution mechanisms within the community-based legal entity. Individuals are effectively left by the State to resolve these conflicts at the community level. This assumes that fishers are equipped to negotiate critical issues in

an equitable manner, and that conflict is peripheral and can be solved by the same players who are themselves involved in the conflict. Yet the necessary conditions for assuming a greater role in decisionmaking are not fully in place. According to one exasperated community member, “Each area is different! Who will come in to say: ‘This is the community’? They fight like cats and dogs”.

The reality facing many of these fishers is that they may need support to resolve conflicts emerging from the increased role envisioned for communities in fisheries governance

...the lack of even preliminary proposals for implementation makes it difficult for fishers to engage with, and assess, the document.

and management. These conflicts revolve around access to resources in a context of resource scarcity—the stakes are so high that conflict is inevitable. The flawed conception of community underpinning the policy creates practical challenges for implementation on the Cape Peninsula because it does not adequately reflect the situation on the ground.

The viability of the policy is further hindered by the fact that the draft does not include specific plans for implementation. A footnote in the document indicates that the “draft policy is not a strategy, implementation plan or procedural guideline, and, therefore, does not spell out the operational details”; these “will be determined and may be spelt out in regulations or operating procedures once the draft policy is adopted”.

Broad principles

Yet the implementation plan or procedural guidelines are as crucial as the broad principles and objectives upon which they are based. While it is critical to get stakeholder support on principles before deciding on details, the lack of even preliminary proposals for

OLIVER SCHULTZ



A young man handling snoek caught on hand-held lines in St. Helena Bay on the Cape west coast. The small-scale policy also includes those who participate in post-harvest processes

It is understandable that the architects of the policy were concerned to leave room for communities to establish the kind of legal entity that best suited them. However, the general lack of clarity regarding the paradigm shift to community-based legal entities is significant in shaping perceptions of fishers towards the draft. As mentioned, the community-based approach is more feasible—and thus has more grass-roots support—among fishers in rural coastal areas, compared to the Cape Peninsula. Here, community-based legal entities have an infamous history associated with economically unviable quotas and an unequal distribution of benefits.

Many people at the road shows expressed opposition to the idea of ‘community quotas’ managed by community-based legal entities. One fisher claimed that these arrangements “rob the people over time ... we have had bad experiences”. Indeed, on the Cape Peninsula, it appears that the lack of clarity regarding community-based legal entities has invigorated support for the policy to adopt an individualized rights system. A theme throughout the road shows was eloquently expressed by one fisher: “We need individual transferable quotas (ITQs) to control our destiny”.

It is important to note that some of the opposition to the community-based approach set out in the policy stems from the common misperception that the policy is proposing to implement ‘community quotas’. This misperception is itself the result of the ‘bad experiences’ mentioned above - many fishers are suspicious of any mention of ‘collective’ or ‘community-based’ arrangements. Yet the policy does not propose a quota system, where small-scale fishers would have to compete with other sectors for a quota. Rather, the intention is to implement a *rights-based* system where small-scale fishers would have their historical rights restored, and would have access, as a class, to all nearshore resources. This access would be managed jointly with State fisheries managers and scientists.

implementation makes it difficult for fishers to engage with, and assess, the document.

An example of the lack of clear guidelines for implementation is the proposal for “legal entities” to be set up in each small-scale fishing community. These legal entities would work with the State as local partners in co-management, and would administer their own collective fishing rights and post-harvest processes. The document recognizes the need for State and non governmental organization (NGO) support to assist communities in establishing and running these bodies, and includes suggestions of what this legal entity could look like (for example, closed corporation, co-operative, trust).

On an institutional level, the draft does not acknowledge that the DAFF lacks the skills and resources required to implement the developmental approach envisaged in the document. As a DAFF employee explained, the department is struggling to fulfil its mandate to manage inshore fish stocks sustainably; it is even less equipped to deal with the additional policy mandate of developing social capacity among small-scale fishers. It is common knowledge that the State does not have sufficient institutional capacity to implement the policy's proposal. As one DAFF official admitted, the policy is "something that DAFF doesn't yet have the capacity for, but it is something the department would like to investigate".

Asked about the cost of implementing the policy, a senior DAFF scientist responded to one fisher: "At this draft stage, no one has worked out exactly how much all of this will cost. You are right, there needs to be more money. The minister has said building the required resources and capacity will take 10-15 years". To which an elderly fisher replied: "Captain, I am 72 years old, I will be dead by then, Captain".

Ultimately, the draft also evades several 'elephants in the room'. The fact that small-scale fisheries are embedded within a broader fisheries system is alluded to, but the implications of this critical issue are not confronted explicitly. Just how small-scale fisheries are governed in relation to these other sectors is crucial to the success of the draft policy. It is not clear how DAFF will accommodate the new small-scale sector in relation to other sectors in the broader fisheries system.

The fundamental dynamic is how marine resources will be distributed. Exactly how the small-scale sector is to be accommodated within the broader system of allocation is not clearly dealt with in the draft; yet it is the case that more equitable quota allocation across all sectors is a pre-requisite for realizing the policy's objectives.

Another 'elephant in the room' is the critical concern raised by

stakeholders (in both the fishing and scientific communities) about the potential space opened by the policy for unsustainable levels of fishing in inshore waters. According to section 4.2.1 of the draft, the three tiers of government will "provide support to ensure that the small-scale fisheries sector is able to contribute to poverty alleviation and food security as well as to the growth and development of vibrant economies based on principles of social justice, participatory democracy and sustainable marine resource utilization".

The shift from restitution to an emphasis on small-scale fisheries as a means of poverty alleviation implied in the draft could be dangerous in the context of a developing country such as South Africa, where unemployment and poverty levels in coastal areas are high, and opportunities are scarce. The policy is not sufficiently explicit about the limited capacity of marine resources to absorb new entrants. In the period that the policy has been drafted and made public, expectations have been raised, and there is a sense among many individuals that being poor and living in a coastal area makes one eligible to access marine resources through the implementation of community-based fishing rights. This may result in increased legal

Exactly how the small-scale sector is to be accommodated within the broader system of allocation is not clearly dealt within the draft...

and illegal fishing effort, placing even more pressure on DAFF's already overburdened enforcement capabilities.

Fisheries governance

These evasions betray the fact that the policy does not fit with the broader context of fisheries governance and management in South Africa, embodied by the Marine Living Resources Act of 1998 (MLRA). DAFF remains oriented toward

conventional resource-based management of large-scale commercial sectors, and does not have the institutional capacity to adopt the development-focused management of small-scale fisheries. In addition, it is not clear where the space required for the creation of this new sector will be found in terms of the existing sectors, and in terms of available marine resources. The small-scale fishing policy is thus situated

gradual and selective implementation of the community-based approach to fisheries management in suitable situations. At the same time, this would avoid having to impose the community-based approach upon fishers in communities on the Cape Peninsula, where local social dynamics may not be conducive for its implementation. **3**

It must be emphasized that a policy for artisanal fishers marginalized by the MLRA is long overdue...

outside current realities of fisheries governance and management; yet its successful implementation depends fundamentally on the manner in which it is integrated into the broader fisheries context.

The alienation experienced by fishers at the road shows on the Cape Peninsula serves to undermine their support for the policy process, and further erodes their relationship with the government. It must be emphasized that a policy for artisanal fishers marginalized by the MLRA is long overdue, and is a move towards promoting “transformation and the redress of past injustices in the sector”. However, the significant opposition to the draft’s key elements observed in places like the Cape Town Metropole has to be properly considered by the State. History, communal politics and geographic specificity should not be glossed over or they will inevitably undermine the viability of the interventions to be guided by the policy. For fishers on the Cape Peninsula, it is highly likely that the policy’s flawed conception of community will introduce a new set of inequalities, and entrench many that already exist.

It appears that the policy should be designed and implemented in a flexible manner, allowing for prescriptions to be moulded to local contexts. This would allow for the

For more

www.info.gov.za/view/DownloadFileAction?id=131201

Draft Small-scale Fishing Policy

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Guiding Small-scale Fisheries

A set of international voluntary guidelines is being planned to address both inland and marine small-scale fisheries in developing countries

The Twenty-ninth Session of the Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO), held in Rome in early 2011, agreed on the important role played by the small-scale fisheries sector and decided to give it high priority and adequate visibility. The Committee approved the development of a new international instrument on small-scale fisheries. A set of international voluntary guidelines that would draw on relevant existing instruments complementing the Code of Conduct for Responsible Fisheries, to address both inland and marine small-scale fisheries in developing countries, will be developed. This is to be done with the involvement of all stakeholders. The FAO Council subsequently lent support to COFI by including the work on small-scale fisheries in the Programme of Work and Budget (PWB) for the year 2012-13.

The workshop-cum-symposium on sustainable small-scale fisheries, organized by the National Fishworkers' Forum (NFF), India, in collaboration with ICSF, and held at Kolkata in September 2011 (see "A Bottom-up, Pro-fisher Policy", page 42), was intended to contribute to the process of developing the proposed FAO guidelines. Drawing participants from a range of fisheries—marine, estuarine, lagoon, riverine, lake, tank and pond fisheries—the meeting illustrated the heterogeneity, diversity and complexity of Indian small-scale fisheries. It provided an opportunity to understand the status of inland and marine fisheries in the context of food security and poverty alleviation. It highlighted good practices in small-scale fisheries management and development, and in welfare and social-security measures; it also identified gaps that need urgent attention.

The Kolkata meeting revealed how the fisheries sector receives the lowest priority in comparison with forestry, agriculture and industry, and how the legitimate livelihood interests of fishers and fishing communities are often overlooked in inter-sector conflicts over land and water resources. Fishing community representatives who spoke at the meeting sought protection of their fundamental right to life and

livelihood, and their right to be treated with dignity. More than anything else, the meeting underscored the importance of adopting a rights based approach to development in the case of vulnerable fishing communities, and the need for developing guidelines on securing sustainable small-scale fisheries within a pro-poor, human-rights and ecosystem-based framework. A significant outcome of the meeting was the clarification of the term 'small-scale fisheries' in the Indian context.

At least nine similar meetings are scheduled to be held under the auspices of civil society organizations such as the World Forum of Fisher Peoples (WFFP) and the World Forum of Fish Harvesters and Fishworkers (WFF) during the next three months to contribute to the guidelines process. These are to be held in Sri Lanka, Pakistan, Thailand, Senegal, South Africa, Uganda, Brazil, Honduras and Costa Rica. The Senegal meeting will have participants from 12 countries in west Africa.



These meetings, as in the case of the Kolkata workshop and symposium, are meant to contribute to clarifying small-scale fisheries in different parts of the world, to document good practices in small-scale fisheries, and to identify threats facing small-scale fisheries and fishing communities. They are expected to improve the visibility of small-scale fisheries at the regional, national and local levels, to open up channels of communication between the State and civil society organizations, and to influence government positions on the proposed guidelines during the FAO technical consultation in mid-2012.

This is the first time that several meetings are being organized under the auspices of civil society organizations in preparation for a proposed FAO fishery instrument. These meetings and their pertinent outcomes should be seen by the FAO Member States and the Secretariat as an opportunity to benefit from a bottom-up process to develop meaningful, voluntary guidelines on securing sustainable small-scale fisheries, to complement the Code of Conduct for Responsible Fisheries. They should also be seen as a promising beginning to broadening the participation of civil society organizations in the fisheries work of FAO. 3

Living Off the Land

A case regarding the customary rights of fishermen in the Dwesa-Cwebe Marine Protected Area of South Africa could be a landmark

David Gongqose is a fisherman from a remote coastal community on the eastern seaboard of South Africa. On 22 September 2010, David and two other fishers from his community were arrested in the Dwesa-Cwebe Marine Protected Area (MPA) and charged with attempting to fish in the MPA. David and his companions argued that they had a customary right to fish in this reserve as it comprised their ancestral lands. David's father had taught him to fish according to the customary system that he himself

the material basis of their culture and upon which they depended for food security.

Due to successive waves of colonial—and, later, apartheid—conservation planning, many households have been forced to vacate their ancestral homesteads and relocate to surrounding lands. Under apartheid, this section of the country was declared a *'bantustan'* (the term used to refer to the area reserved for residence for African persons during the apartheid regime) and, subsequently, the community lived on communal land administered by traditional authority, but within the restrictive constraints of apartheid planning.

In 1991, the Dwesa-Cwebe Marine Reserve was established. Inter-tidal harvesting was prohibited but shore-based angling was permitted under strict regulations. In 1996, after the election of the first democratic government and the introduction of land restitution legislation to provide redress to communities who had suffered under apartheid, the communities' claim to the land comprising the reserve was recognized and negotiations on how they would access their land and natural resources commenced.

Land claim

In 2001, they signed a land claim agreement. Government policy required that the MPA remain under conservation status; however, access to resources was a key principle underlying the Settlement Agreement. Despite the fact that negotiations leading up to the signing of the Settlement Agreement confirmed recognition of the communities' right

The seven communities comprising Dwesa-Cwebe have historically depended on the coastline of the MPA and the adjacent coastal forest for their livelihoods...

had inherited from his father. David further noted that on the night in question, he had been fishing in order to put food on the table and to purchase mourning clothes for his mother as his father had recently died and David was now the sole provider for his family. Harvesting of marine resources is his primary livelihood.

The seven communities comprising Dwesa-Cwebe have historically depended on the coastline of the MPA and the adjacent coastal forest for their livelihoods, and have a well-established customary system of natural resource use. Over the past century, these communities, comprising approximately 2,300 households, were systematically deprived of access to both the coastal and forest resources, which formed

This article has been written by Jackie Sunde (jsunde@telkomsa.net), a researcher based at the Environmental Evaluation Unit, University of Cape Town, South Africa. David Gongqose and the co-accused were represented by the Legal Resource Centre legal team comprising advocate Jason Brickhill, instructing attorney Wilmiem Wicomb and Henk Smith

to sustainable use of resources and to participate in the co-management of natural resources in the reserve, the marine reserve component was removed from the final Settlement Agreement.

Instead, Dwesa-Cwebe MPA was promulgated as a complete 'no-take' MPA in 2000, just six months prior to the signing of the Settlement Agreement. This was authorized by the Department of Environmental Affairs and Tourism, the department responsible for MPAs at the time, and also a party to the negotiations and signatory to the Settlement Agreement. There was no consultation with the affected communities about the declaration of the MPA; however, the community understood that their right to access marine resources would continue to be negotiated. To date, the fisheries and the conservation authorities have neither recognized the communities' claim to their customary fishing rights along this coastline nor taken steps to establish appropriate co-management arrangements.

In a Statistics South Africa survey published the same year (2000), it was noted that the district in which David resides was the poorest district in the country. There are very few alternative livelihood options, and hence the seven local communities comprising the greater Dwesa-Cwebe community have continued to harvest both marine and forest resources, despite running the risk of prosecution. They cite both their customary system and their lack of alternatives as reasons for continuing to fish. Many fishermen and women inter-tidal harvesters have had to pay huge fines or face imprisonment when they cannot afford to pay the fines. Two persons have been killed by conservation rangers while harvesting resources in the reserve during the past year. The community has embarked on protest action in the past and have made repeated requests to the authorities to re-consider the no-take zonation of the MPA, and make provisions for sustainable use but, to date, the no-take status of the reserve is maintained.

At the time that David was arrested, the Committee on World Food Security had commenced an international consultative process in order to develop Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests. In the context of National Food Security, in May 2012 at a Special Session held in Rome, the Committee on World Food Security adopted the Guidelines. These Guidelines are intended to contribute to global and national efforts towards the eradication of hunger and poverty, based on the principles of sustainable development. They recognize the centrality of secure tenure rights and equitable access to land, fisheries and forests in this regard.

Most significantly, the Tenure Guidelines recognize that in many countries, communities have pre-existing systems of rights and entitlements that guide access to, and use and management of both land and marine resources. These local systems of tenure might not be recorded or formally recognized in statutory law but are nonetheless legitimate tenure rights that require recognition.

The Guidelines state that:

9.5 Where indigenous peoples and other communities with customary tenure systems have legitimate tenure rights to the ancestral lands on which they live, States should recognize



David Gongqose with his legal representative, Jason Brickhill. David was arrested for attempting to fish in the Dwesa-Cwebe MPA, South Africa

DERICK FAY



David Gonggose and co-accused with members of their community and their legal team. The community hopes that their freedom to enjoy their basic human rights will be upheld

6

and protect these rights. Indigenous peoples and other communities with customary tenure systems should not be forcibly evicted from such ancestral lands.

In addition, the Guidelines note that:

9.6 States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should co-operate to accommodate such changes in the customary tenure systems.

While many countries, such as those in the Pacific and elsewhere, have long recognized both the existence and importance of customary systems of marine tenure, these Guidelines will have far-reaching implications for countries that to date have tended to develop

statutory regulations with little or no recognition of communities' customary rights to coastal lands and adjacent waters or their right to practise their culture and traditional livelihoods in these spaces.

Although some governments have argued that such statutory legislation in effect extinguishes any pre-existing customary rights, in this South African matter the court heard arguments that drew on precedents established in the Supreme Court of Canada in *Ronald Edward Sparrow vs Her Majesty The Queen* (1990), which found that the fact that an aboriginal fishing right was controlled by regulation did not mean that the right was thereby extinguished.

Clear intention

According to the court, the burden of proving that the Sovereign intended to extinguish an existing right was on the Crown and that intention had to be "clear and plain", now commonly referred to as

the “test of extinguishment”. The defence team also drew on principles established in the highest court in Australia when, in *Yanner vs Eaton* (1999) the court held that:

“It is sufficient to say that regulating the way in which rights and interests may be exercised is not inconsistent with their continued existence. Indeed, regulating the way in which a right may be exercised presupposes that the right exists. [...] Regulating particular aspects of the usufructuary relationship with traditional land does not sever the connection of the aboriginal peoples concerned with the land [...]. That is, saying to a group of aboriginal peoples, “You may not hunt or fish without a permit”, does not sever their connection with the land concerned and does not deny the continued exercise of the rights and interests that aboriginal law and custom recognizes them as possessing.”

In their defence, the South African fishermen acknowledged the need for their use of marine resources to be sustainable and to accommodate the rights of future generations. They also did not deny the need for their use of the resource to be regulated or for the reserve to be an MPA; however, they argued that they have a customary system that can form the basis of any future management arrangements and that their local knowledge of the resource should be included in any such arrangements.

The Magistrate in this case expressed strong criticism of the conservation authorities for their failure to recognize the livelihood needs of this community. He drew extensively on the South African Constitution, noting “the court cannot ignore that the purpose of this legislation was to protect and enforce the constitutional freedom and rights to land and unrestricted practice of their customs by ordinary citizens of which the inhabitants of the Dwesa-Cwebe area, are certainly part”.

As it was not within his powers as a Magistrate to pass judgement on the constitutional validity of the Marine Living Resources Act, the Magistrate

was required to find the provisions of the Act in force and, therefore, to find the fishermen guilty in terms of this act; however, he noted that the constitutional validity of the Act in this regard was highly debatable. This matter will now be taken on appeal to the High Court to confirm the fishermen’s claim to their customary rights. For the first time since 1994, the community of Dwesa-Cwebe have hope that their freedom to enjoy their basic human rights will finally be realized. **3**

...the South African fishermen acknowledged the need for their use of marine resources to be sustainable and to accommodate the rights of future generations.

For more



www.fao.org/nr/tenure/voluntary-guidelines/en/

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

www.lrc.org.za/press-releases/1944-2012-05-22-press-release-transkei-fishermen-to-challenge-guilty-verdict-in-high-court-

Transkei fishermen to challenge guilty verdict in High Court

Improvudent Law

Legal improvidence has led to fishers in South Africa being denied access to the waters of protected areas

I am called a pirate.” This declaration came from Donovan van der Heyden, a fisherman from South Africa, who was addressing audiences in Hyderabad during the 11th session of the Conference of Parties (COP11) to the Convention on Biological Diversity (CBD) in October 2012.

‘Pirate’ is the misnomer employed by the South African authorities to refer to someone who ‘steals’ marine resources, van der Heyden explained. But the law that declares his activities

fishing company to fish in the MPA for the next 30 years. The officials reasoned that the company had been given fishing rights before the act was formulated and hence its rights could not be snatched away suddenly. Ironically, though, the officials had no qualms about annulling the fishing rights of the fishers of van der Heyden’s village, who had traditionally enjoyed access to the very same waters.

The coloured people of Hout Bay do not have motor boats to go beyond the MPA to fish; thus, in order to sustain their livelihoods, they have to work on the boats of richer people. In this little village in post-apartheid South Africa, the rich are still predominantly white. “The government has made us work on white people’s boats, forcing us into enslavement once again. This is South Africa’s second wave of apartheid,” says van der Heyden.

Hout Bay is a microcosm of South Africa; people from diverse racial backgrounds reside in the village, which is populated by around a few hundred people. “Because of this representative nature, most research case studies use Hout Bay as a sample,” points out van der Heyden. What goes wrong here is more likely to go wrong elsewhere in the country, he adds.

Fishing for sustenance

“The people from the village fish for sustenance and not for profits, unlike the fishing and tourism industries. The waters beyond the MPA have only a high-priced species of fish. But what can we do with that? We need local fish and lobster to feed on. We

The people from the village fish for sustenance and not for profits, unlike the fishing and tourism industries.

illegal—the Marine Living Resources Act governing the country’s marine protected areas (MPAs)—does not coerce him into abiding by it blindly.

A revised act was mandated in 2000. But the amendment to the original legislation, which was construed during the apartheid regime, did little to change the law’s discriminating characteristic, claims van der Heyden.

The declaration of van der Heyden’s home region of Hout Bay as an MPA was soon followed by the entry of private companies into the no-take zone and permission for recreational fishing and tourism, while the waters of the MPA remained beyond the reach of the fishing community that had been fishing in the area for centuries. The act granted rights to a large

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are not in the fish trade," explains van der Heyden.

In order to sustain themselves, people like van der Heyden are forced to go to sea at night, which is dangerous even for those who have fished in those waters all their lives. They are also often caught, forced to pay fines and declared as 'pirates'. Resentment is thus brewing among the fishers.

Led by van der Heyden and without any organizational funding support, the residents of Hout Bay were able to persuade the government to eject the fishing company from the MPA in 2010, which had been operating in its waters for 19 years. "We have continued to fish in the protected waters because that is the only way we can sustain ourselves. The fish population has not been affected in all these years. Isn't that example enough to prove we are not the cause for depletion of fish stocks?" van der Heyden asks. "So why not make it legal to fish here and save us from the trauma of being forced to break the law, pay fines and bribe our way through our daily lives?"

Nico Waldeck, who also works with fishermen, shares a similar experience from Ebebhaesar, a fishing town in the Western Cape. There, unlike in Hout Bay, the government consulted with the fishing community before declaring a protected zone. But the consultation was superficial, claims Waldeck. "They gave us their tongues and not their ears," he says, adding that the reservations of the people were never taken into account. Langerbay, a holiday destination, was thrown open to recreational fishing though it was closed for traditional fishing communities. In this case too, the non-protected waters were beyond the reach of traditional fishing boats. "Pesticide effluents from agricultural land adversely affect the marine resources. But that has been overlooked. Only fishers, who fish to sustain themselves, have been targeted," says Waldeck, indicating the improvidence of the law.

Since South Africa's fishermen are not well organized in all regions, it is difficult to fight the marine protection law on a national scale. The application



SERGE RAEMAERKERS

A South African lobster fisherman. Not being in the fish trade, most fishermen depend on local species for their subsistence

of the law also varies from region to region, making it all the more difficult for fishing communities to engage in a united battle. 3

For more



bgis.sanbi.org/nsba/marineAreas.asp
NSBA Marine Protected Areas

www.environment.gov.za/?q=content/home

Department of Environment Affairs

rd.springer.com/article/10.1007/s00267-010-9499-x

Marine Protected Area Management in South Africa: New Policies, Old Paradigms

A Weighty Responsibility

A fisheries reform process is under way in Africa, but where are the voices of the fishers?

The voices of small-scale fisherpeople in Africa must be heard in any process aimed at reforming fisheries governance in the continent. A process that does not take on board the life experiences of those who depend on oceans and lakes for their livelihoods will inevitably be a flawed one.

Too many fisher people, in Africa and elsewhere, have lost their livelihoods as a result of policies that are insensitive to the needs and

fishery policies developed by high-level decisionmakers—influenced by the powerful industrial fisheries sector, and fisheries advisers from the North—have had on livelihoods and food security in fishing communities.

In 2012, Masifundise became involved in a process of developing a policy framework and comprehensive fisheries reform strategy for Africa, as part of the think tank established by the African Union's Intergovernmental Bureau for Animal Resources (AU-IBAR). The AU-IBAR was given this task based on the recommendations of the inaugural Conference of African Ministers of Fisheries and Aquaculture (CAMFA) held in Gambia in 2010. In our view, this process has been undemocratic, not sufficiently including the voice of the millions of small-scale fishers in Africa directly dependent on the sector for their livelihoods. Secondly, despite some of the rhetoric, it is clear that maximizing economic benefits from the fishery is taking priority over ensuring the protection of livelihoods and food security at local levels.

Think tank meeting

The first think tank meeting was held in July and besides Masifundise, only three small-scale fisher representatives attended. There was a great deal of talk about the importance of consulting with civil society, and small-scale fishers in particular, and yet somehow the failure to ensure fair representation at this opening meeting seemed to escape most delegates. Had we at Masifundise not invited ourselves there would have only been three

...it is clear that optimizing macroeconomic output from the fishery is taking priority over ensuring the protection of livelihoods and food security at local levels.

opportunities in small-scale fisheries; in fact, lives have been lost. If such policies become entrenched in Africa, they will not only impact on the fishers themselves, but will have potentially disastrous consequences for more than 200 mn Africans who rely on fish as their primary source of protein and nutrients: their food security is inextricably tied to the success or decline of small-scale fisheries, which provides a ready source of affordable protein to coastal and lakeshore communities across the continent. In Sierra Leone, for example, fish accounts for 80 per cent of animal protein intake and 95 per cent of fish landed is consumed locally.

Having been a part of the struggle for the recognition of the rights of small-scale fishers in South Africa over the last 10 years, we in Masifundise have seen first-hand the impacts that

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small-scale fisher representatives, all of them from just one of the five regions in Africa.

At the meeting, five regional assessment teams were set up to assess and report on the state of fisheries and fisheries governance in north, south, east, west and central Africa, respectively. Masifundise was appointed as part of the southern Africa team, and the West African Association for the Development of Artisanal Fisheries (WADAF) as part of the team for west Africa. A handful of fisher organizations were asked to provide minor inputs to the assessment reports but no fisher representatives were appointed to the other three assessment teams, despite our protests. The only concession made was for Masifundise to consult with fisher organizations around the continent to compile a report on small-scale fisheries for Africa, although no extra resources or time were allocated for this additional task.

The assessment teams were given just five days in August to prepare their reports. Again, we argued strongly that more time was needed to consult adequately with our partner organizations and that a workshop with fisher organizations in the region would be necessary to allow them to make meaningful contributions. The time frame remained unchanged and we were, therefore, only able to gather very limited inputs from other organizations.

At our insistence, a handful of additional fisher organizations attended the follow-up validation meeting in Cameroon in November. But the meeting focused on minor amendments to the report rather than dealing with substantive inputs from the fishers. One of the seven discussion groups formed had a specific focus on small-scale fisheries. Some of the content of the pan-African report on small-scale fisheries was incorporated into a summary document on small-scale fisheries, to be reviewed and edited by this group. The summary document, however, focused only on inland

fisheries. and the discussions had to be abandoned.

An overall synthesis document will now be developed by the process facilitator and in the coming weeks members of the think tank will be given the opportunity to comment before the final version is presented to the CAMFA ministers.

The outcomes (policy recommendations for the CAMFA ministers) of the Comprehensive African Fisheries Reform Strategy (CAFRS) process will have potentially far-reaching impacts on fisheries governance in Africa. Yet, from the beginning, it has been abundantly clear that insufficient time and resources were allocated to ensuring that small-scale fishers were adequately included in this process. Cursory attempts to include a handful of fisher organizations might be enough to 'tick the box', but can hardly be considered a democratic process.

So what does all this tell us besides the fact that the process has been undemocratic? The lack of inclusion of the biggest sub-sector in fisheries creates space for the complex of African neoliberal policymakers (often educated in Europe or North America), the World Bank (notorious for sidelining civil society in policy-making processes), the economically

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The day's catch being landed in Cape Town, South Africa. Many fisher people in the country have lost their livelihoods as a result of policies that are insensitive

powerful and politically connected fishing industry (mostly non-African and with no interest in civil society), and big international environmental organizations (often co-opted by corporations and neoliberal philanthropic foundations who have an interest in the privatization of fisheries) to push forward fishery policies that are, at best, insensitive to small-scale fisheries and, at worst (and far more likely), will lead to the expropriation of fisher people's rights and loss of livelihoods and lives.

Civil society can play the crucial role of watchdog, but when the small-scale fisheries subsector is left in the dark and alienated, this is impossible. In this case, by far the greatest majority of small-scale fishers and fisher organizations in the continent have no knowledge whatsoever that a policy process is under way that could dramatically affect their livelihoods.

How can they then possibly act as a watchdog or make meaningful contributions? Yes, it is not realistic to reach or include everyone, but ensuring that small-scale fishers were represented in all five regions, at both the meetings and on the regional assessment teams, and

giving enough resources to allow these organizations to consult meaningfully with other fisher organizations for the assessments is hardly a big task.

While little can be done to transform this policy process into a meaningful, consultative one at this late stage, all hope is not lost in terms of the outcomes. The Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO) has begun the process of developing International Guidelines for Securing Sustainable Small-scale Fisheries.

The Guidelines, still in draft form, include inputs from numerous small-scale fisher organizations who participated in the consultative development process through national and regional workshops.

The Guidelines provide recommendations on how best to manage fisheries through ensuring the inclusion of fisher people, promoting social and economic development at local and national levels, and combating overfishing and habitat destruction.

We have yet to see how this important policy development process will conclude, and it is our hope that the decisionmakers will turn to the

Think Tank on African Fisheries in Context

In 2005, following the Fish for All summit in Abuja, Nigeria, the World Bank-supported New Partnership for Africa's Development Agency (NEPAD) published the NEPAD Action Plan for the Development of African Fisheries and Aquaculture. Subsequently, in 2008, and aided by Swedish Co-operation, the Food and Agriculture Organization of the United Nations (FAO) initiated a process to support the development and implementation of the Comprehensive African Fisheries Reform Strategy (CAFRRS), promoted by the NEPAD Action Plan. This paved the way for the first Conference of African Ministers of Fisheries and Aquaculture (CAMFA) in Banjul, Gambia, in 2010, hosted by the African Union (AU) and NEPAD.

All this has given rise to a series of consultations of which the AU-IBAR 'think tank' process is a part.

The projected long-term outcome of this process is for "a significantly enhanced contribution of fisheries and aquaculture to poverty alleviation, food security through economic growth, improved sustainable management of the fishery and aquaculture sectors, and reduced vulnerability of fishing and fish farming communities to disasters and climate-change impact".

Source: FAO "Programme in support of the implementation of FAO strategy for fisheries and aquaculture in Africa" (GCP/RAF/463/MUL).



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Small-scale fishers across Africa are becoming increasingly marginalized, both economically and politically

Guidelines to incorporate the views of the fishers, ultimately ensuring the protection of their human rights. We hope also that, as some consolation, small-scale fishers will be given a fair opportunity to comment on the draft policy reform document as it becomes available.

Small-scale fishers across Africa are becoming increasingly marginalized, both economically and politically. This reform strategy development process presents us with an opportunity to put measures in place to reverse this trend, and to ensure that those most heavily dependent on fish resources are given an equal chance to help shape the way in which these resources are managed and allocated. It is a weighty responsibility indeed resting on those leading this process. 📌

For more



masifundise.org.za/wp-content/uploads/2013/01/AU-Report_Africa.pdf

Masifundise Development Trust Assessment Report On Small-scale Fisheries In Africa

www.fishnewseu.com/index.php?option=com_content&view=article&id=4299:african-fisheries-conference-opens-in-the-gambia&catid=46:world&Itemid=56

CAMFA Press Release

www.cape-cffa.org/spip.php?article180

CFFA Press Release on CAMFA

www.nepad.org/foodsecurity/fisheries/about

NEPAD Press Release on PAF

Spreading the Net

Civil society representatives in South Africa are committed towards the implementation of the FAO SSF Guidelines, based on a human-rights approach

On 8 May 2015 the two ICSF members in South Africa hosted an informal workshop on the implementation of the Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), adopted by the Food and Agriculture Organization of the United Nations, in 2014. The workshop brought together representatives from non-governmental organizations (NGOs), activists, academics and researchers who have been working on various aspects of small-scale

those more orientated to promoting the role of SSF in marine biodiversity conservation.

The implementation of the SSF Guidelines in South Africa has the advantage that the international advocacy processes that contributed towards their adoption were mirrored by a similar process in the country, which drew on the content of the international advocacy campaigns. In 2007, small-scale fishers in South Africa began advocating in earnest for a national SSF policy. Representatives from a national SSF fisher organization, Coastal Links, together with the Masifundise Development Trust, an NGO, participated actively in the preparatory workshops prior to the Bangkok SSF conference in 2008, as well as in the processes in 2010 of the International Collective in Support of Fishworkers (ICSF) and in the FAO Committee on Fisheries (COFI) side events and meetings organized by civil society in the process of developing the SSF Guidelines.

In 2012, Masifundise hosted the civil society organization (CSO) national consultative workshop on the development of the SSF Guidelines in South Africa. Subsequently, the CSO Synthesis document was developed, negotiations finalized and the SSF Guidelines adopted by COFI in 2014.

New SSF policy

In South Africa a new small-scale fisheries policy was developed over a period of five years and finally gazetted in 2012. In May 2014 the Marine Living Resources Act of 1998 was amended to include small-scale fisheries within the ambit of the statutory legislation and provision

Although small, the group represented a rich body of expertise and knowledge on key aspects of the SSF Guidelines.

fisheries (SSF) in South Africa for some time.

Although small, the group represented a rich body of expertise and knowledge on key aspects of the SSF Guidelines. It comprised persons with experience in both marine and inland fisheries, experts working on issues of governance at both international and national levels, a leader in the SSF fisher social movement, researchers and academics with expertise on food security, fisheries value chains, climate change, inland fisheries and aquaculture, marine protected areas (MPAs), customary rights and gender relations. This informal civil society platform reflects a broad range of perspectives from those focusing on building the social movement of SSF fishers to

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made for the Minister to allocate rights to small-scale fishing communities in line with this policy.

Yet, notwithstanding this close synergy between the national and international advocacy struggles to develop the SSF Guidelines and policy on SSF in South Africa, the challenge of now interpreting and then implementing the SSF Guidelines in the context of national legislation remains extensive. There has been very little engagement between the State fisheries department and civil society, specifically on the implementation of the SSF Guidelines and the task of now interpreting them in this context looms large. Similarly, while there is a high level of awareness about the SSF Guidelines at a very broad level amongst the SSF fishing communities, very little work has been done to articulate precisely what the principles of the SSF Guidelines would mean in practice. This task now has a sense of urgency as the department responsible for fisheries management, the Department of Agriculture Forestry and Fisheries (DAFF), has recently released a draft set of regulations which outline the policy mechanisms whereby the new SSF policy will be implemented.

This set of draft regulations thus embodies the approach to governance and management of SSF in the larger context of the fisheries sector in the country; it prescribes tenure arrangements, the type of user rights that will be allocated, the legal entity that will hold these rights, the way in which management plans will be developed, and the powers that co-management committees will have and also addresses the approach to women and marginalized and vulnerable groups.

In effect, the regulations comprise the core mechanism whereby the principles and objectives of any guiding framework and policy would be operationalized.

Suddenly, civil society in South Africa is faced with crunch time. We have a very brief window of opportunity to participate in a consultative process to decide if

these regulations will capture the spirit of the SSF Guidelines, the spirit of the South African constitution and the vision that inspired the development of the SSF policy.

Both the SSF Guidelines and the Voluntary Guidelines on Tenure Rights are aspirational documents developed within an international human-rights framework. Similarly, the South African Constitution is an aspirational document that sets a specific national standard for the recognition of, and respect for, human rights. Likewise, both the focus and strength of the SSF policy gazetted by the DAFF in 2012 is that it speaks to these human-rights aspirations: it commits to redress and restitution for past injustices and aims to implement a human-rights-based approach to fisheries; but precisely how this will happen is not elaborated in the document.

The focus of the discussion of the workshop hosted by ICSF thus centred around the question: what would a human-rights-based approach to SSF look like in practice? The first step is to interpret the SSF Guidelines in the context of national legislation and policy. The workshop commenced with an input and discussion on this in the context of the 'voluntary' nature of the SSF Guidelines.

JACKIE SUNDE



Coastal Links' leaders debate their tenure options. This small civil society group remains committed in its efforts to imagine that a different fisheries sector is possible

In South Africa, although the SSF Guidelines themselves have not been incorporated into national legislation, there are a few provisions in them that are already law in South Africa. The Constitution includes provisions on equity and the State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. It includes recognition of customary law and customary rights arising in terms of customary systems of law and recognition of women's rights to equality and non-discrimination.

The Constitution places an obligation on the State to take steps to realize the eradication of inequities and discrimination. The Constitution includes a range of freedoms and then makes specific provision for the freedom to choose one's trade and occupation and for the right to fair labour practices.

Section 24, of particular relevance to fisheries governance and marine biodiversity, provides for the right (a) to an environment that is not

does not limit property to land and is of critical relevance to the tenure rights of SSF and coastal communities as it obliges the State to undertake reforms to bring about equitable access to all South Africa's natural resources.

Further, the State must "take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress".

Other basic human rights such as the provisions on housing, water and sanitation and healthcare, food and social security are of direct relevance. Access to justice, adequate information and just administrative action are addressed in the Bill of Rights. Of direct relevance to the approach to implementation of the SSF Guidelines, the Constitution requires the State to adopt co-operative governance. Most significantly, the Constitution obliges the State to take into consideration both international soft and hard law and to consider foreign law where relevant.

Constitutional provisions

The Constitution obliges the State to develop legislation to give effect to these Constitutional provisions and human rights. Despite this legal imperative, the national statute on marine resources, the MLRA, failed to accommodate SSF and hence small-scale fishers used the Constitutional provisions of food security and right to their occupation to launch court action in 2005. This subsequently led to an Equality

The constitution places an obligation on the State to take steps to realize the eradication of inequities and discrimination.

harmful to the people's health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that— (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Section 25 provides for the property and tenure rights of all and obliges the State to take active measures to ensure redress for past racially based injustices. This section

Court order that began the process of developing a new SSF policy for the country. This human-rights basis to the current policy thus provides a firm grounding in human rights for the implementation of the SSF Guidelines.

Although civil society has been involved in this struggle for nearly a decade, we have yet to put a clear set of recommendations on the table of what a human-rights-based implementation plan would look for in the very varied and diverse ecosystems and socio-ecological communities along our coastline. This was the challenge facing the group that met last month. The debate centred around what type of user rights would maximize equity. How do we support a policy shift from very centralised, top-down governance approach to a more community-orientated, co-management-based system?

Making the shift from an individual transferable quota system wherein the neoliberal conception of privatised individual rights has dominated, to a more communally based interpretation of sharing and caring for the marine commons for the greater public good is not easy within the dominant, market-driven paradigm that exists. It raises critical questions about the limitations of government policy alone in engineering change in the social relations of power, and the need for strong social partners who are committed to an alternative vision of race, gender, class and other social relations. As those present at the meeting shared their concerns about implementation from the particular perspective of their current area of work, the extent of the complexity of this task emerged.

The impact of several decades of an industrially-oriented fisheries framework, within which a wealth-based user rights system of individual transferable quotas, coupled with individual rights tied to effort controls, has led to fronting and paper quotas—and the concentration of wealth is keenly felt. Legal reforms have merely transformed the racial profile of the class relations, with little real social transformation

trickling down to the poorest black SSF communities who have historically always been marginalized. Organized labour has supported the industrial sectors' rationale for its position on transformation: maintain the status quo in terms of the allocation of fishing rights and promote transformation vertically within the industrial sector which can add more value, rather than redistributing access horizontally.

This human-rights basis to the current policy thus provides a firm grounding in human rights for the implementation of the SSF Guidelines.

The implementation of the SSF Guidelines and the new policy poses a significant challenge to this position as it raises the question: where is the fish for the SSF basket going to come from? Inevitably, it demands a redistribution of the total allowable catch and total effort in favour of the SSF sector; however, the State has yet to negotiate this shift with the industrial sector. As pointed out by participants in the meeting, this will have significant implications for labour in the industrial sector, in itself raising thorny issues regarding how to implement a human-rights-based approach where promoting access for some will have job losses and potential food security impacts for others. In some instances, those who will lose out are the families and relatives of those who will gain.

Class and race

In some coastal towns, the intersection of class and race continues to shape relations between boatowners and crew very tightly. It is apparent that giving crew access rights in a community-based approach will not necessarily transform the social relations of power that are closely tied to ownership of the means of production, in this case, in the form of ownership of vessels. For the traditional line fishers along the Cape coast, the issue of what form

JACKIE SUNDE



Fishing community members of Dwesa Cwebe Marine Protected Area in South Africa map out their tenure with government officials

that has historically been closely entwined with the political economy of land occupation and ownership in the country. Through colonial and apartheid systems of marine and land spatial planning, access to, and control over, both land and other natural resources has been racially skewed. White capital has appropriated and steadily privatized the commons. A racially discriminatory colonial administration began a process of dispossession on land in the 1880s that gained strength through legislative provisions such as the Native Land Act of 1913 and the Native Administration Act of 1927. This was further entrenched by the apartheid legislation of the 1950s and 1960s.

While these acts served to restrict coloured and African tenure rights along the coast in terms of access to land for residential and business purposes as well as access to harbours, jetties and slipways for launching boats as well as engaging in marketing of fish, a series of racially based acts and regulations began to steadily shape both the class and racial profile of the fisheries.

Artisanal and small-scale fishing communities—some of whom fished for local sale whilst others were more commercially orientated—found themselves marginalized. Both the land, agrarian and fisheries legal reforms post-apartheid after 1994 failed to address this marginalization and this legacy now weighs heavily on the SSF sector.

Systematic underdevelopment

This marginalization is most pronounced in the rural regions of the coastline, particularly in the provinces of the Eastern Cape and Kwa-Zulu Natal where the opportunistic declaration of MPAs adjacent to the African homelands during the height of apartheid has resulted in the systematic underdevelopment of these coastal communities. As a result, the SSF sector in South Africa now comprises an extremely diverse, complex profile. It includes small-scale fishers in the Western and Northern Cape who target high-value species and have

the tenure rights should take is additionally complex: how to balance the demand from fishers for an area-based approach that recognizes their historical rights in a given locality with their equally strong right to be mobile and target migratory line fish stocks along the coast, also part of their cultural practice.

The SSF Guidelines have drawn heavily on their sister document, the VG Tenure Guidelines, negotiated within the framework of the Committee on World Food Security in 2012, under the new rules of engagement with civil society that enabled a highly participatory process. Most significantly, the definition on tenure adopted through this process is an extremely progressive one: it defines tenure as how people, communities and others gain access to land and other natural resources. This definition enables a strategic focus on the social relations of power that lie at the heart of fisheries: who gets access to what. This puts the issue of these social relations centre stage.

The process of negotiating the tenure relations and system that will be brought into being through the implementation of the new SSF policy in South Africa—and, it is hoped, thus the implementation of the SSF Guidelines—thus lies at the very heart of implementation. South Africa has a very complex, layered and plural system of marine and fisheries tenure

interacted with the large industrial fishing and marketing companies to a considerable extent over the past decades, albeit from a position of relative powerlessness and exclusion, to the primarily subsistence-oriented and very rurally isolated communities of the Eastern Cape who live adjacent to vast stretches of coastline that are either no-take MPAs or where access is restricted to recreational and subsistence fishing, with limited market presence. In these areas many of the communities live on communally owned land and have local customary systems of law and governance.

According to their customary systems of law, they have customary rights to natural resources within their territories. Within their customary systems of tenure, individual rights are recognized and protected, nested within the broader communal right which is a function of the larger group. In this context, a broad-brush 'one-size-fits-all' approach to SSF implementation that forces a form of community-based quotas allocated to co-operatives (as is currently proposed in the DAFF draft regulations) will be most inappropriate.

Due to the exclusion of small-scale fishers from the long-term rights allocation processes post-democracy, the small-scale fishers have come to associate the individual quota system as synonymous with exclusion and inequity. They have, therefore, demanded a community-based access rights system. Regrettably, the interpretation of different user rights approaches has been reduced rather crudely in the public domain to one of 'individual rights' versus 'community rights'. Many of the fishers who did get individual fishing rights through the allocation of rights, coupled with those who have received an interim individual right, are reluctant to now move towards a 'community-based right' as they fear they will lose their individual benefits. The challenge now lies in developing the local legal entity and institutional arrangements that will protect individual rights within a

broader community-based legal entity and communally held right.

Perhaps the greatest challenge facing civil society is how to position itself in relation to the issue of the contribution of the SSF Guidelines and SSF policy towards poverty eradication and food security more broadly. Now that the time has come to identify who is 'in' the fisher community and who is 'out', the question arises as to how to ensure that benefits will accrue to the other residents of these villages, who do not meet the defining criteria of eligibility to be part of the 'fishing community' but who nonetheless also live in these coastal fishing villages and towns.

In the more rural areas, access to marine resources and the ability to harvest in times of food insecurity has been an important safety net for many dwellers. The proposed regulations will, however, close off the commons to an exclusive user group or groups and this safety net will no longer be available to the broader community. The implications of the choice of user-rights mechanisms and how they are defined and managed thus has important wider implications for how poverty and food security issues are addressed. While the intention of the SSF Guidelines and VG Tenure Tights is to recognize tenure rights *in the context of poverty eradication and food security*, this aspect requires careful interpretation and elaboration in each context. It is on these challenging policy choices and positions that both the fisher social movement and its civil society partners must now focus. They have committed to meet regularly in their efforts to imagine that a different fisheries sector is possible and to spread the potential of the human-rights-based net of the SSF Guidelines as far, as deep and as wide as possible along the coastline of South Africa. 📌

For more



www.daff.gov.za/daffweb3/Branches/Fisheries-Management/Marine-Resource-Management/Smallscale
Department of Agriculture, Forestry and Fisheries, South Africa

www.nda.agric.za/doaDev/sideMenu/fisheries/21_HotIssues/April2010/Small%20Scale/38536_6-3_AgriculForFishCV01.pdf
Proposed Regulations Relating to Small-scale Fishing

Caught in a Net

Small-scale fishing communities in South Africa have to cope with unequal power relations as they seek effective means for the implementation of the SSF Guidelines

In July 2014 the International Collective in Support of Fishworkers (ICSF) hosted an international workshop on implementation of the Voluntary Guidelines for Sustainable Small-scale Fisheries (VG SSF), entitled “Towards Socially Just and Sustainable Fisheries: ICSF Workshop on Implementing the FAO Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines)”.

Participants at the workshop recognized that power relations within which SSF communities

of information upon which the foundation of the SSF Guidelines implementation action plan can be built, ICSF has embarked on a number of national studies in order to promote deeper understanding of the social relations shaping small-scale fisheries (SSF) in different contexts. In 2015 a study of the dynamics and social relations impacting SSF in South Africa was undertaken. This was complemented with an analysis of the existing legislative and policy environment in South Africa within which the SSF Guidelines will gain traction.

Since its first democratic elections in 1994, South Africa has developed an extensive legislative and policy framework that gives the SSF Guidelines traction within the constitutional framework within which fisheries governance and marine resource conservation is located in this country. An analysis of the key principles and provisions in the SSF Guidelines provides clear evidence that implementation of the SSF Guidelines in South Africa is not an optional, voluntary gesture of goodwill on the part of either the South African government or of any other actor in the fisheries sector. Rather, the SSF Guidelines conveniently bring together a range of pre-existing human-rights obligations and policy guidelines that have relevance for the SSF subsector.

Ecosystem approach

From provisions to secure gender equity for women in fisheries and eliminate all forms of discrimination to secure decent and fair labour standards to the need to adopt an ecosystem approach to fisheries, the SSF Guidelines are mirrored

...the SSF Guidelines conveniently bring together a range of pre-existing human-rights obligations and policy guidelines that have relevance for the SSF subsector.

are located are invariably skewed against these communities and, in particular, against women and other vulnerable and marginalized groups. Integral to the SSF Guidelines’ goal of targeting the most vulnerable and marginalized persons and eliminating discrimination will be the need to have adequate understanding of these power relations and intersectionalities that shape access to, and control over, marine and other resources. These intersectionalities include issues such as gender, race, ethnicity, age, labour and migratory status, disability and geographic location, amongst other historical and specific power relations relevant in each national context.

In order to contribute towards the development of a sound body

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in national legislation and policy even though this framework was developed prior to the SSF Guidelines. The only significant gap in this national framework relates to specific provisions to protect the rights of indigenous peoples and migrant fishers. These groups may be vulnerable. Although the Equality Clause of the Constitution outlaws discrimination, and most indigenous peoples would be protected by various clauses in the Constitution, the specific rights and needs of indigenous peoples have not been highlighted and South Africa has failed to implement the 2007 UN Declaration on the Rights of Indigenous Peoples.

However, the South African Constitution obliges the State to take cognisance of international law and as the rights of indigenous peoples are now international customary law, this would apply. In addition, although the Constitution recognizes the rights and freedoms of all people in the country, even if they are foreign nationals, there are no specific mechanisms to ensure the protection of migrant fishers. Migrant fishers, particularly if they are found to be in South African waters illegally, might be very vulnerable as the Constitutional provision protecting all people in the country is dependent on being legally resident in the country. Over and above the two gaps mentioned, the spirit of the SSF Guidelines is clearly evidenced in South Africa's national legislation and policy developed on the foundation of the human rights enshrined in the country's Constitution.

Notwithstanding this very enabling legislative and policy framework in South Africa, interviews with key respondents drawn from SSF fishing communities, fisher leaders, government, NGOs and research institutions, together with a review of current literature, provide evidence that there are huge challenges facing the SSF subsector in South Africa. In particular, a range of unequal power dynamics and social relations shapes the location of small-scale fishers within the political economy

of fisheries and impacts the way in which both the international SSF Guidelines and the recently promulgated South African Policy on Small-scale Fisheries (SSF Policy) are being interpreted and implemented.

Racial, class and gender-based relations, coupled with historical rural-urban divides, continue to shape the experiences of different groups of small-scale fishers and their communities. Many fishers up and down the coast express a sense of despair in the face of what appears to be deepening levels of inequity and marginalization within the fisheries sector, with the associated social vulnerabilities that accompany this: high levels of poverty, debt, corruption, food insecurity, sexual violence, drug and alcohol addiction, crime, conflict and depression. Environmental changes in the marine and coastal environment exacerbate their vulnerability to these political and social challenges. While the problems that are cited by the fishers on the western seaboard differ from those in the two coastal provinces on the eastern seaboard, a common theme expressed by fishers, NGO activists and researchers is a perception of a growing gap between the visionary and aspirational human-rights-based content of the South African Constitution and the reality that they face on the ground every day.

The industrial fisheries subsector has historically dominated the catching, processing and marketing of all high-value species in South Africa. Under the apartheid regime, this subsector was

JACKIE SUNDE



A woman inter-tidal mussel harvester, Dwesa Cwebe, in Eastern Cape, South Africa

controlled by white capital. Artisanal and subsistence fishers, predominantly from black communities, were systemically marginalized and dispossessed of their tenure rights to marine resources. SSF communities question the lack of real redress for the racially-based dispossession that many of them experienced during apartheid. Notwithstanding some policy attempts to transform the unequal racial structure of the industry in the past two decades, the continued close relationship between the ruling party, the fisheries administration and the captains of industry creates the co-management conditions required by the industrial subsector to ensure that they benefit from any policy that is introduced to address the needs of the SSF. Their continued control over the means of production, made possible through the failure of the Department of Agriculture, Forestry and Fisheries (DAFF) to apportion adequate resource access to the SSF and to introduce mechanisms to enable SSF

continue to influence how men in fisher organizations and communities perceive women's rights to resources and to controlling these resources. This impacts women most heavily along the western seaboard where the high-value industrial fisheries have been dominated by men. Women were largely restricted to employment in the processing subsector. In the current processes aimed at implementing the SSF Policy, women are required to demonstrate ten years of active involvement in the industry in order to be eligible for membership of an SSF entity with a fishing right. However, their years of employment in the processing establishments are not considered relevant. This is an issue that women fishers are determined to challenge in the coming months, drawing on the Constitution and the SSF Guidelines.

The historical marginalization of black fishing communities, particularly in two of the coastal provinces of the country, namely the Eastern Cape and KwaZulu Natal provinces, where the apartheid regime established designated areas where African persons could reside, continues to shape the current context. SSF fishing communities in these provinces remain ultra-vulnerable due to their lack of voice and the unequal provision of services in these regions.

...the SSF subsector is structured by patriarchal gender relations which continue to shape the underlying dynamics in communities.

communities to control a segment of the value chain, leaves the SSF very vulnerable. It would appear that notwithstanding State commitments to the SSF Guidelines and the SSF Policy, and hopes for a paradigm shift in favour of a different model of fisheries exploitation that would enable redistribution of marine resources to poor SSF communities, the policy trajectory for the future is 'business as usual' in South Africa.

In addition to key class and racial fissures, the SSF subsector is structured by patriarchal gender relations which continue to shape the underlying dynamics in communities. Whilst superficially an impression of shift is created by the visibility of a few prominent women leaders, deep-seated patriarchal relations

Dispossession

During the height of apartheid, the State embarked on racially-based spatial planning which dovetailed with the expansion of the conservation estate. More than half of the existing 22 coastal Marine Protected Areas (MPAs) were established adjacent to terrestrial reserves that involved racially-based forced removals of local coastal communities. Despite most of these communities submitting land claims in terms of the Land Restitution Act post-apartheid, there has been no recognition of their dispossession from their traditional fishing grounds and marine resources. Land claim settlements have failed to lead to restitution of their pre-existing

tenure and access rights. The heavy-handed attitude of the conservation authorities in these provinces towards the small-scale fishers who they do not accept as having legitimate tenure rights now exacerbates their socioeconomic marginalization.

Communities living in, or adjacent to, MPAs and the iSimangaliso World Heritage Site are most vulnerable in this regard. Lack of high-level inter-sectoral policy cohesion and a total absence of policy guiding the management approach to SSF fisheries in these areas is resulting in extensive conflict between the fishing communities and the authorities. Several local fishing communities living adjacent to MPAs have legal action against the State pending in order to secure their customary tenure rights. The fishers have drawn on the SSF Guidelines and the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) in their court papers.

In the light of the fact that South Africa already has a legislative and policy framework that prescribes the implementation of the principles inherent in the SSF Guidelines, the question as to why there is such a gap between the provisions in the SSF Guidelines (and the Constitution and the SSF Policy), and the actual *de facto* rights enjoyed by SSF fishers on the ground arises. It is apparent that whilst there are *de jure* provisions to protect and promote the SSF subsector, the interpretation of these legal and policy provisions into practice results in *de facto* discrimination against poor SSF fishing communities. Several characteristics of the current situation enable this failure to implement the SSF Guidelines.

A powerful neoliberal economic agenda influences the location of the SSF subsector in the political economy of the country and shapes the perceived value and role of the SSF subsector. The industrial subsector commands considerable control over fisheries policy and influences the States' approach to tenure rights,

resource management, marketing and trade, and research support to the sector. The lack of data and information about the SSF subsector is an outcome of this marginalization and further deepens the marginalization of SSF communities.

As one of the consequences of this agenda, organization of fishing communities and fishworkers is fragmented and there is a lack of solidarity amongst actors in the SSF subsector. Small-scale fishers have historically lacked political awareness and voice. They have also been slow

A powerful neoliberal economic agenda influences the location of the SSF subsector in the political economy of the country...

to build community support for their struggles and so fisher organization in many coastal communities is limited, resting largely on a thin layer of fisher leaders with few cross-sectoral alliances and little solidarity from other small-scale producers or political groupings. Although one of the key SSF groupings has been very involved in the international advocacy activities leading to the negotiation of the SSF Guidelines, the majority of the SSF subsector lacks awareness of the SSF Guidelines and the protective provisions within both the Constitution and the Guidelines that they could use to defend their rights.

Democratic practice

A major contributing factor has been the government's failure to put mechanisms in place to ensure transparency and accountability within the fisheries administration. This has created a culture in which corruption, cronyism and political influence has thrived. This lack of ethical governance is mirrored in some of the fisher organizations, where a lack of democratic practice and sound checks and balances have enabled several individual leaders to become involved in deals with marketers and the industrial subsector

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Local fishers at Dwesa Cwebe MPA. Artisanal and subsistence fishers, predominantly from black communities, were systemically marginalized and dispossessed of their tenure rights to marine resources

that compromise their legitimacy. In this environment, the lack of legitimacy of both government and community-level institutions has enabled a pervasive perception of lawlessness and inequity.

The analysis conducted by ICSF on the SSF subsector in South Africa provides useful insights into the key obstacles that prevent full and effective implementation of the SSF Guidelines. It suggests that an enabling legislative and policy framework is a necessary precondition for implementation of the SSF Guidelines but in and of itself is not sufficient to secure their realization. Rather, a multi-pronged approach that builds local-level organization and democracy, advocacy capacity and political power is key to ensuring that the SSF Guidelines are implemented. The SSF Guidelines will be achieved through the bottom-up advocacy struggles and strategies of small-scale fishers and their supporters and through them leading by example.

Whilst there are no government or civil-society initiatives to track implementation of the SSF Guidelines in South Africa underway as yet, this research has highlighted the importance of contextual analysis

prior to the implementation of the SSF Guidelines. If goals such as promoting poverty eradication and food security, eliminating discrimination and ensuring inclusivity and equity are to be achieved, then it becomes necessary to ensure that a baseline understanding of the social relations and dynamics in the fisheries sector is available and that strategic priorities are identified accordingly across all actors, both state and civil society. This study underscores the need to ensure that unequal power relations are placed centre stage in any plan of action in order to ensure that the human rights and freedoms of small-scale fishing communities are realized.

For more

icsf.net/en/monographs/article/EN/150-social-relation.html?limitstart=0

Social Relations and Dynamics Shaping the Implementation of the Voluntary Guidelines on Small-scale Fisheries (SSF Guidelines) in South Africa

Reaffirming Rights

The traditional net fishers of Langebaan Lagoon MPA in South Africa have proved victorious in adopting a human-rights-based approach to small-scale fisheries

A recent High Court Judgement in support of small-scale fishers' rights lays the foundation for a human-rights-based approach towards the implementation of the policy on small-scale fisheries and future Marine Protected Area (MPA) planning and governance in South Africa.

The Langebaan Lagoon MPA lies approximately 120 km northwest of Cape Town, along the western Atlantic coastline of South Africa. The lagoon is home to one of South Africa's oldest traditional net fisheries. Originally inhabited by the indigenous Cochoqua who were gradually chased out of the region, the area was settled by the Dutch during colonial times and they established farms along the shores of the lagoon. These waters gained a reputation for fine fish, particularly the large mullet (known locally as 'harders') caught in the sheltered, nutrient-rich lagoon. The small group of traditional net fishers of Langebaan Lagoon who continue to fish today are mostly descendants of the Malay slaves and other residents of mixed race who eked out an existence as labourers on these farms following the emancipation of slaves at the Cape. Most of them fished using beach-seines, gill-nets and handlines to supplement their meagre wages.

In time, the net fishers evolved a system of customary rules to manage their fishing activities and to avoid conflict amongst the different net fishing boats on the lagoon. This included a range of local customary norms and laws related to how they worked together on the water, how the catch was shared amongst the crew, who was responsible for maintenance

of the boats and how to manage conflict. Specific fishing grounds were recognized by the authorities as their customary fishing grounds and the oral histories of the Langebaan net fishing families indicate that the names of as many as 20 fishing sites in the lagoon were commonly known.

The customary fishing rules that evolved were woven into the social relations of the small, close-knit fishing community that describe themselves as a 'fishing family'. Traditional knowledge was passed on from generation to generation, and young children grew up with a strong identity attached to their

The customary fishing rules that evolved were woven into the social relations of the small, close-knit fishing community that describe themselves as a 'fishing family'.

families' interaction with the lagoon. The Langebaan fishers considered themselves the rightful users and owners of the lagoon and membership of the net fishery was limited to this group.

Apartheid

In the 1960s the fishers were impacted by the steady introduction of apartheid-based racial planning as well as the growing, predominantly white, tourism industry and recreational fishing sector in Langebaan. During this period the fishers who were classified according to the apartheid race-based classification system as 'coloured', were forced to relocate to a new area designated for coloured residence, which was some distance from

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their homes adjacent to the lagoon. In addition, growing numbers of recreational fishers on the waters disturbed their net fishing and led to increasing conflicts. In 1969 the fishers requested the local municipal board to establish a zone specifically for them, and two buoys were placed in the lagoon, effectively creating a protected zone for the traditional net fishers only.

In 1973 the lagoon was declared a marine reserve in terms of the Sea Fisheries Act and, subsequently, in 1985, it was incorporated into the West Coast National Park.

However, in the decade that followed, the Department of Sea Fisheries introduced a range of conservation measures and, drawing on the original line that had been established to protect the fishers, used this zonation to establish three zones—a sanctuary zone, a zone for non-motorized net fishing and an open, multi-use zone. In 1973 the lagoon was declared a marine reserve in terms of the Sea Fisheries Act and, subsequently, in 1985, it was incorporated into the West Coast National Park. The National Parks began acquiring farm land for inclusion in the Park and purchased a number of white-owned farms adjacent to the lagoon. The Park authorities entered into agreements with the owners of these farms and the West Coast National Park became the first contractual park in South Africa. Many of the white property owners retained certain residential rights in sections of the Park whilst the coloured fishers were forced to move to Langebaan town. The local fishing community were not consulted when the marine reserve was declared.

This simultaneous introduction of conservation and fisheries management measures in the lagoon coincided with the introduction of apartheid spatial planning measures. The forced relocation of the coloured community from their homes adjacent

to the lagoon, the eviction of fishing families from the farms that were later incorporated into the National Park, and the perceived preference given to white landowners to continue residing in the Park and fishing in restricted zones were associated with the concomitant increase in restrictive conservation measures which led to the zonation of the lagoon. The lagoon was zoned into three zones. Both line fishing and recreational fishing, as well as a range of other non-consumptive uses, were permitted in Zone A; Zone B was restricted for traditional net fishers; and Zone C was a no-take sanctuary area. When the National Parks Board took over the management of the lagoon, they confirmed this zonation, introducing a set of regulations restricting fishing and motor vessels in Zone B unless in possession of a permit from the Parks Board. In the late 1980s the trek net fishery—shore-based, drag-net fishery—was outlawed and fishers were forced to rely on their gill-nets to target *harders* only.

In 1992, following the signing of an agreement with the local landowners, the Parks Board introduced a differential set of permit regulations in which the local white landowners still resident in the Park were permitted to fish in Zone B for *harders* using their drift-nets, but the fishers resident in Langebaan were not. The net fishers resisted these permit regulations and over time the Park authorities permitted those traditional fishers with a history of fishing on the lagoon to continue net fishing in Zone B.

Conditions and restrictions

In 2003 the National Environmental Management: Protected Areas Act, 2003 (NEMPAA), was promulgated, granting the National Parks the authority to introduce specific permit conditions and restrictions on use in certain zones. The conservation authorities used this legislation to prohibit the Langebaan net fishers from fishing in Zone B, which was their traditional fishing grounds, although the white landowners were

able to continue. This policy dovetailed with the fisheries authority's policy of restricting the net fishing effort on the lagoon.

The Langebaan net fishers have argued that these restrictions are discriminatory. Firstly, three white landowners who have a contract linked to their continued residence in the Park with the conservation authorities have retained the right to continue fishing in Zone B, and the traditional net fishers, who depend on the net fishery for their livelihoods but were forced away from the Park, have to compete with the growing recreational sector in Zone A. The conservation authority and the department responsible for fisheries management have argued strongly that the zonation is needed to protect key line fish and shark species that use the shallow waters of the lagoon as a nursery ground. Zone B acts an important buffer zone within the MPA. However, the scientific evidence used to motivate these restrictions on the harder fishery draw largely on national-level data for *harders* and is also outdated. As the fishers were not consulted about the restrictions and the zonation, they question the legitimacy of the MPA zonation and the accuracy

of the scientific data upon which decisions have been made.

The Langebaan net fishing community has been one of the leading communities participating in the small-scale fisheries campaign in South Africa since 2004 that has demanded recognition that their 'fisher rights are human rights'. They have advocated strongly for their right to preferential access to their traditional waters and to participate in management in line with the FAO Code of Conduct for Responsible Fisheries. They cite the customary system of local fisheries management developed by their forefathers as the basis for their claims in addition to their human right to food security and to practice their occupation. In the absence of any real consultation that took their histories and needs seriously, and faced with their continued exclusion from their traditional fishing grounds, and increasing conflict with the recreational fishers, the Langebaan fishers launched legal action in 2013 against the Minister of Environmental Affairs, as the governance authority of the lagoon, the Minister of Fisheries as the authority responsible for allocating fishing rights and the SANPARKS as the contracted

JACKIE SUNDE



Langebaan fishers listen to the legal advisers from Legal Resource Centre outside the Cape Town High Court, South Africa, June 2016. The Langebaan fishers considered themselves the rightful users and owners of the lagoon

management agency for the Langebaan Lagoon MPA (Coastal Links Langebaan and others versus the Minister of the Department of Agriculture, Fisheries and Forestry (DAFF) and others, 2013). Represented by the Legal Resources Centre, a human rights public litigation NGO, the fishers argued that the permit condition that “prevents us from fishing in a part of the Langebaan Lagoon known as ‘Zone B’... has serious consequences for our livelihoods, and threatens the continued existence of the custom of traditional net fishing in Langebaan. Drawing on the Bill of Rights in the South African Constitution, they argued that the fisheries regulations imposed on them are irrational, unreasonable, and unfairly discriminate indirectly on the basis of race” (Coastal Links Langebaan versus the Minister of DAFF and others, 2013).

Further, the fishers argued that it is ironic that the line that was originally drawn to protect them, is the same line “now used to keep us from our traditional fishing grounds and threatens our ability to survive. It is significant that the line was not drawn on the basis of any conservation imperative; it was drawn to solve a dispute between

- any alternatives to a complete limitation of the right to access Zone B; and
- the applicable legal framework, including domestic and international law and policy, and, in particular, the new SSF Policy.

They argued that the zonation underpinning the MPA was not based on scientific evidence and hence it is arbitrary and irrational to continue to employ this same line in the name of ‘conservation’ and restrict their rights. As such, the decision by the Minister and the harsh restrictions on the *harders* net fishers are unreasonable in terms of the Constitutional obligation of the Minister to seek the least restrictive limitations on their rights (Section 36 of the Constitution). They allege that the scientific evidence available does not indicate that net fishing in Zone B will have an unacceptable ecological impact. They also argue that the current restriction unfairly discriminates against them on the grounds of race and perpetuates past patterns of discrimination. The fishers cite the Policy on Small-scale Fisheries (DAFF 2012) in their argument, citing again the principle that small-scale fishers who depend on fisheries for their livelihood should be given preferential access to resources. They challenge the conservation authorities for seemingly turning a blind eye to the thousands of recreational fishers who are catching the same threatened line fish species that the MPA zonation allegedly seeks to protect. They also document the impact of the conflict with the recreational sector on their livelihoods.

The High Court judgement delivered on 31 October 2016 has far-reaching implications for the future management of small-scale fisheries in South Africa. In particular, it sets an important precedent for how the rights of small-scale fishers should be considered when planning, managing or evaluating existing MPAs. In his judgement, the Honourable Judge Sher highlighted the fact that the national statute legislating the management of marine living

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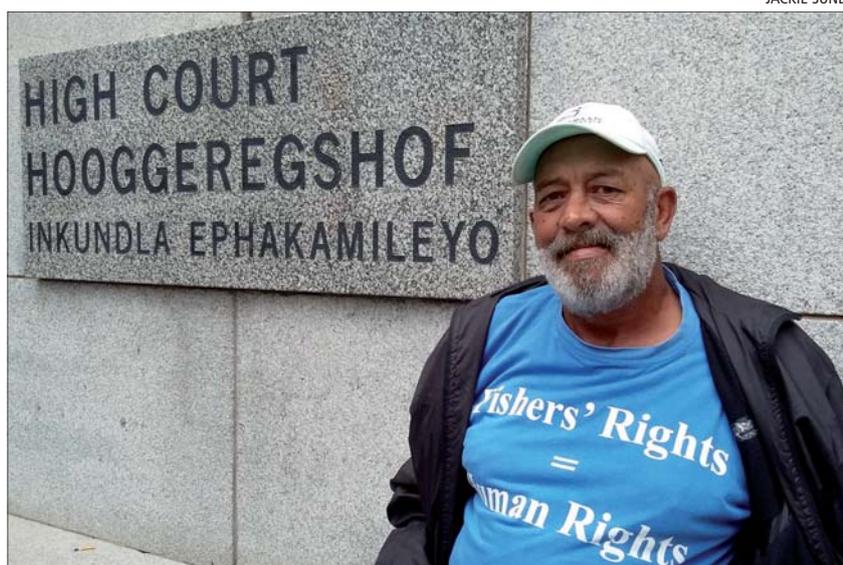
traditional and recreational fishers over 40 years ago” (Coastal Links and others versus the Minister and others 2013, CASE NO: 11907/13). The founding legal papers argued that the Minister of DAFF and other respondents acted unconstitutionally in that they should, at minimum, have considered:

- the available science pertaining to the Langebaan Lagoon relevant to the specific species and net fishery;
- the socioeconomic status of the fishers impacted by the decision;

resources in South Africa, the Marine Living Resources Act of 1998, provides guidance in section two of the Act to the Minister to have regard for a number of principles and objectives when developing management mechanisms, not just objectives narrowly restricted to protection of the marine ecosystem. This includes the need to achieve “the ‘optimum utilisation’ and ecologically sustainable development of such resources, and the re-structuring of the fishing industry in order to address historical imbalances, and to promote ‘equitable access to, and involvement in,’ all aspects of the fishing industry (with particular reference to the need to rectify past prejudice against women, youth and disabled persons) and to achieve equity within all branches of the industry.” (Langebaan Coastal Links versus the Minister and others 2016, 11907/13).

The judgement gave visibility to the Small-scale Fisheries Policy which, like the SSF Guidelines adopted by the FAO Committee on Fisheries (COFI), stresses the centrality of the principles of equity and equality. The Policy on SSF has, as one of its principal objectives, the promotion of “equitable access to, and benefits from, marine living resources, taking the historical background of the fishers into account”. The vision outlined in the SSF Policy is of a sustainable, equitable, small-scale fishing sector in which the “wellbeing and livelihood of fishing and coastal communities is secured and the health of the marine ecosystem is maintained”. It also recognizes that in order to achieve effective transformation, small-scale fishers need to regain their lost access to their traditional areas.

The judgement draws on Section (9 (3) of the Bill of Rights in the Constitution, noting that the State may not unfairly discriminate, either directly or indirectly, against anyone on a number of grounds, including race. In this instance, the Judge found that the permit conditions imposed on the Langebaan traditional net fishers were discriminatory



Langebaan leader Norton Dowries outside the Cape Town High Court, South Africa. The Langebaan community members have advocated for their right to preferential access

and irrational. He argued that the decisionmakers did not take important factors into consideration such as the fishers’ “historical claim to traditional fishing rights, the imperatives of transformation and the need for ecological conservation whilst also allowing for sustainable utilisation and development of the resources concerned” (Langebaan Coastal Links versus the Minister and others, 2016).

Importantly, the Judge found that the Court cannot determine the new regulations and permit conditions, but the parties to the action must sit and negotiate new terms, by taking into consideration these important social imperatives. In reaffirming these socioeconomic rights as integral to the governance and management of fisheries and conservation, this judgement confirms a core principle at the heart of the SSF Guidelines, that of the indivisibility of human rights, sustainable development and responsible governance of fisheries. 3

For more



irc.org.za/ircarchive/press-releases/3704-press-release-court-finds-fishing-restrictions-at-langebaan-irrational-calls-for-transformation

Court Finds Fishing Restrictions at Langebaan Irrational—Calls for Transformation

saflii.org/za/cases/ZAWCHC/2016/150.html

Coastal Links Langebaan and Others v Minister of Agriculture, Forestry and Fisheries and Others (11907/13) [2016] ZAWCHC 150 (31 October 2016)s

The Relic of Apartheid

A research report uncovers the historical injustice meted out to Indian-origin subsistence fishers in South Africa who have to deal with the restrictions brought on by the COVID-19 pandemic

In March 2020, the South African government declared COVID-19 a national disaster under the Disaster Management Act No. 57 of 2002. This introduced, overnight, regulations that prescribed the activities regarded as 'essential' to society. These lockdown regulations set in motion a series of administrative reactions that have revealed the deep-seated and stubborn inequalities in South Africa and the underbelly of the post-apartheid state. The impacts of these regulations were devastating for a specific groups of subsistence fishers from Durban in the province of KwaZulu Natal (KZN), along the eastern seaboard.

situation reflects the plight of many poor South Africans, worsened by the regulations brought in to curb the pandemic. The regulations enacted as a response to the pandemic, however, placed a spotlight on the history of Indian subsistence fishers in this region of South Africa; it revealed the way in which fisheries legislative and policy reforms in South Africa excluded them.

Numerous policy processes have failed to accommodate the diversity of fishers and fishing communities that exists under the umbrella term 'small-scale fisheries'. In addition, the desire for neat policy categories of fishers denies the dynamic and messy lived reality of fishers; they live in a seascape without clear-cut categories of work and employment. A research report titled 'Cast Out: The systematic exclusion of the KwaZulu Natal subsistence fishers from the fishing rights regime in South Africa' was commissioned in 2020 by the South Durban Community Environmental Alliance (SDCEA). The report highlights the history of these fishers. It unpacks the way that they have historically crafted freedom and cultural identity through their subsistence strategies—as also the policy and administrative failure to accommodate them.

Numerous policy processes have failed to accommodate the diversity of fishers and fishing communities that exists under the umbrella term 'small-scale fisheries'.

These fishers include subsistence fishers of Indian origin, joined by the non-racial community of poor, subsistence line fishers, forming the KZN Subsistence Fisher's Forum (KZNSFF). They find themselves caught in a net of regulatory distortions. Under the lockdown, they were told by the Deputy Director General of Fisheries that 'subsistence fishers' was no longer a legitimate category in South Africa. It transpired that they should have applied for recognition as 'small-scale fishers' in previous policy processes, if they had hoped to be legally recognized as 'essential services'.

Given their illegal status under the new regulations, these fishers were unable to turn to their natural commons to feed their families, nor were they eligible for state food parcels. Their

A unique contribution

The earliest record of shore-based subsistence line fishing in KZN is that of indentured Indian labourers of the 1860s who fished on the shores of the city of Durban. These bonded workers came from India to the Colony of Natal to work on the sugar plantations, bringing with them both their fishing skills and their close relationships with the ocean. Some of the indentured labourers were brought specifically for their seafaring, boat-building and



KwaZulu Natal subsistence fishers protest their exclusion in Durban, South Africa. The impacts of new regulations were devastating for a specific groups of subsistence fishers from Durban along the eastern seaboard

fishing skills to assist the Port Captain and to provide fish rations for the workers on the sugar plantations.

So began the proudly cherished cultural tradition of the rod-and-reel subsistence line fisher along the harbour and beachfront of Durban. More than just a pastime, this practice represented a means for these labourers to express their independence from the bondage of their contracted indenture, whilst also ensuring adequate food for their families. Fishing assisted in creating a livelihood in this liminal zone on the edges of indentured labour. These early fishers used fishing and the social relations around it to craft a cultural response to the harsh environment of indenture and colonial racism. Once freed from their indentured labour contracts, many of these workers and their families settled around Durban harbour at the mouth of the Umgeni River. It was in these mud marshes and mangroves on the edge of the sea that many Indian families established their livelihoods.

For many families rod-and-reel fishing became a means of subsistence; for others seine-net fishing steadily

developed into a flourishing enterprise. In addition, these fishers harvested a range of other marine resources, both for food and for medicine. Both men and women engaged in this activity, usually held day jobs and worked this trade by night to supplement low incomes.

These state administrative processes linked to policy implementation were shaped by the prior, systemic racism inherent in the provincial approach to subsistence fishers.

The Indian migrants had a significant impact on the culture of colonial Natal. They built beautiful local temples and established schools in their midst, fish markets sprung up, and a distinctive seafood culture, flavoured with Indian spices, developed. These Indian cultural influences are still tangible in Durban today, a part of what makes the city unique in South Africa.

Food security

Despite the importance of their contribution to food security, culture

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Fishers inspect the nets during the sardine run on the KZN coast, South Africa. The authorities took the view that subsistence fishing should be an occupation of last resort, and that these fishers must be shifted into alternative livelihoods rather than supported to flourish

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and development, these early fishers experienced increasing racism and class-based prejudice. As white residents of Durban began using the harbour area and surrounding beaches and waters for recreation, they started complaining about the Indian fishers in the area. Drawing on racist stereotypes, such complaints began as early as 1877, growing steadily in the subsequent two decades.

The archival evidence of these early expressions of racism towards Indian fishers and subsequent policy responses aimed at restricting these fishers suggests that just over a decade after they arrived in the Natal Colony, they were subjected to intense discrimination and material exclusion. Over time, these exclusions only grew worse. Half a century later, the nationalist apartheid government legislated racial segregation and discrimination. Using the notorious Group Areas Act of 1950, Indian families were forcibly removed from the coastal locations to designated 'Indian' townships inland. This legislation robbed people of their dignity and access to their traditional fishing spots.

During colonialism and apartheid, subsistence fishers were not legally recognized. The governance of fisheries up until this time was firmly orientated towards the white-owned commercial, industrial sector which received considerable support from the state. Only commercial and recreational fishers were recognized. This despite thousands of fishers who subsisted on marine resources—either seasonally or on an ad hoc basis or as a safety net or on an ongoing basis throughout the year.

Avoiding detection

Despite their removal to areas over 20 km away from the sea, many of the descendants of this early community of Indian fishers continued to rely on fishing for their food and livelihood. Fishing was also the material basis of their cultural identity in South Africa, a source of local knowledge and intergenerational pride. These fishers shared fishing spots with the growing recreational fishing sector. As subsistence fishing was not legally recognized in South Africa prior to 1998, these fishers blended into this

recreational sector to avoid detection and punitive measures from the authorities.

The lines between recreational fishing and subsistence fishing have always been blurred.

Subsistence fisheries steadily grew in and around the industrializing centre of Durban during the colonial and early apartheid period, drawing in not only Indian but also coloured, black and poor white fishers who turned to the marine commons as a means of survival. Rural-based African subsistence fishers in Natal, predominantly of isiZulu and Thonga culture, also experienced

exclusions and forced evictions during these colonial and apartheid periods. In the decades immediately before the advent of democracy, thousands of subsistence fishers in rural Natal were harassed and arrested for fishing illegally, and treated as poachers.

Post-apartheid legal reforms and their impact

After apartheid was abolished, legal reforms included the development of a new statute to guide the governance of marine living resources. The Marine Living Resources Act of 1998 added the category of 'subsistence' fisheries to those of commercial and recreational fishing. A subsistence fisher was defined as one who fished for own consumption and was only permitted local sale of fish. Notwithstanding this legal recognition, the institutional arrangements for the implementation of this provision in this province, unlike in the other coastal provinces, rested in the hands of the 'KZN Ezemvelo Wildlife', the provincial conservation authority contracted to manage fisheries. Strongly influenced by the perspectives of marine scientists and ecologists working in the province, this authority took the view that, ideally, subsistence fishing should be an occupation of last resort, and that these fishers must be shifted into alternative livelihoods rather than supported to flourish.

This narrow approach to the recognition of subsistence fishers meant that in the period between 1998 and 2013, just over 2,000 subsistence fishers were legally recognized. The

rest of the subsistence fishers in the province, estimated at over 18,000, were forced to either purchase recreational permits or risk getting caught and prosecuted. Recreational permits, easily purchased at the local post office, are relatively inexpensive, and there are no means tests or limits on the number of recreational fishers, making this an open-access fishery. The distinguishing feature of this form of fishing is that these fishers may not sell their catch.

Elsewhere in the country small-scale, artisanal fishers protested the failure of the reforms to recognize their fisheries, arguing that the subsistence definition failed to accommodate small-scale fishers whose livelihoods included the modest sale of fish on a commercial basis. Following extensive advocacy action, the Equality Court

Fishing assisted in creating a livelihood in this liminal zone on the edges of indentured labour.

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finally ordered the then Minister of Fisheries to develop a new policy through a participatory process, one that would recognize the social and economic rights of traditional, small-scale fishers.

Slipping through the net

The Policy for Small-Scale Fisheries was finally gazetted in 2012. It included a definition of small-scale fishing that aimed to include a continuum of fishing, from those who fished on a subsistence basis to those who fished on an artisanal and small-scale commercial basis. The formal amendment of the statute to include this new definition of small-scale was followed by the promulgation of a set of Regulations for Small-Scale Fisheries in 2016. Shortly after this, the Department of Fisheries embarked on a nationwide process of rights application and verification. These state administrative processes linked to policy implementation were shaped by the prior, systemic racism inherent in the provincial approach to subsistence fishers. Instead of engaging widely with

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The KwaZulu subsistence fishers finally get access to their traditional fishing spots as users of the port. Policymakers will need to become far more comfortable with the dynamic and messy lived reality of fishers in a country where clear-cut categories of work and employment no longer exist

the range of subsistence fishers in the province, including those Indian fishers who held recreational permits despite the subsistence nature of their fishing, the department consulted narrowly. It ignored pleas to come and explain the policy for small-scale fisheries to the Durban-based KZNSFF.

The majority of these fishers noted that the policy and regulations were based on a community-based approach to fisheries that demanded the establishment of formal co-operatives. This system, they argued, made no allowances for their individual rod-and-reel subsistence practices. Nor did the system recognize the history of forced removals where Indian communities had been removed far from their traditional fishing areas and their coastal fishing communities had been fragmented and dispersed. Others were deemed not eligible for small-scale fishing rights due to the very narrow interpretation of dependence on marine resources applied by the

officials managing the process. If an applicant was not completely dependent on fishing for their livelihood then they were rejected.

As a result of this overly bureaucratic, technical approach to rights allocation and recognition, only 11,500 fishers in the entire country have been recognized as bone fide small-scale fishers deserving of rights. Despite the fact that the policy is closely aligned to principles inherent in the Guidelines on Small-Scale Fisheries, agreed upon by the international community and confirmed by the South African government in 2014, the implementation of the policy for small-scale fisheries has failed to create the conditions that would enable subsistence fishers to be recognized and supported. It was this mix of different subsistence fishers—together with those rural-based small-scale fishers who were left out of the policy process—who found their subsistence fishing and livelihoods described as

'non-essential' when the COVID-19 lockdown regulations were introduced. Overnight their means of feeding their families and selling a small amount of fish locally for basic necessities was outlawed.

Subsistence in the neoliberal Blue Economy

The Indian-origin fishers of Durban have led the resistance to the exclusion of so-called 'recreational' and real subsistence fishers by the COVID-19 lockdown regulations, arguing that the right to subsistence is linked to their right to human dignity. They have argued that the way in which the policy for small-scale fisheries is being administered and regulated, forcing groups of fishers to form business co-operatives and navigate considerable red tape to enjoy their historical rights, is unfair and exclusionary. They summon the history of their ancestors, the early Indian indentured workers, who proudly subsisted due to fishing, thereby asserting their independence and freedom.

The weight and power of the word 'subsistence', and the resistance to being classified as 'small-scale' in the current national policy among a segment of the traditional fishers in KZN, have their roots in this specific socio-cultural history of Indian fishers in the province since 1860. Holding on to the category of 'subsistence' is an assertion of human dignity and a direct response to the racist, ethnic and class-based prejudice suffered over the last 150 years. Stories of ancestors who experienced forced removals three times in their lifetimes are not forgotten in many fisher families.

Given this historical and intergenerational struggle for rights, it is not surprising that the descendants of these fishers in Durban continue to demand recognition as subsistence fishers. Nor is it surprising that these fishers view contemporary regulations and enforcement that deny them fishing access to public beaches, the Durban Port, and marine protected areas in the South Coast, as a continuation of their marginalization and exclusion in society. Contemporary forms of exclusion through neoliberal capitalism and its Blue Economy, and

the persistence of racism, are entangled with the distinctive oppressive practices of the apartheid past.

The research report calls for a serious engagement with these fishers by the relevant ministry, an engagement that recognizes the complex entanglements among culture, heritage and economic livelihoods. The current Small-Scale Fisheries Policy does hold promise for their inclusion as resource users and active members in South African fisheries management. However, to make the current policy inclusive, a more nuanced approach to the implementation of small-scale fisheries governance and management is required. Policymakers and management officials will have to understand the historical processes that shape some fishing practices. They will need to become far more comfortable with the dynamic and messy lived reality of fishers in a country where clear-cut categories of work and employment no longer exist.

There is substantive precedent for this in South Africa, where local and national government decisionmakers have recognized the precarious nature of work and how informal practices support livelihoods. There is also growing recognition internationally that urban fishers utilize multiple livelihood strategies to support families in cities, of which fishing is an important part. The current economic context of work and informality must be acknowledged and engaged with in a policy review. Similarly, the powerful continuities of culture across these dispersed communities, and their deep historical relationship with the ocean and coast, must be recognized. 

For more

Caught in a Net

https://www.icsf.net/images/samudra/pdf/english/issue_74/4214_art_Sam74_e-Art07.pdf

Living Off the Land

https://www.icsf.net/images/samudra/pdf/english/issue_62/3742_art_Sam62_eng-art01.pdf

A Weighty Responsibility

https://www.icsf.net/images/samudra/pdf/english/issue_64/3849_art_Sam64_e-art04.pdf

Cast out: The systematic exclusion of the KwaZulu Natal Subsistence Fishers from the fishing rights regime in South Africa

<https://static.pmg.org.za/201027Cast-Out-Policy-Document-2020.pdf>

Social relations and dynamics shaping the implementation of the voluntary guidelines on small-scale fisheries (SSF guidelines) in South Africa

https://www.icsf.net/images/monographs/pdf/english/issue_150/150_SSF_Guidelines_SAfrica_Jackie_29_MAR_2016.pdf

High & Dry. KwaZulu Natal Fishers Fight for their Rights

<https://www.fishingindustrynewssa.com/2020/11/02/high-dry-kwazulu-natal-fishers-fight-for-their-rights/>

Disaster Management Act 57 of 2002

https://www.gov.za/sites/default/files/gcis_document/201409/a57-020.pdf

A Seismic Shift

A coalition of fishing communities, activists and lawyers has come together to keep the coasts and oceans of South Africa free of the destructive Blue Economy agenda

To Hell with Shell!” This was the rallying call of small-scale fishing communities and indigenous coastal communities in South Africa as they mobilized support for their struggle against illegal oil and gas exploration over the past few months.

In November 2021, the indigenous amaXhosa communities and small-scale fishers living along the eastern seaboard of South Africa became aware that the international petroleum giant Shell and its local business partner, Impact Africa, intended to commence seismic blasting of a large section of the Indian Ocean. Living on their ancestral lands along a beautiful coastline, these communities have fished sustainably and cared for their natural resources since time immemorial.

The identities and culture of the coastal amaXhosa are closely entwined with this ocean. It is a sacred place,

South Africa have been concerned about how the Blue Economy agenda is being implemented. In the past decade, since the Rio+20 Development Conference, the country has prioritized the economic exploitation of the ocean, fast-tracking oil and gas exploration, industrial aquaculture, marine shipping and transport. Plans for the building of new ports, the expansion of existing harbours and the building of sub-sea gas pipelines have been approved, while tenders for floating gas platforms and powerships are currently being considered.

Simultaneously, there has been an explosion of applications for off- and on-shore prospecting for heavy minerals. Large tracts of the coastline on the western seaboard are already wall-to-wall with mining operations that leave little, if any, space for the small-scale fisheries sector to access this coast. Purportedly to balance this economic exploitation with environmental protection, the Department of Fisheries, Forestry and Environment (DFFE) adopted a Marine Spatial Planning Act, which came into effect in 2021. However, this Act is yet to be implemented. In this policy gap, the DFFE has expanded the coverage of marine protected areas, while the Department of Minerals and Energy is awarding permits for offshore and coastal prospecting and mining at a fast pace.

Operation Phakisa has enabled the cutting of policy red tape and the fast-tracking of environmental authorizations. This contradicts the country’s climate change and carbon emissions policy commitments, its environmental practices and the principles of equality and social justice underpinning the Bill of Rights in the Constitution.

Ocean grabbing

Against this backdrop of ocean and coastal grabbing, small-scale artisanal fishers have been fighting for the

... the national government has allocated exploration permits in 98 per cent of the country’s exclusive economic zone...

the great home of their ancestors; it represents the material basis of their livelihoods; and is a source of spiritual healing and well-being. Yet, unbeknown to them, under the auspices of the South African version of the ‘Blue Economy’—known locally as ‘Operation Phakisa’, meaning ‘hurry up’ in one of the indigenous languages—the national government has allocated exploration permits in 98 per cent of the country’s exclusive economic zone (EEZ). This application for an exploration permit by Impact Africa in 2013, subsequently renewed twice, is just one of many applications granted with little or no public participation and consultation.

As is the case in many countries, small-scale fishing communities in

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A protest against the seismic survey outside the court in Cape Town, South Africa. For the first time, the country's courts recognized the intangible cultural beliefs of small-scale fishing communities that the ocean is the sacred home of their ancestors

recognition of their fishing rights since the first democratic elections in 1994. Despite the introduction of a human-rights-based policy for small-scale fisheries in 2012 and a legal framework that recognizes the rights of small-scale fishing communities in 2014, most small-scale artisanal fishers in South Africa are still struggling for the full and effective enjoyment of their rights. This is evidenced in the fact that despite the recognition of small-scale fishing rights, Shell and Impact Africa failed to inform and consult the small-scale fishers as part of the mandatory environmental planning and public participation process. This process is a must for the environmental authorization for exploration or prospecting activities.

While the United Nations climate change summit was wrapping up in Scotland in November 2021 and the call to end all fossil fuel extraction was sounding around the world, Shell and Impact Africa announced their intention to start seismic blasting in order to ascertain the potential for oil and gas extraction on this coast. According to the application for this exploration right, the seismic survey proposed would involve extremely loud (220 decibels) underwater explosions or discharges at intervals of 10-20 seconds. These explosions would

continue 24 hours per day for four to five months. The approved application indicated that a vessel would tow an airgun array with 12 or more lines of hydrophones spaced 5-10 m apart and 3-25 m below the water surface. In this instance, the array could be upwards of 12,000 m long and 1,200 m wide.

Small-scale fishers along this coastline immediately joined other coastal communities, a local environmental organization, activists, academics, researchers and South African citizens in calling on the Minister of Minerals and Energy and the Minister of Fisheries, Forestry and the Environment to suspend the seismic survey, but to no avail. Within an exceptionally short period of time, with support from the Legal Resources Centre, an NGO working on human rights, together with a leading human rights law firm, two of the local indigenous coastal communities and small-scale fishers launched an application for an urgent interdict to stop the seismic survey.

The applicants indicated their intention to also lodge a review of the decision by the Minister of Minerals and Energy on the grounds that Shell had been granted this exploration right without undertaking an Environmental Impact Assessment (EIA). Instead, the company had

developed an Environmental Management Plan (EMP), which included mitigation measures that were considered outdated and they had failed to consult the applicant communities adequately.

This application garnered support from a wide range of social movements, civil society organizations, research institutions, academics and users of the ocean. Initially expressed as a call for ocean environmental protection, a vibrant campaign soon emerged that combined concerns about the environment and climate justice with the livelihoods and human rights of the small-scale fishing communities. Privileged middle-class surfers, recreational fishers and ocean lovers calling to save the whales, turtles, fish and other marine creatures of special concern joined in support of the marginalized, and Black rural communities that stand to be most impacted by this seismic survey. Assistance came from several organizations including Natural Justice, the One Ocean Hub Coastal Justice Network, Masifundise and Coastal Links.

The human rights lawyers crafted their case based on the lack of adequate consultation of the communities living along this coastline. They argued that these communities have customary rights. The authorization to the

At the heart of the court papers was the call for an ecosystem-based approach to ocean governance, respecting the human rights of local communities and adopting a precautionary approach...

companies had failed to consider these rights, including to their intangible culture. Moreover, it had not adequately considered the evidence of the impacts of the seismic surveys on fisheries and the marine environment, according to the petitioners.

Ten leading experts in marine science supported the struggle; the latest scientific evidence on the impact of seismic blasting was put before the court, together with affidavits from these communities and social science experts, attesting to the significance of the ocean for their spiritual and cultural identity and their livelihoods. The activists ensured that the voices of the small-scale fishers are heard across

the plethora of scientific papers cited. The legal material included an expert affidavit with embedded links to three transdisciplinary artistic media. These highlight the intangible heritage, eco-cultural values and the deep emotional and spiritual connections that span the near-shore and off-shore ocean environment.

At the heart of the court papers was the call for an ecosystem-based approach to ocean governance, respecting the human rights of local communities and adopting a precautionary approach, given the paucity of scientific data on the impact of seismic blasting on ocean life. Due to the COVID-19 restrictions, the court proceedings were held online. This enabled a wider audience to observe the court proceedings. On 28 December 2021, the court decided in favour of the coastal communities and small-scale fisher applicants. It ordered the seismic survey be stopped.

The judge ruled that the consultation process was inadequate and “substantially flawed”. For the first time in South Africa, the court recognized the small-scale fishing communities’ intangible cultural beliefs that the ocean is the sacred home of their ancestors. The judge made special mention of the constitutional obligation to respect the cultural beliefs and practices of the applicant fisher communities. Both the Minister of Minerals and Energy and Shell appealed against this order. After their appeal failed, they have subsequently launched their review of the minister’s decision to grant this exploration permit. This matter will be argued in court in two months’ time.

A week after this High Court judgement, a notice circulated on social media drew attention to the fact that a company called Searcher Geodata intended to commence a 2D and 3D seismic survey off a large section of South Africa’s west coast along the Atlantic Ocean. Like Shell, this company had been awarded an exploration permit but had not conducted an EIA. The proposed survey area overlaps with the prime fishing grounds of the small-scale and commercial fishing industry and lies adjacent to 30 small-scale fishing communities. These communities had no knowledge of such a survey. It subsequently emerged that while the commercial fishing sector had been consulted, the small-scale fishing communities had not.



Fishers land their catch at Lamberts Bay on the West Coast, South Africa. Ordinary citizens are becoming aware of how small-scale fishers are the soul of vibrant, healthy coastal communities, providing food and defending the oceans

Solidarity protests

As happened in the Eastern Cape, protests erupted across the coastline. Ocean activists and supporters mobilized themselves across major socioeconomic and geographical differences. They stood in solidarity with the local small-scale fishing communities. Once again the same group of lawyers, legal activists and NGOs supported the communities.

Small-scale fishing communities on the West Coast mobilized and began working with scientists and academics to develop affidavits demanding that the survey be stopped immediately. In this case, they argued that their right to be consulted had been violated. They insisted their rights to adequate food, work and livelihoods had been undermined, along with their rights to their culture; and that the survey would inflict irreparable harm on the marine environment. They launched an application for an urgent interim interdict to stop the survey and review the authorization of this permit.

On 24 February 2022, small-scale fishers from up and down the coast stood side-by-side with environmental justice activists and other supporters outside the High Court in Cape Town, demanding the recognition of their

human rights and their right to protect and defend the ocean. On 1 March, the judge ruled in favour of the small-scale fishing communities and noted that the company had failed to consult them adequately. The court prohibited Searcher Geodata from continuing with the seismic survey, pending the outcome of a review of the Minister's decision to grant the company a permit without an EIA.

Although the immediate danger of the oil and gas prospecting has diminished, the threats presented by these planned seismic surveys have revealed the pitfalls in South Africa's Blue Economy policy. A powerful wave of social solidarity is moving across the South African coastline, bringing with it a new understanding of the centrality of the ocean in sustaining life on this planet. For the first time in South Africa, ordinary citizens are becoming aware of the importance of small-scale, artisanal fishers as defenders of our ocean environment; as providers of food; and as the soul of vibrant, healthy coastal communities. The International Year of Artisanal Fisheries and Aquaculture (IYAFA 2022) has started on a very powerful note, ushering in the potential for a seismic shift in ocean and coastal governance in South Africa. 3

For more



Court judgement for the Shell case

<https://cer.org.za/virtual-library/case-watch/challenges-to-shells-seismic-blasting-on-south-africas-wild-coast-december-2021>

Court judgement for the Searcher Geodata case

<https://cer.org.za/virtual-library/judgments/high-courts/christian-john-adams-others-v-minister-of-mineral-resources-and-energy-others-west-coast-seismic-blasting-part-a-interdict-march-2022>

Reaffirming Rights

<https://www.icsf.net/samudra/reaffirming-rights/>

Policy for the Small Scale Fisheries Sector in South Africa

https://www.gov.za/sites/default/files/gcis_document/201409/35455gon474.pdf