

Land reform and agrarian change in southern Africa

An occasional paper series



'It's all about money!' Implementation
of South Africa's new fisheries policy

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No. 18

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Published by the Programme for Land and Agrarian Studies, School of Government,
University of the Western Cape, Private Bag X17, Bellville 7535, Cape Town, South Africa

Tel: +27 21 959 3733

Fax: +27 21 959 3732

E-mail: vmagerman@uwc.ac.za

www.uwc.ac.za/plaas/

ISBN: 1-86808-515-5

First published 2001

Cover illustration: Colleen Crawford Cousins

Layout: Rosie Campbell

Copy editing: Stephen Heyns

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'It's all about money!' Implementation of South Africa's new fisheries policy

**Bjørn Hersoug, Norwegian College of Fishery
Science, University of Tromsø**

**Moenieba Isaacs, Programme for Land and Agrarian
Studies, University of the Western Cape**

Programme for Land and Agrarian Studies

School of Government
University of the Western Cape
2001

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1. Introduction

This paper was originally written as part of an economics study commissioned by the Chief Directorate: Marine and Coastal Management (MCM) of the South African Department of Environmental Affairs and Tourism (DEAT).

Since the 1994 ‘negotiated revolution’, South Africa’s fishing industry has been under pressure to ‘become transformed’, just like most other industries and administrative institutions. The broad goals of the new dispensation were gradually spelt out, starting with an initiative in late 1994 which led to the establishment of the Fisheries Policy Development Committee (FPDC), via a White Paper on fisheries policy in 1997, and finally on to the passing of new legislation at the end of 1998 – the Marine Living Resources Act (MLRA). Although the Act is clearly a compromise between the existing industry owners and the political representatives of previously disadvantaged groups, it nevertheless opened a considerable ‘action space’ by insisting on ‘the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry’ (MLRA section 2(j)).

And reform was urgently needed. Just like the rest of South African society, the fishing industry was extremely racially skewed in terms of ownership of existing vessels and factories, as well as the allocation of quotas and fishing rights (Hersoug 1998; Hersoug & Holm 2000). The same pattern applied to industry leadership and fisheries administration – it was predominantly white. However, after years of discussions and planning, the high hopes pinned on implementing the proposed reforms have not borne fruit. More than two years after having passed the new MLRA, there is a high level of confusion about what is expected of the established industry and what is possible (in terms of redistributing quotas and fishing rights) for the new prospective entrants. In spite of having produced the long-awaited new framework for fisheries, production is falling, distribution conflicts seem to be endemic, litigation is becoming more common and huge human as well as economic resources are being expended on all kinds of ‘rent-seeking’ behaviour. What went wrong and why?

The following is an account of the transformation process so far (May 2001), based on information from central as well as local sources. Basically, we are interested in showing how the results of the transformation process have deviated from the ideals of the MLRA, and explain why this happened in spite of

goodwill and political backing from the government. In this paper we focus on three groups of actors: established owners and operators, successful new entrants and the large group of unsuccessful applicants, many of whom happen to be subsistence fishers. How have these groups manoeuvred to reach their goals and to what extent have they succeeded? An earlier analysis identifies the outcome as being the result of implementation problems (Hersoug 2000). This time the ambition is more to cover the internal dynamic, the dialectical process in which political decisions constitute the starting point of social processes, where different actors try to utilise the action space created, by mobilising support for their own cause, with a result that is very different from the one envisaged by the politicians when they enacted the MLRA.

Political and economic transformation is seldom easy, and South Africa is no exception, in spite of the numerous claims of a 'miracle transformation'. What is special about the fishing industry is that the present transformation takes place largely as a *zero-sum game*, where what is given to new entrants has to be taken away from existing operators. Furthermore, the South African process is special in that there are no models or blueprints for how to turn a fully developed, capitalised and largely monopolised industry into a more diversified structure, containing a large number of entrants hardly familiar with running business entities in the first place. As we are going to show, there are definite limits to redistribution, and the bottom line is that there is no way that all previously disadvantaged fishers could possibly receive a fishing right or quota. Nevertheless, our argument here is that the meagre results of the redistribution exercise so far is more due to imprecise ideas about what transformation is meant to achieve, lack of understanding of what is necessary to 'level the playing field', and finally the problem of anchoring the reform in an enabling structure. This is due to basic flaws in the government's general economic strategy, based on economic growth through private entrepreneurs, which is expected to result in employment and income for the poor masses through the 'trickle-down effect'. So far, very little has trickled down in the fisheries industry, and this paper tries to explain why.

The first section describes the new fisheries policy from its inception in 1994 to the present day. The second deals with the aggregated results in terms of quota redistributed in each of the major fisheries. The third deals specifically with the strategies of the new entrants, illustrated by case stories from four selected fishing communities. The fourth explains the strategies of the



established owners and demonstrates how, through 'joint ventures', they have tried to incorporate new entrants to the industry. The fifth section deals with the unsuccessful applicants and in particular with the fate of the subsistence fishers. In Section 6 we discuss the disputed concepts of 'transformation', 'empowerment', 'previously disadvantaged groups and individuals' (PDIIs) and the idea of 'fishing communities'. Without a more precise idea of what the concepts mean, it is difficult to measure the impact of the new policy. Section 7 discusses new initiatives as they were early in 2001, asking whether it is possible to see the contours of an entirely different allocation process. The eighth and last section reviews the process so far, explaining the three 'lost years', the meagre results and the unexpected outcomes of the process, all adding up to a more dynamic understanding of policy implementation. This section also sums up the policy lessons so far and indicates some ideas for the future, taking for granted that a more just distribution is still on the agenda.

As with earlier works, we have relied on a large number of informants; centrally in Marine and Coastal Management, and locally within the fishing communities of Elands Bay, Hout Bay, Mossel Bay and Jeffrey's Bay. In addition we have had access to a large number of official documents, 'grey' departmental drafts as well as official statistics. Last but not least, one of the authors has spent considerable time in each of the four communities doing the actual fieldwork. Visiting each community many times has given her the advantage of not only following the dynamic process over time, but also of cross-checking disputed information. And, as usual, nothing comes for free. The fieldworker has on many occasions provided information to applicants, arranged workshops and assisted as far as possible, without compromising the actual research.

Writing from the 'storm's eye' is a risky undertaking, as configurations change rapidly and last year's successful players are not necessarily as successful this year. In addition, new policy initiatives come up all the time, reflecting that the new regime is anything but stable. By the time this paper is published, some of the more detailed information may already be outdated. However, we strongly believe that the basic inherent problems do not change as fast, and that the issues we raise remain critical in trying to improve delivery on the ground. Many of our informants claim that the new fisheries policy 'is all about money'. Our contention is that much more is at stake. Without a reasonably successful redistribution of rights and resources and a meaningful transformation, South Africa will

never succeed in obtaining a sustainable resource management regime in biological, economic or social terms. In the end it is a question of legitimacy, that is, to what extent the new policy is accepted, not only by the active fishers, but also by the large number of 'have-nots'.

2. The process leading up to the new MLRA

The Minister of Environmental Affairs and Tourism initiated the process of drafting a new fisheries policy in October 1994. The immediate background was unrest among fishers and fish workers over the dispensation of the time, which they claimed was corrupt and insensitive to the very difficult situation of most coastal communities. By that time some African National Congress (ANC)-aligned groups in the fishing industry had already worked out a preliminary programme as part of the organisation's election manifesto. In December 1994, a meeting was held in Cape Town to discuss how a new fisheries policy could be developed. It was agreed that a Fisheries Policy Development Committee would be established with a mandate to produce a Green Paper on the fisheries policy. The committee consisted of five representatives from each of the 13 different sectors of the fishing industry. In addition, one representative was appointed by each of the maritime provinces. Including a representative from the Ministry, the committee totalled 70 members.

The first meeting of the Plenary Committee agreed that a working committee had to be chosen to carry out the task. This Working Committee consisted originally of 18 members, drawn from all the participating groups in the plenary committee. Later, the Working Committee was enlarged with more members from organised labour, which claimed it was under-represented, and the plenary group was increased to 150 members. The FPDC requested all stakeholders to submit their ideas for a first integrated document, and these ideas were discussed at subsequent meetings in order to identify areas of agreement. On issues where the FPDC was not able to find a common solution, technical teams were set up to provide possible solutions. Six technical task teams were appointed, of which the Technical Team on Access Rights played the most prominent role. In most of these teams scientists played lead roles.

By May 1996 the Working Committee of the FPDC had finalised a draft, which was endorsed in principle by the Plenary



Committee during a two-day meeting in Cape Town, although with strong reservations from some sectors. By 4 June the final document (FPDC 1996) was handed over to the Minister. In the meantime the transitional Government of National Unity ended and the ANC took over government. After some hesitation, the process of drafting a White Paper started, with a Norwegian consultant hired as an 'unbiased expert', working in co-operation with some of the leading scientists from Sea Fisheries. The issues of access rights and transferability continued to be contentious. The FPDC had proposed transferable rights, granted in perpetuity, but without being very specific about their nature or how the system was supposed to bring redistribution in favour of previously disadvantaged groups. In order to move the process forward, the Minister nominated a panel of specialists to review the access rights options. After four months and extensive consultation, the Access Rights Panel delivered its report to Cabinet, with clear recommendations as to the nature of the access rights. They were to be real, *long-term*, rights, *transferable* and *inheritable*.

With slight editing, the recommendations of the Access Rights Panel were written into the White Paper, which was presented to Parliament in May 1997 (DEAT 1997). The White Paper was distributed widely so as to contribute further to the policy debate over the proposed changes. Contrary to the normal procedure, however, the writing of a Bill on the new fisheries policy was not held over until responses to the White Paper had been received. Because of the pressure to produce speedy results, the Marine Living Resources Bill (RSA 1997) was prepared in a parallel process with the White Paper. As part of its internal deliberations, DEAT had appointed a legal task team, consisting of local and foreign experts, to review the Sea Fisheries Act of 1988. The team soon discovered that it would be impossible to implement the proposed policy through the existing law and advised the drafting of a new Bill to be started immediately.

By the end of September 1997 the Bill had been introduced, adhering strictly to most of the major recommendations in the White Paper. Then a new political process was started by Parliament's Portfolio Committee on Environmental Affairs and Tourism. The committee was not happy with some of the recommendations of the White Paper and the content of the Bill, in particular with the idea of real, long-term and transferable property rights. After a lengthy process of hearings, the portfolio committee was able to reach a compromise on all contentious issues, including access rights (RSA 1998). After this truly

remarkable compromise, the National Assembly passed the Bill in May 1998. The Bill was passed by the National Council of Provinces with a few technical amendments and the Act was gazetted in September 1998. In principle the 1998/99 allocations could then be implemented according to the new Marine Living Resources Act. Due to legal technicalities, several of the old right-holders were able to successfully resist the first round of redistribution (1998/99), but for the 1999/2000 season the MLRA was the basis for the new policy.

3. Reallocation in numbers – the provisional results¹

We have on earlier occasions been somewhat pessimistic about the prospects for success of a full-scale reallocation process (Hersoug & Holm 1999). The existing industry refused to make any concessions during the FPDC process, and the process of gearing up the administration to do the actual work took a long time. In view of the figures presented below, we were clearly too pessimistic, although it is highly unlikely that the results obtained in 2000 will survive the more stringent process of allocating long-term rights which is due to start in 2001/02. In order to review the *whole* reallocation process, we have started in 1992, thus including the reallocation which took place through the old Quota Board which was operative from 1991 to 1998.

Starting with one of the most disputed resources, abalone, the picture is fairly clear. The number of rights holders have increased from five in 1992 to 47 in 2000 and the rights are now shared among five established companies and 47 new entrants. In terms of tonnage, the established companies now control 45%, the new entrants have been allocated 47%, and 8% has been set aside for subsistence fishers.²

If we also take the shareholder transformation of the established companies into consideration, the previously disadvantaged are allocated 77% of the total allowable catch (TAC). As can be seen in Table 1, the old Quota Board made a rather modest effort in terms of restructuring this sector, increasing the allocation to new entrants from 2% to 9% of TAC.³ The dramatic restructuring took place in 1999, being followed up in 2000 with specific allocation also made for the subsistence fishers.



Table 1: The allocation of abalone quotas 1992–2000 (kg)

	1992	%	1994	%	1998	%	1999	%	2000	%
Established industry	605 000	100	605 000	98	482 194	91	280 000	56	243 680	45
New entrants	0	0	10 000	2	47 806	9	223 000	44	256 320	47
Subsistence									45 000	8
Total TAC	605 000	100	615 000	100	530 000	100	503 000	100	545 000	100

Source: Stuttaford (1992–2000)

Table 2 gives the comparable figures for West Coast rock lobster, which is also among the most disputed species, being easily accessible to small-scale fishers. In this sector a considerable reallocation had already taken place before 1994. From 1992 to 2000 the number of rights holders has increased from 40 to 229. Here the new quota holders (including the subsistence fishers) control 44%, while the established companies have 43% of the total commercial quota and the recreational fishers what remains. In 2000 the increase (from 40% to 44%) is mainly due to a special allocation to subsistence fishers. If restructuring of the established companies is taken into consideration, the previously disadvantaged have now been allocated approximately 70% of the total quota, or a little less than in the abalone sector.

Table 2: The allocation of West Coast rock lobster quotas 1992–2000 (kg)

	1992	%	1994	%	1998	%	1999	%	2000	%*
Established industry	2 322 280	97	1 623 352	74	1 189 194	62	1 008 604	60	911 552	42
New entrants & subsistence			576 648	26	724 721	38	686 396	40	953 448	44
Total commercial	2 322 280	97	2 200 000	100	1 913 915	100	1 695 000	100	1 865 000	87
Total TAC	2 400 000	100	2 200 000	100	1 920 000	100	1 700 000	100	2 156 000	100

Source: Stuttaford (1992-2000)

* Does not add up due to rounding

In South Coast rock lobster the established sector succeeded in keeping the structure nearly intact up to 1998, with only a minor allocation for new entrants. The three years which followed saw a major reallocation, with new entrants now

controlling 38%, or 62% if the restructuring of established companies is taken into consideration.

Table 3: The allocation for South Coast rock lobster quotas 1992–2000 (kg)

	1992	%	1994	%	1998	%	1999	%	2000	%
Established industry	450 000	100	405 000	90	359 470	89	279 072	69	233 215	62
New entrants			45 000	10	42 530	11	122 928	31	143 785	38
Total TAC	450 000	100	450 000	100	402 000	100	402 000	100	377 000	100

Source: Stuttaford (1992–2000)

In the allocation of pilchard, the old Quota Board was also active, but the major drive towards restructuring the pelagic sector started with the 1998 allocation, to be followed up and reinforced in 1999. New entrants now control 48% and, if the restructuring of established companies is also considered, the share increases to 72%. In anchovy, where TACs are also highly variable, the profile is quite different, with a major reallocation carried out through the Quota Board in 1994. Nevertheless, the end result is quite similar to the pilchard allocation, with new entrants now 'controlling' 45%, or 71% if restructuring of the established companies is factored in.

Table 4: The allocation of pilchard quotas 1992–2000 (tonnes)

	1992	%	1994	%	1998	%	1999	%	2000	%
Established industry	25 121	93	21 313	92	61 911	65	62 161	52	57 441	52
New entrants	1 879	7	1 787	8	33 418	35	56 539	48	53 065	48
Total TAC	27 000	100	23 100	100	95 329	100	118 700	100	110 506	100

Source: Stuttaford (1992–2000)

Table 5: The allocation of anchovy quotas 1992–2000 (tonnes)

	1992	%	1994	%	1998	%	1999	%	2000	%
Established industry	327 875	94	135 478	53	59 758	61	125 720	54	159 647	55
New entrants	20 125	6	122 522	47	38 245	39	105 380	46	131 353	45
Total TAC	348 000	100	258 000	100	98 003	100	231 100	100	291 000	100

Source: Stuttaford (1992–2000)



In the most valuable hake sector, there has also been a sizeable reallocation of quotas, although the magnitude is considerably less than in the above-mentioned sectors. At present 28% of the total quota is allocated to new entrants (55 in the actual trawl fishery + 195 long-lining and 300 hand-lining). The established companies still control 72%, a figure that is reduced to 54% if the transformation of the established companies is taken into consideration. Unlike the two previous sectors, hardly any transformation took place before 1994, but a big boost came from 1998 onwards. The increase in 2000 is largely due to special allocations for long-lining and hand-lining, mainly going to new entrants.

Table 6: The allocation of hake quotas 1992–2000 (tonnes)

	1992	%	1994	%	1998	%	1999	%	2000	%
Established industry	130 053	100	130 263	97	123 333.3	82	110 920.7	78	110 200	72
New entrants (trawl, long line & hand line)	0	0	4 161	3	27 666.9	18	32 179.3	22	43 800	28
Total TAC	130 053	100	134 424	100	151 000.2	100	143 100	100	154 000	100

Source: Stuttaford (1992–2000)

From the information in Tables 1–6, it seems that a major shift has taken place in terms of quota allocations, with the notable exception of hake trawling (deep-sea). But, contrary to popular perceptions, a considerable part of this transformation actually happened before 1998 as a result of the rather haphazard policies of the Quota Board. Since then further progress has been made in 1998 and 1999, to the extent that the pelagic industry now claims that the process should be declared complete because the industry more accurately reflects the general racial demographic structure of South Africa.⁴ There are two problems with this interpretation. First, that we have not examined the extent to which the new entrants function only as front companies for the old established ones. With considerable experience from the apartheid era in setting up front companies, daughter companies and holding companies, Manning (2000) has shown, in the case of Namibia, that it is very difficult to really ascertain who owns or controls what.

Secondly, we have not looked into how the new entrants operate, that is, to what extent they lease their quotas forward

to others without any substantial investment in labour or money. Although it is impossible to trace more than 800 new entrants (companies, co-operatives, close corporations, and individuals), a brief examination of some of the new entrants from various fishing communities along the coast can give an impression of how the new entrants really operate. In this case the main question is to what extent *reallocation* has implied a *real transformation* of the industry? To what extent is transformation more than just a quota allocation numbers game?

4. The new entrants – needy or just greedy?

Since 1994 when the Quota Board started its gradual and very limited transformation process, most actors in the South African fishing industry have been interested in the 'new entrants'. With the open application process initiated through the MLRA in 1998, the interest grew to an obsession – everybody wanted to be a new entrant. In order to succeed in their applications, they created many co-operatives, close corporations (CCs), private companies and holding companies. Unfortunately only a fraction succeeded (less than 10%), resulting in recriminations, lack of faith in the transformation process and numerous anecdotes describing the lucky ones, most often characterised as 'paper quota owners' or worse. But who are they and what have they achieved so far? Below we take a 'snapshot' of five new entrants to illustrate the variety of persons and companies which have entered the industry over the last few years. We do not claim they are representative of *all* new entrants (of which there have been more than 1 000 since 1994), but they are all important players in their local communities and their fate can be used to illustrate the possibilities as well as limitations of the present policy of selecting a fraction of the needy and turning them into entrepreneurs.

4.1 Organising the needy: South African Commercial Fishermen Co-operatives (SACFC)

SACFC was registered in 1997 after a massive campaign to organise the 3 000 informal fishers in co-operatives in the various fishing communities in South Africa. The organisational work had been going on for several years with a large media campaign, extensive lobbying and mediating with MCM, the



Minister of Environmental Affairs and Tourism and Parliament's Portfolio Committee on Environmental Affairs, arguing in favour of more equitable access rights for *bona fide* poor fishers. Hence, after a successful campaign during 1998–99, SACFC became the largest new entrant in the South African fishing industry. SACFC consists of 25 co-operatives with 2 935 informal fishers from Doring Bay on the West Coast to Jeffrey's Bay on the East Coast. Based on the company structure and the number of members, SACFC was allocated the largest quota ever given to a new entrant in the West Coast rock lobster – 59 tons, in addition to 20 tons of abalone, 300 tons of long-line hake and 40 squid permits.

The philosophy of SACFC at the time was its 'one man, one job' policy. The mission of the company is to serve and promote the interest of all its members by running a professional fishing company and using the profits it generates to invest in various types of community programmes and expand opportunities through economic empowerment schemes. The vision of South African Commercial Fishermen's Holdings (SACFH) stands on two pillars: one commercial and one social, each supporting the other. Profit is seen as essential to the survival of the group in order to improve the quality of life of all its members, their families and the communities in which they reside. Hence the company is striving to strike a balance between socially useful activities and financial rewards. Thus far, the company has invested R2.5-million in a joint venture agreement with the established fishing company Oceana called Ikamva Lethu ('our future'), R1-million in a hake processing plant in Mossel Bay, R1.4-million in boats, R800 000 in vehicles, fishing equipment and office equipment. It now has assets worth R3-million.

Coupled with these achievements comes the very challenging task of managing the expectations of its impatient members. As a matter of policy, it was decided to reinvest all profits generated by the quota allocations in the company for at least the first three years. This message made the top structure of the company very unpopular and more than 300 fishermen have left the organisation. Since 1997 the management view has changed somewhat towards a more profit-oriented style, finding that the promises of jobs and income were difficult to fulfil in the short term. This has in turn led to more dissatisfied members and to occasional violence among various factions. Many fishermen now feel that this co-operative set-up was yet another system that only benefited the top structure of the SACFC, not the ordinary fishers as was promised. The shift in strategic policy led to the formation of two different blocs. Led by former leader Andy

Johnston, a group of dissidents left the organisation after dramatic clashes and intimidation of the remaining leadership, many of whom resigned fearing for their lives. According to a former Chief Executive Officer, Z Moolla:

Only 500 of the 2 700 members have been employed by the co-operatives during the first two years of operation and the 'one man one job' philosophy is difficult to implement. The company has to deal with the economic growth on the one hand and alleviate poverty on the other hand, which at times are an impossible task to do. Furthermore we do not have any support from MCM or NGOs to assist in the training and empowerment of our members that need the most basic literacy and numeracy training, driving licences, basic communication via telephone and fax, decision-making skills, operations of a meeting, basic bookkeeping and entrepreneurial skills. These are the kind of problems that the established companies do not have to deal with in that they employed qualified people to run their operation. In retrospect, for this company to start big was a big mistake. However, we would not have been allocated our existing quotas based on a small, local company.

Others are less pessimistic, hoping the company will ride out the storm and gradually acquire more quotas and hence be able to employ more people and pay dividends to all owners.

Whatever the future, the story of the co-operative illustrates vividly how difficult it is to organise informal fishers from widely disparate fishing communities and keep them in an organisation which has to start from rock bottom. Getting the rights and quotas is only the first step, processing and selling with a profit is the next, while keeping a large organisation intact is an ongoing task.

4.2 Going the private route: Kouga Fishing (Pty) Ltd

Kouga Fishing (Pty) Ltd. was established in 2000 as an umbrella company to represent successful new entrants in the Kouga area of Oyster Bay, St. Francis Bay, Humansdorp and Jeffrey's Bay. The company represents five new entrant entities with 36 members, three directors, two managers, and a company secretary. The species allocation include 540 tons of hake (trawled), 100 tons of hake (long-line), 3 tons of abalone, 7 squid permits, 3 800 tons of anchovy, 500 tons of pilchards, and 11 tons of South Coast rock lobster. Kouga Fishing has invested in a number of joint venture arrangements, covering vessels as well as processing factories.⁵



Securing long-term fishing rights and more viable quotas for its five entities drives the mission of the company. Kouga Fishing is one of the few success stories in the Eastern Cape fishing industry. Its working recipe seems to be having both a lawyer and a politician in the leadership. The lawyer's responsibility is to oversee all the technicalities involved in the quota applications and the joint venture agreements between various companies. The politician's responsibility is to use his political network to secure better quota allocation and long-term rights. He has been instrumental in forming the Kouga Fishing enterprise and represents the company's interest in the various stakeholder and association meetings. The networking involves interaction with ANC government officials and lobbying with MCM and the established industries. The duo believe in a 'shotgun approach' by applying for all quota species available on behalf of the often-neglected Eastern Cape fishing communities.

Although it has been successful in its quota applications, there are good reasons to ask how the company empowers its new members. According to the lawyer, it is necessary to teach the members 'boardroom manners'. While this may be urgent and necessary, far more basic training is needed to enable the new black entrants to really participate in the running of the joint ventures. At present, most of the new entrants are silent as they receive a handsome profit for just leasing their respective quota allocations to the joint ventures. They are therefore characterised as typical 'cardboard' or 'paper' quota holders.

4.3 Pooling the resources: Blue Horizon Holdings

Because the quota allocation for West Coast rock lobster (WCRL) to new entrants is limited to only 2–5 tons per entrant, quota holders must pool their allocations in order to break out of being 'paper' quota holders. Blue Horizon Holdings in Hout Bay was established by a female entrepreneur and her politically connected husband, both of whom also act as consultants to assist close corporations in Hout Bay with quota applications. They initiated the idea of a group of new entrants pooling their allocations. Daddy's Money CC, Du Preez Fishing CC, Bluefin CC, Louwenians CC and Olympia CC pooled their WCRL allocations to add up to a viable total of 21 tons. The group registered under a new name – Conquistador Holdings – believing that this co-operation would give them a better chance of setting up joint ventures with the established industry. Conquistador Holdings consists of 50 members from the Hout Bay fishing community, ten of whom are women. According to Ms S Meter, managing director of the new holding company, the established actors have a certain moral obligation:

Established companies with infrastructure must realise that they need to facilitate investment opportunities and cushion those investments for new entrants rather than using the opportunity to exploit new entrants. Viable proposals of investment will benefit the entire industry.

As new entrants, Conquistador Holdings lacked start-up capital, infrastructure and business skills. Its members decided after approaching many established companies that the Saldanha Group provided the best possible agreement at the time in terms of processing and marketing their quota. Saldanha Group and Conquistador Holdings formed another company called Blue Horizon Holdings with a total WCRL quota of 41 tons. Blue Horizon Holdings then entered a joint venture agreement with an established processing and marketing concern called Grey's Marine. Furthermore, Blue Horizon Holdings have 50% shares in the Saldanha Group, and 50% shares in a pilchard vessel.

This joint venture agreement is generally seen as an example of successful black emerging entrepreneurs and the actors themselves believed that networking with key political figures, applying pressure on MCM officials to allocate access rights to women, and marketing their company via the media (newspapers, radio and television) added to the success of this initiative. However, in practice these joint venture agreements are more complicated. According to Mr Adams of Olympians Fishing CC:

The joint venture agreements with the established white companies is ripping us [new entrants] off by not transforming the industry or their companies. They are not concerned with real transformation, that is why they form new companies with new entrants with new names and do not want us. We are not involved in the running and operations of our own company that we formed with them. The industry wants to reap the profits on both sides but when the new company fails they do not have to take responsibility. We as new entrants want real transformation, not these window dressing joint ventures that we find ourselves in. We have no support from credit institutions and when we approach the banks they want us to use our homes as collateral and we refuse to do that and question why they do not give us the same treatment as the whites. Still up to today whites benefits more from the credit institutions.⁶

The story of Bluefin Holdings and Conquistador seems to underline the important distinction between being a successful quota applicant and being able to use such a quota to succeed



in business as well. While leadership, entrepreneurial skills and good political contacts may have been instrumental in getting the quotas in the first place (Isaacs & Hersoug 2000), other (business) qualifications are needed to run the companies, unless the entrants are absentee shareholders or 'sleeping partners'.

4.4 Active owners: the BMC close corporation

BMC, a Mossel Bay-based enterprise better known as 'Brown the skipper, Meyer the engineer and Christy the administrator', formed a close corporation with seven fishermen. The three leaders are the majority shareholders whilst seven others have equal shares and fish on the boat. The corporation has been an unsuccessful quota applicant for five years and only received its first quota in 1999 with 175 tons of hake inshore trawl, 10 tons sole and eight squid permits. BMC CC has formed a joint venture to process and market its quota allocation with the local established fishing company Irvin & Johnson (I&J). The skipper Brown was an employer of this company. As a result of the lack of co-operation in the Mossel Bay community amongst quota holders, BMC decided to form a joint venture with I&J on the grounds of 'better the devil you know than the devil you don't know'. Furthermore, the skipper states that:

I know how to catch the fish and be a skipper but I do not know anything on how to process, market or manage the quota. I am learning every day and I do get the assistance from the company, they show me how to do my budget but I do not trust them with everything, thus I make use of my lawyer and accountant if the company needs to make a decision.

However, the quota allocation is not economically viable in that it only provides work for four months of the year. According to BMC, the business has monthly meetings with all the shareholders to explain the new developments in the industry, investments, the current budget and agreements it has entered into. The close corporation has just invested R100 000 in an inshore trawl vessel that cost R600 000. Members plan to pay off boat in the next three years and hope that government will double their quota allocation. They leased a boat from I&J to catch their current allocation. Judging from the costs which were incurred, profits have been meagre in the first year. It may suit established companies very well to sell older boats to new entrants because in doing so they shed the risk of having to do frequent repairs to old vessels. BMC has bought a 14% share in Mossel Bay Fishing Pty. Ltd, a new black economic

empowerment privately-owned company. According to the skipper, the new entrants in the fishing industry 'experience a lack of support from government institutions, credit institutions and local industries – we do not have the business skills and collateral to compete with the existing industries'. As a result, new entrants have no alternative but to co-operate with one another from a weak position:

We know that we cannot compete with the local industry if we are alone. Furthermore, what is expected of us (new entrants) in one year the industry had 50 years to establish with the active support of the government. The government states that we should invest in fishing enterprises, but we are left on our own with no support and we feel that if we do not make investments we risk losing our quota.

Whether co-operative, corporate company, holding company or close corporation, the new entrants, although lucky to have received quotas, have only cleared the first hurdle. The next is to compete successfully with the established companies from the very first day, not having any business training or any forms of secure credit. Some, as shown above, are able to pull themselves up by their bootstraps, but the majority end up as passive owners, receiving payments on their quota holdings which are nowhere near their real value, unable to influence the important decisions regarding investments and strategies. To what extent this passive ownership will qualify for the next round of more permanent quota allocations remains to be seen. What should be abundantly clear is that *reallocation* is only one step in the process of *transformation*, and that it is in fact possible to have a massive reallocation of rights and quotas without much transformation in terms of empowering new entrants to be active participants in the industry.

5. Window dressing or real transformation? Strategies of the established companies

To what extent have the established companies been transformed? Before the MLRA was passed, most of the established companies had seen the writing on the wall: 'You either have to dye or to die!' said the head of one prominent fishing company. The new government had clearly indicated that transformation of the existing industry was a *sine qua non* – a non-negotiable – but transformation to what? On that point the FPDC, the White Paper and the MLRA were not



clear – the interpretation of the ‘transformation’ word was left up to the companies themselves. Some of the larger fishing companies, owned by even larger holding companies, made an early move by being part of some of the first black empowerment schemes. They calculated that a larger degree of black ownership would strengthen their claims for new and existing quotas.

Oceana was one of the early movers to lead the transformation in the industry, selling half of its equity to a black economic empowerment consortium comprising various black business entrepreneurs, together with savings funds from churches and labour union pension funds.⁷ Premier Pty. Ltd. is now owned by the empowerment group Sekunjalo, which calculated that a larger degree of black ownership would strengthen its claims for quotas, both existing and new.

Other large companies, like Sea Harvest and Irvin & Johnson started on a more modest scale, offering limited shareholding ownership for employees at favourable prices. Although employee shareholding never constituted more than a small percentage of the total stock, the symbolic effect was considered important. Blacks, even workers, were made shareholders and received annual dividends.⁸ A third strategy was to bring in new black leaders in an attempt to transform the leadership structure. The labour unions viewed this with considerable suspicion as part of a ‘window dressing’ exercise in which a few prominent blacks were given the privileges of power but no right to make decisions. However, some of the fishing companies succeeded in attracting former prominent leaders from the struggle against apartheid and well conversant with the problems in the fishing industry. These include Chris Nissen, former head of Economic Affairs in the Western Cape and prominent ANC leader, now chairman of Sea Harvest; Johnny Issel, previous ANC Western Cape activist and politician, now director of transformation in Premier Fishing; Tokyo Sexwale, former Gauteng Premier, on the board of Sekunjalo Holdings; and Adelaide Tambo, who brings strong links to the ANC Women’s League to the Irvin & Johnson consortium. In this way the companies obtained better representivity in their leadership structures, and acquired valuable political contacts to the ruling ANC, securing channels of communication both to and from government.

The fourth strategy, much demanded by the unions, was to improve labour conditions (salaries, fringe benefits, pension schemes, training and skills upgrading schemes) is much harder to assess. Most companies claim that such improvements

have been implemented to some extent, while unions are sceptical. Both sides claim that the present situation is largely to blame for the lack of substantial results, as annual quota allocations give little security and thereby few incentives for long-term investment in human as well as physical capital.

Several of the large fishing companies are represented in the four communities researched by the authors. To some extent they have all transformed in terms of ownership, leadership or working conditions, although to a variable degree. Less impressive is the transformation among the small and medium-sized established companies. Their strategies have mainly been limited to various forms of joint ventures, often selling off old vessels as part of joint venture arrangements. The strategies are invariably the same – let the new quota owners obtain shares in vessels or minority shares in processing companies in return for delivering catches to the established company.

Joint venture (JV) arrangements no doubt fulfil the need of the new quota owners to obtain some type of equity within short time – to escape being accused of being a 'paper' quota owner. Whether these arrangements can be seen as a form of real transformation is open to debate. According to some industry analysts, the whole JV industry is a convenient way of shedding risks, selling old boats, while keeping the more profitable processing and marketing operations for themselves. When new JV partners are allowed into the processing companies, they are most commonly only minority shareholders with little influence on strategic decisions. However, there are some rare examples of real skills transfer and training in which the new owners have been actively involved from the very first day.

6. Fishing – social policy or commercial micro-enterprise?

During the FPDC process there was constant talk of subsistence fishers, but then in the context of fishing for immediate consumption in certain areas characterised by extreme poverty. In spite of rather different notions of who could qualify as subsistence fisher, the concept survived the whole policy making process and ended up as one of the defined categories of fishers in the MLRA:

'Subsistence fisher' means a natural person who regularly catches fish for personal consumption or for the consumption of his or her dependants, including one who engages from



time to time in the local sale or barter of excess catch, but does not include a person who engages on a substantial scale in the sale of fish on a commercial basis.

However, due to other more pressing issues, not much happened the first year. In 1999 it was time to revisit the issue, especially in light of the high number of unsuccessful applicants for ordinary quotas, approximately 10 000 of them. The number of affected parties is much higher since many applications are made by groups of people. A special Subsistence Fisheries Task Group (SFTG) was formed in December 1998, consisting of two groups – the ‘core group’ consisting of 17 members with divergent areas of expertise, and the ‘consultative group’ comprising 20 members to provide information and support to the core group. The SFTG succeeded in surveying the entire coast within a short time to compile a list of 143 fishing communities in which approximately 30 000 fishers were identified as *subsistence fishers* (SFTG 2000). Based on this report, a pilot programme started in various fishing communities on the West Coast, targeting West Coast rock lobster for the last part of the 1999/2000 fishing season.

The possibilities and limitations of the approach are illustrated by the experience of a group in Elands Bay, identified as an impoverished community by the Subsistence Fishing Task Group (SFTG 2000). The group allocated 147 permits for the last two weeks of the 1999/2000 fishing after a quick screening process. Before the permits were allocated to the subsistence fishers, the local ANC branch together with an MCM official took the initiative to reach an agreement with Oceana Fishing Company to process and market the catches of these fishers.⁹ Most of these fishers were not actively involved in the actual fishing of the lobster, being happy that they would get a salary at the end of the week for doing absolutely nothing.

In the meantime, pressure was put on MCM to increase the size of the scheme. It was then decided to extend the rights of the experimental group for the next season (2000/2001), awaiting the implementation of a new, more permanent system. When MCM’s newly created special unit started its information campaign in September 2000, the ‘road show’ visited 49 fishing communities along the West Coast and South Coast. The meetings were open to all members of the community and all stakeholders in the fishing industry. The aim of the meetings was to provide a solution to all unsuccessful applicants, giving them a minimum catch per day. But the scheme was not for charity alone. MCM saw the possibility of ‘trading’ access with better compliance, asking each of the participating communities

to nominate a committee containing at least three experienced fishers, to liaise with MCM. One of the main goals of this committee is to get 'their things in order', that is to clean up local corruption, illegal catching and selling. Another task is to collect a copy of the identity documents of persons in the community who qualify according to the criteria set up by MCM. It is considered important that the process should be open and transparent and that the fisher forum should be legitimate. The criteria for qualifying as a subsistence fisher are extensive and detailed:

- Fishers must collect/fish personally, although immediate family members registered under their permit/licence may collect on their behalf (but not on the same day). Fishers must not employ staff to undertake the harvesting, processing or sale.
- All resources must be categorised in terms of their suitability for use by subsistence.
- Only low-technology gear that is not capital-intensive may be used for the capture and processing of subsistence resources. Specifically excluded would be motorised boats, electronic equipment, hookah and scuba gear.
- Subsistence fishers must live in close proximity to the resource (that is, no more than 20km).
- In allocating rights, preference should be given to those whose practice of fishing has a long-standing cultural or traditional role (transmitted through at least three generations or 50 years).
- To qualify for consideration, fishers should be poor and have not other employment that yields sufficient income for the resource to no longer be necessary to meet their basic food requirements.
- Fishers must conform to the sustainable levels of harvest, which will need to be set for each resource and in each locality.
- Subsistence fishers may barter or sell excess catches beyond consumption needs (within legal catch limits), provided the sale is by the fishers personally, and the resource is used for consumption within their local area (that is, within 20km of the point of harvest).
- Any sale should be local (within 20km of the point of capture), and the resource should be used for consumption within that local area.

As could be expected, this new opportunity was also seized by new as well as established industry. New entrants with boats offered to catch and pay the rights holders for just leasing their



rights 'offering R500 a week for doing absolutely nothing' while established companies offered processing and marketing in an orderly fashion in return for the right of being the sole buyer. In the end the established industry offered the best prospects. According to one of the leading spokespersons for the subsistence fishers in Elands Bay:

We are sick of being used by our own people and the empty promises of the ANC. We do not trust them, they only see to themselves and their friends. The ANC just want us to vote for them in the local elections and then we do we do not see them again in the community. The [established] industry has provided us with jobs and we are guaranteed of an income. We do not trust these new quota holders.

Needless to say, the new system also opens for creative ways of circumventing the strict rules. The rates per kg of rock lobster in the fishing communities are R80–R115 and, taking fuel costs into account, the permit holder can earn up to R500 per week. Many of them are not actively involved in fishing activities, as agreements are made with the skippers to just pick them up and take them for a ride to show the fisheries inspector that they are catching lobster while most of the fishing has been done already. The lobster is then sold to one of the specifically designated companies which takes care of the further processing and marketing, at a handsome profit.

When MCM opened for general application for the 2000/2001 fishing season, 3 431 persons representing 49 communities along the West Coast and South Coast applied for permits. And as usual, the sheer paper work involved totally outstripped MCM's capacity for handling the applications within a relatively short time. This meant no allocations had yet been made by the time the fishing season started and the fishers had to threaten civil disobedience to get the fishery started through an official exemption, awaiting the formalisation of the permit system. (The list of approximately 1 700 subsistence permits was finally released on 2 March 2001).

After only one ordinary season it is certainly too early to draw any firm conclusions concerning the success of this new category which is distinct from ordinary commercial fishers as well as recreational fishers. Four rock lobster a day is certainly better than nothing, considering the desperate poverty in many of these coastal communities. Over time, it is also likely that the scheme will be extended to cover other inshore species, with abalone being next in line. At that point, subsistence fishing could yield a marginal living. Organising the subsistence fishers could in the next instance serve as a stepping stone for entering

the ordinary commercial circuit, which is the preferred option for most of these fishers. According to MCM's strategy, this scheme could also serve to reduce illegal fishing and illegal selling, provided that the fishers involved see the logic of keeping catches within sustainable limits.

However, there are plenty of problems involved, not least connected to the open access nature of the system, that is, the category is potentially open for any needy person living in a coastal community to qualify. In addition, there is an increasing control problem, following each new category introduced into the fishery. Not only do the authorities have to check that daily bag-limits are being kept and catches not sold outside the defined processors, but each fisher will also have to be checked every year to see whether his or her credentials are still valid. Given that MCM ran out of administrative and control capacity a long time ago, the new scheme is an added responsibility. The burden of proof is on MCM to show that the actual benefits are larger than the costs. At present, the scheme is double edged: it represents a significant (although limited) step towards using marine resources to alleviate poverty, while at the same time creating new cleavages and a substantial control problem. Whether local co-operation in sustainable management can be 'bought' through this scheme remains to be seen.

7. Transformation?

The need for 'transformation' has been stressed in all key documents since 1994, but what this means has never elaborated. As explained above, 'transformation' of the established companies has most often been interpreted to mean a change in ownership and leadership in order better to reflect the general composition of the South African population, while for organised labour 'transformation' has also included improving labour practices, training and empowerment. Because the term has never been precisely defined, the companies being left to define their own transformation goals, so the extent of transformation in the industry varies widely. While transformation of the ownership and control of existing companies has been a key issue for the 'insiders', most coastal dwellers have been more concerned with the aspect of transformation that has to do with redefining access to marine resources. In the period 1994–98 this was interpreted by the Quota Board as meaning occasionally



admitting blacks to the industry, most often from the coloured community. However, with the advent of the MLRA in 1998, the issue of redistribution and a fair and equitable access was firmly put on the agenda.¹⁰ At present there is still no binding schedule, although by mid-2001 work had been initiated to develop a proposal in this regard.

For many participants, including MCM, the measure of transformation has been centred on numbers – the percentage of TAC to be allocated to the previously disadvantaged. The actual reallocation process has also, so far, been concentrating on seemingly neutral numbers, ranking all applicants on the same composite scale of factors. But transformation is more than a number. Transformation could be seen as having at least three different dimensions – economic, social and political. The economic dimension should be fairly evident in the South African setting – the proceeds need to be distributed more widely than the limited number of companies still dominating the bulk of the industry. Getting more small and medium sized companies involved is clearly a goal, but precisely how many is difficult to assess on a scientific basis. Certain fishing operations seem to require economies of scale and nobody (not even the new entrants) would be served by a multitude of small companies all competing with each other in the same narrow markets.

Similar problems arise when assessing the social transformation needed. More people should get a slice of the pie, and within a number of companies, new as well as old, a good argument can be made for a more equal distribution, giving fishers and workers more and owners less. But also this type of redistribution has limits, regarding what is viable in terms of size and what can be distributed versus reinvested. In certain fisheries it is also worth considering what will give the largest employment (and hence the widest distribution of benefits). A ton of hake can, for example, be used for a freezer trawler, processing at sea, a wet-fish trawler delivering for onshore processing, a long-liner or a hand-liner delivering for the fresh fish markets, yielding very different results in terms of employment and value added, all other conditions being equal.¹¹ Whatever dimensions or indicators are used, there remains an element of political discretion in such a transformation process. The alternative would be lottery or auction with allocation to the highest bidder – mechanisms that have been resisted so far for political reasons.

Political transformation can be seen at two levels. Firstly, resource management is now performed by a democratically-

elected government with a professional bureaucratic administration. However, the quality and representivity of the administration is more doubtful, although some progress has been made in transforming the service. Political transformation is also used to describe a transformation of management at local level, ritualistically referred to as 'co-management', without much thought as to what should be administered co-operatively and through which structures. In the four communities we have researched, there is not much interest in co-management – most people here say that co-management without some type of ownership is a rather far-fetched idea, their primary interest is obtaining quotas. In certain communities in KwaZulu-Natal, co-management structures have already been tested out with promising results. It is obvious that all coastal dwellers cannot be owners of commercial quotas, not even through community quotas. They may nevertheless have an interest in management of the fishing resources, as recreational or subsistence fishers. Others may have an interest in marine resources for their amenity value, that is, as a resource for recreational or educational purposes. Hence, the challenge is to find structures at local level that reflect not only the interests of the quota owners, but also the interests of the larger community of user groups. There is definitely a long way to go before this is achieved, and South Africa needs to define who should be qualified as potential recipients of the more permanent quotas.

Equally difficult has been the all-embracing concept of 'previously disadvantaged individuals' (and groups) or PDIs in the South African fisheries parlance. In general political terms, it is fairly evident what is meant by this phrase, namely blacks, coloureds and Indians who under the previous dispensation were barred from participating in the fishing industry, that is, from fishing or from owning assets in the fishing industry. However, as soon as we start operationalising the concept in the practical setting of the South African fishing industry, it becomes clear that there are different interpretations, depending on whom you are talking to.

Black empowerment companies located far from the coast (for example, in Gauteng) hold the broadest concept of preferential access to PDIs. They claim that all previously disadvantaged groups and individuals should be able to buy into the fishing industry and receive quotas, regardless of where they live and whether they have been previously involved with fishing or not. By contrast, representatives of most coastal towns and settlements claim that although marine resources are national property, they 'rightly belong' to coastal communities which



traditionally used these resources. In other words, for access to marine resources, PDIs should have some kind of connection to coastal communities. Millions of PDIs live in coastal cities like Cape Town, Port Elizabeth or Durban, although few of them will have a historical connection to the utilisation of marine resources.

Coastal communities want to restrict the group of PDIs who qualify for redistribution of rights and quotas to those 'having worked the sea', that is fishers and processing workers who have participated in the industry for a considerable period of time. An even narrower conception of PDIs within the established industry says that quotas and rights should only be allocated those PDIs who have made a clear investment in the industry, that is, who have acquired equity in the form of shares in boats or processing plants. This qualification has its roots in trying to separate the 'true participants' from paper-quota operators, that is, the ones who just sell, hire or lease out their quotas.

Depending on how PDIs are defined, the process and its results will be quite different. So far there has been a tendency to use the widest definition of the concept, resulting in a situation in which some quota holders are people who have no previous connection to the fishing industry, while the majority of fishers and processing workers have none. Are marine resources primarily national property, to be used for the creation of the largest possible economic surplus (resource fees + employment + export revenues) or do they in some way 'belong' the coastal communities as a general means of income, more in line with a welfare payment? These positions are not necessarily mutually exclusive. They can be seen as two extremes on a continuum, with numerous positions in between.¹² In present day fisheries policy debate, the positions can be illustrated by two recent developments (see the next section). The idea of auctioning off part of the quotas is clearly inspired by the goal of maximising the revenue from the sector, while the allocation of so-called subsistence quotas is more in line with relief assistance, giving some minimal quotas to fishers who were not successful in the ordinary allocation process.

We are not arguing that one position is necessarily more 'correct' than the other, only that hard decisions have to be made. There may be very different outcomes, depending on how the resources are perceived and how PDIs are defined. This is even more so since 'transformation' (or lack thereof) is measured by a number, for example by share of company turnover ending up with PDIs (as has been suggested in a draft for the new allocation process). While the concepts of 'transformation' and

'PDIs' have been instrumental in securing support from a very diversified political community in the drafting of new fisheries legislation, the same broad concepts are now increasingly seen as counterproductive when it comes to implementation. Without a more precise definition, MCM and the Ministry become open to all sorts of litigation, especially from participants who are denied access or those whose access is reduced. A more precise definition is therefore a necessity to escape allegations of too much administrative discretion, or in more plain language, corruption.

The third and last crucial concept in the redistribution process is 'fishing community'. A more precise definition is necessary, as more and more politicians and administrators use this term to designate potential quota recipients and prospective managers of local fisheries. In our opinion, most officials misread the context. There is no question that South Africa has a number of settlements along the coast which are dependent on harvesting marine resources, either for sale or for direct human consumption. That does not mean that these settlements are able to operate as *communities*, with some common interests managed through democratic or representative organs. As shown, for example, in the case of Elands Bay (see Isaacs & Hersoug 2000), the settlement is clearly segregated along racial lines, where individuals and groups operate completely independently of each other. This is also representative of a number of other coastal settlements. Due to forced removals and unregulated influx from the former homelands as well as from neighbouring countries (Angola, Namibia, Mozambique) few settlements possess the qualities we normally associate with *fishing communities*. Handing over quotas and rights to coastal communities is therefore problematic. This was tried in 1993–94 as part of a policy of social relief, an experiment that backfired dramatically as most community trusts came up in serious problems, causing more distress than ever.

The same problem exists today. Without proper organisational structures, sound financial management, elected leaders and policy transparency, there are few reasons for allocating rights and quotas to 'communities', and even less reason to believe that they can play a meaningful role in resource management. Is it possible that the new forums which have been created to assist in the allocation of subsistence quotas can serve as some type of community organisation in the future? So far it seems like lack of transparency on behalf of the self-appointed leaders regarding the distribution of economic benefits is a major



impediment. In any case, it seems like a solid organisational drive is necessary before most coastal settlements can operate as ‘representative communities’.¹³

8. Towards a new regime

By mid-2000 MCM admitted that the allocation process was in deep trouble again. According to a document released by the new Allocation Unit:

In the historic absence of a defined fishing rights allocation procedure, the department has been unable to call upon any dedicated capacity to manage the allocation process, and this lack of capacity has meant that the department has become so immersed in the mechanics of fishing rights allocation that the development of an effective allocation policy and plan has been severely compromised. This has lead to a virtually permanent state of crisis management with regard to rights allocation and a lack of proper planning.

(DEAT 2000:8).

Hence, the work for a new paradigm started mid-2000 as a crisis measure, headed by a professional trouble-shooter from the Ministry of Finance. His mission was to get the allocation process in order by mid-2001, in time for the allocation of long-term rights. At the time of writing, the new regime is a *proposal*, not yet steered through the political mill, that is Parliament, the Minister of Environmental Affairs and Tourism and the Cabinet. However, indications are that the new system is likely to have the full support of the present Minister and the Cabinet.

What is new in the proposed setup? First of all, the queue will be dramatically reduced from 12 000 applicants in 1999/2000 by imposing a considerable application fee (graduated according to size of quota), thereby discouraging less serious applicants. In addition, applicants will have to submit proof that their tax affairs are in order.

Secondly, the applicants who make it through the first screening will have to conform to certain criteria, possibly more detailed and technical than the present ones. Thirdly, quotas will be assessed according to what is considered viable within the different sub-sectors, as per the results of a recently commissioned MCM economic study. Fourthly, within all sub-sectors the industry will be divided according to size: large, medium, small, micro, artisanal and subsistence. The number of

viable entities within each stratum will be determined partly by economic considerations, partly by political ones which envisage a desired structure within each stratum, and eligible applicants will be allocated a certain part of the quota. The remaining part could be up for tender. Finally, transformation is seen as a 3–5 year process, and quotas will be issued accordingly. Thereafter, long-term rights (up to 15 years) will be issued for the second phase. The phasing-in of new entrants is planned through annual attrition. If, for example, it is decided that a sub-sector should be restructured so that 25% should be allocated to new entrants, a percentage will revert back to the state every year so that quota can be set aside for accommodating new entrants. Alternatively, the transformation will take place through a once-off process, with no adjustment until the next round of allocations. It is envisaged that the transformation of existing companies should take place using incentives rather than punishment. 'Transformation should follow the bucks!' is the new slogan and the incentives will be arranged so that companies which can prove they are successfully transforming themselves will be offered the possibility of acquiring more quotas, either by sale or by tender (DEAT 2001).

9. Implementing policy or learning from experience?

We have earlier pointed to the fact that implementing the new MLRA should be conceived more as a political experiment than the straightforward implementation of a prescribed policy (Hersoug 2000). There were no models nor blueprints available for how an established fishing industry, dominated by vertically-integrated companies, could be restructured to accommodate a new set of participants who are largely unfamiliar with the actual running of fishing as a business operation. The action space created by the new Act was (and is) considerable. How new and old operators would respond was not clear at the time the MLRA was passed, with unexpected results.

Early in 2001 it was probably fair to say that the dynamics created by the new MLRA totally outstripped the capacity of the existing administration, thus creating a situation of great uncertainty. While the original fishing industry was a limited brotherhood in which most participants knew each other personally and where positions were fixed according to size and



tradition, the new Act opened a frenzied application race involving more than 12 000 applicants in 1999/2000. Given that fewer than 1 000 quotas were awarded, the vast majority of applicants were disappointed. They questioned the legitimacy of the whole process and, in particular, the legitimacy of MCM.

In spite of this, there is little doubt that a number of previously disadvantaged individuals and groups have succeeded in obtaining quotas (both before and after 1998) and that their participation has already changed the face of the South African fishing industry. Nevertheless, the bulk of the industry is still *controlled* by white owners and operations established long before 1994. This continued dominance in spite of clear obligations to widespread reform is due to many factors. The most important is probably the character of the 1994 political transformation as a 'negotiated revolution', in which existing owners and administrators received strong guarantees against any 'sudden removal' of property or employment. Once new black empowerment groups had acquired certain key fishing companies, prominent black voices also started to argue against any major restructuring in terms of reallocating quotas. This should also be seen in conjunction with the pressure already exerted by the most important trade unions presented in the fishing industry, lobbying in favour of protecting the jobs of their members who are mainly employed in the established companies. A final constraint is the government's clear need to generate export income by whatever means. Large-scale redistribution will not be allowed to interfere with the generation of foreign exchange earnings. In other words, there were serious limits to transformation from the outset, although these were never made explicit.

A second set of factors influencing the outcome of the transformation process was the strategies employed by existing companies. While the MLRA opened a considerable action space for new entrants, at the same time it created room for the established companies to manoeuvre. They had the processing facilities, the market contacts, the credit facilities and established networks with fishing officials which they used to their advantage. For processors with ample processing capacity, the challenge was to acquire as much raw material as possible through, for example, binding new quota holders to deliver their catch to a particular factory. For ship owners and operators with available catch capacity, the challenge was to increase the quota available to them. As discussed above, a wide variety of arrangements were made, ranging from formal joint ventures to short-term informal deals. Lawyers and accountants served as

consultants, often at exorbitant prices. In practice these arrangements were only limited by fantasy, as no working control unit was checking the *modus operandi* of the new companies.

This brings us to the third set of factors: the lack of administrative capacity to handle such a complicated process. It was clear from the very start that the government's management institution was not in any shape to handle such a complicated undertaking, in legal, technical or political terms. MCM had no clear political direction as to who should receive the new quotas, or what the restructuring of the existing industry should precisely entail. Consequently, MCM became increasingly bogged down in the allocation process, to the extent that most of its other important management tasks were neglected. Once MCM finally admitted the state of affairs, it changed course, challenging the industry players to make inputs which it could use to create 'rule books' for the industry. Although it is much too early to assess the outcome of this new approach, the basic elements seem to meet the shortcomings of the previous regime. The focus on clear criteria, increasing capacity (outsourcing certain elements of the handling of applications) and establishment of a verification unit may improve the functioning of the reallocation process.

In our terminology this is a second-order institutional problem – sorting out the practicalities after the basic principles of the system have been fixed. But in the new setting there are also attempts to redefine the basic ground-rules – a first-order institutional design problem. The proposed ordering of applicants in size categories according to what is considered to be a viable allocation, bidding for quotas, and making extra quota available for the most successful transformers, are all elements that may change the institutional setup, although the MLRA allows for this. Generally, all attempts to make the reallocation process a transparent one should be welcomed, as long as it is clearly acknowledged that most of the difficult choices are political. Although a thorough economic study may reveal some basic understanding of profit levels and optimal size within the various sub-sectors, political discretion still plays a major role. Which sectors should primarily be earmarked for transition (reallocation of quotas), how should they be constructed in terms of size, how many new entrants should be allowed within each sub-sector and, not least, what should they have to pay in order to receive their quotas?

The question of payment is crucial to the legitimacy of the new setup, but unfortunately this is the issue which has



received the least attention. MCM seems to prefer a mix of resource rental and cost recovery. These factors play a role for very different reasons and have very different political implications. Cost recovery provides for commercial operators to pay for the authorities to administer their activities, as is done in New Zealand and Australia. Resource rental is compensation to society for giving the select few the privilege of continuing to utilise a national resource, thereby acknowledging that the resources were acquired without compensation in the first place. Mixing the two without a clear argument (as in the Canadian case) may be detrimental to both cost recovery and public compensation.

So far, seen from the perspective of the established fishers and the coastal communities, the result of the redistribution process has been rather disappointing. The thrust of our argument has been that the reallocation process has not worked as anticipated due to lack of knowledge of how coastal communities are structured and how they function in terms of leadership and entrepreneurship. This is not an accidental outcome, but the results of a general national policy which promotes entrepreneurs in the hope that the poorest will benefit through the 'trickle-down effect'. As we have shown previously (Hersoug 2000; Isaacs & Mohammed 2000; Isaacs & Hersoug 2000) the entrepreneurs do not necessarily come from the fishing industry or from coastal communities. In many cases, entrepreneurs' involvement with fishers has been to use them for legitimacy in their business ventures without giving the fishers much in return, being motivated primarily by self-interest. The lack of control presented the opportunity to rip people off, to the extent that many of the established fishers feel worse off today than they did under apartheid. Although there are also true 'community' entrepreneurs, these are few and far between. This is not always the result of greed – in many cases, communities are so fractured along ethnic lines or badly organised that they are not able to work well together for mutual benefit.

This brings us to the last and most crucial part of the implementation policy, namely the false notion that all previously disadvantaged people should be able to start competing without any additional input from government. For the previously disadvantaged to stand any chance of challenging the existing industry, the government would have to provide capacity building and training, access to soft credit to help fund new business ventures, and organisation, to bring people together in functioning structures.

The proposed reorganisation of the industry could help to reverse the trend set by the three 'lost years' of transformation in the fishing industry. However, in the South African case, we are also facing a real dilemma: a market-oriented fisheries management system based on individual transferable quotas cannot possibly be politically controlled to ensure that redistribution targets are achieved. One way of organising the fisheries sector would be to consider three sub-sectors:

- A fully commercial sub-sector, in which quotas are traded and companies reorganised according to business requirements, relatively isolated from direct political influence, as long as they operate within the accepted parameters of fisheries regulations and pay required fees and rentals.
- A transitional sub-sector, mainly for new entrants who have recently received a quota in which there are limitations on transferring quotas (to avoid selling off quotas as soon as they have been allocated).
- A subsistence fisheries sector, more correctly 'artisanal', as most subsistence fishers on the West Coast and South Coast would definitely be small-scale commercial operators. These would be guided by non-transferable quotas, which have to be caught *personally*. If this scheme is extended to comprise more species and a larger geographic area, this could serve as a security net for the poor, although on a very modest scale.

Whether communities should receive quotas, as has been proposed several times, would have to be decided at a much later stage, after the organisational structures have been put in place, their capacity assessed, and their responsibilities with regard to handling money and redistribute fairly the proceeds of common activities have been formalised. The forums developed in connection with the subsistence fisheries in West Coast rock lobster and abalone could be the frontrunners of such an organisational structure. However, at this point there are few signs that fisheries management can be handed over to either localised or functional user-groups. Both types of structures are weakly organised and do not have the capacity to handle more complicated management issues. However, this should not be read as an argument against starting the process now.

The first lesson from this exercise is that redistribution is a process that needs organisational structures to secure the political gains achieved in the first round. In the absence of such structures, the reform effort fell apart, being captured by other interests, not necessarily the most needy, but definitely



among the more greedy. The second lesson is that whatever regime is set up, the act of redistribution is clearly a *political* one that can only to a limited degree be made technical. This is not to say that criteria should not be made clear and processes transparent, it only serves to underline that the actual process of allocating public resources is a political act necessarily involving an element of political discretion.¹⁴

The third lesson is even more important, regarding the possibility of combining a market approach with a detailed prescription of the distributional results. With a market-oriented industry, based on transferable quotas, there can hardly be strong political guidance as to the 'ideal structure' or the 'optimal structure'. Operating (transitionally) with three different regimes could be one way out of the dilemma but, in the longer run, South Africa will have to make the hard choices: Given a limited resource, not all previously disadvantaged can get a direct slice of the pie. Benefits will have to be produced through employment, dividends on ownership and a resource rental, levied on behalf of the greater South African public (in addition to the value of recreational fishing and the amenity value of a unique marine environment). Maybe South Africa, like Namibia, should start considering whether the income from the resource rental could be as important as the redistribution of ownership.

In any case, South Africa will have to sort out the direction of the reallocation process. While it should be accepted that not all applicants could receive a quota, there is still room for choice. The choice is not, as often presented 'between treating the fisheries as an industry or a charity'. Most of the previously disadvantaged living in the coastal communities are not asking for charity, but for meaningful participation and support structures to compete in the commercial sector. Even with a limited share set aside for reallocation (now approximately 25% of the TAC), it is a question of political choice. So far it has been run much like a 'beauty contest', with a number of the more greedy gaining access through being able to hire expensive consultants to formulate fancy plans and projections. While not discounting the need for entrepreneurs on all levels, we believe more could be done to involve previously disadvantaged groups and individuals. Measures should include development-oriented support structures in training, empowerment, credit and other matters that focus on managing quotas, processing and the marketing of quotas. Hence, it is a question of more than just redistributing money in terms of assisting the performance of PDI fishers through training, empowerment and credit. In any

case, a large number of people (even in the coastal communities) will still not receive a quota. If a solution for these groups cannot be found in the fishing sector, other alternatives must be examined, for instance diversification into other sectors. Getting people employed in other sectors (including aquaculture) will help to take off some pressure on the fishing resources. That, in the end, is also a question of money. Part of this development work could be paid through a decent resource rental, in terms of which private operators pay for the exclusive use of a public resource.

Endnotes

1. Before examining the provisional results, it is important to note that South African authorities decided to make only short-term allocations in the first round, waiting for more permanent guidelines. Quotas were therefore allocated for only one year at a time (although allocations made in 1999 were extended for a second year in 2000).
2. One of the reasons for this dramatic shift is that the abalone divers were previously not rights holders, unlike the processing companies. Now the divers control the largest quota (87.3 tons) through the Overberg Commercial Abalone Divers' Association.
3. As indicated earlier, most of the original reallocation in 1998 was reversed, after the established companies had taken the Minister to court and won the case, based on a legal technicality.
4. Interview with Themba Vundla, managing director of the fishing division, Oceana Fishing Group Ltd. 2 March 2000.
5. Kouga Fishing is presently involved in joint venture arrangements with the following partners:
 - Umzamowetu – (3 800 tons of anchovy and 500 tons of pilchard) – has 18 000 shares in Atlantic Enterprises and 1 000 shares in Bongulethu
 - PJO & Partners – (11 tons of South Coast rock lobster) – is a shareholder in the South Coast rock lobster vessel Helena Marine
 - Pellsrus Historicals – (540 tons of hake trawl quota) – has



- a 35% share in Emile Adrian Vessel Co. (Pty. Ltd) and – (100 ton hake long-line quota) – a 34% share in Augusta Vessel Co. (Pty. Ltd.)
- Sikho Nathi – (3 tons abalone) – purchased a factory in Cape Town for R90 000
 - Jeffrey’s Bay Fish-Mast Fishing – (7 squid permits) –has a 50/50 share with Irvin & Johnson in the vessel Equinox.
6. Mr Adams is the director of Olympians CC, which is a new entrant in the Blue Horizon Holdings joint venture agreement.
 7. The acquisition group comprised of Real Africa Investments Ltd., Brimstone Investment Corporation Ltd., fishermens’ associations, pelagic quota holders, local business interests and individual investors.
 8. Realising that the annual dividend was rather meagre, Sea Harvest offered to buy back employee shares in late 2000, giving the lucky owners a handsome cash payout. Since then Sea Harvest has been delisted from the stock exchange.
 9. The fishers were paid R45/kg, as 3–4 crayfish equals a kilogram, and had to pay R5 levy for the use of the company boats. For the last two weeks of the season all 147 permit holders were paid R192 in the first week and R169 in the second.
 10. Expectations varied wildly, from the 5–10% of the TACs suggested by the Access Panel to the 70–80% indicated in the submission from the Food and Allied Workers’ Union (Fawu), the most influential union within the fishing industry. Proposals for a more diversified transformation schedule never reached the Minister.
 11. This is of course often not the case, for example, when accessibility and gear selectivity severely restrict which group of users are able to access the stocks. Allocating a quota to a certain gear group may also have unintended consequences in terms of by-catch, for example, of species that are already threatened.
 12. A third position, frequently found in the established fishing industry, is that fish as such is not a resource *per se*. This

argument holds that fish is a *potential* resource which is turned into an actual resource only through investment in and the development of catch technology, processing and marketing. This 'resource rent', or at least most of it (deducted from the share due to public management) therefore belongs to the industry. Without the investment and the continued commitment of the industry, there is no resource!

13. Whether this organisational work is to be performed top-down (by MCM), bottom-up (by the fishers themselves), by NGOs or all three in combination is an issue of considerable debate. While ANC has an undisputed record of organising unions and civics, its ability to organise coastal communities, especially along the West Coast and South Coast has been limited, leaving much of the initiative to the National Party which traditionally relied on the coloured working class vote.
14. The important distinction is that the political element should preferably be built into the system, not be used to pick the lucky winners after the rules have been made. Still, in all types of ranking systems there are elements of discretionary judgements, no matter how technical the criteria.

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