

# RECONCILING EQUITY AND STABILITY IN THE SOUTH AFRICAN FISHING INDUSTRY

Warwick Sauer<sup>1</sup> Horst Kleinschmidt<sup>2</sup>, and Peter Britz<sup>1</sup>

1. Department of Ichthyology and Fisheries Science, Rhodes University, Grahamstown, South Africa

2. Deputy Director General, Department of Environmental Affairs and Tourism, Cape Town, South Africa.

## Preamble

The difficulties experienced by the South African fishing community during the post-apartheid era are by no means unique. Governments and resource managers the world over are facing the challenges of reconciling equity, economic efficiency and sustainability.

It is against the backdrop of a global failure by fisheries managers to stem the decline of the world's great fish stocks that South Africa is completely revising the management of its marine resources. While there can be little doubt that change of this magnitude is traumatic, in many respects South Africa is fortunate. For one thing, few democratic countries have been given a political mandate to completely reinvent their management systems; for another, our most important commercial fisheries are, broadly speaking, in very good shape.

Why this should be so is open to debate. Certainly, in the 1980s and 1990s, good science provided realistic input and output regulations – as in Europe for example – but for South Africa the difference must surely lie in the political dispensation of the time and, to some extent, the country's geographical position. We would contend that, until the mid-1990s, fisheries management was conducted largely by political default; a repressive regime limited the players in the industry to a select few, while the country's political isolation limited the clamour for access by the first world.

## The road to change

With the publishing of the White Paper on Marine Fisheries Policy in 1997, and the passing of the Marine Living Resources Act (MLRA) in 1998, the fundamental policy and regulatory framework for fisheries management in South Africa were put in place. These two milestones followed an exhaustive series of inclusive negotiations which began with the convening of the Fisheries Policy Development Committee in 1995.

Undoubtedly the most serious challenge facing Government, post the first democratic elections of 1994, was to re-allocate rights (or quotas) in a way that would ensure that the under-representation of historically disadvantaged individuals (HDIs) or companies (HDCs) in the fishing industry would be corrected. This presented a massive challenge to a government department that was, at the time, ill equipped for implementing the MLRA which required a complete re-engineering of the South African fishing industry.

The period between 1994 and 2000 was destined to be fraught with problems. For one thing, the expectation that Government would broaden access to marine resources resulted in a "rush" for fishing quotas. In 1999 the Department of Environmental Affairs and Tourism's (DEAT) Marine and Coastal Management branch processed a total of 11 989 applications for rights; prior to 1990 it had processed no more than 300. Inadequate administrative structures resulted in a virtually permanent state of crisis management. The result was long delays in the allocation of fishing rights and an increasingly litigious business environment.

By 2000 it was abundantly clear that a revised strategy was required to build a rational, legally defensible and transparent allocation system that met critical transformation targets. This strategy took root in 2000 and whatever has been achieved to date should be considered to be the beginning of a long and arduous journey. At the time, a number of key requirements were evident:

- The need for clear, simple, workable policy!
- The need to accept from the outset that one cannot meet the needs and aspirations of all.

- The need for policy to capture the broad support of the general public and political decision-makers.
- The need to recognise that there is no technical solution worldwide to the allocation dilemma, only political compromise!
- The need to design some form of secure, tradable and flexible access rights for the commercial sector, while also recognising the legacy of the apartheid system and the need for equity.
- The recognition that fisheries management must include biological, economic and social input.

### **The road to medium-term rights**

In an effort to address the bureaucratic problems that were harming the fishing industry DEAT appealed to Cabinet for a “breathing period” within which to institute a rational and legally defensible rights allocation system that would promote Government’s objective of transforming the fishing industry.

As a result, on 29 November 2000, the President signed an amendment to the Marine Living Resources Act, which gave the Department the legal mechanism required to waive the annual rights allocation procedure. Through the amendment - that came to be known as the “roll over” of fishing rights - those individuals and companies that held fishing rights in 2000 were automatically allocated rights for the 2001 fishing season.

By instituting the roll over of rights, the pressure of the annual allocation of fishing rights was taken off the Department for one year and a window of opportunity was created within which to plan for the allocation of medium-term and long-term rights.

A second process began simultaneously: in an effort to understand the scale of the task that lay ahead, and to benefit from those who might contribute to the creation of a new allocation system, a three-month country-wide workshop was organised. Short-comings were identified and an attempt was made to turn them into a legally sustainable management system. Consultations with stakeholder groups took place in two phases:

- Aggrieved parties were asked to raise their concerns with the new management team; and
- Two consultative documents were released for public comment and stakeholders and interested parties were asked to collaborate by submitting “rule books” to the Department.

From the consultation process emerged a “skeleton” for the proposed *Manual for the Management of the South African Fishing Industry*, a document which should set out the regulatory framework for the management of fisheries in South Africa. Unfortunately, time constraints precluded the completion of the Manual. Fishing seasons would not wait, nor could they be ignored lest the prevailing chaos entrenched itself even further. The Department simply had to concentrate on the task at hand: the allocation of medium-term fishing rights.

### **A new system for allocating rights**

It would be true to say that, between 1995 and 2000 - when DEAT began to prepare for the allocation of medium-term fishing rights - Government’s approach to managing transformation in the fishing industry shifted slightly. Rather than viewing the allocation of fishing rights to new entrants (emerging black-owned small, medium and micro enterprises or SMMEs) as the primary instrument of transformation, the idea of rewarding established companies that met specific criteria relating to transformation, began to take hold.

There were practical reasons for this shift in approach. Firstly, with a few notable exceptions, the allocation of fishing rights to new entrants between 1996 and 1999, had met with only limited success. The quantity of fish allocated was usually small, with the result that most new entrants preferred to lease their fishing rights back to the established companies, rather than invest in the fishing industry. While this rent seeking behaviour was logical (small allocations often didn’t warrant the risk of investment) it did nothing to advance DEAT’s objectives of supporting black-owned SMMEs and job creation.

Secondly, DEAT was forced to acknowledge that, since 1996, almost all of the larger fishing companies in the quota controlled fisheries had taken heed of its transformation policy and restructured their ownership. It was no longer feasible to introduce new entrants to the fishing industry, at the expense of established companies with massive investments in the industry, many of which now had significant black shareholding.

It was against this backdrop that DEAT began to formalise the policy guidelines that would underpin the 2001 rights allocation process. A two pronged strategy for pursuing transformation goals through the allocation of fishing rights was devised: investment and experience in the fishing industry, coupled with black economic empowerment and employment equity were identified as key criteria for securing rights. The policy guidelines that were circulated with the rights application forms encapsulate this approach:

“To effectively address the injustices of the past in an orderly and just manner and to achieve equity in the fishing industry, it is the intention to allocate a notable proportion of the TAC/TAE to deserving applicants in order to encourage transformation, either through the internal restructuring of current rights holder, or through the accommodation of new entrants.”

*Policy Guidelines with regard to applications for the granting of rights in terms of the Marine Living Resources Act 18 of 1998. P.2*

## **Key features of the allocation process**

### **1. Medium-term rights**

The annual allocation of fishing rights was initially used by Government to facilitate the transformation process. However, by 2000 the practice had resulted in increasing instability in the fishing industry which manifested itself through a lack of investment and a loss of competitiveness. The introduction of medium-term fishing rights constituted a manageable political compromise between Government's means to affect further transformation, and the need for a measure of security by investors. It is widely anticipated that, at the close of the four year period, Government will be in a position to allocate long-term rights, as is recommended by both the White Paper on Marine Fisheries Policy and MLRA.

### **2. The application fee**

Key to the new system for allocating fishing rights was the application fee. For as long as most people could remember, an application fee of R100 had been charged by Government, irrespective of whether the right that was ultimately allocated would translate into a multi-million rand business or not. In fact, the nominal application fee was part of the reason why DEAT was inundated with applications; in certain instances people applied up to 15 times for the same right, each time under a different name. Equally, entities and individuals without the slightest business acumen but with the simple intention of selling their right applied, viewing their chances as a kind of lotto.

The time had come to adjust the application fee and thereby reduce the number of chance applicants. In the end a broad, catch-all figure of R6 000 was determined as the application fee for full commercial fishing rights. The application fee for limited commercial fishing rights was set at R500.

The Department's strategy appeared to work. In total, around 5 250 applications for commercial rights were received, considerably less than in 1999.

### **3. The application form and the adjudication process**

The next key factor to resolve was the shape and nature of the application form itself. The form that had been used until 2001 was concise, yet it failed to assist the adjudicator in testing the merits of one application against another. Clearly a comprehensive set of questions had to be devised in order to provide a basis from which applications could be scored and ranked. The obvious pitfall of such an approach is that the application form becomes “user-unfriendly”. We believe that, in future, even more time needs to be spent on designing the application form and attempting to balance the adjudicator's need for information with the applicant's need for simplicity.

At an early stage it was decided to appoint, through public tender, a company that would handle the verification process. The intention was to run checks on the applicants who might have misrepresented themselves, or in any way attempted to deceive the Department on their application form.

The task of the Verification Unit turned out to be more complex and cumbersome than initially anticipated. State-of-the-art computer software was utilised with a view to scanning the information from the application form and then submitting this to the Minister's delegate in a simple format. This strategy met with limited success, largely because the majority of applicants did not respect the space in which they were asked to provide key information. Low literacy levels were acknowledged to be a stumbling block and the fact that people filled in forms in three different languages was recognised as a problem from the start. Administrators decided that applications could not be rejected simply because of the way in which they were filled in. The only way to remedy the situation was to hire casual punch clerks who transmitted the information into a data bank. This caused delays that ultimately resulted in the late allocation of rights.

Some fraudulent applications were inevitably revealed during the verification process. Where such information only came to light after rights were allocated, the relevant powers under the MLRA were invoked and rights have been withdrawn.

Ongoing verification is seen as a vital exercise, and a new tender has circulated a view to contracting an agency that will check the veracity of claims made by right-holders in their applications. It is the view of the Department that it faces a formidable, but vital task to "clean up" within the Department as well as the industry as a whole.

Once the verification process was complete, a comprehensive report - with copies of each application - was delivered to the Minister's delegate and the Advisory Committee.

The task of the Advisory Committee was to assess and summarise each application according to departmental policy and then present this information to the Minister's delegate for adjudication. The Advisory Committee was also appointed through public tender. It was an entirely independent body and no individual member of the Committee had any interest in the fishing industry.

The Minister's delegates were required to design a system whereby applications could be scored against one another. While in some cases the basic system could be applied generically across a number of fisheries, for others, a tailor-made system was required.

One fundamental decision was to stream applications into "existing right-holders" and "new right-holders". Existing right-holders were those individuals or entities that held rights in 2001; new right-holders were aspirant new entrants.

Each applicant was scored according to a range of criteria such as degree of transformation, degree of involvement and investment in the fishery, capacity to harvest and market the resource, past performance in the fishery, legislative compliance (e.g. tax compliance) and degree of paper quota risk (i.e. whether the applicant would sell his/her right without investing in the fishery). The system was designed in such a way that it would advantage fully committed past participants and prospective new entrants who could demonstrate the commitment and knowledge required to operate a fishing business. The applicant who could demonstrate a good combination of both HDI-ownership and historic participation, scored highest under the system.

An analysis of the allocation of fishing rights in the west coast rock lobster fishery demonstrates how DEAT pursued this strategy.

#### **A case study: West Coast rock lobster**

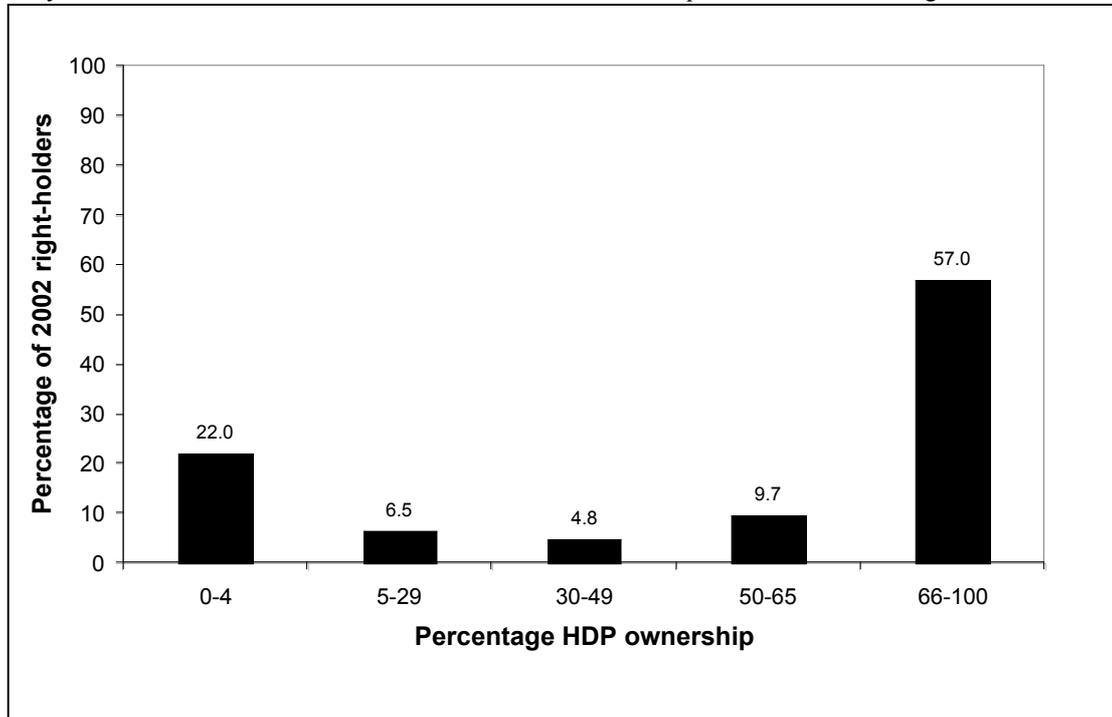
DEAT received 1 959 applications for West Coast rock lobster fishing rights and, between December 2001 and May 2002, allocated medium-term fishing rights to 713 successful applicants. Most of these applicants (481) were allocated limited commercial rights of between 200kg and 1 500kg.

In total, 189 successful applicants were awarded full commercial rights of between 1.45 tons and 95 649 tons. This allocation included 32 new entrants.

The scoring and weighting system that was used to assess applications made by existing right-holders and prospective new entrants was different. When assessing existing right-holders, equal weight was given to investment in the fishery, ownership by historically disadvantaged individuals (HDIs) and employment equity. For prospective new entrants, the points awarded for investment in the fishery carried half the weight of those awarded for HDI-ownership and a high level of employment equity. As a result, almost all (96.9%) of the 32 new entrants that were awarded medium-term rights for West Coast rock lobster were 50% or more HDI-owned and 81.2% of these companies employ HDIs in 50% or more of the senior management positions in their companies.

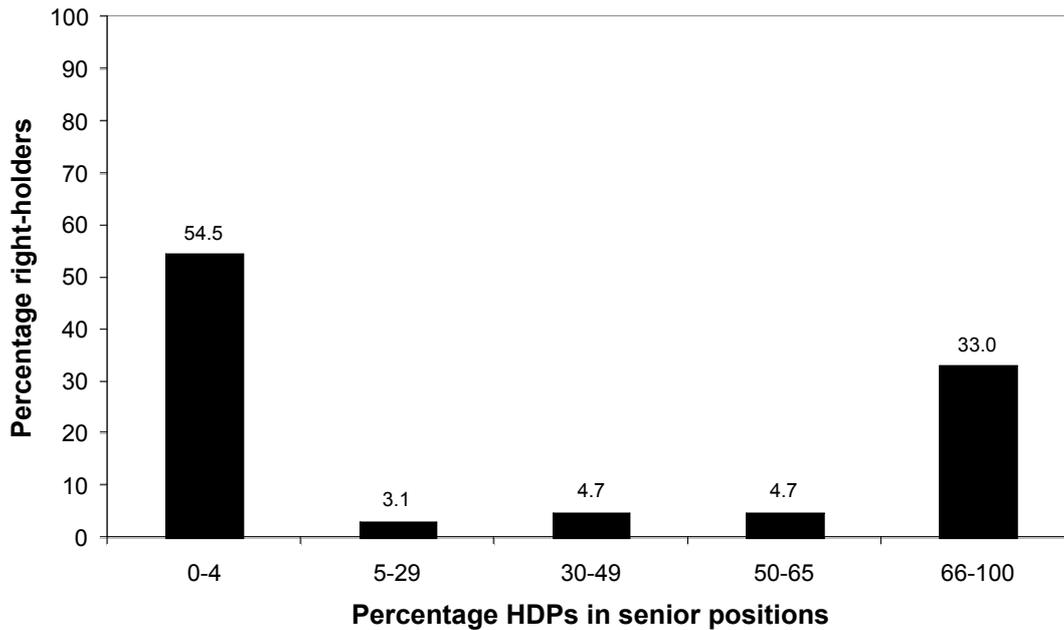
The scoring of candidates resulted in a number of companies that previously held fishing rights for West Coast rock lobster falling out of the fishery, thereby making room for 32 new entrants. In other words, the lowest scoring of the existing right-holders were removed from the fishery in favour of the best of the prospective new entrants. Although the existing right-holders would have been eliminated for a variety of reasons – including a lack of transformation and underperformance - it would be true to say that by awarding rights to new entrants with a high degree of HDI-ownership and employment equity, DEAT advanced its objective of transforming the west coast rock lobster fishery.

The first graph demonstrates that 57% of the successful applicants in the West Coast rock lobster fishery are 66% or more HDI-owned and that less than a quarter of the 189 right-holders are



exclusively white-owned. These figures would appear to demonstrate that DEAT's pursuit of transformation goals through its allocation policy has born fruit in this fishery.

One aspect of transformation that appears not to have been addressed by the west coast rock lobster fishery is that of employment equity. The second graph illustrates that 54% of right-holders have no HDIs in their top management structures.



Of course it was recognised early on that the final outcome would not be as favourable across all sectors. For the deep-sea hake industry, for example, following the completion of the appeal process, fishing rights were allocated to 53 companies. Allocation records show that:

- 74% of right-holders are majority HDI-owned.
- 53% of right-holders are majority HDI-managed.
- 25% of the TAC is in the hands of majority HDI-owned companies.

It is interesting to note that this sector supports approximately 5 790 employees, 91% of whom are HDIs.

One of the least transformed sectors is that of the squid fishery. Allocation records show that, following the completion of the appeal process:

- 33% of right-holders are majority HDI-owned.
- 32% of right-holders are majority HDI-managed.
- 30% of total allowable effort is in the hands of majority HDI-owned companies.

The general employment trends across all sectors support the findings of an Economic and Sectoral study of the fishing industry during 2001. The study suggests that:

“For the entire fishing industry, “the important professional/managerial (P/M) skills group shows a 50/50 balance between racial characteristics (the aim is a 80/20 black to white mix) but whites earn 57% more per year than their black counterparts (the aim is equivalence). This phenomenon is not unique to the fishing industry. It takes time to create equivalence in income and racial balance in skills levels, particularly at the professional/managerial level. It would be safe to state that the fishing industry is well advanced in this respect.”

*An Economic and Sectoral Study of the Fishing Industry, Volume 2. Part 5.*

#### 4. The result

Applicants were kept informed of DEAT’s progress throughout the allocation process. Regular news bulletins were circulated to the fishing industry and, for the first time, the summary of the decision-making process that culminated in the allocation of fishing rights was presented to applicants, a step that greatly contributed to the transparency of the process.

A “Tip-offs Anonymous” call centre was established so that members of the public could report any irregularities that may have occurred in the allocation process.

By February 2002 the Minister of Environmental Affairs and Tourism had allocated medium-term fishing rights in the commercially most important fisheries. The appeal process, whereby applicants who are not satisfied with the Minister's allocations have the right to appeal against these decisions, began in earnest the same month and will be complete by October 2002.

Importantly, there has been broad agreement within the fishing industry that the new allocation system although imperfect, has produced a sound outcome. Industry leaders and community leaders have indicated that they are satisfied with the process, agreeing that it was more balanced and transparent than it has ever been.

### **Into the future**

Now that right-holders in the fishing industry have greater security of tenure and the Department's resources are no longer consumed by the rights allocation process, the way is clear and the incentive exists for building a new fisheries management system in partnership with the fishing industry. Experience around the world suggests that with increasing security of rights, there is a greater incentive for the fishing industry to assume more responsibility for the management of resources. The challenge for the Department is to lead and facilitate such a process, appropriate to the needs and capacity of both Government and industry. By allocating rights for a medium-term period, Government has signalled that it does not regard the transformation process as complete. While significant progress has been made towards achieving racial equity within the fishing industry, the challenge of increasing the socio-economic benefits that flow from marine living resources remains. Creative approaches need to be sought in a bid to meet this challenge. For example, there is room for:

- Enhanced fisheries compliance and stock rebuilding;
- Promoting entrepreneurship and black economic empowerment;
- Improved management and utilisation of by-catch;
- Promotion of mariculture technology;
- The development of fleet management strategies which promote more efficient resource use and enhance socio-economic benefit;
- An integrated "local area management" approach to the utilisation of inshore resources, including linefish;
- Building institutional capacity and the alignment of capacities within existing institutions;
- Complementary, non-consumptive use of marine resources, particularly tourism based activities.

The above list makes it clear that the potential socio-economic benefits of marine resources are constrained primarily by institutional capacity and that the challenge to Government, the private sector and NGO's in South Africa is to build a partnership based on the three columns of equity, economic efficiency and sustainability enshrined in the Marine Living Resources Act.