

COMMERCIAL FISHING RIGHTS ALLOCATION IN POST-APARTHEID SOUTH AFRICA: RECONCILING EQUITY AND STABILITY

H. KLEINSCHMIDT*, W. H. H. SAUER† and P. BRITZ†

The fundamental policy and regulatory framework for a post-apartheid dispensation to manage commercial fisheries in South Africa was put in place with the publication of the White Paper on Marine Fisheries Policy in 1997, and the enactment of the Marine Living Resources Act (MLRA) in 1998. In order to achieve equity within the fishing industry, a way had to be found to address the under-representation of historically disadvantaged individuals or companies. This presented a massive challenge to a government department that was, at the time, ill-equipped to implement the MLRA. Inadequate administrative capacity in the department, together with major new responsibilities, resulted in a virtually permanent state of crisis management, which was complicated by a system of annual rights allocations. A strategy for building a rational, legally defensible and transparent allocation system that met critical transformation targets was initiated in 2000. The new, medium-term rights-allocation system contains a number of key features designed to ensure a fair and equitable process. The allocation of fishing rights in 2001/2002 yielded mixed results in terms of meeting transformation targets, emphasizing once more that transformation is a complex process that can only be achieved over a period of time. Management interventions to optimize the potential social and economic benefits of marine resources continue to be constrained, primarily by institutional capacity. The challenge to government, the private sector and civil society is to build a partnership based on the three pillars of the MLRA: equity, economic efficiency and sustainability.

Key words: fishing rights allocation, management, South Africa, transformation

The World Summit on Sustainable Development, which took place in Johannesburg, South Africa, in September 2002, demonstrated that governments worldwide are being challenged to find ways of reconciling social equity with economic efficiency and stability, while ensuring resource sustainability, a “triple bottom line”. Fisheries in developing countries, and South Africa is no exception, are under strong and increasing pressure (FAO 2000). Competition for resources, globalization, pollution and increasing poverty all contribute to chaotic and unmanaged resource use. The situation in the first world is not much better (e.g. Payne and Bannister 2003). As pointed out by Watson and Pauly (2001), the omens are not particularly good, with the world’s fish production being in decline for a decade already. The sad truth is that sustainable management of fisheries has largely failed worldwide, with many of the world’s great fisheries going from abundance to depletion over the past 60 years (FAO 1997, Buckworth 1998, Charles 1998, Caddy 1999).

The South African government’s efforts to restructure the commercial fishing industry, following the dismantling of Apartheid, presents an interesting case study, which highlights the challenges and difficulties in achieving the “triple bottom line”. The very rapid change in the political system, from an authoritarian style of government under Apartheid to an open

democracy post-1994, placed huge demands on under-resourced government departments with increasingly outdated and inappropriate management systems. It is therefore not surprising that the implementation of legislation and policy aimed at correcting the imbalances of the Apartheid era has been uneven, and in certain instances, special administrative interventions have been required to achieve policy goals. This paper documents the fishing-rights allocation process following the introduction of the Marine Living Resources Act of 1998 (Anon. 1998), the administrative problems encountered, and the actions that were required to ensure that it was fair, legal and transparent. It concludes by evaluating the outcomes of the rights allocation process in terms of the degree of “transformation” or racial equity achieved in selected commercial fisheries, namely hake *Merluccius capensis* and *M. paradoxus*, chokka squid *Loligo vulgaris reynaudii* and West Coast rock lobster *Jasus lalandi*.

Addressing the Apartheid legacy in fisheries

Under the Apartheid administration, fishing rights (allocated as a proportion of Total Allowable Catch [TAC] or Total Allowable Effort [TAE]) were largely denied to any person who was not classified “white”,

* Marine & Coastal Management, Department of Environmental Affairs and Tourism, Private Bag X2, Rogge Bay 8012, Cape Town, South Africa. E-mail: hghklein@mcm.wcape.gov.za

† Department of Ichthyology and Fisheries Science, Rhodes University, P.O. Box 94, Grahamstown 6140, South Africa

and thus issues of racial equity had to be addressed as a priority by the post-Apartheid government, by fisheries policy managers and by those in the industry willing to embrace the new dispensation and reality confronting them. At the same time, it was recognized that the institution of fisheries management had to be restructured to become more of a cooperative governance arrangement appropriate to a modern democracy.

Despite the difficulties experienced in implementing the post-Apartheid fisheries "transformation" process, South Africa is fortunate in several respects, because few countries have been given a political mandate to completely reinvent their fisheries management systems. South Africa's most important commercial fisheries are, broadly speaking, in fairly good shape (Payne and Bannister 2003). Why this should be so is open to debate. In the 1980s and 1990s good science provided realistic input and output regulations – as in Europe – but for South Africa the difference most likely lies in the political dispensation of the time. A racist dispensation limited the players in the fishing industry to a select few, while the country's geographical position and political isolation to some extent limited access (legal and illegal) to South Africa's resources. The opening of fishing rights to many more players in the post-Apartheid restructuring process has inevitably placed a strain on the fisheries administration, and introduced new threats to resource sustainability.

Changes were first attempted following the first democratic elections of 1994. To address the challenges facing South African fisheries, an exhaustive series of consultations followed the appointment of a Fisheries Policy Development Committee in 1995, which in turn led to the publishing of the White Paper on Marine Fisheries Policy in 1997 (Anon. 1997). With the implementation of the Marine Living Resources Act (MLRA) in 1998 (Anon. 1998), the fundamental policy and regulatory framework for a new fisheries management dispensation was put in place. The fisheries policy development process has been reviewed during its different stages (e.g. Cochrane and Payne 1998, Hersoug and Holme 2000).

The fishing industry, like all other sectors of the South African economy, required a wide-ranging transformation process in which the under-representation of historically disadvantaged individuals (HDIs) and historically disadvantaged companies (HDCs)¹ con-

stituted the most important political challenge. Accordingly, the Objectives and Principles of the MLRA identify "the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry". There was little formal published literature or detailed instruction that could assist the fisheries managers in South Africa with meeting this legislative requirement. More recently, Martin *et al.* (2001) published a handbook enumerating approaches to some of the difficulties involved in such a process. Most significantly, the Department of Environmental Affairs and Tourism (hereafter referred to as the Department) did not anticipate the legal and administrative skills it required to effectively drive this process of change, a process that would profoundly affect existing and future investors in the industry and the socio-economic well-being of coastal communities.

Administrative problems

Given the momentous political changes in South Africa, it is not surprising that initial moves to broaden access to fisheries resources resulted in many new applications for fishing rights. In 1999, the Department processed a total of 11 989 applications for the annual allocation of rights. Prior to 1990, it had allocated no more than 300 applications annually, so it was not surprising that the administration of the Department was plunged into a state of crisis management. A series of problems ensued, including long delays in the allocation of fishing rights, and repeated court challenges to the allocations made (by those denied access to the resource and those who felt that too much had been taken away from them). This resulted in loss of confidence by the fishing industry, in the ability of government to implement its new policy objectives, or to bring stability back to the sector. The hake longline fishery suffered more disruption than the other sectors because the courts set aside the Department's decisions on several occasions.

The administrative crises brought about side effects, most notably in fisheries compliance. Widespread poaching and non-reporting of catches assumed new and threatening dimensions, especially in the fisheries for abalone *Haliotis midae* (Hauck and Sweijd 1999, Hauck 2001), rock lobster (Groeneveld 2003) and hake, as subsequent investigations, charges and litigation revealed.

With utmost urgency a new, clear, credible, enforceable and transparent management system, which took into account transformation objectives and could withstand legal challenge, had to be established. In 2000, a new team was appointed to re-start the process. In an

¹ Defined as "those persons or categories of persons, who prior to the new democratic dispensation marked by the adoption and coming into force of the Republic of South Africa Act, 1996 (Act No. 108 of 1996) were disadvantaged by unfair discrimination on the basis of their race and includes juristic persons or associations owned and controlled by such persons"

effort to “buy time” to put in place arrangements that would allow the new system to be developed, the Department appealed to Parliament for a “breathing period”. As a result, on 29 November 2000, the President signed an amendment to the Marine Living Resources Act that gave the Department the legal means to suspend the annual rights allocation process during 2001 and to “roll over” all fishing rights held in 2000. Although the effect of this was that the *status quo* was extended for another year, it crucially provided the time to organize and create a new management system, culminating in the allocation of new fishing rights.

Towards a cooperative fisheries management system

As Caddy (1999) points out, the successful development of a cooperative fisheries management system has to take place amid wide consultation. Accordingly, in 2000 and 2001, more than 750 meetings with companies, communities and other interested parties were held in an effort to re-build bridges between Government and all those who had an interest in fishing.

It is desirable that government should try to create a positive environment for all rights-holders (established and new) by assuring them of an ongoing right to harvest, so that they have the incentive to consider the long-term viability of the stock. Without such an environment, co-management arrangements become second to the conflict over rights (Hutton 2003). In an earlier paper, Hutton and Pitcher (1998) refer to a number of critical factors for successful participative management, including the need to define the criteria for participation in the fishery and its management, and the establishment of rules for the allocation of costs and benefits between the participants. Such considerations were embodied in two policy documents that were released for public comment. Grievances about the existing system were noted and analysed, and proposals for improvement were invited and considered. Industry associations contributed by submitting proposals or “rule books” for each fishery, based on their perspective.

From this process emerged the basis for the first comprehensive manual on how to manage the South African fishing industry. It was obvious that this would be a long and arduous task, and, as noted by Hutton and Pitcher (1998), it would be naïve to expect such an undertaking to result in a quick-fix solution. The completion and adoption of the fisheries management manual was halted as a result of time and legal constraints, because the team had to concentrate on setting up the legal and administrative framework for the new rights-allocation system. The lack, previously, of clearly defined fishery management policies and

objectives limited the options available to the rights-allocation team who had to be guided by the broad objectives of the MLRA, the legal rights of existing fishing rights-holders, and the limited information available on the biology, economics and history of each fishery.

A NEW SYSTEM FOR ALLOCATING FISHING RIGHTS IN SOUTH AFRICA

At the outset it was clear that a new allocation system would have to take a number of key considerations into account, including:

- A simple, but practical plan that would be in place before the start of the next fishing season;
- Communicating the main features of the plan, with the purpose of winning the support of the fishing industry, political decision-makers and the general public, and rebuilding confidence within the Department;
- Ensuring that economic and social considerations would not be compromised. Given the social inequalities created under Apartheid, this would be a major challenge;
- Acceptance that the majority of fishing sectors were oversubscribed and that many applicants from both historically advantaged and disadvantaged backgrounds would be unsuccessful;
- Recognition that there could be no technical solution to the allocation dilemma. Although a scoring system would form part of the assessment of applications, judgement had to play a part when balancing applications against one another;
- Recognition that, besides the objective of transformation, the creation of small and medium-sized enterprises was a policy requirement.

More generally, it was imperative to understand fully the achievements and impact of the previous allocations. Initial efforts at transforming the South African fishing industry had started in the early 1990s, when a number of new entrants, mostly small or medium-sized companies owned or partially owned by HDIs, were allocated fishing rights. To accommodate the new entrants, large quota-holders had their allocations reduced. In some instances, it was later discovered that fishing rights were allocated to sham entities, and when the complex shareholding and convoluted company structures were analysed, white companies and individuals turned out to be the actual owners and managers of some of these new companies. This system of “fronting” contributed to the discrediting of early allocations of fishing rights. Further,

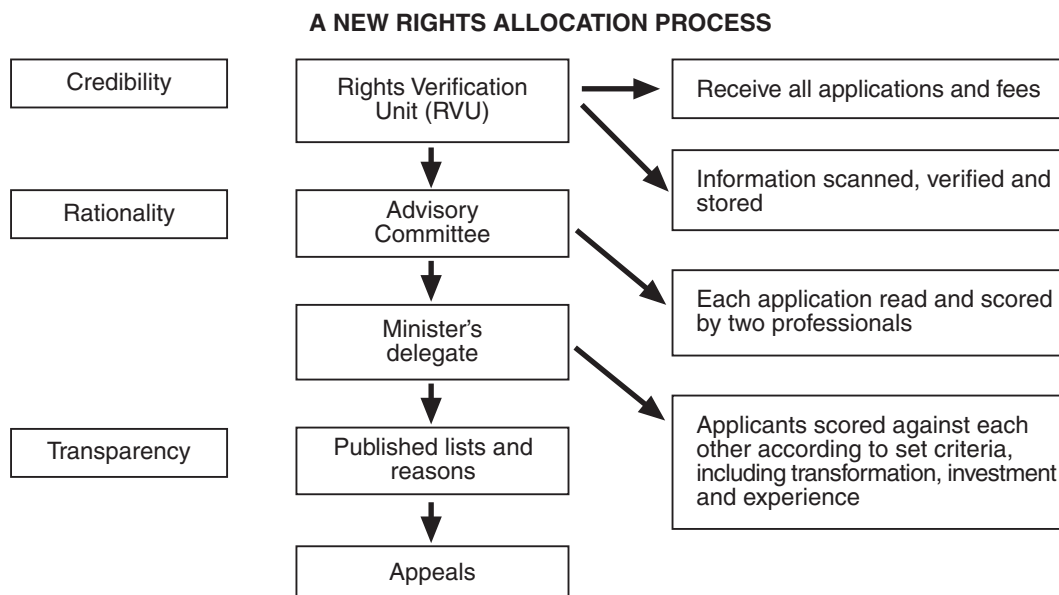


Fig. 1: A schematic representation of the key elements of the new allocation system

fishing rights were often held by so-called “paper” or “cardboard” quota-holders. These descriptions refer to the practice of holders of fishing rights leasing or transferring their fishing rights by private treaty to others (mostly white, established companies), often for substantial financial benefit, rather than investment in infrastructure and involvement in fishing themselves. Given the fact that the quantity of fish allocated was often small, it could be argued that new entrants had little option but to lease their fishing rights back to the established companies.

Whereas this rent-seeking behaviour was logical (small, annual allocations did not warrant the risk to invest, nor would banks extend loans), it did little to advance the Department’s objectives of supporting black-owned companies. Uncertainty, caused by having to re-apply annually, together with an undefined transformation policy, led to a lack of investment in the fishing sector, and both fleet and fishing gear were becoming obsolete in many fisheries². At the same time, the demands from those not allocated rights increased. Demonstrations, sit-ins and hostage-taking of officials at the Department’s offices took place on a regular basis. The inability to respond effectively to

these incidents highlighted the lack of resources, skills and resolve within the Department at the time. The need for certainty and industrial stability, for historical participants and potential new entrants alike, became paramount.

Apart from ensuring that policy considerations would be properly taken into account, the Department also had to invest in administrative infra-structure that would:

- be able to deal with large numbers of applications;
- be able to scrutinize each application;
- be transparent and meet the requirement of providing access to information, including the ability to provide records of all decisions in regard to each fishing sector and beyond that for each applicant;
- be seen to be equitable and fair;
- be able to verify the information submitted by applicants;
- stand up to legal scrutiny;
- establish a database that would reflect the details and assessments of each applicant and thus establish a benchmark for future allocations.

Because the Department was under-resourced to undertake this complex task and qualified personnel were in short supply, it was through the contracting of legal and administrative staff that a modest but viable structure was created to administer the 2001 rights

² The economic and sectoral study of the South African fishing industry found that, in 2000, the average age of a vessel in the fishing fleet was 22 years

allocation process. Scientific and other staff that had previously been co-opted into the adjudication of the annual rights allocations were now largely freed of this responsibility. The new system ensured that scientists were relied upon only to give advice on the state of resources and related management issues. They were not required to take administrative and legal responsibility for the allocation themselves, something for which they had no training and that they had undertaken reluctantly in the past. It is important to note that a key requirement throughout the allocation of the 22 commercial fisheries was that the decision-makers did not tamper with or manipulate the scientific advice provided in the form of *TACs* and *TAEs*.

The new system began to take shape. Its general features are shown in Figure 1 and are expanded on below.

Medium-term rights

Since the inception of the MLRA in 1998, an annual allocation of fishing rights had been used by Government to facilitate the transformation process. However, by 2000 this practice had the effect of destabilizing the South African fishing industry. One-year rights did not provide adequate surety for banks in relation to the size of the loans required for the acquisition or re-investment of assets required by the fishing industry. In market terms, the lack of stability threatened the international competitiveness of the industry. The notion of medium-term fishing rights, which would be valid for a four-year period, constituted a manageable political compromise between government's means to effect further transformation and the need for a measure of security for investors in the industry. At the close of the four-year period, government would have one further opportunity to enhance transformation through the allocation process, at which point Government could allocate long-term rights. The MLRA allows for fishing rights to be granted for a period of up to 15 years.

Application fee and form

The next in a number of steps was to increase the application fee. Previously, an application fee of only R100 (equivalent to US\$15 in 1999) had been charged, irrespective of whether or not the right allocated would translate into a multi-million Rand business. In fact, the nominal application fee was part of the reason why the Department was inundated with applications; in certain instances, people applied up to 15 times for the same rights, each time under a different name. Many viewed the allocations as a form of lottery, and

applied with the sole intention of selling their rights. In the end, a broad, catch-all figure of R6 000 was determined as the new application fee for full commercial fishing rights. The application fee for limited, or small-scale, commercial fishing rights was set at R500.

The application form that was used until 2001 had captured insufficient detail from applicants. As a result, it failed to assist the decision-maker in testing the merits of an applicant, nor did it allow for "comparative balancing" between applicants, a key feature of the new system. Clearly, a comprehensive set of questions had to be devised in order to solicit sufficient information and to provide a basis on which applications could be scored and ranked. The obvious pitfall of such an approach is that the application form becomes complicated and therefore difficult for less sophisticated fishers to respond to. Clearly, a challenge for the future will be to design an application form that is better able to balance the decision-maker's need for information with the applicant's need for simplicity. This is particularly true for those fishers who apply for "limited" commercial fishing rights, because many live in remote coastal towns and are unschooled in the complexities of bureaucracy and administration.

Ability to verify

The role of the Rights Verification Unit (RVU; Fig. 1), consisting of contracted outside expertise, was to check on applicants who may have misrepresented themselves or attempted to deceive the Department. State-of-the-art computer software was used to scan information from each application, which was then submitted to the decision-makers and their advisers in simplified and tabulated format. This strategy met with limited success only, because the majority of applicants did not respect the "letter per allocated box" spacing that is required for such a process to succeed. Low levels of literacy and the filling in of forms in both English and Afrikaans by many applicants were also a stumbling block. However, applications could not be rejected simply because of the way in which the forms were completed. To remedy this situation, data capturers were hired to transmit the information onto a database. Of course, capturing data in such a manner itself required checks for accuracy of the data captured.

The verification process led to the exposure of several fraudulent applications, which were rejected. Where such information only came to light after fishing rights were allocated, the relevant powers under the MLRA (Section 28) were invoked and rights were withdrawn. Ongoing verification is seen as vital to the overall process, which will continue throughout the duration of the rights.

Advisory Committee

Once the initial verification process had been completed and the information summarized, an Advisory Committee, which, like the RVU, was made up of in-sourced personnel, most notably legal and administrative staff, assessed each application. The Advisory Committee was independent of the Department and was required to retain a neutral stance. Originals of each application remained under lock and key at the offices of the RVU to meet any accusations that applications had been tampered with. The task of the Advisory Committee was to assess and summarize each application according to set criteria, as determined by the Department's policy. Furthermore, members of the committee were required to score each application and then to present this information, in summary form, to the Minister's delegate for adjudication. Applicants were scored and then ranked against one another in accordance with criteria based on, *inter alia*, 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 was likely to sell his or her rights without investing in the fishery).

One of the fundamental decisions that was made during the scoring process was to stream applications into "existing rights-holders" and "new entrants". This method was devised to ensure equity between these essentially different applicants. The adjudicator then determined how many "previous rights-holders" should be allocated rights and how many "new entrants" should be admitted.

The scoring system was designed in such a way that it would advantage previous rights-holders who had achieved a high degree of transformation in their ownership or management, and new entrants who, by definition, were "transformed" in their composition, and could also demonstrate involvement and preferably investment in the industry. New entrants were not required to own a vessel. However, they had to demonstrate that they had access to a suitable vessel through a binding catch agreement with a vessel owner.

Communication

A fundamental aspect of the process was to communicate with the applicants and the wider public. This was achieved through regular news bulletins. Other means of communication, such as e-mail, through industry associations and fishing harbour offices, were used. A comprehensive written summary of the decision-

making process was made available to applicants, a step that contributed to the transparency of the process. The summary included the general reasons why an applicant succeeded or failed. All applicants received individual notification that advised them of the outcome, in what respects their application had failed and how they should lodge an appeal.

The Department instituted a "tip-offs anonymous" call centre to enable the public to report irregularities that they perceived were committed either by departmental officials or by fishers or fishing companies. The service is run independently of the Department and is currently used by the public. All accusations are investigated and, where required, acted upon.

OUTCOME OF THE ALLOCATIONS

In total, 5 496 applications for commercial rights were received for the four-year period (2002–2005), a reduction of approximately one-half of the total for 1999. By February 2002, 1 879 medium-term fishing rights had been allocated in the most important commercial fisheries. In marked contrast to previous years, these allocations were largely completed on time, and fishing operations could generally commence at the beginning of the fishing season.

The internal appeal process began immediately. Of the 3 574 potential appellants, 1 501 lodged internal appeals. Under current legislation, the Minister has to attend to these personally. He upheld 283 appeals, bringing the total number of rights-holders to 2 162.

After the internal appeal process, aggrieved applicants have the possibility and right to seek relief through the courts. However, some applicants ignored the internal process and sought relief immediately after the allocations. In the longline sector, all fishing had previously been stopped when the courts were asked to grant urgent interdicts against the Department, requesting the Minister or his delegate to make a new allocation. On this occasion, similar urgent applications were made once again, but the applicants failed to persuade the courts of the urgency of the request and the judge found in favour of the Department.

The most substantive challenge to the process itself came from two companies in the hake trawl sector. The aggrieved companies requested the court to order the Department to re-allocate the rights in the trawl sector. They argued that, as wholly HDI-owned companies, they were entitled to a bigger share of the TAC. Although the High Court in Cape Town had initially found in favour of the applicants, the judgement was later overturned by the South African Supreme Court of Appeal. A unanimous ruling by a bench of

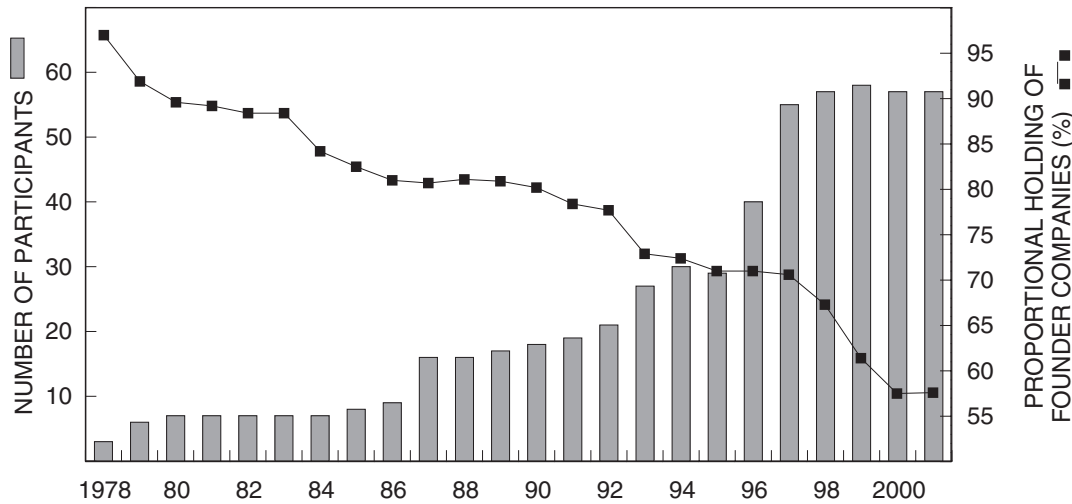


Fig. 2: Number of quota-holding companies and trend in the proportion of the TAC controlled by founding companies in the deep-sea hake trawl sector, 1978–2001 (R. Bross, South African Deepsea Trawling Association, and T. Hecht, Rhodes University, unpublished data)

five Appeal Court judges set aside the previous ruling (a full account of this case is available on www.environment.gov.za).

In setting TACs or TAEs, there is an inherent tension between ensuring sustainability on the one hand and demands for access by the Industry on the other. This has been the underlying cause for litigation against the Department. It is believed that this landmark judgement may finally bring to an end the litigious environment that characterized the South African fishing industry for the past decade.

SELECTED CASE STUDIES

Without doubt, transformation has been the major policy driver in the South African fishing industry over recent years. Its impact and consequence for the industry needs to be measured and studied beyond the figures provided in this paper. Besides transformation, there has been a “de-concentration” in the form of taking the TAC or TAE away from large companies and allocating it to a larger number of small and medium-sized companies. This is evident from the fact that, prior to 1994, rights were held by fewer than 500 companies compared with the more than 2 000 rights now allocated.

For purposes of illustration, a brief description is provided below of how the new allocation system performed for three sectors of the fishing industry:

hake, squid and West Coast rock lobster. The examples demonstrate the complexities that arise when transformation, resource sustainability and industry stability are addressed in the context of individual companies, specific fishing sectors and the industry as a whole.

Three indices were used to measure transformation: (1) ownership, as a percentage of rights-holders in each fishery that are majority (>50%) HDI-owned; (2) employment equity, as an indication of the percentage of rights-holders that are majority HDI-managed; and (3) the amount of TAC or TAE that is allocated to majority HDI-owned companies. The terms “majority owned” and “majority managed” are used to indicate that transformation is not a policy that simply takes from one group and gives to another. In most companies there is, in ownership, in management, and indeed in staff complement, a mix of HDIs and those designated white.

Hake

The hake resource is widely distributed along the South African coastline. Its trawl fishery is more than a century old (Payne 1995) and was historically concentrated in the hands of a few companies (Lees 1969). The hake fishery is economically the most prominent sector, currently worth some R1.45 billion, with foreign exchange earnings of the order of R750 million annually. It is the largest South African exporter of perishable frozen products and has an inter-

national reputation for quality and reliability. Largely because of the vertically integrated nature of the two largest companies, the South African trawling industry has a high ratio of seagoing to onshore employment.

The number of participants in the hake deep-sea sector increased steadily over the past decade (Fig. 2). In 1978, three participants shared the *TAC*, compared with 57 participants prior to 2001. Over that period, the proportional holdings of the founding companies decreased to below 60% of the *TAC*. After the 2001 allocation, 74% of rights-holders in the fishery are majority HDI-owned (Fig. 3) and 53% of the companies have more than half of their management comprising HDIs. In allocating medium-term rights, the Department decided not to allow further new entrants into the deep-sea fishery, because further “de-concentration” of the sector was not considered to be economically justifiable. The fact that the majority of the 138 127 ton *TAC* for trawl hake is allocated to two large, so-called “pioneer”, companies needs to be viewed in the context that these companies have in turn acquired appreciable HDI shareholdings. Also, cognisance had to be given to the need for stability by providing large-scale, on-shore permanent jobs. The large companies produce mainly branded, packaged goods and employ about 66 people per thousand tons of fish landed, whereas the small companies produce less sophisticated products and consequently employ relatively fewer people. Redistribution of the *TAC* to small companies would not necessarily have compensated for jobs lost to pioneer companies when quotes were relocated.

In the hake longline fishery, the view was taken that this sector was better suited for medium-sized enterprises, in which higher levels of HDI participation could be accommodated. Compared with the hake trawl sector, investment levels are lower and therefore participation by new entrants more easily achieved. As a result, 90% of the *TAC* was allocated to companies that are majority HDI-owned.

Squid

The squid industry is relatively new (<20 years old). The fishery is mainly restricted to the south-east coast of South Africa (Augustyn *et al.* 1992, Sauer *et al.* 1992, Augustyn and Smale 1995; Fig. 4a). Investment levels are less than for the hake trawl sector, because vessel costs are lower and there is little processing involved. The sector has attracted medium and family-type businesses. Within this context, the target for transformation is not easily achieved, especially when vessels are heavily bonded by their owners. The resource also has a history of fluctuating abundance (Augustyn and Smale 1995), which has created economic uncertainty in the industry over the years. Such

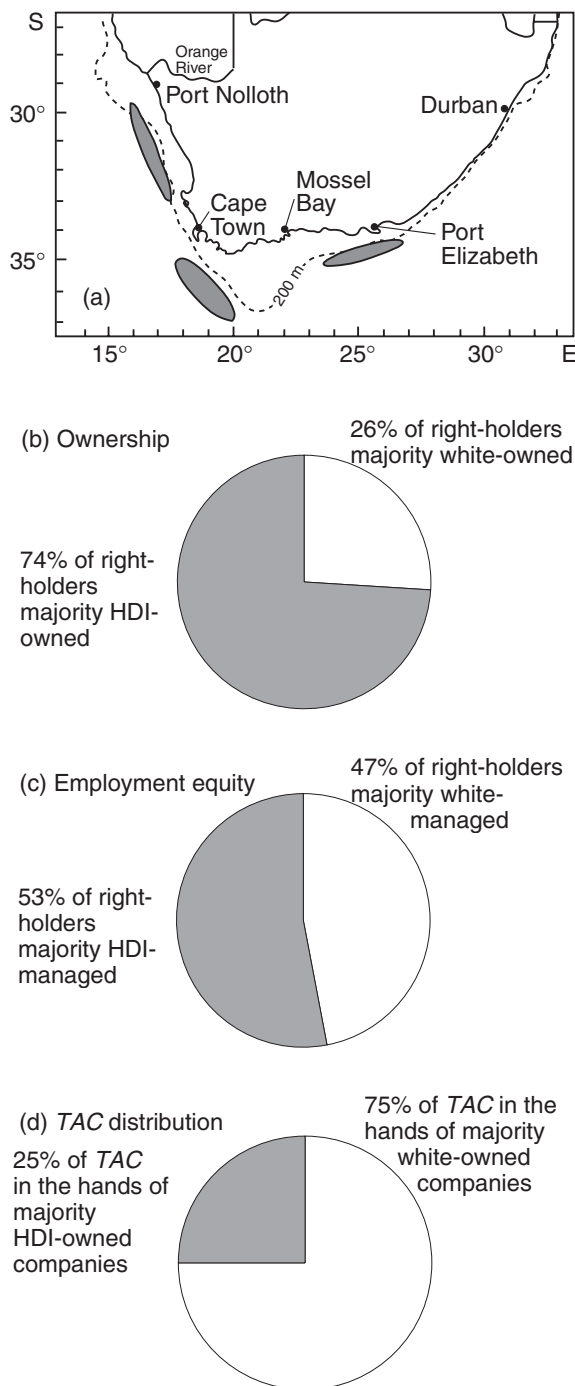


Fig. 3: (a) Deep-sea trawling grounds for hake, and (b) ownership, (c) employment equity and (d) *TAC* distribution of the fishery

adverse factors are the likely reason why relatively few new entrants have applied for access to this fishery. The result is a less favourable index of transformation (Fig. 4). Given that the fishery operates in an economically depressed area of South Africa, this outcome is controversial and has attracted negative comment.

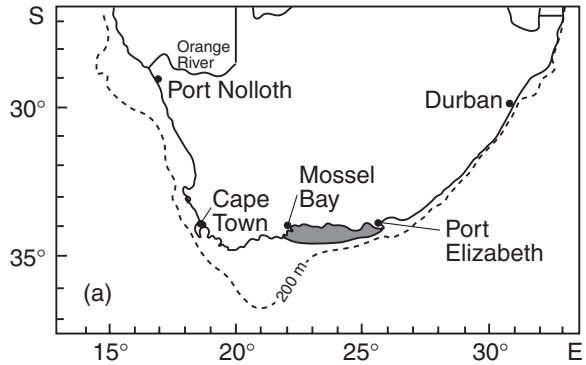
West Coast rock lobster

This fishery poses its own unique and complex issues. Heavy fishing mortality and a natural phenomenon of reduced somatic growth have caused the resource to decline over the past few decades (Pollock *et al.* 2000). Owing to a complex life history pattern (Pollock 1995), it is found along a long coastline (Fig. 5a), and the fact that its geographical abundance varies necessitates zonal or area allocations.

Rock lobster is a high-value species, which is increasingly harvested for the export market. Because lobsters are easily accessible from the shore, the Department created a category of limited or small-scale commercial rights-holders, with allocations of between 200 and 1 500 kg each. Such small amounts clearly indicate the difficult compromises fisheries managers had to make when balancing viability, resource control and social and political expectations. In all, 512 small-scale and 234 full commercial rights were allocated for this sector, the latter being awarded between 1.45 and 95.65 tons each. In the allocation process, a number of companies that previously held fishing rights had their allocations removed to provide space for 32 new entrants. The introduction of limited rights allocations, as well as the degree to which existing companies had transformed, together with the accommodation of new entrants, resulted in an overall transformation profile that was higher than in most other fishing sectors (Fig. 5).

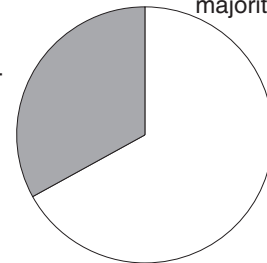
THE WAY FORWARD

Ultimately, a high degree of transformation has been achieved in the fishing industry, compared with other industrial sectors of South Africa. The degree of transformation will most likely change during the four-year period of medium-term rights. Some HDI shareholders may disinvest or invest according to what market forces dictate. Given the overall policy thrust in South Africa, companies that still have a "white" image will independently seek new and further HDI shareholders. For the foreseeable future, the interaction between market forces and the policy objective of transformation will dominate the fishing industry, as it has for other industrial sectors in South Africa. In



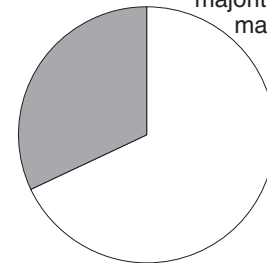
(b) Ownership

33% of right-holders majority HDI-owned
67% of right-holders majority white-owned



(c) Employment equity

32% of right-holders majority HDI-managed
68% of right-holders majority white-managed



(d) TAC distribution

30% of licences in the hands of majority HDI-owned companies
70% of licences in the hands of majority white-owned companies

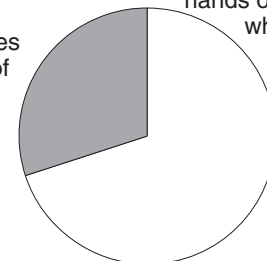


Fig 4: (a) Squid fishing grounds, and (b) ownership, (c) employment equity and (d) TAC distribution of the fishery

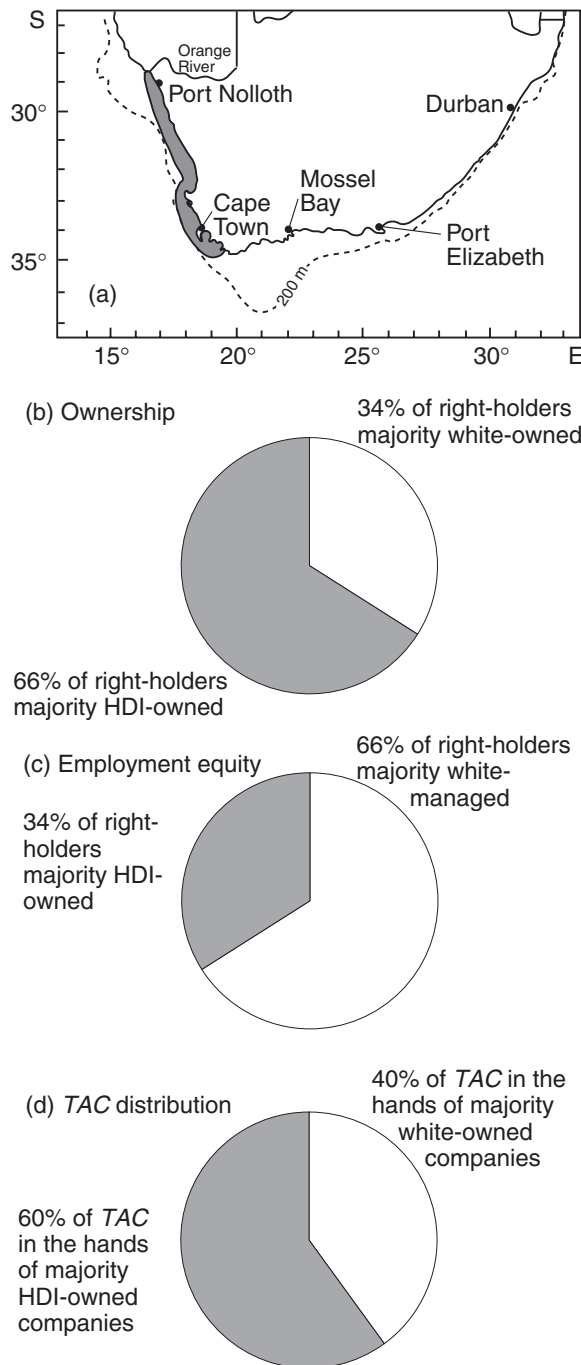


Fig 5: (a) West Coast rock lobster fishing grounds, and (b) ownership, (c) employment equity and (d) TAC distribution of the fishery

addition, some small and medium-size operations that currently have access to the resource may not be capable or viable as business entities and therefore may wish to sell out to larger entities. Current policy prevents such amalgamations from taking place. The lack of capacity within user groups is a key challenge to the success of the new system, both in their ability to run a successful business and to play a meaningful role in collaborative management (Hutton and Pitcher 1998). Because the Department is not equipped to train such entities, the South African Department of Trade and Industry and private sector organizations have been approached to provide training for small companies.

Fisheries administration is often bedevilled by lack of basic information, and the allocation process presented here experienced such problems. Fundamental to the successful outcome of future allocations is having established a benchmark against which to measure a range of issues that were recorded during the allocation. For this to be of real benefit, the comprehensive database established during the allocation process needs to be refined and continuously updated with such information as catch returns, vessel changes, changes to permit conditions, levy payments, changes to the transformation status, compliance transgressions, employment data and economic data of various kinds.

It is also important to take cognisance of the drawbacks of the present system. A comprehensive "lessons learnt" workshop held in November 2002 provided a route map for the next round of fishing rights allocations. It notably pointed to the skills needed, the administrative systems required to be built and maintained, and the capacity that should be in-sourced when the next rights are allocated. Key to the latter is the buying-in selectively of legal and other capacity, required only during the periods when rights are to be allocated.

Steps have been taken for South Africa to move towards a more cooperative-based management system (e.g. Hilborn 1992, Hutton and Pitcher 1998, Hutton 2003), in which Management Working Groups are set up for each sector of the fishing industry, comprising both industry and government representatives, and where joint decision-making can take place. In this process, it is important that government clearly demonstrates its future policy in regards to transformation of the industry. The process should be informed of the targets government intends setting, of the time-frames for transformation, and whether such targets are to be enforced by law or through the industry's own actions. There are related questions that also require clarity and deliberation. How many rights should be allocated per sector? When and under what conditions will rights be transferable? Do specific sectors need to be further "de-concentrated" or should consolidation

through normal market forces take its course? How long will the next rights be? Answers to these questions relate directly to the economic efficiency of the sector and therefore to the South African economy.

The challenges ahead remain many and pose a daunting task for all involved in South Africa's fisheries management. The process thus far constitutes a step in the overall objectives and should not be seen as an "ultimate product". It is too early to tell whether South Africa has successfully integrated its new political reality with a management regime that ensures the sustainable utilization of its fisheries.

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LITERATURE CITED

- ANON. 1997 — *White Paper: A Marine Fisheries Policy for South Africa*. Cape Town; Department of Environmental Affairs & Tourism: 46 pp.
- ANON. 1998 — Marine Living Resources Act 1998 (Act No. 18 of 1998). *Government Gazette, S. Afr.* **395**(18930): 66 pp.
- AUGUSTYN, C. J., LIPÍŃSKI, M. R. and W. H. H. SAUER 1992 — Can the *Loligo* squid fishery be managed effectively? A synthesis of research on *Loligo vulgaris reynaudii*. In *Benguela Trophic Functioning*. Payne, A. I. L., Brink, K. H., Mann, K. H. and R. Hilborn (Eds). *S. Afr. J. mar. Sci.* **12**: 903–918.
- AUGUSTYN, C. J. and M. J. SMALE 1995 — Cephalopods. In *Oceans of Life off Southern Africa*, 2nd ed. Payne, A. I. L. and R. J. M. Crawford (Eds). Cape Town; Vlaeberg: 91–104.
- BUCKWORTH, R. 1998 — World fisheries are in crisis? We must respond! In *Reinventing Fisheries Management*. Pitcher, T. J., Hart, P. J. B. and D. Pauly (Eds). Boston; Kluwer: 3–17.
- CADDY, J. F. 1999 — Fisheries management in the twenty first century: will new paradigms apply? *Revs Fish Biol. Fish.* **9**: 1–43.
- CHARLES, A. T. 1998 — Beyond the *status quo*: rethinking fisheries management. In *Reinventing Fisheries Management*. Pitcher, T. J., Hart, P. J. B. and D. Pauly (Eds). Boston; Kluwer: 101–111.
- COCHRANE, K. L. and A. I. L. PAYNE 1998 — People, purses and power: developing fisheries policy for the new South Africa. In *Reinventing Fisheries Management*. Pitcher, T. J., Hart, P. J. B. and D. Pauly (Eds). Boston; Kluwer: 73–99.
- FAO 1997 — Review of the state of world fish resources: marine fisheries. *FAO Fish. Circ.* **920**: 173 pp.
- FAO 2000 — World Review of Fisheries and Aquaculture. The State of World Fisheries and Aquaculture **1**. Rome; FAO: 142 pp.
- GROENEVELD, J. R. 2003 — Under-reporting of catch of South Coast rock lobster *Palinurus gilchristi*, with implications for the assessment and management of the fishery. *Afr. J. mar. Sci.* **25**: 407–411.
- HAUCK, M. 2001 — An overview of state and non-state responses to abalone poaching in South Africa. *J. Shellfish Res.* **19**: 518–519.
- HAUCK, M. and N. SWEIJID 1999 — A case study of abalone poaching in South Africa and its impact on fisheries management. *ICES J. mar. Sci.* **56**: 1024–1032.
- HERSOUG, B. and P. HOLME 2000 — Change without redistribution: an institutional perspective on South Africa's new fisheries policy. *Mar. Policy* **24**: 221–231.
- HILBORN, R. 1992 — Current and future trends in fisheries stock assessment and management. In *Benguela Trophic Functioning*. Payne, A. I. L., Brink, K. H., Mann, K. H. and R. Hilborn (Eds). *S. Afr. J. mar. Sci.* **12**: 975–988.
- HUTTON, T. 2003 — Industry-government co-management arrangements in the South African offshore demersal hake fishery. In *Waves of Change: Coastal and Fisheries Co-management in South Africa*. Hauck, M. and M. Sowman (Eds). Cape Town; University of Cape Town Press: 200–225.
- HUTTON, T. and T. J. PITCHER 1998 — Current directions in fisheries management policy: a perspective on co-management and its application to South African fisheries. In *Benguela Dynamics: Impacts of Variability on Shelf-Sea Environments and their Living Resources*. Pillar, S. C., Moloney, C. L., Payne, A. I. L. and F. A. Shillington (Eds). *S. Afr. J. mar. Sci.* **19**: 471–486.
- LEES, R. 1969 — *Fishing for Fortunes. The Story of the Fishing Industry in Southern Africa – and the Men who Made it*. Cape Town; Purnell: xv + 283 pp.
- MARTIN, W., LODGE, M., CADDY, J. and K. MFODWO 2001 — *A Handbook for Negotiating Fishing Access Agreements*. Washington, D.C.; World Wildlife Fund: xii + 127 pp.
- PAYNE, A. I. L. 1995 — Cape hakes. In *Oceans of Life off Southern Africa*, 2nd ed. Payne, A. I. L. and R. J. M. Crawford (Eds). Cape Town; Vlaeberg: 136–147.
- PAYNE, A. I. L. and R. C. A. BANNISTER 2003 — Science and fisheries management in southern Africa and Europe. *Afr. J. mar. Sci.* **25**: 1–23.
- POLLOCK, D. E. 1995 — Spiny lobsters. In *Oceans of Life off Southern Africa*, 2nd ed. Payne, A. I. L. and R. J. M. Crawford (Eds). Cape Town; Vlaeberg: 70–80.
- POLLOCK, D. E., COCKROFT, A. C., GROENEVELD, J. C. and D. S. SCHOEMAN 2000 — The fisheries for *Jasus* species in the south-east Atlantic and for *Palinurus* species of the south-west Indian Ocean. In *Spiny Lobster: Fisheries and Culture*. Phillips, B. F. and J. Kittaka (Eds). Oxford; Blackwell: 105–120.
- SAUER, W. H. H., SMALE, M. J. and M. R. LIPÍŃSKI 1992 — The location of spawning grounds, spawning and shoaling behaviour of the squid *Loligo vulgaris reynaudii* (D'Orbigny) off the Eastern Cape coast, South Africa. *Mar. Biol.* **114**: 97–107.
- WATSON, R. and D. PAULY 2001 — Systematic distortions in world fisheries catch trends. *Nature, Lond.* **414**: 534–536.