



# Achieving an Inclusive Blue Economy for Small-scale Fishers: Recommendations to the South African Parliament

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## EXECUTIVE SUMMARY

Small-scale fisheries in South Africa play a crucial role in supporting livelihoods and contributing to food security in the country's coastal provinces. Policy changes in recent years have sought to establish a more inclusive and equitable governance system. While these developments should be applauded, many small-scale fishers are yet to feel the tangible impact of these policies, particularly as the allocation of fishing rights in line with the new policies has been held up by procedural failures and legal challenges. Parliament has a crucial oversight role in supporting the governance of small-scale fisheries in South Africa and contributing to efforts that may address the high levels of uncertainty and mistrust in the sector.

## INTRODUCTION

South Africa's small-scale fisheries sector is a highly contested and politicised domain. On the face of it, fisheries managers play a simple role: they determine sustainable harvest levels for key fish species and allocate rights to fishers in such a way that these harvest levels are not exceeded. Part of this process involves regulating when and how fishers may operate by setting and enforcing restrictions on gear, quotas and seasons. However, South Africa's experience has clearly shown that fisheries governance is anything but a neutral administrative exercise. The questions of who should be permitted to fish, and how much they should be permitted to harvest, are intertwined with issues of social justice, power and historical grievance.

## RECOMMENDATIONS

- Parliament must strengthen its oversight role with regard to the governance of small-scale fisheries in order to support the implementation of the *Policy for the Small Scale Fisheries Sector in South Africa*. This is particularly crucial in relation to the rights allocation process for linefish, rock lobster and abalone fisheries.
- The need to address the racially skewed ownership structure of South Africa's fisheries is broadly accepted by fisheries stakeholders and reflected in fisheries policy. In pursuing transformative justice, however, it is important that procedural justice is respected. Transparent, inclusive and procedurally sound rights allocation and decision-making processes will contribute to restoring trust in the sector and avoid protracted litigation.
- Explicit transformation targets, as well as transparency regarding the ownership structure of current rights holders, may contribute to addressing uncertainty in the sector.

## DISPOSSESSION AND THE STRUGGLE FOR RIGHTS<sup>2</sup>

The racially discriminatory legislation and spatial development strategies of the apartheid government had a dramatic impact on the lives of South Africa's black and coloured fishers and their families. During the 1960s–70s in particular, many black and coloured families were forcibly evicted from fishing communities such as Fish Hoek and Simon's Town and resettled in areas such as Ocean View or the Cape Flats. Access to fishing grounds was also limited by urban development and the establishment of marine protected areas. Marine protected areas can play an important role in conserving fish stocks and other marine life, but the lack of regard for traditional fishing communities in their establishment contributed to a suspicion of conservation efforts that is still in evidence today. Finally, access to many of the most lucrative marine species, such as rock lobster and abalone, was shifted to white-owned companies during the apartheid era.

During the 1990s, with the advent of a democratic dispensation and the establishment of an ANC-led government, fisheries governance authorities faced two primary trends. On the one hand, there were increased expectations that access to fisheries resources would be broadened and the injustices of apartheid policies rectified. The ANC's 1991 governance manifesto, *Ready to Govern*, explicitly stated that the party 'favours restructuring the fishing industry by moving away from large fishing conglomerates to smaller, community-based fisheries'.<sup>3</sup>

The second important trend was the decline in important marine species targeted by fishers. Small-scale fishers primarily target three categories of fish stocks, namely rock lobster,<sup>4</sup> abalone and linefish (the linefish category includes a wide variety of fish species, the most important of which are snoek, yellowtail, black bream,<sup>5</sup> cape salmon and cob). As the 1990s drew to a close both trends came to a head. In 2001, the government declared an emergency in the linefish sector. A number of conservation measures were implemented and it was announced that fishing rights in the traditional linefish sector would be limited in order to reduce fishing pressure by 70%.

At the same time, the management of the country's fishery sector underwent a major shift, as the government moved towards the allocation of long-term fishing rights.

In the past, fishing rights had been renewed annually, but this practice created uncertainty and made it difficult for new entrants to secure financing, thus working against efforts to address the racially skewed ownership structure of the sector. In 2002 medium-term rights were allocated for a period of three years. In 2005 long-term rights were allocated to numerous fisheries for periods ranging from eight to 15 years.

The rights allocation process was highly contentious. It is important to note that there was some success in achieving transformation in the sector. Rights ownership among historically disadvantaged individuals rose to 26% after the medium-term rights allocation process and to almost 40% after the long-term rights allocation process.<sup>6</sup> However, many viewed the level of transformation achieved as insufficient. Many traditional fishers who applied were unsuccessful due to a lack of access to finance and fishing vessels. Complex application procedures discriminated against poorly educated traditional fishers.<sup>7</sup> For the great majority of historically disadvantaged fishers, the 2002 and 2005 rights allocation process did not deliver the expected results. The contestation surrounding small-scale fishing rights ultimately led to a class action suit against the minister responsible for fisheries.<sup>8</sup> In 2007 the Equality Court ruled that the minister should develop a policy that addresses the needs of excluded fishers and provide immediate access to marine resources to these fishers through an 'interim relief' system.<sup>9</sup>

## HOPES AND FRUSTRATIONS: IMPLEMENTING THE SMALL-SCALE FISHERIES POLICY

It was initially expected that the interim relief system would be relatively short lived, as the required policy development process was completed. However, it was not until June 2012 that the *Policy for the Small Scale Fisheries Sector in South Africa* (SSF policy) was adopted, while the interim relief system still remains in place.<sup>10</sup> The adoption of the SSF policy was a significant milestone for South Africa's small-scale fishers. For the first time an inclusive policy development process had resulted in a broadly accepted framework for the governance of the sector. The SSF policy emphasises the importance of the small-scale sector to the livelihoods and food security of traditional fishing communities and stresses that these communities should be

directly involved in fisheries governance through co-management arrangements. It also addresses an important conceptual shortcoming of the Marine Living Resources Act (MLRA), which had categorised South African fisheries as commercial, recreational or subsistence. Under this categorisation most small-scale fishers were viewed as subsistence fishers, which limited their opportunities to sell their catch.

Perhaps the most important innovation of the SSF policy was the shift from an individual rights-based approach, which allocated rights to natural persons or companies, to a system of collective rights. The SSF policy envisions that rights will be granted to community-based legal entities (in the form of a company, trust or co-operative), which will promote a more inclusive and development-oriented approach to fisheries governance.<sup>11</sup>

While the adoption of the SSF policy was seen as a historic success for traditional small-scale fishers in South Africa, it was soon realised that legislative reform would be required if the policy was to be implemented effectively. Unfortunately, the MLRA Amendment Act was not passed before the expiration of the long-term traditional linefish rights on 31 December 2014. The 2005 long-term rights allocation process had awarded 455 rights in the linefish sector. With the allocation of linefish rights at the close of 2014, 115 of these rights holders retained their rights. A further 100 new entrants were allocated rights, while a share of rights was held back by the fisheries authorities in anticipation of legislative reform that would allow the allocation of these rights to co-operatives. The rights allocation process was challenged in court, resulting in an interdict that permitted fishers who had lost their rights to continue fishing. In February 2014 the outgoing Minister of Agriculture, Forestry and Fisheries, Tina Joemat-Pettersson, conceded that there were 'legitimate concerns, either relating to poor administration of the applications, or questionable judgements by the delegated officials'.<sup>12</sup> Following a review of the rights allocations, the minister stated in May 2014 that the entire 2013 rights allocation process would be set aside.

#### ACHIEVING A BALANCE BETWEEN SOCIAL JUSTICE AND SUSTAINABILITY

Despite progress in policy development and legislative reform, South Africa's small-scale fisheries continue to

face significant uncertainty. While recent research has indicated some recovery of certain linefish species, most stocks targeted by small-scale fisheries are either overexploited or collapsed. Poaching continues to be a major threat, particularly with regard to high-value rock lobster and abalone stocks. The question of enforcement is complicated by the history of small-scale fisheries in South Africa, as in the past 'protest fishing' emerged as a form of dissent against discriminatory and exclusionary government policies. To this day illegal fishing is seen by many as a legitimate pursuit through which to sustain livelihoods in coastal communities where fishers have been excluded by the current rights allocation system and where alternative economic opportunities are scarce. Enforcement activities are often viewed as protecting the commercial interests of existing rights holders, and there is limited trust and co-operation between communities and enforcement officials. The SSF policy and the MLRA Amendment Act provide the framework within which an inclusive governance system can be developed, but without access to fisheries resources through a legitimate rights allocation process, fishers are likely to continue to engage in illegal activities. Broadening access is therefore key to re-establishing the rule of law. However, it is essential that efforts to broaden access are combined with effective law enforcement.<sup>13</sup>

Co-operatives have been formed in most fishing communities. Many of these have been functioning well for some time, with stable leadership structures and financial records. In some cases fishers have combined their limited interim relief allocations in order to broaden access to other community members. The non-governmental organisation (NGO) Masifundise has played an important role in promoting the interests of small-scale fisheries and supporting co-operatives, but assistance has also been provided by other NGOs such as the World Wide Fund for Nature. Despite progress in forming co-operatives, significant divisions still exist in some fisheries communities. Often these divisions stem from the competing interests of those who benefit from the current individual rights allocation system and those who are promoting the implementation of collective rights allocations.

The government faces a difficult task in transforming the sector. In pursuing legitimate transformation goals, it stands to reason that certain rights holders will lose their livelihoods in the process. It is critical, however,

that in pursuing restorative justice, fisheries authorities ensure that procedural justice is not undermined. Without transparent and fair processes, the uncertainty and lack of trust in the sector could be heightened. Even more critically, shortcomings in procedural justice make fisheries authorities vulnerable to legal challenge. As the legal proceedings arising from the 2013 rights allocation process have shown, such court cases have the potential to significantly delay the implementation of the SSF policy. Uncertainty in the sector may be alleviated by an agreement on transformation targets and more clarity on the envisioned balance between individual rights allocations as 'limited commercial' fishers and collective rights allocations through co-operatives and other structures.

## CONCLUSION

Through Operation Phakisa the South African government is seeking to unlock the economic potential of the country's oceans. Capture fisheries are not highlighted in the plan, reflecting the National Development Plan's assessment that growth opportunities in capture fisheries are limited, given the status of stocks. However, the historical marginalisation experienced by South Africa's small-scale fisheries communities, combined with the current high levels of unemployment in many of the country's coastal communities, underlines the importance of achieving a human rights-focused and development-oriented approach to small-scale fisheries governance. Parliament has played a crucial role in the development of the SSF policy and the MLRA Amendment Act. In coming years, Parliament should strengthen its oversight function to ensure that the goals of the SSF policy are realised.

## ENDNOTES

- 1 Alex Benkenstein is the Programme Manager of the Governance of Africa's Resources Programme at the South African Institute of International Affairs.
- 2 A more detailed history of small-scale fisheries is provided by South Africa, Department of Agriculture, Forestry and Fisheries, *Policy for the Small Scale Fisheries Sector in South Africa*, Government Gazette No. 35455, 20 June 2012; and Sowman M *et al.*, 'Fishing for equality: Policy for poverty alleviation for South Africa's small-scale fisheries', *Marine Policy*, 46, 2014, pp. 31–42.
- 3 ANC (African National Congress), 'Ready to govern: ANC policy guidelines for a democratic South Africa', adopted at the ANC National Conference, 28–31 May 1992, <http://www.anc.org.za/show.php?id=227>, accessed 16 November 2014.
- 4 West Coast and East Coast rock lobster are two distinct species, both of which are important to the small-scale fisheries sector.
- 5 More commonly known as 'hottentot'.
- 6 J Duncan, *End of the line? Benchmarking South Africa's traditional linefishery*, dissertation submitted to the University of Manchester for the degree of Masters of Environmental Science Policy and Management, 2008, School of Earth, Atmospheric and Environmental Sciences, University of Manchester, United Kingdom.
- 7 Sunde J *et al.*, 'Emerging proposals for tenure governance for small-scale fisheries in South Africa', *Land Tenure Journal*, 0, 1, 2013.
- 8 *George K and others vs. the Minister of Environmental Affairs and Tourism*, 2005 (6) SA 297 (EqC), 2004.
- 9 Sowman S *et al.*, *op. cit.*, pp. 31–42.
- 10 South Africa, Department of Agriculture, Forestry and Fisheries, *op. cit.*
- 11 *Ibid.*, sections 5.2.2, 6.1.
- 12 South Africa, Department of Agriculture, Forestry and Fisheries, 'Media statement by Minister Tina Joemat-Pettersson: Announcement on the allocation of fishing rights', Kalk Bay, 23 February 2014, <http://www.nda.agric.za/docs/media/Announcement%20on%20allocation%20of%20fishing%20rights.pdf>, accessed 2 December 2014.
- 13 Raemaekers S *et al.*, 'Review of the causes of the rise of the illegal South African abalone fishery and consequent closure of the rights-based fishery', *Ocean & Coastal Management*, 54, 6, pp. 433–445.

The Governance of Africa's Resources Programme (GARP) is funded by the Norwegian Ministry of Foreign Affairs. SAIIA gratefully acknowledges this support.

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