

REDISTRIBUTION OF FISHING RIGHTS IN THE SOUTH AFRICAN HAKE FISHERY

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Abstract

The new Marine Fisheries Policy as encoded in the Marine Living Resources Act (MLRA) of 1998 aims to broaden access in the fishing industry to include the previously disadvantaged people, who were excluded in the fisheries through apartheid laws. Using the hake fishery to show that redistribution of fishing rights can be achieved to include previously disadvantaged people with consideration to biological sustainability and economic efficiency, this study analysis the policy objectives and shows that the policy is not achieving its objectives. The new entrants are faced with numerous structural problems such as lack of infrastructure, lack of access to finance and lack of skills and expertise in fisheries. The joint ventures that are formed between the new entrants and the historical group do not result into new investments and job creation, since the infrastructure exists with the historical group. Although the policy is clear on the requirements that must met to be considered for rights, rights are allocated to people that do not meet the requirements of the policy.

In order for the policy to achieve its objectives, comprehensive support should be given to the new entrants that include making loans available for investment in the fishery and training in business skills. Further, longterm rights should be granted for 10 years as a pilot project for new entrants and be evaluated so that those, that show good performance, their term be extended for a further 5 years. To give weight to the policy, economical viable rights should be allocated that will enable the rights holders to invest in the fisheries. The provision of section 18 of the MLRA (1998) on longterm rights should be implemented to give a sense security in the industry.

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1. INTRODUCTION

The democratically elected government of South Africa in 1994, adopted a fisheries policy aimed at broadening access to the fishing industry for previously disadvantaged people who had been excluded from participating in the fishing industry through the apartheid laws of the previous government. The distribution of the resources and the wealth within the fisheries sector was, and still is, extremely uneven in favour of a few white-owned companies. Furthermore, there was a heavy regional imbalance in the fishing industry and the fisheries administration was dominated by white people. However, a primary objective of the present government, as outlined in the fisheries policy and the Marine Living Resources Act of 1998 MLRA (1998), is to uplift the impoverished coastal communities through improved access to marine resources and sustainable management of those resources through appropriate strategies. The policy was founded on the belief that all natural marine living resources of the country, as well as the environment in which they exist and in which mariculture activities occur, are a national asset and the heritage of all South African people. Consequently, the marine resources should be managed and developed for the benefit of present and future generations in the country as a whole (Anon. 1998).

This study addresses the redistribution of fishing rights in the South African hake fisheries. The main objective of the study is to show that effective redistribution of fishing rights can be achieved in the South African hake fishery, so that previously disadvantaged people in the fishing industry will be included, while ensuring biological sustainability and economic efficiency. In relation to this objective, the study will deal with such fundamental questions as:

1. How can a more equitable and fair distribution of fisheries resources be achieved without compromising the economic basis of the industry?
2. Is it possible to reconcile massive redistribution with the goals of biological sustainability and economic efficiency?
3. What strategies can be employed in the empowerment of the previously disadvantaged groups in the fishing sector?

2. REVIEW OF THE FISHERIES POLICIES AND INSTITUTIONAL STRUCTURES

This section describes the fisheries policy prior to 1994, and the policy process that led to the development of the White Paper on Marine Living Resources, and the new Act of 1998. Also the government institutional structures that are responsible for the management of the resources in terms of the new policy.

2.1 The Fisheries Policy prior to 1994

Prior to 1994, South Africa did not have a formal and clearly articulated fisheries policy. Instead, each fisheries sector had to develop a strategy related to its needs, largely dependent on fluctuations in stock sizes (Payne and Cochrane 1995). The South African fishing industry was also characterised by an uneven distribution of resources in favour of a few white-owned companies. Further, it was marked by an uneven regional distribution of access to the resources, as there was a greater concentration of fishing activities in the Western Cape, than in other coastal provinces (Cochrane and Payne 1997; Hersoug and Holm 1998).

The effects of this policy and the uneven distribution of the resources resulted in some of the excluded groups forming underground poaching societies, a factor viewed by many fishers as reasonable and acceptable (Hersoug and Holm 1998, Anon. 1999). This undermined the authorities and control laws because the system was considered illegitimate and unfair by many black fishers. Consequently, the policy and regulations suffered a legitimacy crisis, where legitimacy is defined as the quality of being justified or willingly accepted by subordinates which converts the exercise of political power into rightful authority.

The historical imbalances illustrated above, prompted the new democratically elected government in 1994 to change the status quo, by initiating a new fisheries policy process aimed at addressing redistribution of fishing rights in the fishing industry.

2.2 The new Fisheries Policy of 1998

The Minister of Environmental Affairs and Tourism, who oversees the fisheries sector, initiated a policy process in October 1994 known as the Fisheries Policy Development Committee (FPDC) and appointed Mr. Mandla Gxanyana as the chairperson.

The FPDC was commissioned to develop a fisheries policy that would conform to the democratic values of the new South Africa as outlined in the government's policy of Reconstruction and Development (RDP) and its Growth Employment and Redistribution (GEAR) macro-economic strategy. The Committee was tasked with the objective of broadening access to the fishing industry, specifically to include people that had previously been excluded by the apartheid policy (Anon. 1996, Mayekiso et al. 1998).

The FPDC was composed of representatives from various stakeholders in the fisheries, including the government. The stakeholders presented written submissions about their visions of a future fisheries policy for South Africa, which served as a basis for the FPDC process. After an 18 month process, the FPDC presented its final report (FPDC 1996) to the Minister of Environmental Affairs and Tourism in June 1996 with recommendations on access rights.

The FPDC report addressed the underlying rationale behind the debate on access rights, but did not make any firm recommendations on which the government could act (Payne and Cochrane 1995). The FPDC proposed an individual transferable quota (ITQ) system with the rights granted in perpetuity, but did not show how this was going to be achieved. However, the FPDC report did form the basis for the White Paper on Marine Fisheries Policy that became the new fisheries policy in 1998.

2.3 The White Paper on drafting Process

The White Paper drafting process was marked by the appointment of the Fisheries Access Rights Panel by the Minister of Environmental Affairs and Tourism in 1997. The panel was composed of several individuals who had no vested interests in the fishing industry namely two lawyers, one economist, and a social scientist. Within a four-month period, the panel was required to evolve access rights principles that could be applied to address the previous imbalances in the industry (Anon. 1997). The panel used the FPDC (1996) recommendations on access rights and drew on experiences of other countries, including advice by international experts on access rights.

The Access Rights Panel presented its report to the government with recommendations that transferable and inheritable long-term property rights be granted in the fishing industry (Hersoug and Holm 1998). The panel further recommended that it was in the interest of all stakeholders that changes be made and implemented speedily, in contrast to the FPDC which recommended no sudden removal of quotas and property rights (Hersoug and Holm 1998).

The White Paper recommended that access rights be sold for a period of 50 years. The legislature settled for a period of 15 years, whereby the rights revert back to the State so as to prevent concentration of rights in the hands of the economically powerful. However, there are no limits on the amount that any single rights holder should own (Mayekiso et al. 1998).

The Marine Living Resources Act of 1998, was passed by Parliament in 1998, thereby replacing the old Sea Fisheries Act of 1988 which was not compatible with the objectives and principles of the new policy (Hersoug and Holm 1998). Presently, the nature of access rights is that the State retains complete control over the distribution of the rights. Section 18 of the Marine Living Resources Act of 1998 states that only the Minister of Environmental Affairs and Tourism is responsible for the allocation of access rights (Anon. 1998).

2.4 Institutional Structures

The Ministry of Environmental Affairs and Tourism is responsible for fisheries management. The Ministry formulates fisheries policy by initiating new or revised fisheries legislation, issuing fisheries regulations and determining annual total allowable catches (TACs). The Ministry is also in charge of the Chief Directorate: Marine and Coastal Management, through its Department of Environmental Affairs and Tourism.

The main roles of the Chief Directorate are:

- To implement government policy in accordance with the relevant directives and legislation.
- To manage the marine fisheries resources and to produce a knowledge base needed by government in conducting fisheries research.
- To make recommendations on levels of the TAC.
- To gather and disseminate information on the condition of the marine environment, assess the state of marine stocks, and provide scientific and economic advice on their rational utilisation to government, the fishing sector, and the general public.
- To enforce compliance with management measures.

The management of marine fisheries resources and the allocation of fishing rights is characterised by the following principles and objectives outlined in Chapter 1, section 2 of the Marine Living Resources Act of 1998;

- *"The need to achieve optimum utilisation and ecologically sustainable development of marine living resources;*
- *The need to conserve marine living resources for both present and future generations;*
- *The need to utilise marine living resources to achieve economic growth, human resource development, capacity building within fisheries and mariculture branches, employment creation and a sound ecological balance consistent with the development objectives of the national government;*

- *The need to restructure the industry to address historical imbalances and to achieve equity within all branches of the fishing industry".*

2.4.1 The Role of the Minister

The Minister of Environmental Affairs and Tourism is responsible for the allocation of fishing rights in accordance with the Marine Living Resources Act of 1998. As part of these responsibilities the Minister appoints the Fisheries Transformation Council (FTC) and the Consultative Advisory Forum (CAF) to provide advice on Fisheries management in relation to the MLRA (1998).

2.4.2 The role of CAF

The function of CAF is to advise the Minister on fisheries management, including the development of the fishing industry, matters referred to the forum by the Minister, and issues relating to the appropriation of the TAC. CAF is also allowed to bring issues of its own initiative to the Minister. However, the Minister may prescribe to CAF the necessary matters relating to its meetings. The CAF is composed of five members from various interest groups, appointed by the Minister for a duration not exceeding three years (Hersoug and Holm 1998).

2.4.3 The role of the FTC

The FTC is composed of five independent members who have no direct interest in the fishing industry, as stipulated in the Act. Their appointment by the Minister shall not exceed three years. The main objectives of the FTC are to facilitate the achievement of equity in the industry by allocating rights to new entrants from previously disadvantaged sectors of society, and to small and medium sized enterprises, and assist in the development and capacity building of these sectors (Anon. 1998). The FTC shall lease these rights in terms of the criteria determined by the Minister. Further, the FTC may determine in terms of the Act the price to be paid by lease of rights and the conditions applicable to leases granted. The FTC is required in terms of the Act to submit an annual report on its activities to the Minister. In assisting the Council in its administrative activities, provision has been made for it to have a staff component MLRA (1998).

2.4.4 The Role of the Chief Director

Part of the role of the Chief Director is to be responsible for the allocation of rights to large enterprises in terms of the criteria and guidelines approved by the Minister. This function is carried out in concurrence with the Minister. In assisting the Chief Director in this function, a Management Advisory Committee (MAC) was appointed consisting of departmental officials, although this function was not stipulated in the Act. However, the Minister exercised section 79(1) Chapter 8, of the Marine Living Resources Act, 1998, which states that:

" The Minister may-

(a) upon the conditions that he or she deems fit, delegate any or all the powers conferred upon him or her in terms of this Act, save a power to make regulations, to the Director-General or an officer of the Department nominated by the Director -General; or

(b) by notice in the Gazette, delegate any power conferred upon him or her in terms of this Act, excluding the power to make regulations, to an authority in the local sphere of government.

(2) The Director-General may delegate any power conferred upon him or her in terms of this Act to an officer in the Department upon the conditions that he or she deems fit.

(3) No delegation of any power shall prevent the exercise of such power by the Minister or the Director-General".

2.5 Current decision-making flow chart

The relationship of the structures involved in the fisheries management decision making process is shown in Figure 1. These processes apply to all fisheries except for the subsistence, recreational and foreign fishing as no provision for these sectors has been made to date.

Presently, the decision making process starts with the Chief Directorate, involving mainly the scientific component of the organisation (Figure 1). After conducting biological research, including collecting relevant data, the research component recommends each year a final total allowable catch (TAC) to CAF.

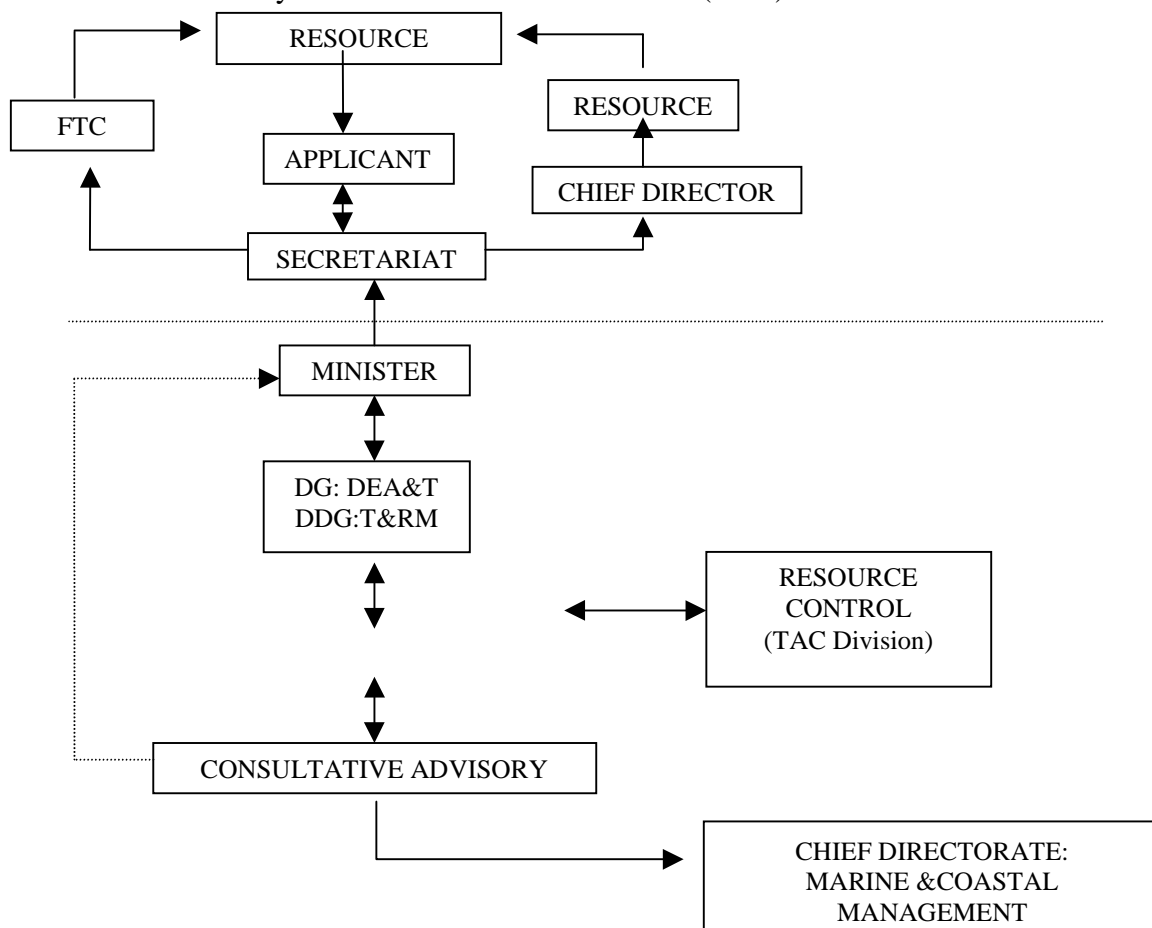


Figure 1: Flow diagram of the decision making process in setting of TAC and allocation of fishing rights.

Comments are then invited from the Chief Director, Deputy Director-General, and the Director-General. After receiving the comments, the TAC is submitted to the Minister for a decision.

Officials from the Resource Control then advise on the allocation division of the TAC. The recommendations are then channelled through the office of the Director-General to the Minister who decides on the final division and TAC. The decision of the Minister on both the division and TAC is forwarded through the Secretariat (administrative component) to the Chief Director, FTC and the Resource Control. After the allocation process has been completed, the successful applicants are issued with permits to exercise their right, to fish after fulfilling prescribed administrative procedures. It should be noted that a permit to exploit the right might be refused if permit conditions were not adhered to before.

3. OVERVIEW OF THE SOUTH AFRICAN FISHERIES

South Africa is the largest fishing nation in Africa, ranking 30th among fishing nations, with total production greater than 500 000 tons and a landed and processed whole sale value estimated at R680 million and R1732 million respectively (Hersoug and Holm 1998, Fishing Industry Handbook 1996). Table 1 shows the total annual catches by the main commercial sectors and the total wholesale value over time. The fishing industry contributes 0.37% of the GDP and employs about 27 000 people in the commercial sector. However, there is no reliable information regarding employment in the subsistence sector (Hersoug and Holm 1998). In the Western Cape, where most of the harvest is landed and processed the fishery accounts for 2.3% of the regional economy.

Table 1: Annual commercial catches (Round Mass) and wholesale values.

INDUSTRY SECTOR	1993		1994		1995	
	Catch (Tons)	Value (R'000)	Catch (Tons)	Value (R'000)	Catch (Tons)	Value (R'000)
Offshore Trawl	196 605	570 373	171 286	626 268	162 543	744 508
Inshore Trawl	15 280	43 455	15 104	52 164	15 235	60 722
TOTAL DEMERSAL	211 885	613 828	186 390	678 432	177 778	805 230
Purse Seine (Pelagic)	357 040	232 134	314 461	289 475	366 456	403 835
Rock Lobster	3 161	138 270	3 190	168 347	2 850	185 901
Crustacean Trawl	554	12 667	609	13 298	512	11 261
Line Fish	20 114	145 118	23 389	164 321	24 745	216 946
Demersal Longlining	0	0	2 452	38 122	1 696	26 520
Abalone	599	32 777	613	53 884	616	54 054
Miscellaneous Nets	1 766	3 197	1 228	2 555	1 338	3 895
Oysters	52	408	120	945	160	1 431
Mussel and Oyster Farm	2 237	9 481	2 887	13 759	2 082	23 586
TOTAL CATCH	597 408	1 187 880	535 339	1 423 138	578 233	1 732 659
Seaweed	995	2 819	857	2 782	1 250	4 215
Guano	0	0	281	219	0	0
GRAND TOTAL	598 403	1 190 699	536 477	1 426 139	579 483	1 736 874

Fish exports play an important role in generating foreign exchange for the country, although the bulk of the products are consumed domestically (Table 2). Similarly, fish imports play an important role in the economy (Table 2).

Table 2: South Africa's imports and exports of fish in 1994 (Fishing Industry Handbook 1996).

	IMPORTS		EXPORTS	
	tons	R'000	tons	R'000
TOTAL	276 396	478 354	178 068	898 060
MAIN PRODUCTS				
Live fish	11	1 888	93	61
Fresh fish, excluding fillets	3 010	3 198	6 960	51 257
Frozen fish, excluding fillets	37 724	46 652	124 052	413 338
Fish fillets, fresh and frozen	871	2 394	12 168	99 454
Fish dried, salted, smoked, etc.	518	6 279	5 093	40 759
Fish, crustacea, molluscs, prepared preserved	12 755	99 818	12 857	76 448
Crustacea and molluscs	5 021	42 374	12 443	208 823
Fishmeal and fish body oil	216 410	274 802	4 165	7 183

4. THE SOUTH AFRICAN HAKE FISHERY

This section describes the biological conditions, regulatory conditions, and the socio-economic condition of the hake fishery.

4.1 Biological conditions

The basic biology of the Cape hake in South Africa is well known. The Cape hake are two morphologically similar species, *Merluccius capensis* and *M. paradoxus*. The former is a shallow-water hake found from close inshore to a depth of about 400 m and the latter is a deep-water species caught from 200 to 600 m (Figure 2). These species are found in the Southeast Atlantic and the Western Indian Ocean and over the Agulhas Bank in the south, to Natal (Punt 1994 and Payne and Cochrane 1995). *M.paradoxus* dominates catches off the West Coast, while *M.capensis* dominates catches on the Agulhas Bank fishing grounds.

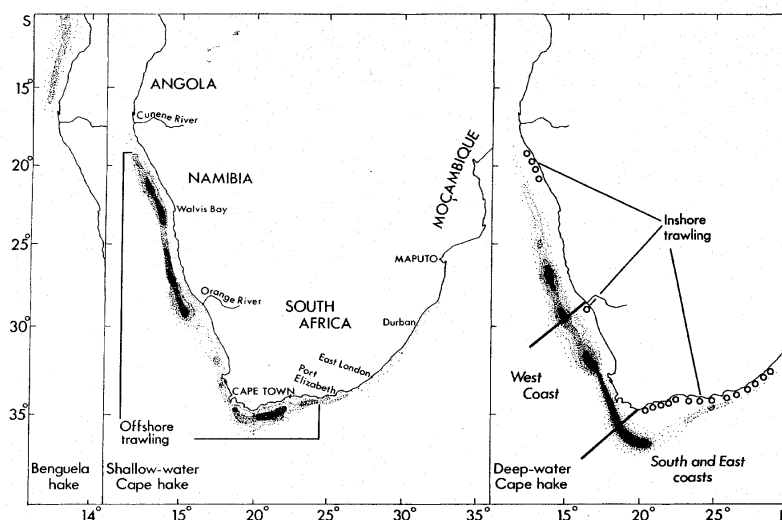


Figure 2: Relative abundance (density) of the two Cape hake species, the division into west and south coasts and the traditional hake fishing grounds of South Africa. (Alheit and Pitcher 1995).

Further, it is apparent that

"both species of the Cape hakes are virtually continuous around most of South Africa and that, with limited horizontal migration taking place, there is no real biological basis for the existence of separate stocks. Therefore, it is purely on the basis of catch trends that hake stocks on the west and south coasts are delineated for the purpose of stock assessment" (Alheit and Pitcher 1995).

Spawning of both species takes place off the West Coast from August to March, whereas spawning occurs all year round on the South Coast (Payne and Cochrane 1995). The hake resources of both species and some nursery grounds of *M. capensis* straddle the common border of South Africa and Namibia. Figure 2 shows the relative abundance of the species including the Benguela hake, which is not caught off South Africa and the statistical subdivision of the South African coastline into western and southern regions (Alheit and Pitcher 1995). Adult *M. capensis* and juvenile *M. paradoxus* are located in the same depth range, where juveniles feed mainly on small crustaceans and adults feed on smaller hakes.

The Cape hakes are preyed upon by birds, other species of predatory fish and seals. The predation potentially impacts future yields of the species and other commercial species of the Southern African coast (Namibia, the South African west coast, and the South African south coast) (Butterworth and Harwood 1991; Punt 1997).

4.1.1 Assessment

The Cape hake stocks have been assessed in recent years by using two assessment methods. The first one is a surplus production method, which assumes a relationship between stock size and catch per unit effort (CPUE). The second is an ad hoc tuned Virtual Population Analysis (VPA). However, the application of either method, and in particular the VPA method to these Cape hake species has been questioned as they involve aggregation of the data for the different species (Punt et al. 1995).

However, TAC recommendations are still formulated for each coast separately as it is assumed that the populations of hake off the south and west coasts are reproductively and geographically isolated (Punt 1994). Final recommendations for the TAC each year is made in May of that year, so that data for the year immediately preceding are available and used in the assessment.

4.1.2 Regulatory conditions

Output controls (TAC) have been the sole means of managing what is, in the case of hake, a recovering fishery because of the difficulties, implementing effective input or effort controls (Payne and Cochrane 1995). The hake fishery is largely controlled by means of company allocated quotas based on the TAC determined by the Minister.

Other management measures that have been used are minimum mesh sizes, limitations on numbers of vessels, and closed areas. Regulatory gillnet mesh size on the west coast are 110 mm and 75 mm on the south coast.

Trawling within 5 miles of the west coast is not permitted, or in the inshore mixed species groups shallower than 110 m on the south coast (Alheit and Pitcher 1995). Levies are charged on the landings based on kilograms of catch. The money accrued from such levies is paid into the MLRA Fund and is appropriated for the administration of the Act.

4.1.3 Socio-economic conditions

Hake is the most valuable fish resource in South Africa by all measures, other than catch tonnage. The trawling industry alone accounts for 53% of all the fisheries output inclusive of processing operations (Bross 1995). During the early 1970s, hake catches peaked at more than 300 000 metric tons (mt). In recent years these catches dropped between 100 000 and 150 000 mt, with maximum sustainable yield estimated between 180 000 and 200 000 mt (Sjoholt 1998).

The hake industry is dominated by two companies, Irvin & Johnson (I&J), and Sea Harvest. These companies control about 80% of the TAC. Both are highly vertically integrated companies. The companies have processing factories, operate their own distribution networks, and are directly involved in trawling operations. However, the quotas of these companies have been reduced in recent years for allocations to new entrants from previously disadvantaged groups (Table 7).

The hake fishery is characterised by the following sectors (Table 3).

- deep-sea trawl
- inshore trawl
- mid water trawl
- longline
- handline

It should be noted that longline was formally introduced in 1998 after an experiment was carried out to establish its economic viability. The handline fishery was allocated 2500 tons the same year (1998). Quotas allocated to Mozambique are caught as a joint venture with South African companies in the deep-sea fishery.

Table 3: Hake catches by each fishery and TAC *It should be noted that 1998 and 1999 show allocations of the TAC (Fishing Industry Handbook 1998, M&CM 1999).

Year	1993	1994	1995	1996	1997	1998	1999
TAC	147 000	148 000	148 000	151 000	153 000	*151 000	*143 000
Deep-sea	132 089	134 179	126 711	142 603	133 489	139 061	126 661
Long-line	0	0	1 696	4 241	4 556	4 400	4 000
Mozambique	1 000	1 000	1 000	1 000	1 000	1 000	1 000
Inshore	8 870	9 569	10 630	11 083	8 909	9 439	9 439
Mid water	243	305	305	858	615	-	-
Reserved	-	-	-	2 700	-	-	-
Hand line						2 500	
New entrants (1999)							3 000
TOTAL	145 053	140 342	140 342	162 485	148 569	149 290	141 100

Although 40 companies receive quotas, only 11 of them are engaged in actual trawling operations; commanding 52 vessels (Hersoug and Holm 1998). The total offshore demersal fleet in the 1990s consisted of 63 trawlers, 37 of which were factory/ freezers and the balance ice carriers (Alheit and Pitcher 1995). Small trawlers (35) operated inshore off the south coast.

The hake fleet statistics are as follows:

- Number of ships: 91
- Gross registered tons: 40 000 (6 000 in reserve)
- Building costs: R 259 million
- Average age of hulls: 20-25 years (Anon. 1998).

The hake fishery is highly capital intensive both in its catching and processing operations. Most of the catch is caught by deep-water bottom trawling, which needs technologically advanced vessels. The make up of the fishery has changed after the entrance of the new quota holders, which mostly fish by longline and handline.

4.2 Markets for the South African hake products

South Africa exports mainly frozen fillets and fresh hake products to overseas markets. The main market for frozen hake and fresh products is Spain, with more than 80% share of the market in 1996. In 1995 and 1996 there was a decrease in the export value of the products to Spain. The value of hake was R400 million between 1992 and 1994, and R100 to R300 million between 1995 and 1996.

The decrease in export value to Spain could be attributed to the reduction of hake exports from 75 000 to 15 000 mt (1995 to 1996). Other markets for hake are; Portugal, Italy, Australia, and the USA, which imports frozen fillets. The remainder of the products is sold to the local catering sector and to all of Southern Africa through supermarkets (Sjoholt 1998). South Africa competes for the same hake markets with countries such as Argentina, Namibia, and Chile. The hake fishery employs about 9 000 people, with most from fisheries dependent communities.

5. ALLOCATIONS OF HAKE FISHING RIGHTS IN SOUTH AFRICA

The key aspect in this section is to describe how the TAC has been distributed among new and historical entrants, how many have entered the fishery between 1993 and 1999, and the subsequent quota held by each entrant.

Traditionally, a new entrant is one that enters the fishery in a particular year. In the following year that same entrant would then become a historical quota holder. However, for the purpose of this study, new entrants are classified as those that entered the fishery from 1993 to 1999. Historical entrants are classified in this study as entrants prior to 1993. The reason being for this classification (1993) in this study is that new entrants from the previously disadvantaged group participated in the fishery from 1993, and it is therefore, imperative to show what the situation was prior to 1993.

In analysing the allocation of fishing rights in terms of the new fisheries policy it is imperative to mention the aspects that underline the nature of equity issues in the implementation of that policy. The fundamental question to be answered prior to the establishment of any system of allocation rights is who owns the resource? In the South African context the government owns the resources and manages it on behalf of the society (Parliament 1998).

Allocation of fishing rights is often difficult and controversial as it determines who will receive benefits from the resource, creating a valuable asset for some and excluding others. With substantial rewards at stake, it is not surprising that difficulties in the initial allocation (redistribution) of rights have often led to severe discontent and legal action over the allocation process (e.g., hake 1997 and rock lobster cases 1999). In the hake Supreme Court case, 6400 mt was set aside from the TAC for longline for allocation to new entrants. A Supreme Court interdict was sought by companies in the industry challenging the Minister's basis of allocating the tonnage to new entrants. As a result of this legal action, the Minister allocated 2000 mt of the 6400 mt to the existing industry with an option that the fishery could be converted to longline.

Similarly in the rock lobster Supreme Court case, the Minister was also challenged for allocating permits to new entrants. This challenge was about how the department of Fisheries issued the 1998 permits. The court case resulted in a delay of pelagic fishing and caused the reduction of harvest by 75 000 mt as the fish was not caught within the specified fishing season. The hake industry was also affected, although both the trawlers and processors were allowed to continue operating while the legal and administrative problems were being addressed. The underlying issue of this case was that in assessing the applications for rights, the Minister applied the provisions of the new Act (MLRA) that led to the exclusion of some of the historical group and the inclusion of new entrants. The historical group contended that the Minister should have applied the old Act (Sea Fishery Act of 1988). They argued that Section 85 of the MLRA (1998) provided that the Minister should have exercised the powers of the old Quota Board for a period of six months after the enactment of the new act. Furthermore, they had submitted their applications for quotas according to the criteria and requirements of the old Act of 1988, and were assessed in terms of the new Act of 1998. As a consequence of the technical legality, permits were reallocated to the existing quota holders.

5.1 Allocation of the TAC between participants in the fishery

Hake quotas are allocated to companies on an annual basis, with applications for quotas invited each year. Applicants are issued an application form to be completed and a copy of the guidelines for the assessment of the application. A non-refundable R600 application fee is charged. Applications are categorised (Table 4) in terms of new entrants, and small, medium and large sized enterprises.

Table 4: The classification of enterprises.

Size or Class	Current full time employees	Total annual turnover	Total gross asset value (fixed property excluded)
Large	Over 100	Over R4 million	Over R4 million
Medium	50-100	R2-R4 million	R2-R4 million
Small	10-49	R400 000-R2 million	R400 000 -R2million
Very small	Less than 10	Less than R400 000	Less than R400 000

Applications are then divided between the FTC and the Chief Director for consideration. The Minister allocates a proportion of the TAC to the FTC to allocate to new entrants, small and medium sized enterprises, and the remainder to large enterprises through the Chief Director on behalf of the Minister. In considering the applications, the allocation committees apply the selection criteria approved by the Minister in November 1998.

In the analysis of the allocation of rights in this fishery, it should be mentioned that one of the limitations of this study is that the stated policy objectives have no clearly stated goals. It would then be difficult to measure the success of the objective of redistribution of rights. However, the fact that there are no clearly stated goals, would not mean that the policy has not been clear on what it is trying to achieve.

5.2 Granting of fishing rights selection criteria

The Minister approved the selection criteria that are applied to allocation of rights on 11 November 1998.

The key aspects of the selection criteria are the following:

" Capability of accessing and exploiting the resource. This means that:

- *1.1 rights should only be granted to applicants who will be actively involved in the fishery;*
- *1.2 paper quotas will be avoided;*
- *1.3 applicants must be in possession of or have access to catching and / or processing facilities;*
- *1.4 applicants should be significantly involved in the fishing operation and its management, including exposure to the risk involved reflected by owning a significant portion of the share capital;*
- *1.5 if the applicant does not comply with 1.3/1.4, evidence that he / she is able to do so within two years must be provided. If this is not attained within that period, the right allocated may be revoked. In this event, a sale of the right within three years after allocation will not be accepted.*

- 2.3.3 *Economic viability of the business and the extent to which applicant furnishes information on capital expenditure, in the past or intended in future, as well as on sustainability of the present or intended business;*
- 5.7 *Empowerment partnerships, e.g. joint-venture co-operation with previously disadvantaged persons or with small or medium sized operators;*
- 5.8 *providing opportunities to own shares in fishing enterprises to all workers and members or businessmen from the previously disadvantaged society, especially within the context of fishing communities".*

It should be mentioned that the above selection criteria were used from 1998, while prior to that, allocations were made by the Quota Board in terms of the old Sea Fisheries Act of 1988. Although the criteria for selection has been clear on the requirements for prospective applicants, what has actually happened is that these rights were granted to people who did not have the capability of accessing and exploiting the rights themselves and, instead sold the rights granted to them to existing enterprises. Thus, paper quotas were not avoided.

5.3 Current allocations

In this section, the changing social distribution of quotas is examined by arranging quota holders into discrete groups, based on the size of their quota shares. The historical users are grouped together, and two companies that hold the largest shares of the quota are compared with those that hold less quotas in the deep-sea fishery (Table 5).

Table 5: Distribution of quotas (in tons) among the historical users in the deep-sea fisheries (Fishing Industry Handbook 1998).

Name of company	1994	1995	1996	1997	1998
Irvin & Johnson	53 386	53 386	53 386	53 088	50 646
Sea Harvest	41 272	41 272	41 272	41 042	39 154
Others	29 932	46 508	46 778	49 262	49 262
Total	124 590	141 166	141 436	143 392	139 062
TAC	147 000	148 000	151 000	153 700	151 000

In 1993, new entrants were allocated quotas in the deep-sea fishery. Table 6 shows the change in the number of quota holders and the distribution of quota between new entrants during 1993 and 1999. It should be noted that there were no new entrants in 1994 and 1995. Tonnage as per new entrant was unchanged, until 1996 when it started to decrease. This decrease may be explained by assuming that it was beneficial for the initial group since they were the ones who came in first in the fishery. The decrease can be attributed to the entrants that came later, as a result the greater increase in the number of participants, then the less the other group received, since the TAC was allocated to a larger group of participants.

Table 6: Total quota (in tons) held per new entrant in the hake deep-sea fisheries (Fishing Handbook 1998, M&CM 1999).

Entrance	Number	1993	1994	1995	1996	1997	1998	1999
1993	4	1000	1000	1000	1000	948.8	948.8	1014
1994								
1995								
1996	14				343.3	463.3	442.2	507
1997	15					251.5	240.4	306
1998								
1999	3							750
Total	36	4 000	4 000	4 000	8806.2	14053.9	13592	17994

Implementation of the new fisheries policy in 1998 has shown some results of achieving the objective of redistribution of quotas to include people from the previously disadvantaged groups in the fisheries (Table 9) although, there is still a high level of concentration of quotas in the historical companies. The quotas allocated to new entrants are taken from the existing quota holders (Table 7).

Table 7: Change in quota allocation (in tons) for major quota holders (Fishing Handbook 1998 and M&CM 1999).

Name of company	1996	1997	1998	1999
Irvin & Johnson	53 386	53 088.1	50 645.95	46 128
Sea Harvest	41 272	41 041.7	39 153.95	35 770
Atlantic Trawling	12 495	12 425.3	11 582.97	10 830
FernparFishing	2 499	2 485.1	2 371.17	2 153
Marine Products (Food Corporation)	6 548	6 511.5	6 210.45	5 706
Trachurus Fishing	1 350	1 342.4	1 279.31	1 175
Viking Company	2 634	2 619.3	2 498.53	2 269
SacoFishing	903	901.9	858.60	839
Total	121 087	120 415.3	114 601.02	104 870
TAC	151 000	153 700	151 000	143 100

In 1999, 10 000 mt were made available from the trawl sector by the Minister, for allocations to new entrants. The tonnage (10 000 mt) was distributed as follows; 4 000 mt to the longline fishery, 3 000 mt to existing small trawl companies and 3 000 mt to new entrants of hake trawling. The small-trawl sector converted 1600 mt of their quota to longline.

From the 10 000 mt, 7770 mt were allocated for longline to 48 companies, and out of these companies, 23 were quota holders from 1998 and 25 were 1999 entrants. It should be mentioned that of the 53 companies in the 1998 group 30 companies dropped out in 1999.

Table 8: Longline quota allocation (in tons) to new entrants. (Fishing Industry Handbook 1998, M&CM 1999).

Year of entrance	Number	1998	1999
1998	53	4400	*4220
1999	25		3550
Total	48	4400	7770

* 30 of the 1998 group dropped out.

Table 9 compares the time when the first new entrants entered the fishery and the current situation and shows how redistribution of fishing rights has evolved over time.

Table 9: Distribution of quotas (in tons) between historical group and new entrants in the deepsea fishery (Fishing Industry Handbook 1998 and 1994, M&CM 1999).

Participants	1993	Percentage	1998	Percentage
Historical group	120 590	96.79	121 069.3	87.1
New entrants	4 000	3.21	* 17 992	12.9
Total	124 590	100	139 061.3	100

*Figure includes longline allocations (1998 & 1999)

6. CURRENT ISSUES

In 1998, the new MLRA was passed by Parliament. The act concluded a complete review of the fisheries legislation that had been going on since the enactment of the Sea Fisheries Act of 1988. It provided a complete revision of the fisheries Act, to make it compatible with the new fisheries policy and its objectives. The key objectives of the policy were to broaden access to include people from the disadvantaged sector of society in the fisheries and to create jobs. In achieving these objectives, the government has allocated quotas to new entrants as shown in Tables 6 and 8, and summarised in Table 9. Further, Table 7 shows where these quotas have been taken from and how they have been distributed to new entrants. Even though, rights are allocated to new entrants, they are not actually meeting the requirements of the policy (Attwood 1999).

6.1 Why is the Government Marine Fisheries Policy not achieving its objectives?

The current policy is aimed at achieving equity, to include people from the previously disadvantaged groups in the fishery. One of the reasons that make this objective difficult to achieve is that the new entrants are faced with numerous obstacles, the following problems being the most serious:

- Lack of skills and expertise in fisheries.
- Lack of access to finance, where as a result they are unable to make the necessary investments in the fisheries such as in infrastructures, and buying of fishing vessels and boats.
- They lack credit so banks are reluctant to grant them loans.
- The hake fishery is highly industrialised and requires large capital investments. For instance, fishing trawlers cost between R15-20 million, (Cape Business News, April 1997). The current allocations of 100 to 1000 tons to new entrants will never enable them to buy such trawlers, and then there are operational costs involved.
- Although there is a gradual shift into longline for new entrants this fishery also requires large capital investment (Cape Business News 1997).

The policy is clear on the requirements that must be fulfilled by applicants when applying for rights. It outlines clearly for the allocation bodies (FTC and MAC) the key aspects that must be considered when assessing applications for rights (for selection criteria see Appendix 2). However, what is happening in practice is in direct

contradiction with the policy itself, as rights are granted to people who do not meet the most basic requirements, such as: rights will only be granted to applicants who will be actively involved in the fishery and paper quotas will be avoided.

6.2 What happens with the fishing rights that are allocated to new entrants?

Generally, the new entrants lack experience and capital to utilise the rights themselves. What is happening is that the rights are sold to existing companies by the those who are unable to utilise the rights themselves, therefore, creating what has been commonly known as paper quotas (selling of rights). The selling of rights is in direct contradiction with the actual policy, as rights holders are supposed to create jobs and make investments in the fisheries, so that there could be a flow of social benefits. The benefits accrued by the rights holders are used by some to buy shares in existing companies. In this regard, it is very important to realise that the government cannot be seen as using a national resource to give finance in a form of fishing rights to people in order for them to buy shares in fishing companies.

6.3 Joint Ventures between new entrants and historical user group

The policy encourages the formation of joint ventures between existing companies and new entrants. What has not been clear is the form that these joint ventures must take to best achieve the policy objectives. For the purpose of this study it is imperative to define the term joint venture. Joint venture is defined as, "an association of two or more partners who share risks and benefits of a joint commercial enterprise"(FAO 1996). The nature of the joint ventures that are formed by new entrants and the historical companies is that the new entrants contribute to the joint venture with fishing rights. Whereas the historical companies harvest, process, and market the fish, clearly showing who is taking the associated risks of the venture. This can be construed as a manifestation of the paper quota system in a form of a joint venture. The joint ventures do not result in the creation of jobs and new investments as the infrastructure already exists with the historical companies.

This situation shows that the policy is not achieving its objectives and no redistribution is taking place, as the rights that are taken from existing companies and redistributed to new entrants, revert back to the existing companies. Mr Gording of Irvin & Johnson said that, "although the company had suffered a cut, it hopes to make up the tonnage through joint venture initiatives" (Attwood 1999). This is illustrated by the nature of the joint ventures that are being formed by the two groups. Further the manner, in which the policy is being implemented in some instances stirs discontent among the right holders and the society, which is meant to benefit from the utilisation of the national resource.

The chairperson of Sea Harvest (one of the major fishing companies) has been quoted in the Cape Times (1999) as saying, "We cannot give up our quotas to only to have them given to front companies who are not going to create jobs and employment. That goes against the challenge that is facing us in terms of making black fishermen benefit from this industry. We were prepared to make sacrifices and to restructure to avoid job losses, but we cannot allow quotas to be given to existing quota holders". This statement is made in direct reference to two companies that were allocated rights in the deep-sea fishery as new entrants. The two companies are believed to be subsidiaries of existing hake quota holders, and therefore, implying that the rights that

were taken from these companies and distributed to new entrants go back into these companies.

Out of the 53 new entrants in the hake longline fishery that received rights in 1998, 30 dropped out in the 1999 allocation and 25 new entrants were granted rights in 1999. The high drop-out can be viewed as a loss to the fishing industry (paper quotas), as these companies are not active in the fishing industry. The objective of the policy is not only about giving rights to disadvantaged groups, it is also about building capacity and making them viable economic enterprises so that they can make a meaningful contribution to the economy.

In addressing the paper quota problem the government is considering implementing long-term non-transferrable rights with the view that this will discourage the selling of rights by new entrants. The argument being that many of the new entrants are ill equipped to harvest fish. They have no catching facilities and since they cannot be sure of whether they will receive fishing rights in the following year they cannot risk making an investment in fishing equipment.

This argument is in direct contradiction with the policy as it has been clear on the requirements to be fulfilled, in order to be granted rights and therefore the fact that rights are not granted on a longterm basis cannot be used to justify the status quo. The next section makes some recommendations on how the current problems that characterise the policy, can be addressed.

7. RECOMMENDATIONS

The recommendations given in this section of the study should serve as a basis on which government could begin a comprehensive analysis of the current policy issues raised in this study. It should be stressed that due to time constraints and limited data, a cost and benefit analysis of the policy was not possible. Therefore, my recommendations provide a general scope by which such an analysis can be undertaken.

My recommendations are:

- The establishment of a comprehensive support system for the new entrants that will include making loans available for investment in the fishery and training in business skills. Setting aside a certain part of the TAC each year for new entrants and small and medium size enterprises (SMMEs) to enable them to create bigger entities, and thereby consolidate their assets should facilitate this.
- These rights should be granted for 10 years, as a pilot project, and be reviewed after the first 5 years. The Government should annually monitor the utilisation of the rights to identify any problems that may arise and take corrective measures.
- Conditions should be attached to the rights to avoid being utilised for purposes that are not in accordance with the policy objectives.
- There should be a provision of incentives, for example the rights be extended for another 5 years to good performers. For the ones that drop out, the rights that were held by them should be allocated to performers as an incentive.
- The rights that are being allocated should be economically viable. In this regard, the economic section of the department should give advice to the allocation bodies, as to what constitutes an economic viable right (minimum tonnage). This will require the economic section to carry out a cost-benefit

analysis prior to giving such advice, so that the rights that are being allocated achieve the intended social goals.

- It should be noted that the resource is limited, and therefore, to allocate economically viable rights, there should be a limited number of entrants in the fishery.
- For the policy to be effective, the selection criteria must be enforced.
- **Joint ventures:** The current joint ventures, between the large companies and the new entrants are not achieving the policy objectives, hence the need for the change of strategy. The co-operation between these groups should be based on the notion that the new entrants charter the vessels from the large companies. Such an arrangement will enable the new entrants to negotiate prices and retain control over their rights.
- **Provision of Economic Advice:** The economic section of the department should be involved when decisions are made about the setting of TACs, in order to give advice on social and economic issues. In order to this, the economists in the department should prepare and maintain position papers on the consequences of the various aspects of the fisheries policy.
- Special studies should be undertaken to evaluate and advise on conditions for joint ventures between new entrants and large companies including joint ventures with foreigners.
- Advice should be given on policy issues pertaining to resource allocation between the different sectors of the hake fishery, and on the division of the TAC between the SMMEs and large companies.
- The economic section should conduct research including cost-benefit (input-output) analysis of the different sectors of the industry in order to identify fishing methods and vessel types that create the greatest national benefit.
- The deepsea fishery requires a lot of capital investment. Therefore, large companies should operate in this fishery, and any of the SMMEs that have the capacity to operate in this fishery should be allowed to do so.
- The structural constraints inadvertently entails that new entrants should operate in the inshore fishery as it requires less capital investment.
- Section 18 of the MLRA (1998), dealing with the allocation of longterm rights not exceeding 15 years whereby the rights revert back to the State, should be implemented to give a sense of security to the industry.

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