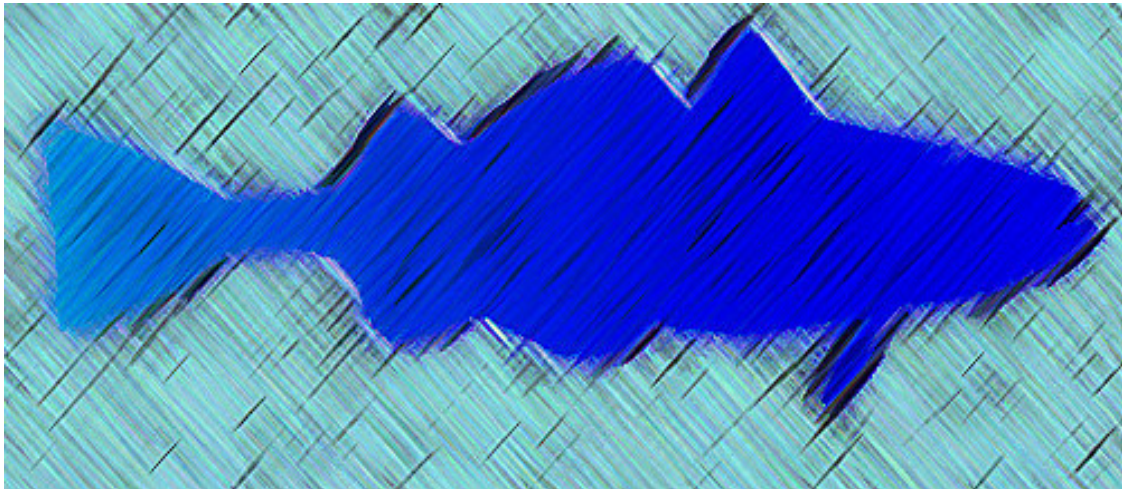


# TRANSFORMATION IN THE MARINE FISHING INDUSTRIES OF THE BCLME COUNTRIES

BCLME Project LMR/SE/03/03



PRESENTED TO:



BCLME Activity Centre for Living Marine Resources

PRESENTED BY:



ON BEHALF OF:



THE CONSORTIUM

01 October 2005

## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>LIST OF ACRONYMS .....</b>   | <b>V</b>  |
| <b>EXECUTIVE SUMMARY .....</b>  | <b>I</b>  |
| <b>1. INTRODUCTION .....</b>  | <b>1</b>  |
| <b>2. MEASURING TRANSFORMATION IN SOUTH AFRICA .....</b>                                      | <b>4</b>  |
| <b>2.1 Introduction to the South African Fishing Industry .....</b>                           | <b>4</b>  |
| <b>2.2 Understanding Transformation in South Africa .....</b>                                 | <b>6</b>  |
| <b>2.3 Regulating Transformation in the South African Fishing Industry .....</b>              | <b>7</b>  |
| 2.3.1 The legal nature of a Fishing Right in South Africa.....                                | 7         |
| 2.3.2 The Constitution of the Republic of South Africa, 1996 .....                            | 8         |
| 2.3.3 The Broad Based Black Economic Empowerment Act, 2003 .....                              | 9         |
| 2.3.4 The Marine Living Resources Act, 1998.....  | 10        |
| 2.3.5 South African Fisheries Policy.....   | 11        |
| <b>2.4 Analysis of Implementation .....</b>   | <b>12</b> |
| 2.4.1 Phase 1: The Marine Living Resources Act.....   | 12        |
| 2.4.2 Phase 2: Transformation of the Department of Environmental Affairs and<br>Tourism ..... | 13        |
| 2.4.3 Phase 3: The Allocation of Medium Term Commercial Fishing Rights .....                  | 13        |
| <b>2.5 Case Studies.....</b>  | <b>17</b> |
| 2.5.1 Process Overview .....  | 18        |
| 2.5.2 Criteria and Weighting Design.....  | 19        |
| 2.5.3 Hake Deep Sea Trawl.....  | 19        |
| 2.5.4 Hake Inshore Trawl.....   | 20        |
| 2.5.5 Hake Long Line.....   | 22        |
| 2.5.6 Hake Handline .....   | 23        |
| 2.5.7 Horse Mackerel.....   | 25        |
| 2.5.8 Small Pelagics (Anchovy and Sardines).....  | 26        |
| 2.5.9 The Tuna and Swordfish Long Line Fisheries (The Large Pelagic<br>Fisheries).....        | 27        |
| <b>2.6 Measuring Transformation in South Africa.....</b>                                      | <b>29</b> |
| 2.6.1 South Africa's Overarching Fisheries Transformation Policy .....                        | 29        |
| 2.6.2 The Fishery Specific Policies and Transformation.....                                   | 31        |
| 2.6.3 The Hake Fisheries.....   | 31        |
| 2.6.3.1 Hake Deep Sea Trawl .....   | 32        |
| 2.6.3.2 Hake Inshore Trawl .....  | 34        |
| 2.6.3.3 Hake Long Line .....  | 35        |
| 2.6.3.4 Hake Handline.....  | 36        |
| 2.6.4 Horse Mackerel.....   | 36        |

|           |  |           |
|-----------|--|-----------|
| 2.6.5     | Small Pelagics .....   | 37        |
| 2.6.6     | Tuna and Swordfish Long Line.....  | 37        |
| 2.7       | <b>Conclusion.....</b>   | <b>38</b> |
| <b>3.</b> | <b>MEASURING TRANSFORMATION IN NAMIBIA.....</b>  | <b>40</b> |
| 3.1       | <b>Introduction .....</b>  | <b>40</b> |
| 3.2       | <b>Understanding transformation in Namibia .....</b>   | <b>41</b> |
| 3.3       | <b>Regulating Transformation in Namibia’s Fishing Industry.....</b>                              | <b>42</b> |
| 3.3.1     | The Namibian Constitution.....   | 42        |
| 3.3.2     | Fisheries Laws and Regulations .....   | 43        |
| 3.3.2.1   | The Sea Fisheries Act and Regulations, 1992.....   | 44        |
| 3.3.2.2   | The Marine Resources Act of 2000 .....   | 44        |
| 3.3.3     | Fisheries Policies .....   | 46        |
| 3.3.3.1   | Policy on the Granting of Rights of Exploitation .....   | 46        |
| 3.3.3.2   | Quota Allocations and Systems of Fishing Rights.....   | 47        |
| 3.4       | <b>Analysis of Implementation .....</b>  | <b>48</b> |
| 3.4.1     | Fishing Licenses .....   | 49        |
| 3.4.2     | Fees.....  | 50        |
| 3.5       | <b>Case Studies.....</b>   | <b>51</b> |
| 3.5.1     | Policy Implementation in Hake Sub-Sector .....   | 51        |
| 3.5.2     | Economic Rents Generated by the two Categories of Apportioned Hake TAC’s .....                   | 52        |
| 3.5.3     | A Closer Look at the Role of Resource Rents in Rights-based Fisheries Management .....           | 52        |
| 3.5.4     | Quota Allocations and Production Capacity: Shortcomings and Recommendations.....                 | 54        |
| 3.5.5     | Horse Mackerel.....  | 54        |
| 3.5.6     | Pilchard.....  | 55        |
| 3.5.7     | Where Should the Resource Rents Go? .....  | 56        |
| 3.5.8     | Where are the Resource Rents Going? Ownership and Control of the Namibian Fishing Industry ..... | 58        |
| 3.5.9     | The Structure and Quality of Namibianisation: Where has the Rent been Dispersed to? .....        | 59        |
| 3.5.10    | Vertical Integration of the Fishing Industry .....   | 63        |
| 3.6       | <b>Measuring Transformation in Namibia.....</b>  | <b>66</b> |
| 3.7       | <b>Empowerment and Namibianisation .....</b>   | <b>67</b> |
| 3.8       | <b>Conclusion.....</b>   | <b>68</b> |
| 3.8.1     | The Dynamics of Policy Implementation and the Way forward: Suggested Avenues for Progress .....  | 70        |
| <b>4.</b> | <b>MEASURING TRANSFORMATION IN ANGOLA.....</b>   | <b>74</b> |
| 4.1       | <b>Introduction to the Angolan Fishing Industry .....</b>  | <b>74</b> |

|  |           |
|--|-----------|
| <b>4.2 Understanding Transformation in Angola .....</b>  | <b>75</b> |
| <b>4.3 Regulating Transformation in Angola .....</b>   | <b>76</b> |
| 4.3.1 The Southern African Development Community Protocol: 2001 .....  | 76        |
| 4.3.2 The Constitution of the Republic of Angola (Lei Constitucional da Republica de Angola), 1992.....                            | 76        |
| 4.3.3 Angola’s Fisheries Regulatory Environment.....   | 76        |
| 4.3.4 Fundamental Law of Angola.....   | 77        |
| 4.3.5 Law 21/92 on Angola’s Internal Waters, the Territorial Sea and the Exclusive Economic Zone .....                             | 78        |
| 4.3.6 The Angolan Fisheries Act (Lei das Pescas), No. 20/92, of 14 August.....   | 78        |
| 4.3.7 The Aquatic Biological Resources Act.....  | 79        |
| 4.3.8 Investment and Participation .....   | 79        |
| <b>4.4 Analysis of Implementation .....</b>  | <b>80</b> |
| 4.4.1 Fishing Rights .....   | 80        |
| 4.4.2 Categories and Types of Fisheries.....   | 81        |
| 4.4.3 Characteristics of Angola’s Fishing Sectors .....  | 81        |
| 4.4.4 Fishing Licenses .....   | 82        |
| 4.4.4.1 Angolan Fishing Vessels .....  | 82        |
| 4.4.4.2 Foreign Vessels.....   | 82        |
| 4.4.4.3 Scientific Licenses.....   | 83        |
| 4.4.4.4 Foreign Access Agreements (F/A Agreements).....  | 83        |
| <b>4.5 Case Studies.....</b>   | <b>83</b> |
| 4.5.1 Reserved Fishing Zones for Small Scale Fisheries .....   | 83        |
| 4.5.2 Small Scale and Artisanal Fisheries .....  | 84        |
| 4.5.3 The Nature of Angola’s Artisanal Fishers and Fishery.....  | 84        |
| 4.5.4 Financial – and other Support Structures for Small-scale Fisheries in Angola .....   | 85        |
| 4.5.4.1 The Institute for the Development of Artisanal Fisheries (IPA) ....  | 85        |
| 4.5.4.2 The African Development Bank .....   | 85        |
| 4.5.4.3 Fund for the Development of Fishing Industries (“FADEPA”).....   | 86        |
| 4.5.5 Further Support Initiatives for Small-Scale Fisheries in Angola: INATIP (Institute for the Import of Fishing Equipment)..... | 87        |
| 4.5.6 Public Participation and Ownership Stakes in Angola’s Fishing Sectors ..   | 87        |
| 4.5.6.1 Fishing Associations and Co-operatives .....   | 87        |
| 4.5.6.2 Industrial Fishing Associations (Associacao dos Armadores Industriais de Pescas) .....                                     | 87        |
| 4.5.6.3 Semi-industrial Fishing Associations (Associacao dos Armadores de Pesca Semi-Industrial de Luanda .....                    | 87        |
| 4.5.6.4 Provincial Fishing Associations (Associacao Provincial de Pesca Industrial e Semi-Industrial - APPIS).....                 | 88        |
| 4.5.6.5 Artisanal Fisheries and Cooperatives .....   | 88        |

|   |           |
|---|-----------|
| 4.5.7 Fishing Agreements .....                | 88        |
| <b>4.6 Measuring Transformation.....</b>      | <b>89</b> |
| <b>4.7 Conclusion.....</b>                    | <b>90</b> |
| <b>5. RECOMMENDATIONS.....</b>                | <b>92</b> |
| <b>5.1 South Africa .....</b>                 | <b>92</b> |
| <b>5.2 Namibia .....</b>                      | <b>93</b> |
| <b>5.3 Angola.....</b>                        | <b>94</b> |
| <b>REFERENCES .....</b>                       | <b>96</b> |
| <b>APPENDIX 1: PERSONS CONSULTED .....</b>    | <b>98</b> |
| <b>APPENDIX 2: NATIONAL LEGISLATION .....</b> | <b>99</b> |

## LIST OF ACRONYMS

|                     |  |
|---------------------|--|
| AFA                 | Annual Fisheries Agreement   |
| BCLME               | Benguela Current Large Marine Ecosystem  |
| BENEFIT             | The Benguela Environment Fisheries Interaction and Training Programme            |
| CCAMLR              | Convention on the Conservation of Antarctic Marine Living Resources              |
| DDC                 | Directorate of Development Co-operation  |
| DEAT                | Department of Environmental Affairs and Tourism (South Africa)                   |
| EEZ                 | Exclusive Economic Zone  |
| EIA                 | Environmental Impact Assessment  |
| EU                  | European Union   |
| EVAC                | Environmental Variability and Co-ordination Unit                                 |
| FAO Code of Conduct | The Food and Agricultural Organisation Code of Conduct for Responsible Fisheries |
| GEF                 | Global Environment Facility  |
| HABs                | Harmful Algal Blooms   |
| IBCC                | Interim Benguela Current Commission  |
| ICCAT               | International Commission for the Conservation of Atlantic Tunas                  |
| ICES                | International Commission on the Exploration of the Sea                           |
| MCM                 | Marine and Coastal Management, a Branch within DEAT (South Africa)               |
| MCS                 | Monitoring, Control and Surveillance   |
| MET                 | Ministry of Environment and Tourism (Namibia)                                    |
| MFMR                | Ministry of Fisheries and Marine Resources (Namibia)                             |
| MME                 | Ministry of Mines and Energy (Namibia)   |
| NPC                 | National Planning Commission (Namibia)   |
| ORM                 | Orange River Mouth   |
| PCU                 | Programme Co-ordinating Unit (of the BCLME)                                      |
| PSC                 | Programme Steering Committee (of the BCLME)                                      |

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|--------|--|
| SADC   | Southern African Development Community               |
| SAP    | Strategic Action Programme (of the BCLME)            |
| SEAFO  | South East Atlantic Fisheries Organisation           |
| TAC    | Total Allowable Catch                                |
| TDA    | Transboundary Diagnostic Analysis                    |
| UNCLOS | United Nations Convention on the Law of the Sea      |
| UNDP   | United Nations Development Programme                 |
| UNOPS  | United Nations Office for Project Services           |
| ZOPCSA | Zone of Peace and Co-operation in the South Atlantic |

## EXECUTIVE SUMMARY

*Transformation* of the South African fishing industry refers to a dual imperative, entrenched both in the Constitution of the Republic of South Africa and the principal fisheries law, the Marine Living Resources Act, 1998. Firstly, it refers to the imperative to right the wrongs of apartheid that systematically excluded black people from gaining formal and equitable access to the commercial fisheries of South Africa. Secondly, it refers to the imperative that commercial fishing rights must be exploited by South Africans for the benefit of South Africa.

An analysis of the South African fishing industry, and in particular the transformation profiles of the hake, horse mackerel and pelagic fisheries, indicates that South Africa has made substantial progress in transforming its fisheries since the advent of democracy in 1994. The re-allocation of quota's, whilst forming the basis for a transformed industry, also hides the depth to which ownership and real control of the industry has entrenched itself. The most significant and sustainable transformation was achieved in 2001 when South Africa allocated medium term or 4 year long commercial fishing rights. Historically, commercial fishing rights were allocated annually, which resulted in significant economic instability for the sector which in turn had the affect of undermining black investment in the fishing industry.

In 2001 and 2002, the Department of Environmental Affairs and Tourism, through its fisheries branch, Marine and Coastal Management, allocated 3900 medium term commercial fishing rights, marking a ten-fold increase in participation levels since 1994. In itself this meant carving smaller slices of the pie as there was no room to increase fish stocks. Of the 3900 rights allocated, 66% were allocated to black persons or entities owned and controlled by black persons. The 66% control represents approximately 58% of all fish landed on a commercial basis in South Africa. In terms of monetary value, this approximates to ZAR2,3 billion (US\$349 million) per annum or roughly 1% of GDP.

Notwithstanding the impressive transformation record of the South African fishing industry, a number of challenges must be recognized and addressed in the medium to long term by the South African Government, which are identified and discussed in the following report.

### ***Measuring transformation in Namibia***

The measure of transformation in Namibia is its fisheries *Namibianisation* programme. Namibianisation reflects a political imperative that to *“be able to take up opportunities provided by development of the fisheries sector, Namibians must be able to acquire skills through training. In addition, to increase the role which Namibian businesses play in the sector, supporting policies and programmes are needed for the allocation of fishing rights and quotas. This goal will be achieved by strengthening the research and training capacities of the fishing industry.”*<sup>1</sup>

Post independent Namibia accordingly faced a challenge similar to that which faced by post apartheid South Africa – ensuring that Black Namibians had equitable access to fisheries resources and ensuring that Namibia's fisheries benefited Namibians.

The Namibian fishing industry employs between 14500 and 15000 persons. The number of Namibians employed as crew has continually increased from 47% in 1996 to 66% in 1998. On-shore workers are predominately Namibian. Of the current 8,000 to 8,500 workers, at least 95% are Namibian.

The Fisheries sector plays a key role in generating revenue for Namibia. Revenues are generated through various fees and levies. During 2003, Namibia collected more than N\$100

<sup>1</sup> See [www.mfmr.gov.nam](http://www.mfmr.gov.nam) (“Laws & Policies”).



million from its fishing industry. During this period some 665 000 tons of fish was landed worth approximately R3.5 billion to the Namibian economy.

Since Namibia's independence in March of 1990, fisheries have assumed an increasingly important role in her national economy. So much so, that the rich marine resources have arguably become the most important renewable resource of the country.<sup>2</sup> Implicitly they have become a central aspect to Namibia's development strategy.<sup>3</sup> An essentially related question thus arises, as to who is truly and substantively benefiting from this lucrative natural resource. Namibia's policy objectives have been aimed at securing these benefits to the advantage of the Namibian peoples, both at a level of poverty eradication, empowerment, job creation, and, more importantly, to serve as an overall infrastructural development tool.

The Namibianisation and empowerment aspects of the fisheries policy have been relatively successful, as they have simultaneously secured real economic advantages for Namibians whilst attracting the foreign investment, skills, capital and market access required by successful development of the sector. This becomes apparent in the appraisal towards the end of this report, which measures the progress in the Namibianisation of the fleets, fishing vessel crews and businesses in the sector. This progress illustrates how there is a much broader-based shareholding, involving Namibian nationals either directly as individual shareholders or indirectly through investment by insurance and pension funds that represent a Namibian workforce and 'small savers'.<sup>4</sup> This form of progress reflects the Government's ongoing commitment to empowerment within its hugely important fishing sector.

All except for one of the 163 rights-holders during 2003 were majority Namibian-controlled. These goals have been achieved in two primary ways: almost all the major, foreign-owned companies brought in Namibian investors with the advent of Namibia's independence and consequent new fisheries policy. The main vehicle used for such investment was provided by pension and insurance schemes. In the second place, many new businesses, most of which are wholly Namibian-owned, have entered the sector since Independence. Simultaneous to such corporate developments, foreign investors have found valuable opportunities in the sector, most notably as partners to Namibian companies in terms of joint venture arrangements.

This report provides a number of recommendations and proposals to further transformation, particularly substantive transformation, in Namibia.

### ***Measuring transformation in Angola***

From the early nineties, the Angolan Government started actively regulating its fishing industry. An analysis of the Angolan legal system and comprehensive regulatory framework indicates that almost every aspect of the industry is regulated by law. Similarly to the other lusophone countries (such as Mozambique and Brazil), the legal principles have been clearly enunciated. The courts themselves do not provide much oversight over the industry. Instead the entire industry is regulated by the Ministry of Fishing. Often, this Ministry is authorised to act upon mere suspicions of breaches of regulations and laws.

Presently, around half the Angolan population is reliant on the fishing industry as their livelihood, with most of these involved in artisanal fishing. For this reason, and in the context of transformation, the present report focuses on Angola's artisanal fishing sector. Furthermore, the artisanal fisheries in Angola are a fast-growing sector, that are becoming an increasingly important part of their economy.

<sup>2</sup> Manning, P. (2004) Review of the Distributive Aspects of Namibia's Fisheries Policy p. 1.

<sup>3</sup> See, for example: National Development Strategy and Action Plans, (NDP) I and II, accessible at the National Planning Commission (NPC), Windhoek, Namibia.

<sup>4</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 2.

The Programme of Government, which is comparable to Namibia's National Development Plans and *Vision 2030* strategies and planning documents, prescribes the adoption of sectoral programmes. One of the cornerstones of the programmes for the fisheries and agricultural sectors relates to the provision of food security and adequate access to food.

Current figures indicate that local industrial and semi-industrial fishing firms catch around 250 000 tons of fish annually, and subsistence fishers harvest 50 000 tons. As a former Portuguese colony, Angola was a major fish meal and oil producer. This industry however faded during the past 30 years of civil war in the country.

This report provides a number of recommendations and proposals to further transformation in Angola.

## 1. INTRODUCTION

Project LMR/SE/03/03, titled Microeconomic Systems and Governance, has as its overarching premise an analysis of the economics of the fishing sectors and of the regulatory systems governing the fishing sectors in each of the Benguela Current Large Marine Ecosystem (“BCLME”) member states; the aim being to harmonise the management of shared stocks. The Preamble to the BCLME Programme records that–

*“...concerned about the fragmented nature of regional management and the urgent need to strengthen and jointly engage member states in the co-ordination and conservation of the resources of the Benguela Current as an integrated ecosystem...”*

The BCLME’s strategic action programme (SAP) identifies a suite of six policy actions that are to address the main issues expressed in the trans-boundary diagnostic analysis (TDA). Two of these concern the harmonisation of shared stock management as well as a socio-economic analysis. Harmonisation is expressly noted not to unquestioningly imply “joint management”. Rather, it is intended to encourage each member state to implement measures that are complementary in the objective of the measures ultimately aimed at. In other words, when implementing eco-system-orientated management measures across the three countries of the BCLME (Angola, Namibia and South Africa), it is implicit that uniform laws, regulations and measures cannot merely be applied in a blanket-fashion, without each of the countries having given adequate consideration to contextual, historical and developmental differences between these three countries. The BCLME Consortium, in its reports on Fisheries Management Protocols, Comparative Legal Analysis and Law Reform, will advise on appropriate harmonisation measures and legal reform.

One of the contextual considerations that impact deeply on each of the three countries is loosely referred to as ‘transformation’. The term does however have widely different connotations in each instance. The approach adopted by each country also varies pending its respective histories and stages of implementation. In order to provide a clear and understandable analysis of transformation and how it pertains to the important commercial and artisanal fisheries in each BCLME-member country, a detailed synthesis of the legislative and regulatory framework and some of the internal administrative procedures is required; this is especially so in the case of South Africa. As a result this report overlaps in part with subsequent reports for project LMR/SE/03/03, referred to above. The future reports by their very nature however, require more emphasis and attention to be paid to comparisons of the different legal systems, administrative and regulatory measures adopted in each of the three BCLME member-countries.

This report focuses on analysing the concept and interpretation of transformation as it pertains to the respective commercial and/or artisanal fisheries in each BCLME member state. The word *transformation* is universally accepted to refer to changing the status quo. The following report analyses the concept of transformation and –

- Considers how it is understood in each BCLME member state;
- Considers whether it is applicable, and if so how it has been implemented; and
- Reports on the extent to which the fisheries under consideration in each BCLME member state have been successfully transformed or otherwise.

This report has been structured as follows–

- Measuring Transformation in South Africa
- Measuring Transformation in Namibia
- Measuring Transformation in Angola
- Recommendations

For the purposes of producing this report, the writers have analysed those measures put in place by each member state to correct the imbalances, injustices and inequality these countries suffered from due to their colonial and white minority rule past as well as the further deficit caused by civil war. Within the fisheries and wider marine context this has required providing equitable access to these resources, which in turn has required: -

- New policies, regulations and legislation
- Communication and interaction leading to the prospect of co-management with huge numbers of new stake-holders
- Establishing new and suitable markets,
- Nurturing new entrepreneurs.

It stands to reason that the actions taken in the marine environment are products of the national debates taking place in each country that have led to the laws that were enacted, the institutions that implemented the laws and those that monitored the implementation to determine the effects of the laws. For such analyses to be meaningful requires research. In turn, research requires a methodology or theory. For any theory to be acceptable, the theory must comprise a –

- Justification;
- Perspective; and
- Explanatory categories.

The basis of the democracies in each of the three countries has led to the decision-makers increasingly ensuring that, for their decisions to be acceptable and capable of implementation, these decisions must be rational and justifiable. Secondly, the component of perspective is crucial to temper the obvious subjective elements within any researcher and his report. Perspective is achieved having conscious regard to experience and justification or rationality. Finally, explanatory categories (case studies) need to show how the laws and policies adopted will achieve or have achieved the purposes sought or intended.

The end of the Second World War heralded the hope for the colonised and under-developed world to attain freedom and national sovereignty, to safeguard human rights and economic development. The birth of the United Nations whose foundational values spoke of equality, freedom and democracy provided the colonised with the means to voice their expectations. National liberation struggles were the vehicles that brought an end to colonial and oppressive rule. It was not for another decade however before the first African countries attained their independence. Southern African nations had to wait further decades before their liberation was achieved as Portugal and white rulers in Zimbabwe and South Africa through a cordon against the winds of change that were sweeping through the rest of Africa.

Fifty five years later and as we begin the 21<sup>st</sup> Century, the South largely remains mired in poverty, conflict, powerlessness and dependence on the dominant North. In Namibia and South Africa, the majority of the population suffered the added burden of apartheid. Africa's real income has dropped between 20% and 25% since 1945<sup>5</sup>.

As poverty, conflict and economic, social and political instability escalated environmental degradation increased. Deforestation, creeping desertification and over-fishing of inshore stocks caused by the competing interests of commercial fishing with artisanal or subsistence

<sup>5</sup> Anne and Robert Seidman, *State and Law in the Development Process*, Macmillan Press, 1994, pp. 11-15.

fishermen, together with the growth of coastal communities are the hallmarks of survival in most Southern nations.

Angola, after independence in 1974, found itself the victim of the cold war which caused devastation on a major scale for the next 25 years. The effects of this war are still pervasive and it will take a long time to build the infra-structure required for a modern economy. Namibia was under South Africa's tutelage and thus under the policies of apartheid from the end of the first world war until South Africa finally acquiesced in 1990. In South Africa, the first democratic elections were only held in 1994. Perversely it is South Africa that has the most developed infra-structure, followed by Namibia with Angola having the greatest need to re-build itself at this point in time.

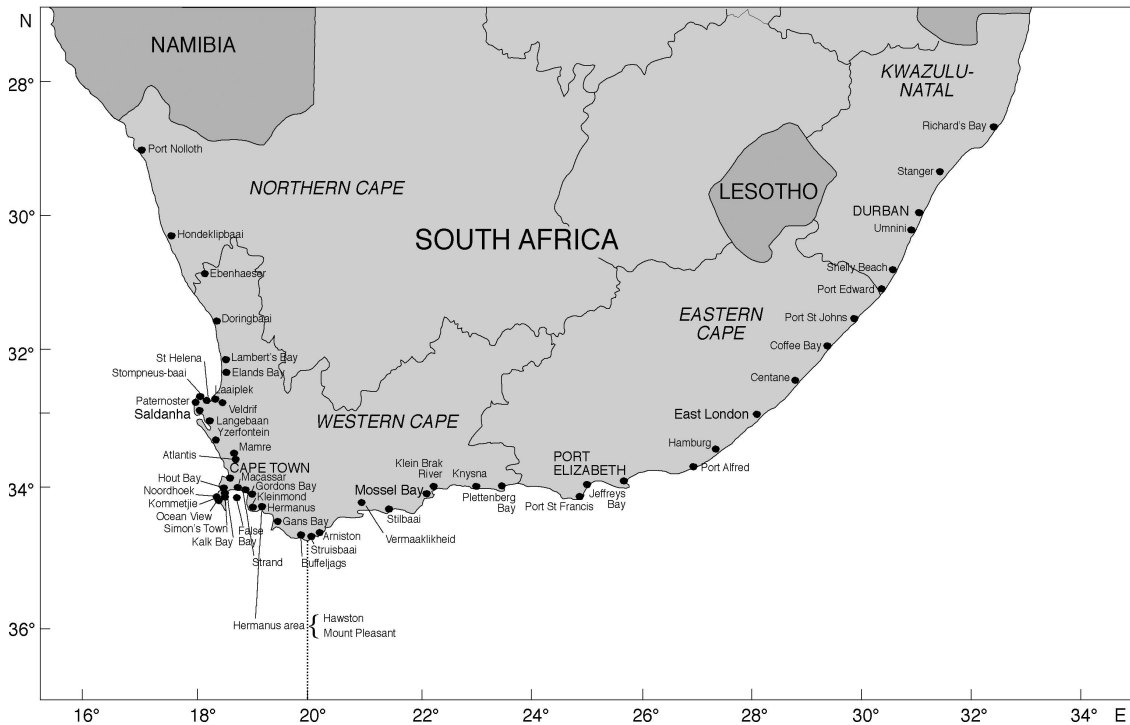
The challenge for each of the three BCLME member states is to meet the challenge of socio-economic transformation and through that to overcome white monopolies or foreign domination where it exists, particularly in the fisheries sector.

The measurement of transformation within the fisheries in South Africa, Namibia and Angola therefore requires an understanding of the socio-economic-political past and present to be able to advise on future paths and the appropriateness of measures already undertaken.

The analysis of transformation that follows below is focused on the commercial fisheries shared by the three countries that share the south Atlantic coast line. The major shared stocks that exist in this eco-system include:

- Hakes;
- Small Pelagics (sardines and anchovies);
- Large Pelagics (swordfish and tunas); and
- Horse Mackerel.

## 2. MEASURING TRANSFORMATION IN SOUTH AFRICA



### 2.1 Introduction to the South African Fishing Industry

The South African fishing industry is regulated by the Department of Environmental Affairs and Tourism, and in particular its branch, Marine and Coastal Management, located in Cape Town. South Africa manages its fisheries strictly in terms of a regulated or “closed” system. All forms of fishing may only occur in terms of a fishing permit or fishing right.

The branch Marine and Coastal Management (“MCM”) is led by a deputy director-general (“the DDG”) and four chief directors, respectively responsible for finance, fisheries research, fisheries management and fisheries compliance.<sup>6</sup> The post of DDG was created in 2001 after it was recognised that the fisheries division required more senior standing in a large Government department with a host of other responsibilities. MCM’s core function is the sustainable management of South Africa’s fish stocks. In addition, section 2(j) of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) requires the Minister of Environmental Affairs and Tourism to have regard to the need to restructure and transform the South African fishing industry due to the inequitable policies of apartheid. Given that the Minister is responsible in terms of the Act to allocate fishing rights (or quota’s) and the volatile nature of managing fisheries in South Africa as anywhere else, recent Ministers responsible for this portfolio have paid exceptional attention to fisheries issues.

South Africa is a participating member in the Food and Agriculture Organisation and regularly attends meetings of the Committee on Fisheries. South Africa complies with FAO Code on Responsible Fishing but has yet to formally implement any of the National Plans of Action required by FAO in terms of its International Plans of Action on IUU Fishing, Effort and Capacity or Sharks. South Africa was also a key contributor to the development of the Johannesburg Plan of Implementation (2002).

<sup>6</sup> See Marine and Coastal Management’s website, [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za)



South Africa's Marine and Coastal Management branch regulates more than 20 commercial fisheries, fish processing (whether on board vessels or on land) and aquaculture. In addition, MCM regulates subsistence and recreational fishing. Commercial fishing may only take place in terms of a fishing right or quota allocated by the Minister of Environmental Affairs and Tourism. The following commercial fisheries are regulated:

*Highly Capital Intensive Fisheries:*

- Hake deep sea trawl;
- Hake inshore trawl;
- Small pelagics;
- South coast rock lobster;
- Horse mackerel;
- Patagonian Toothfish;
- KwaZulu-Natal Prawn Trawl.
- Large pelagics (tuna and swordfish long line)

*Less Capital Intensive Fisheries:*

- West Coast Rock Lobster (offshore);
- Hake long line;
- Squid;
- Tuna pole;
- Abalone;
- Seaweed;
- Demersal shark

*Small Scale / Artisanal Fisheries:*

- West coast rock lobster (near shore);
- Hake handline;
- Traditional line fish;
- Net fishing;
- White mussels;
- Oysters.

The South African commercial fishing industry landed almost one million tons of fish in 2004. The gross landed value of fish is approximately R4 billion (600 million US dollars). South Africa's most valuable fishery is the hake fishery (trawl and line) worth more than 40% of the total landed value of the South African fisheries. The small pelagic fishery (anchovy and sardine) is responsible for the largest quantum of fish landed of all the commercial fisheries, landing approximately 500 000 tons of pelagic fish (including red eye herring).

More than 3900 fishing rights (or quotas) were allocated to in the commercial fisheries in 2001 and 2002. These rights or quotas were allocated for a four year period and by law<sup>7</sup> revert back to the South African government toward the end of 2005.<sup>8</sup> In addition to the commercial fishing quotas allocated, more than 2000 authorisations have been issued to subsistence fishers who fish for resources such as line fish, mussels, abalone, east coast rock lobster and oysters for purposes of food security. Furthermore, some 1 million people fish on a recreational basis for line fish and other game fish species along the South African coast either from the shore or from ski-boats, which are easily launched into the sea from either small landing sites or from the beach into the surf.

<sup>7</sup> See section 18 of the Marine Living Resources Act, 18 of 1998.

<sup>8</sup> All rights revert to the state on 31 December 2005, except for rights allocated in the abalone, tuna long line, south coast and west coast rock lobster fisheries. Fishing rights in the abalone and tuna long line have been allocated for 10 year periods each. Rights in the south coast rock lobster and west coast rock lobster fisheries revert to the state in October 2005 and November 2005, respectively.

South Africa's commercial fisheries are generally well organised. The highly capital intensive fisheries in particular are organised into recognised industrial bodies that represent their members' interests on important bodies such as fisheries research and management working groups that advise the MCM heads of research and fisheries management on a range of matters.

South Africa's fisheries are broadly managed in terms of four principal management tools. These are in terms of –

- Total allowable catches;
- Total applied effort controls;
- A combination of the two management methods stated above;
- Marine protected areas or closed areas.

Of South Africa's 21 commercial fisheries, 9 are managed in terms of total allowable catches ("TAC") only. One (South coast rock lobster) is managed in terms of a combination of a TAC and a total applied effort (sea day restrictions). The remaining fisheries are regulated in terms of a TAE only, which includes restricting vessel numbers, crew numbers or sea days (or a combination of the three).

The South African commercial fisheries are generally well managed with current and reliable catch and research data. The biological status of fish stocks is also broadly understood, with all fisheries being either optimally or maximally exploited, save for abalone and certain traditional line fish stocks. Abalone TAC's have fallen dramatically over the last 6 years as the effects of decades of over-fishing and poaching are now impacting on operational management procedures. In addition, the intrusion of larger numbers of west coast rock lobster in formerly abalone rich areas, has impacted negatively on the spawning rates of abalone. With respect to traditional line fish stocks (which comprises some 200 different fish species), 19 species are categorised as "collapsed", with a further 50 categorised as over-exploited.

In accordance with the international law, South Africa has enacted legislation in terms of which it declared a 200 mile exclusive economic zone adjacent to its 3000 kilometre coastline. All commercial, subsistence and recreational fishing may only occur within the EEZ, unless otherwise authorised by the Minister of Environmental Affairs and Tourism.<sup>9</sup>

## 2.2 Understanding *Transformation* in South Africa

Redressing the socio-economic imbalances so apparent in post apartheid South Africa remains the *grundnorm* of South African economic policy. Apartheid policy had, as with any other economic sector, segregated access to South Africa's 1500 commercially exploited fish stocks.

In 1992 some 400 white-owned and managed participants had rights to exploit South Africa's commercial fisheries. Black participation was relegated to the subsistence and recreational fishing sectors. Neither sector could lawfully sell their catches. Black fishers were effectively forced to the margins of fishing activity and had to endure arrest or financial sanctions were they caught selling catches.

<sup>9</sup> Part 7 of the MLRA makes provision for the Minister to issue a High Seas Fishing permits subject to such conditions as may be considered appropriate.



In addition to the marginalisation of black fishers, South Africa's rapidly increasing isolation from global trade and economic participation after the Soweto uprisings in 1976, encouraged the South African government to allow a number of coastal South East Asian states' vessels to exploit fish stocks, particularly tuna and swordfish, in South African waters. In exchange, these South East Asian states maintained or further improved trade relations with apartheid South Africa in violation of United Nations-imposed trade sanctions.

The challenge for post apartheid government policy on fishing would therefore have to focus on two principal aspects. The first would be to intervene so as to create an environment within which black fishers could properly enter the commercial fishing sector for the first time proper. The second would be to encourage the *South Africanisation* of the tuna and swordfish (longline) fishery and thereafter to cancel the participation of the South East Asian states.

Accordingly, *transformation* of South Africa's fishing industry refers to –

- (a) the equitable inclusion of black persons in all sectors of the fishing industry; and
- (b) the allocation of fishing rights or quotas to South Africa persons only – *South Africanisation*.

## 2.3 Regulating Transformation in the South African Fishing Industry

The Republic of South Africa is a constitutional democracy with government separated into three spheres – a national government, nine provincial governments and 284 local governments. In accordance with fundamental democratic principles, the Constitution strictly separates powers between the executive spheres of government, the legislative sphere and the judicial sphere. The Constitution has determined that marine based fishing is a national competence.<sup>10</sup> Fresh water fishing is controlled and regulated by local governments. Accordingly, all power to regulate marine fisheries vests with the Minister of Environmental Affairs and Tourism within the national sphere of government. This ensures that marine fisheries are regulated in a uniform and consistent manner.

### 2.3.1 The legal nature of a Fishing Right in South Africa

Before the Marine Living Resources Act came into force in 1998, the Department granted fishing "*quotas*" under the Sea Fisheries Act, 12 of 1988. Section 18 of the MLRA now provides for the allocation of fishing "*rights*". The legal nature of the "*right*" allocated under the MLRA is similar to the "*quota*" allocated under the Sea Fisheries. The "*rights*" allocated under the MLRA are not property rights and should be understood as statutory permission to harvest a marine resource for a specified period of time, which cannot be longer than 15 years. Accordingly, cancellation or revocation does not constitute the expropriation of a property right within the meaning of section 25 of the Constitution or the Expropriation Act, 63 of 1975. This is clear from section 18(6) of the MLRA, which provides that a fishing right is valid for the period determined by the Minister (or his delegate) where after it automatically reverts back to the State and may be re-allocated (to the previous right holder or another entity) in terms of the applicable provisions of the MLRA.

A fishing right is granted to a specific person or entity and, in terms of section 21 of the MLRA, the right may not be transferred without the approval of the Minister or his delegate. Upon the death, sequestration, or liquidation of the right holder, the right vests respectively in the executor, trustee or liquidator and the right may continue to be exploited for the period of

<sup>10</sup> The Constitution of the Republic of South Africa, Act 108 of 1996, Schedules 4 and 5.

time permitted by the applicable legal provisions. However, any transfer of the fishing right to a third party requires approval.

Accordingly, a fishing right or quota may not be granted in perpetuity in South Africa and may not be freely traded, sold or bought.

### **2.3.2 The Constitution of the Republic of South Africa, 1996**

The Constitution of the Republic of South Africa is the supreme law and no other law or decision-making institution in any sphere of government may act in any way that is contrary to the Constitution. The Constitution contains a Bill of Rights in Chapter 2. The Bill of Rights, for the purposes of this report, contains two essentially competing fundamental human rights – the right to equality (section 9) and the right to an environment that is, *inter alia*, sustainably managed (section 24). Section 9(2) of the Constitution explicitly recognises the need to address the inequities of apartheid by providing that legislative and other measures must be designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination.

In addition, South Africa's highest court, the Constitutional Court, recently pronounced on the matter of *transformation* in the hake trawl fishing industry in the matter of *Bato Star Fishing (Pty) Ltd v The Minister of Environmental Affairs and Tourism and Others*<sup>11</sup>. The Court stated the following about the constitutional context within which the provisions of the MLRA must be interpreted and the applicable policies applied:

*"[73] South Africa is a country in transition. It is a transition from a society based on inequality to one based on equality. This transition was introduced by the interim Constitution, which was designed "to create a new order based on equality in which there is equality between men and women and people of all races so that all citizens should be able to enjoy and exercise their fundamental rights and freedoms." This commitment to the transformation of our society was affirmed and reinforced in 1997, when the Constitution came into force. The Preamble to the Constitution "recognises the injustices of our past" and makes a commitment to establishing "a society based on democratic values, social justice and fundamental rights". This society is to be built on the foundation of the values entrenched in the very first provision of the Constitution. These values include human dignity, the achievement of equality and the advancement of human rights and freedoms.*

*[75] The commitment to achieving equality and remedying the consequences of past discrimination is immediately apparent in section 9(2) of the Constitution [the "affirmative action clause"]. That provision makes it clear that under our Constitution "[e]quality includes the full and equal enjoyment of all rights and freedoms." And more importantly for present purposes, it permits "legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination." These measures may be taken "[t]o promote the achievement of equality".*

*[76] But transformation is a process. There are profound difficulties that will be confronted in giving effect to the constitutional commitment of achieving equality. We must not underestimate them. The measures that bring about transformation will inevitably affect some members of the society adversely, particularly those coming from the previously advantaged communities. It may well be that other considerations may have to yield in favour of achieving the goal we fashioned for*

<sup>11</sup> 2004(7) BCLR 735 (CC). See also [www.concourt.gov.za](http://www.concourt.gov.za)

*ourselves in the Constitution. What is required, though, is that the process of transformation must be carried out in accordance with the Constitution. As was recognised in *Bel Porto School Governing Body and Others v Premier of the Province, Western Cape, and Another*:*

*“The difficulties confronting us as a nation in giving effect to these commitments are profound and must not be underestimated. The process of transformation must be carried out in accordance with the provisions of the Constitution and its Bill of Rights. Yet, in order to achieve the goals set in the Constitution, what has to be done in the process of transformation will at times inevitably weigh more heavily on some members of the community than others.”*

*[77] It is against this constitutional commitment to achieving equality that the Act must be understood and construed.”*

The significance of the court’s judgment for the purposes of this report is that transformation is no longer a matter of political choice or a policy choice in South Africa, as in other societies. In South Africa transformation of the fishing industry has become a constitutional imperative.

### **2.3.3 The Broad Based Black Economic Empowerment Act, 2003**

The Broad-Based Black Economic Empowerment Act was formally promulgated and came into effect on 9 January 2004. This Act defines ‘black people’ as ‘...a generic term which means Africans, Coloureds and Indians’.<sup>12</sup> Broad-based black economic empowerment is defined as follows:

*“...the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to-*

- a) increasing the number of people that manage, own and control enterprises and productive assets;*
- b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;*
- c) human resources and skills development;*
- d) achieving equitable representation in all occupational categories and levels in the workforce;*
- e) preferential procurement; and*
- f) investment in enterprises that are owned or managed by black people.”*

The significance of this Act is that it requires every government department, such as MCM, to have regard to above so-called “pillars of empowerment” when allocating resources. In other words, fishing quotas in South Africa cannot be allocated without the Minister of Environmental Affairs and Tourism evaluating each applicant for a fishing quota on its commitment to *broad based black economic empowerment*.

A further significance of this Act is that it marks an important milestone in the evolution of transformation as a measurement criterion in South African economic life. Between the early 1990’s and 2003, transformation focused on the empowerment of black persons in a narrow sense – effectively measuring black involvement as shareholders and board managers. This

<sup>12</sup> See section 1.

Act requires the empowerment base to be *broadened*, to include young persons, workers and marginalized rural communities.

### 2.3.4 *The Marine Living Resources Act, 1998*

The Marine Living Resources Act of 1998 is the principal legislative instrument that regulates the sustainable utilisation of all marine living resources in South Africa. Promulgated in late 1998, repealing the Sea Fisheries Act of 1989, it aimed to give effect not only to the principles underpinning South Africa's final Constitution (promulgated in 1996) but also South Africa's increasing commitments and obligations under international law. A set of technical regulations setting out the controls for each commercial fishery were prescribed by the Minister of Environmental Affairs and Tourism in September 1998.<sup>13</sup>

As far as supporting transformation of the fishing industry is concerned, the Marine Living Resources Act relies on two particularly relevant provisions. The first is section 2 (and particularly section 2(j)). The second is section 18 (and particularly sections 18(5) and 18(4)). These two sections should be read together. They are as follows:

Section 2 requires the Minister and any organ of state, in exercising any power under the Marine Living Resources Act,

*“to have regard to, inter alia, the need to:-*

- (d) 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;*
- (h) ‘...achieve to the extent practicable a broad and accountable participation in the decision-making processes provided for in this Act;*
- (j) ‘...restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.*

[own emphasis]

Section 18(5) provides that –

*‘In granting any right referred to..., the Minister shall, in order to achieve the objectives contemplated in section 2, have particular regard to the need to permit new entrants, particularly those from historically disadvantaged sectors of society.’*

[own emphasis]

Section 18(4) provides that –

*‘Unless otherwise determined by the Minister in relation to the holders of existing rights, only South African persons shall acquire or hold rights in terms of this section.’*

[own emphasis]

The Marine Living Resources Act accordingly emphasises a further form of transformation within the South African fishing industry – that of ensuring that the exploitation of fish resources is for the benefit of South Africans by South Africans.

<sup>13</sup> The Marine Living Resources Act and its Regulations are currently being amended to ensure alignment with developments in South Africa law and fisheries management and compliance policies. Feike (Pty) Ltd and EFA (Pty) Ltd are currently advising the Department in these respects.

### 2.3.5 South African Fisheries Policy<sup>14</sup>

On 30 May 2005, the Government of the Republic of South Africa published a volume of fisheries policies aimed at regulating the allocation of long term commercial fishing rights in 2005. The volume published comprised a General Fisheries Policy and 19 separate policies for each of the commercial fisheries. A further policy on traditional line fish species will be published during the second half of 2005. In addition to these 20 fishery specific policies, the Minister of Environmental Affairs and Tourism published policies on abalone and large pelagics (tuna and swordfish long line) in 2003 and 2004, respectively.

The publication of these fisheries policies is as a result of a phased development in the management prowess of South Africa's fisheries management regulators, Marine and Coastal Management. After 1994, the newly elected democratic government in post apartheid South Africa faced a number of challenges in the massively segregated formal economic sectors. South Africa's fisheries in 1994 were dominated by white owned companies that controlled the entire fishing industry. Black persons and black owned and managed companies were invisible in their participation in and ownership of South Africa's marine living resources. The phase of transformation focused on putting in place regulatory instruments that would further transformation of the fisheries, while effectively balancing other important needs such as economic stability and growth and environmental sustainability. The result was the promulgation of the Marine Living Resources Act of 1998 and a complete suite of regulations in that year as well.

The second phase focussed on transforming the South African Department of Environmental Affairs and Tourism, which is responsible for managing fisheries, into a more accountable and effective fisheries regulator. In 2000, under the leadership of the Honourable Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, the branch Marine and Coastal Management was established under the leadership of Horst Kleinschmidt. Kleinschmidt's mandate was to transform the fisheries sector and eradicate all forms of maladministration and perceptions of corruption in the allocation of fishing quotas.

The third phase focussed on encouraging black participation in and ownership of South Africa's fisheries by departing from the annual and chaotic system of quota allocations. Annual allocations of quotas prevented black persons from obtaining access to capital to fund vessels and other capital investments required to successfully participate in commercial fishing. In 2001, the Minister of Environmental Affairs and Tourism invited applications for medium term fishing rights. These medium term fishing rights were to be allocated for a period of 4 years. The fundamental objectives of this rights allocation process were to:

- transform the South African fishing industry so that it may be more representative of the demographics of the country's population;
- ensure the commercial stability of the fishing industry which sustained almost 30000 jobs and provided 1% of the gross domestic product of South Africa;
- allocate rights to South African persons only; and
- ensure that fish stocks would be sustainably managed and harvested.

In 2005, South Africa has premised its fishing policies that will guide the allocation of long term commercial fishing rights on five core considerations. These are as follows:

<sup>14</sup> See [www.feike.co.za](http://www.feike.co.za) (link to fisheries management) for a complete set of the policies.



- (a) **Transformation:** The policies look to increasing the transformation levels in the different fishing sectors either by affirming current right holders that have transformed internally or by introducing new quota holders that are black persons or black owned and managed legal entities.
- (b) **Biological considerations:** The impact of fishing on the target species must be considered and sustainably managed. This is primarily done through the setting of a Total Allowable Catch (“TAC”) or a Total Allowable Effort (“TAE”), or a combination of both for each fishing season.
- (c) **Ecological considerations:** The impact of fishing on the marine ecosystem in which the target species occurs must be considered and sustainably managed.
- (d) **Industry and socio-economic and commercial considerations:** In so far as is practical and relevant, the socio-economic impact of allocations on right holders, workers and consumers, and in particular those individuals and communities dependent on the resource must be considered.
- (e) **Performance or potential to perform:** In so far as is practical and relevant, financial and fishing performance, value adding, enterprise development and job creation, as well as compliance with the Marine Living Resource Act, its Regulations, permit conditions and other legal requirements, must be considered.

## 2.4 Analysis of Implementation

Democratic South Africa in 1994 inherited a commercial fisheries sector that was dominated by less than 400 participants, of which all were white controlled. As explained above, the transformation of South Africa’s commercial fisheries may be described in three phases. To re-iterate, phase one involved the drafting of a new fisheries law. Phase two involved the internal transformation of the government department responsible for fisheries. Phase three involved the departure from traditional quota allocations policy by allocating multi-year or medium term and long term quotas.

Each phase may be explained further to more completely analyse whether the implementation of these three phases resulted in *transformation of South Africa’s commercial fisheries*.

### 2.4.1 Phase 1: The Marine Living Resources Act

Although the Marine Living Resources Act contained at least two principal provisions aimed at guiding the transformation of South Africa’s fisheries (sections 2 and 18), the drafters of the Act, it seems, pinned their hopes on a body called the Fisheries Transformation Council (“the FTC”) to effect the transformation. The FTC may be established by the Minister in terms of section 29 of the Act. The main object of the FTC is to facilitate “the achievement of fair and equitable access to the rights referred to in section 18”.<sup>15</sup> In terms of section 31, the Minister may allocate rights to the FTC, which, in turn, may lease such rights to persons from historically disadvantaged sectors of society and to small and medium size enterprises.

The FTC was established in late 1998 shortly after the MLRA was promulgated. Almost immediately however, the FTC became embroiled in allegations of corruption and the allocation of quotas to relatives and friends of the members of the FTC. The FTC’s first significant attempt at allocating rights to black fishers in the increasingly lucrative hake long

<sup>15</sup> Section 30 of the MLRA.

line fishery in 1999 was declared as being invalid by the South African High Court. The FTC in fact failed to allocate any quotas or rights. The FTC also failed to record any of its decisions or benchmark the development of the industry. By late 1999, the South African fishing industry was in economic turmoil and wracked by continuous allegations of corruption and maladministration in the annual allocations of quotas. There are in fact no statistics of transformation levels between 1995 and 2001.

The FTC therefore failed to effect any meaningful or sustainable transformation. The Minister of Environmental Affairs and Tourism requested an amendment bill to the Marine Living Resources Act to be drafted, seeking to, *inter alia*, repeal the provisions establishing the FTC. This amendment will probably be passed into law during 2006.

#### **2.4.2 Phase 2: Transformation of the Department of Environmental Affairs and Tourism**

The FTC was abolished in late 1999 by the Minister of Environmental Affairs and Tourism. In 2000, the Minister appointed Horst Kleinschmidt as Deputy Director-General of the newly created branch, Marine and Coastal Management.

The Deputy Director-General was charged with effecting substantive transformation in South Africa's fisheries, allocate commercial fishing rights in a legally sustainable manner and ensure that all forms of corruption and maladministration within the Branch are removed.

As far as effecting transformation is concerned, the Deputy Director-General instructed in 2000 that the commercial fishing rights valid for the 2000 fishing season would have to be "rolled over" for the 2001 fishing season. For this roll over to be valid in law, the Parliament of the Republic of South Africa authorised an urgent amendment to section 18 of the Marine Living Resources Act.<sup>16</sup> The purpose of this radical action was to allow for the adequate preparation for the allocation of medium term (4 year long) commercial fishing rights across more than 20 fishing sectors in 2001.

#### **2.4.3 Phase 3: The Allocation of Medium Term Commercial Fishing Rights**

On 27 July 2001, the Minister of Environmental Affairs and Tourism invited applications for commercial rights in 21 commercial fishing sectors, including mariculture. This invitation to apply for commercial fishing rights was unique in that the invitation was for multi-year fishing rights and accompanying the invitation was a policy statement that would guide the allocation of commercial fishing rights.

The policy that accompanied the invitation, although brief (it was five pages long), provided an important guideline on which criteria would be used to evaluate each application submitted in each of the 21 sectors available.

One of the principal criteria was that of transformation. The policy stated the following in this regard:

*"Equity, transformation, restructuring and empowerment*

*The transformation of South Africa from an unequal society rooted in discrimination and disparity to a constitutional democracy founded upon freedom, dignity and equality poses particularly profound challenges for the fishing Industry. It is here that there are acute imbalances in personal wealth, infrastructure and access to financial and other resources. While it is acknowledged that transformation or restructuring of the fishing*

<sup>16</sup> Section 18 was amended with the insertion of a section 18(6)(A), which provided for a one off roll over of commercial fishing rights.

*industry cannot be achieved overnight, it nevertheless is a primary objective to build a fishing industry that in its ownership and management, broadly reflects the demographics of South Africa today.*

*In determining the degree of transformation, the following factors will be taken into account:*

- *ownership of, or equity within the applicant;*
- *the distribution of wealth created gained through access to marine living resources;*
- *the extent to which the applicant provides employment to members of historically disadvantaged sectors of the community;*

*There is also a high degree of gender inequality throughout the fishing industry. The manner in which this is addressed, as well as racial and other historical imbalances in the context of contributing towards achieving equity, are important factors.*

*In the more capital-intensive sectors of the fishing industry, a higher level of internal transformation of current rights holders rather than the introduction of new entrants is encouraged.*

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

Transformation was to be effected by allocating commercial fishing rights to right holders that transformed their shareholding and management ("internal transformation") and by allocating commercial fishing rights to new entrant applicants that were black owned and managed. The criteria used to evaluate the transformation profiles of applicants focused on the following aspects:

- the percentage black ownership of the applicant's equity;
- the percentage black top and senior managers in the applicant's top management team; and
- whether the applicant complied with South Africa's affirmative action legislation, the Employment Equity Act, 1998.

The medium rights allocation policy also identified a number of fisheries that were considered particularly suitable for affirming black fishers and small and medium sized enterprises owned by black fishers. The Department considered the hake long line, hake handline, and the small scale commercial fisheries that harvested west coast rock lobster, abalone, oyster, mussels, line fish and net fish fisheries all suitable for affirming black fishers. These policy statements were recorded as follows:

*"The hake line sector (longline and handline) has been identified as a suitable vehicle for the promotion of HDI's [black persons or 'historically disadvantaged persons'] in the hake sector, more specifically small-and- medium –sized enterprises (SMME'S). In order to achieve the objectives contemplated in section 2 of the Act, particular regard will be paid to the need to grant access to new entrants, particularly those from historically disadvantaged sectors of society;"*

*"It is the intention to assist small commercial enterprises in certain commercial fishing sectors instead of in subsistence fishing and informal fishing. With reference*



*to abalone, West Coast rock lobster, oysters, white mussels for bait purposes and small nets, (beach seine net for mixed shoal fish; gill/drift, cast, drag and shove), applicants should note that maximum allocation levels have been determined to promote small commercial enterprises from historically disadvantaged sectors of society having their origin in subsistence and informal fishing.”*

As far as recognising that the attainment of transformation in certain highly capital intensive fisheries would be more effectively achieved by way of encouraging internal transformation and not granting fishing rights to additional applicants, the Department did not allocate any commercial fishing rights to new entrant applicants in South Africa’s most valuable fishery, the hake deep sea trawl fishery<sup>17</sup>.

With respect to whether the policy on transformation was successfully implemented in the fisheries specifically considered suitable for affirming black fishers and small and medium sized enterprises owned by black fishers, a detailed analysis is provided of the hake fisheries (hake trawl, long line and handline) below. As far as the small scale commercial fisheries mentioned above are concerned, the following may be briefly stated.

West coast rock lobster: A total of 785 small scale commercial lobster fishermen currently operate along South Africa’s west coast. Of the 785, 91.5% of right holders are black lobster fishermen and fisherwomen.

Abalone: The abalone fishery is South Africa’s most environmentally threatened commercial fishery with annual total allowable catch allocations having declined rapidly over the past 10 years. In 2004, long term commercial abalone fishing rights were allocated to more than 200 abalone divers. Of the rights allocated, 77% were to black divers or black owned and managed legal entities.

Oysters and Mussels: Both of the fisheries currently operate as marginal small scale commercial fisheries. Black persons currently hold less than 30% of the rights allocated but more than 95% of oyster pickers and mussel harvesters are black persons.

Netfishing: In line with international trends, the numbers of nets allowed for inshore fishing of line fish stocks has been decreasing over the past decade. Netfishing along the west coast is increasingly being relegated to a part time cultural activity to maintain a traditional activity of using nets to catch a fish called “harders” which is then salted and sun dried for consumption as a dried salted *bilong* or *beef jerky* equivalent. Some 50% of the more than 200 netfishers along the country’s west coast are black.

The Department’s 2001 medium term transformation policy objectives with respect to the above-mentioned small scale commercial fisheries were met. The lower levels of black participation in the oyster, mussels and net fisheries is a result of the unfavourable and unpredictable market demands for the fish products from these fisheries, as opposed to a failure to allocate rights to black fishers in the respective fisheries. To place the oyster, mussels and net fisheries into a commercial perspective the following statistics are helpful. The South African commercial fishery is worth approximately ZAR4.1 billion annually (US\$600 million). These three fisheries combined have a net value as a percentage of the total commercial fishery of approximately 0,0001%. Whereas, the combined value of small scale west coast rock lobster and abalone represents more than 9% of the total value of the commercial fishery.

In summary, the Constitutional imperative of transformation was given flesh in the Marine Living Resources Act (sections 2 and 18) and the policy which was adopted on 27 July 2001

<sup>17</sup> This fishery’s profile is discussed in detail below.

for the allocation of medium-term fishing rights. The significance of these instruments for the allocation of fishing rights in the hake deep-sea trawl fishery were described as follows by the Constitutional Court in the *Bato Star* matter:

*[78] A foundational principle of the Act is the transformation of the fishing industry. This is an industry that has been and continues to be dominated by a few so-called pioneer companies. These companies were and continue to be controlled and owned predominantly by members of the community that were privileged under apartheid and had exclusive access.<sup>18</sup> There was, and still is, therefore a need to ensure that access to this industry is opened to those newly created companies mostly controlled and owned by communities that were previously excluded from this industry. To break away from the past, a new marine fisheries policy was announced. It is a “fisheries policy [that] is founded on the belief that all natural marine living resources of South Africa, as well as the environment in which they exist and in which mariculture activities may occur, are a national asset and the heritage of all its people, and should be managed and developed for the benefit of present and future generations in the country as a whole.<sup>19</sup>*

*[79] This commitment to the transformation of the industry was affirmed and reinforced in the Act. After stating that the purposes of the Act are “the conservation of the marine ecosystem, long-term sustainable utilisation of marine living resources,” the preamble to the Act declares as one of its goals: “to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa.*

*[80] There are a number of provisions of the Act which are indicative of this foundational principle.<sup>20</sup> Section 2(j) enjoins those who exercise any power under the Act to have regard to “the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry”; section 18(5) provides that in granting any rights to undertake or engage in commercial or subsistence fishing under section 18(1), the Minister shall “in order to achieve the objectives contemplated in section 2, have particular regard to the need to permit new entrants, particularly those from historically disadvantaged sectors of society”; part 5 of the Act provides for the establishment of the Fisheries Transformation Council (the Council), whose main object is “to facilitate the achievement of fair and equitable access to the rights referred to in section 18”;<sup>21</sup> and under section 31(1), the fishing rights allocated to the Council shall be leased “to persons from historically disadvantaged sectors of society and to small and medium size enterprises.*

*[81] In Langklip See Produkte v Minister of Environmental Affairs, the Cape High Court found that “[t]he principles of the . . . Act are clearly directed to the*

<sup>18</sup> The ownership scores of these companies are telling in this regard. Scores are given in numbers which represent a percentage. Naught represents 0-4%; 1 represents 5-29%; 2 represents 30-49%; 3 represents 50-65%; and 4 represents 66%-100%. Under the Black Economic Empowerment Column which reflects the percentage of ownership on asset value by previously discriminated groups in the companies they scored as follows: Irvin & Johnson Limited scored 1 point which represents 5-29%; Sea Harvest Corporation Limited scored 2 points which represents 30-49%; Atlantic Trawling (Pty) Limited scored 1 point which represents 5-29%; and Foodcorp (Pty) Limited scored 4 which represents 66-100%. This judgment recognizes the fact that the majority of workforce in the companies come from previously disadvantaged groups. But a primary objective must be “to build a fishing industry that in its ownership and management, broadly reflects the demographics of South Africa today.” See Policy Guidelines for the allocation of fishing rights for the period of 2002 – published in Government Notice No. 1771 published in *Government Gazette* No. 22917 of 27 July 2001.

<sup>19</sup> White Paper, 5 May 1997: A Marine Fisheries Policy for South Africa, paragraph 1.

<sup>20</sup> *Langklip See Produkte (Pty) Ltd and Others v Minister of Environmental Affairs and Tourism and Others* 1999 (4) SA 734 (C) at 743H-744B.

<sup>21</sup> Section 30.

*promotion of equality.<sup>22</sup> I agree. The transformative objectives of the Act are congruent with the Constitution and with section 9(2) in particular.*

*[82] It is against this statutory background that section 2(j) must be construed and understood.*

The Constitutional Court in *Bato Star* determined that the allocation of commercial fishing rights in the hake deep sea trawl met the Constitutional objectives set out in section 9(2) (Equality), the objectives of the Marine Living Resources Act and the policy objectives adopted on 27 July 2001. Subsequent courts have also ruled that the allocation of commercial fishing rights in the squid, small pelagics, hake handline, hake long line, lobster and line fisheries were fair, equitable and in accordance with applicable Constitutional provisions and provisions of the Marine Living Resources Act.<sup>23</sup>

## 2.5 Case Studies

In 1994, some 400 persons exploited South Africa's marine resources on a commercial basis. These 400 persons were all white controlled and managed entities. By way of example, South Africa's most valuable fishery is the hake deep sea trawl fishery. In 1992, the five largest companies in the fishery held 92 percent of the TAC. In 2004, the five largest companies shared less than 75 percent of the hake resource. In 1992 the smallest quota was 50 tons and the largest was 53 000 tons. Ten years later, the smallest quota was 336 tons and the largest was 45 000 tons. The gap between the smallest and the largest allocations has been closing. In addition, between 1992 and 2004, the introduction of transformed new entrants into this fishery has led to a remarkable increase in the transformation profile of this fishery.

By 2004, and subsequent to the allocation of medium term rights, the number of rights allocated in the commercial fisheries increased from the 400 allocated in 1994 to more than 3900. This increase in the number of participants was attained having regard to sustainable harvesting levels and allocating TAC's that objectively could be said to have been at minimum viable quota levels. In addition, between 1998 and 2005, the Minister of Environmental Affairs and Tourism also prescribed 5 new commercial fisheries available for commercial exploitation. These fisheries included:

- hake long line (1998);
- small scale commercial west coast rock lobster (2001);
- small scale commercial abalone (2001);
- small scale west coast rock lobster (East of Cape Hangklip) (2003);
- large pelagics (tuna and swordfish long line) (2004).

Of the 3900 fishing rights allocated, 66% are to black persons or black owned and managed entities, such as private or public companies (where black persons control 50% +1 of the equity and management). Furthermore, some 70% of all right holders are small or medium sized entities, which according to the Department, accords with a broader government objective to support SME growth, which has been recognised by the South African government as being an untapped vehicle to promote job creation and sustainability.<sup>24</sup> Of the

<sup>22</sup> Langklip See Produkte above n 17 at 744F.

<sup>23</sup> Between January 2002 and January 2005, more than 49 review applications were brought by aggrieved applicants or rights holders seeking to set aside the allocation of fishing rights in the fishery concerned. None prevailed. A complete list of the cases, together with the complete judgments may be obtained from Feike's Marius Diemont who was the Department's legal adviser in all of the 49 reviews ([mdiemont@feike.co.za](mailto:mdiemont@feike.co.za)).

<sup>24</sup> See for example, the South African Government's Trade and Industry "Empowerment South Africa" site at [www.empsa.co.za](http://www.empsa.co.za) for articles in this regard.

66% of rights allocated to Black persons (individuals and legal entities), approximately 58% of the total fish landed is controlled by Black persons.

The case studies that will be examined below involve analysing the profiles, particularly from a transformation perspective, of the following fisheries:

- hake deep sea trawl;
- hake inshore trawl;
- hake long line;
- hake handline;
- horse mackerel;
- small pelagics; and
- large pelagics.

The hake fisheries, horse mackerel and small pelagic fisheries represent case studies involving increased participation in and ownership of the fisheries by black persons. The large pelagic fishery is a case study representing the policy of South Africanisation of a fishery formally dominated by foreign distant water coastal states.

However, prior to analysing the transformation profiles of each of the case study fisheries, it is necessary to provide a brief overview of the process of allocating medium term commercial fishing rights in the hake fisheries, horse mackerel and small pelagic fisheries and long term commercial fishing rights (10 years) in the large pelagic fisheries.

### **2.5.1 Process Overview**

The allocation of medium term commercial fishing rights in 2001 was managed in terms of strict legal and project management guidelines, ensuring that the process was insulated from all forms of corruption and maladministration. The Minister had delegated his powers under section 18 of the Marine and Living Resources Act to allocate commercial fishing rights to the Deputy Director-General and Chief Director: Research, the delegation being in terms of section 79(1) of the Act.

A Rights Verification Unit, comprising two independent forensic auditing firms, was appointed by the Department of Environmental Affairs and Tourism with the responsibility of ensuring the veracity of the allocations process. In addition to the Rights Verification Unit, the Department procured the services of a specialist project management firm and a group of legal professionals.

The Deputy Director-General and Chief Director: Research were each supported by advisory committees who were responsible for the evaluation of each application against a detailed set of objective criteria. The advisory committees were comprised of administrative and constitutional law experts and at least one auditor. Every decision taken was recorded and reasons given to each applicant for the decision taken on the application. All documents and decisions were made public.

Any person aggrieved by a decision taken by either the Deputy Director-General or the Chief Director had a right to appeal to the Minister of Environmental Affairs and Tourism. Had this appealed failed, the aggrieved party had a further opportunity of applying to a court of law to set aside the decision of the Minister. More than 40 aggrieved parties exercised this right but none succeeded to set aside the process of allocating medium term commercial fishing rights.

### 2.5.2 Criteria and Weighting Design

Every application submitted was evaluated by objective, rational and fair evaluation criteria.<sup>25</sup> The Government Gazette Notice of 27 July 2001 set out the broad criteria in terms of which each every application for a commercial fishing right would be evaluated. As these criteria were broad overarching criteria, the decision-maker for each fishery sector, thereafter proceeded to design detailed criteria and weighting applicable specifically to each of the commercial fisheries. The weighting attached to each criterion was also determined by the decision-maker after regard was had to data from the applications submitted for each fishery sector.

The decision-makers then instructed each advisory committee to evaluate each and every application in terms of the detailed criteria and weighting documents designed for each fishery sector.

### 2.5.3 Hake Deep Sea Trawl

Commencing in the 1890's, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa's most important fishery and, for the last decade, it has accounted for approximately one half of the wealth generated from commercial fisheries. In the 1960's foreign distant water fleets moved into the Southeast Atlantic, leading to substantial over-exploitation of demersal fish stocks off South Africa and Namibia. The International Commission for the Southeast Atlantic Fisheries ("ICSEAF") was established in 1972 in an attempt to control the rapidly escalating fishery. But it was only the declaration of the 200nm Exclusive Economic Zone in 1978 and subsequent exclusion of foreign fleets that enabled South Africa to reclaim her fish resources and begin to rebuild the demersal resources. Until 1978 the demersal fishery was largely unregulated and participants were not restricted to by fishing limits. An annual total allowable catch ("TAC") was introduced in 1978 and individual quotas were introduced the following year. The fishery was also formally separated into deep-sea and inshore sectors. The Deep-sea Trawl allocation of the global hake TAC has remained remarkably stable, and between 1978 and 2004 it fluctuated between the levels of 140 000 tons (1979) and 133 000 tons (2004). The two species of Cape hakes contribute 80-90% to trawl catches made on the West Coast (mainly deep-water hake) and 60-80% to trawl catches made on the South Coast (mainly shallow-water hake). The balance is made up of various by-catch species many of which are utilised, and on average just over 90% of the catch is retained. The hake deep-sea trawling grounds are widespread on the Cape west coast in waters deeper than 200 metres. On the Cape south coast hake deep-sea trawlers may not fish in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast, and trawling is focused primarily on two fishing grounds.

The Department manages the hake deep-sea trawl fishery as part of a "*hake collective*". In terms of the MLRA a "*global*" TAC for hakes (both species combined) is set annually by the Minister of Environmental Affairs and Tourism. Of the global hake TAC a reserve to cover by-catch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing is set aside prior to distribution among the hake fishing sectors. Currently the global hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake lone line and hake handline fishery sectors without regard to the hake species split in the respective fishery sectors. In terms of that arrangement, 83% is allocated to deep-sea trawl, 6% to inshore trawl and 10% is shared between hake long line and hake handline. However, a sectoral allocation procedure that takes cognisance of the species

<sup>25</sup> This statement is made having regard to the fact that more 40 court decisions ruled that the evaluation criteria employed by the Deputy Director-General, the Chief Director and the Minister were at all times rational, objective, and fair.



taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species.

The hake deep-sea trawl fishery sustains about 8 800 direct jobs along South Africa's west and south east Cape coasts. Of these jobs, 90% are held by persons from historically disadvantaged communities, while 40% are held by women. Working conditions in the hake deep-sea trawl are considered to be better than those that prevail in other fisheries. The majority of employees are employed on a full-time, year round basis, with fixed salaries and employment benefits. The average annual income of crew (including skippers) is R63 000 per annum. Certain of the larger deep-sea trawl fishing companies are registered with the "**Proudly South African**" campaign.<sup>26</sup>

The hake deep-sea trawl fishery is an extremely capital intensive fishery. Existing participants have made substantial investments in vessels as well as processing and marketing infrastructure. The total value of assets in the fishery is estimated to be approximately R2,2 billion. The market value of the landed catch is worth approximately R2 billion annually at current market prices. Although vessels as small as 30 metres in length operate in the fishery, 66 percent of deep-sea trawlers are between 45 metres and 50 metres in length. Fishing trips vary from less than a week to more than 30 days.

The "*internal*" transformation of the traditional companies, and the entry of black-owned and managed companies since 1992 has resulted in a significantly improved transformation profile in this fishery. The medium-term rights allocation records show that:

- 74 percent of the current participants are black-owned and managed;
- 42 percent of right-holders are small- and medium-sized enterprises;
- 25 percent of the TAC is held by black-owned companies (in 1992, this was zero percent).

Accordingly, although the hake deep sea trawl has radically been transformed in terms of the numbers of right holders participating in the fishery, less radical has been the substantive transfer of quota from the five largest pioneer right holders (Irvin & Johnson Ltd, Sea Harvest (Pty) Ltd and Atlantic Trawling (Pty) Ltd, Fernpar (Pty) Ltd and Viking Fishing (Pty) Ltd) to black right holders. Black owned and managed companies currently control 25% of the TAC. In other words, black companies currently control an approximate ZAR410 million (US\$60 million) of the ZAR1,6 billion (US\$241 million) a year hake deep sea trawl fishery.

However, the progress made by the South African government in transforming this highly capital intensive fishery that was the domain of a handful of privileged companies just 11 years ago, must be seen in the context that 11 years ago, blacks controlled an effective zero percent of the hake quota. Additionally, no other commercial sector of comparative commercial value in the South African economy has comparable levels of black ownership and participation.

#### **2.5.4 Hake Inshore Trawl**

Commencing in the 1890s, the demersal trawl fishery (deep-sea and inshore sectors) is South Africa's most important fishery and, for the last decade, it has accounted for more than one half of the wealth generated from commercial fisheries. Although the inshore trawl fishery was pioneered at the start of the twentieth century, it was only in the 1950's that the fishery took on a commercial face when smaller trawlers entered the fishery to target hakes and the more valuable Agulhas sole (*Austroglossus pectoralis*). The inshore trawl fishery continues

<sup>26</sup> The Proudly South African campaign is a non-governmental initiative which encourages South African companies to adhere to labour, environmental and commercial best practices. See further [www.proudlysa.co.za](http://www.proudlysa.co.za).

as a “dual quota” fishery targeting both shallow-water hake (*Merluccius capensis*) and Agulhas sole.

As was the case with the deep-sea trawl fishery, prior to 1978, the inshore trawl fishery was largely unregulated and participants were not restricted to a maximum catch limit. In 1978, the demersal fishery was formally separated into inshore and offshore sectors, a global annual total allowable catch (“TAC”) was introduced and was divided between the sectors. An annual sole TAC was also set. Individual quotas were introduced in 1982. Since then, an annual TAC has been set for both the Cape hakes and for Agulhas sole. The inshore trawl fishery has been managed in terms of a sole TAC and a portion of the hake TAC. The sectoral allocation of the global hake TAC has remained remarkably stable at around 6 percent.

The Department manages the inshore trawl fishery as part of a “*hake collective*”. In terms of the MLRA, a “*global*” TAC for all hakes (both species combined) is set annually by the Minister of Environmental Affairs and Tourism. Of the global hake TAC a reserve to cover bycatch in the horse mackerel fishery and, until 2004, 1 000 tons for foreign fishing was set aside prior to distribution among the hake fishing sectors. Currently the global hake TAC (after deduction of the horse mackerel by-catch reserve) is distributed among the deep-sea trawl, inshore trawl, hake lone line and hake handline fishery sectors without regard to the hake species split in the respective fishery sectors. In terms of that arrangement, 83% is allocated to deep-sea trawl, 6% to inshore trawl and 10% is shared between hake long line and hake handline. However, a sectoral allocation procedure that takes cognisance of the species taken by that sector and the contribution of that species to the global TAC may have to be developed in order to match hake exploitation to the productivity of the two hake species. In terms of such a procedure, the sectoral allocation of hake to the Inshore Trawl Fishery would be determined only by the status of the shallow-water hake resource.

Inshore trawl grounds are located between Cape Agulhas in the west and the Great Kei River in the east. To protect the inshore areas, vessels operating in the inshore fishery may not exceed 30m and may not use heavy trawl gear. In addition, vessels fishing on deep-sea trawl permits may not operate in water depths of less than 110 metres or within 20 nautical miles of the coast, whichever is the greater distance from the coast. However, inshore vessels are not restricted from fishing deeper than 110m. Trawling for hake occurs throughout the traditional “inshore” area i.e. in waters shallower than the 110m isobath and on the two offshore fishing grounds. Trawling for Agulhas sole is in water depths of 50-80m, mainly between Mossel Bay and Struisbaai, in areas where the substrate consists of mud/shale. Most of the bays on the South coast are closed to trawling.

The inshore trawl fishery sustains some 1 100 direct jobs. Black people occupy more than 90 percent of these jobs, while women hold 42 percent. Working conditions in the inshore trawl fishery are generally considered to be better than those that prevail in other fisheries. The majority of employees are employed on a full-time, year round basis, with fixed salaries and employment benefits. The average annual income of sea-going crew is R35 000. Sea-going workers are registered with the Bargaining Council for the South African Fishing Industry which has two chambers: one for the deep-sea trawl fishery and one for the inshore trawl fishery. The Bargaining Council sets out basic conditions of employment in these fisheries.

The inshore trawl fishery is not as capital intensive as the deep-sea trawl fishery, but significant investments in the form of vessels, processing and marketing infrastructure have nevertheless been made by the existing participants. The total value of the assets in the fishery is estimated to be more than R100 million. The market value of catch landed is worth approximately R60 million annually.

Hake stocks are currently managed according to a conservative strategy. The TAC for hake has been reduced each year since 2003 and further reductions may be necessary.

As with all other commercial fisheries in South Africa, the inshore trawl fishery has historically been dominated by a handful of large white-owned companies. The introduction of the TAC in 1978 resulted in the smaller companies being forced out of the fishery. In 1992, eleven large companies operated 35 trawlers in the fishery. By 2004 however, 16 companies were participating. As importantly, in 1992 the ratio between smallest quota and the largest quota was 1:45. Ten years later, the ratio was reduced to 1:26. The gap between the smallest and the largest allocations has been closing.

The “*interna*” transformation of the traditional companies, and the entry of black-owned and managed companies since 1992, has resulted in a significantly improved transformation profile in this fishery. The transformation profile of this fishery however remains below the industry average of 66%. Medium-term rights allocation records show that:

- The inshore trawl fishery is currently 50 percent black-owned;
- 69 percent of right-holders are small- and medium-sized enterprises;
- 37 percent of the hake TAC and 46 percent of the sole TAC is held by black-owned companies (in 1992 this was one percent).

By 1992, 11 companies were left, operating 35 trawlers. The number of right-holders remained virtually constant until 2000, when new entrants were granted access to the inshore fishery. Today, 16 right-holders are active in the inshore fishery.

It is clear that a substantial effort has been made to reshape the inshore trawl industry. Today, 69% of the companies that hold rights in the fishery are SMMEs. To accommodate the new entrants, the average hake quota allocation decreased from about 900 tons in 1992 to 600 tons in 2002. At the same time, the inshore hake quota was distributed more fairly among right-holders; in 1992 the largest quota allocated was 45 times more than the smallest quota, compared to 30 times in 2002 (Figure 3).

### **2.5.5 Hake Long Line**

When compared to the South African hake trawl fishery, the hake longline fishery is relatively new. Longlining started in 1982. Between 1985 and 1990 much of the long line activity was re-directed from hake to kingklip as the latter was significantly more valuable. Due to concerns about the status of hake stocks, longlining for hake was terminated in 1990. Hake longlining was reintroduced as an experimental fishery in 1994. Commercial fishing rights under the MLRA were issued in 1999 and 2000, but these allocations were set aside by the courts. Stability was achieved in 2001 with the allocation of four-year commercial hake longline fishing rights.

The hake longline fishery generates some 3 600 permanent jobs and a further 3 200 part-time jobs. Historically disadvantaged persons occupy more than 90 percent of these jobs. The average annual income for crew is R38 500.

The hake longline fishery is not a highly capital intensive fishery. The longline industry lands prime quality hake for export to Europe and the value of prime quality hake is approximately 50 percent higher than trawled hake. The total value of fish landed in the hake longline fishery is estimated to be worth approximately R280 million per annum. The market value of vessels operating in the fishery is estimated to be about R750 million.



The Department manages the hake longline fishery as part of a “hake collective”. In terms of the MLRA, a “global” total allowable catch (“TAC”) for hake is set annually by the Minister of Environmental Affairs and Tourism. The hake longline and handline fisheries share 10 percent of the global TAC. The hake deep sea trawl fishery is allocated 83 percent of the TAC and the balance is fished by the hake inshore trawl fishery. Until 2004, 1 000 tons was set aside for foreign fishing. This allocation will be discontinued.

Hake longline fishing takes place along the west and south east coasts. The fishery operates out of harbours from Port Nolloth to Port Elizabeth. The fishery operates in offshore and inshore waters. Inshore hake longlining is restricted to the use of no more than 4 000 hooks per line. Offshore longlining may only take place in depths greater than 110 metres and is restricted to the use of no more than 20 000 hooks per line. Vessels and operating costs differ between inshore and offshore operations.

Hake stocks are currently managed according to a conservative strategy. The TAC for hake has been reduced each year since 2003 and further reductions may be necessary.

The hake longline fishery was identified in 2001 as a fishery that was ideally suited for the empowerment of small and medium enterprises and historically disadvantaged fishers. In 2001 and 2002, the Department allocated 141 commercial hake longline rights for a four year period. Historically disadvantaged persons now control 90 percent of the TAC and 80 percent of right-holders are small- and medium-sized enterprises. The Department’s objectives with regard to the empowerment of historically disadvantaged persons and small- and medium-sized enterprises were achieved in this allocation process.

The hake long line fishery is South Africa’s most transformed and accordingly most representative commercial fishery with black persons controlling 90% of the valuable hake long line TAC. The hake long line fishery was identified by the Department in 2001 as an ideal fishery to promote small and medium sized black enterprises as the capital outlay required for successful participating in this fishery was relatively low and the fishery was a new fishery having first been commercialised in 1998, albeit with very little success.

The hake long line fishery however still faces the challenge of having to compete against the hake trawl fisheries for a TAC allocation. Currently, the Minister has fixed the hake long line TAC at approximately 10% of the TAC set for hake (trawl and line). Current policy statements by the Minister in this regard indicate however that, pending further information and research into the respective ecological and biological effects of trawling and long lining, hake long line may be allocated a larger percentage of the total hake TAC.<sup>27</sup>

### **2.5.6 Hake Handline**

The hake handline fishery developed along the southern Cape coast where, in the late 1980’s, traditional linefishers began targeting hake as demand for prime quality (“PQ”) hake increased on the international market.

Originally, hake handline fishers used deck boats that were capable of fishing overnight. As the fishery grew, some fishers started using skiboats, which can stay out at sea overnight, and can be winched up onto a trailer and be driven to areas closest to where the hakes are located. The deck boats were harbour bound. This introduction of skiboats significantly

<sup>27</sup> See paragraph 11.6 of the Hake Long Line Fishery policy ([www.mcm-deat.gov.za](http://www.mcm-deat.gov.za)), which reads as follows: “The current TAC ratio of trawl:line will by and large be maintained. The ratio, however, will be reviewed once further data becomes available on the relative impacts of trawling and longlining.”

increased effort in the hake handline fishery, particularly as use of these vessels allows hake handliners to follow the hake along the South African coastline.

During the 1980's and 1990's the fishery was not properly regulated or managed. The lack of a regulatory framework, coupled with increased demand for PQ hake in the late 1990's, resulted in a number of persons, including recreational and commercial fishers operating in other fisheries, entering this fishery to take advantage of the high prices and catches rapidly escalated. During the late 1980's hake handline catches were estimated to be approximately 150 tons. By the 1990's this had increased to between 1 100 tons and 1 400 tons annually. By the year 2000, approximately 5000 tons were landed with catches peaking at an estimated 7300 tons in 2001.

In December 2000, the Minister announced a biological emergency in the traditional linefish fishery. The Minister also decided to split the management of the handline fisheries into three separate fisheries – the tuna pole, the hake handline and the traditional linefish fisheries. In that year, the Minister set a total applied effort ("TAE") for the fishery for the first time in the hake handline fishery. The TAE limited the number of crew and vessels that could target hake using a handline to 130 vessels and 785 crew. In addition, a precautionary maximum catch limit ("PMCL") of 5500 tons is set aside under the global hake total allowable catch.

The Department manages the hake longline fishery as part of a "hake collective". In terms of the MLRA, a "*global*" total allowable catch ("TAC") for hake is set annually by the Minister of Environmental Affairs and Tourism. The hake handline and longline fisheries share 10 percent of the global TAC. The hake deep sea trawl fishery is allocated 83 percent of the TAC and the balance is fished by the hake inshore trawl fishery. Until 2004, 1 000 tons was set aside for foreign fishing. This allocation has been discontinued.

The hake handline fishery operates out of small fishing harbours and slipways along the southern Cape and Eastern Cape coasts, as far north as Port Alfred. The handline fishery, like the hake long line fishery, lands PQ hake for export to Europe. The fishery operates in inshore waters targeting shallow water hake, *Merluccius capensis*.

Hake stocks are currently managed in terms of a recovery strategy and the TAC for hake has been reduced each year since 2003. Current catch rates of shallow water hake are unsustainable.

In 2003, the Department allocated 86 commercial hake handline fishing rights. The rights authorised 86 vessels and more than 700 crew to target hake using the handline method. This was the first time that commercial fishing rights were allocated in this fishery and the first time that the hake handline fishery was subjected to comprehensive regulation.

The objective of the medium-term allocation process was to allocate commercial hake handline fishing rights to fishers who are reliant on the fishery for their livelihoods. Every effort was made to exclude recreational or part-time fishers who derived income from other fisheries, or who were employed in other sectors of the economy.

Of the rights allocated, 26 percent were allocated to blacks. Approximately 25 percent of the skippers in this fishery are black, while 76 percent of crew are black.

Most of the right-holders are individuals. Legal entities, such as companies, make up a small percentage of the right-holders. All the right-holders in the fishery could be described as small- and medium-sized enterprises.

Although this fishery is a low capital intensive fishery and was a fishery identified by the Department in 2001 as being suitable for the affirmation of black fishers, attempts at

transforming this fishery and introducing black fishers into it have not yielded significant results. The reasons for this may be two-fold:

- Firstly, the hake handline fishery was never prior to 2003 properly regulated under the Marine Living Resources. Participants were allocated annual permits as a result of their performance histories during the 1980's and early 1990's and access to vessels (and here ownership of a vessel scored much higher than other forms of access). This naturally excluded black fishers to a significant degree.
- Secondly, the fishery has traditionally been dominated by recreational or part-time white boat owners who caught hake when international demand increased PQ hake prices. In addition, the hake handline fishery is a very seasonal fishery lasting on average three months each year, which in itself was prohibitive to black fishers accessing sufficient capital to invest in a suitable vessel and fund expenses over a 12 month period.

### **2.5.7 Horse Mackerel**

The southern African subspecies of horse mackerel (*Trachurus trachurus capensis*) is found along the entire South African coast, but the largest concentrations of adult fish are found on the Agulhas Bank, near the continental shelf break. Juveniles occur inshore, mainly on the west coast, where they are caught by the purse-seine fishery during the first quarter of the year.

The South African horse mackerel stock is comparatively small by world standards. The status of the South African stock is still being assessed. For this reason, the horse mackerel fishery is managed in terms of a precautionary maximum catch limit ("PMCL"). The PMCL has fluctuated between 22 000 and 54 000 tons since 1990.

It is important to note that the Cape horse mackerel is highly nomadic. Local availability is variable and dependent on environmental conditions.

The horse mackerel resource is harvested mainly by targeted mid-water trawling but there are substantial targeted and incidental catches in the hake-directed bottom trawl fishery. In addition, juvenile horse mackerel is taken as a by-catch in the purse-seine fishery on the west coast. While generally low, the catch of juveniles by the purse-seine fishery has on occasion been substantial and is currently subject to a strict limit of 5 000 tons per annum.

Management of the horse mackerel resource in South African waters is hampered by a lack of data, particularly the lack of suitable time-series of abundance indices. The most reliable current abundance index is derived from the demersal trawl surveys using bottom trawl gear. However, as this resource is semi-pelagic, this index most likely underestimates the size of the resource. Consequently, the status and productivity of the resource is less well known relative to other South African resources such as hake, sardine and anchovy. The data on horse mackerel are inadequate because the primary research focus of monitoring surveys has been the assessment of established fisheries such as hake and sardine.

The majority of horse mackerel is caught by a single midwater directed trawler. The majority of horse mackerel is transhipped and exported without landing or processing in South Africa. The fish are exported to West Africa, earning approximately R2.50 per kilogram. The value of the catch is worth approximately R55 million annually.

In 2001, medium-term rights for targeted mid-water trawling were allocated to 17 successful applicants, of which five were new entrants. The new entrants were allocated 500 tons (currently 542 tons) each and the rest of the PMCL was divided among existing right-holders.

The allocation considered previous allocations and scores achieved in a comparative balancing assessment.

The medium-term allocation records show that:

- 41 percent of the current participants are black owned;
- 29 percent of the current participants are black managed;
- 37 percent of the PMCL is held by black owned companies.

Black controlled right holders in this fishery control an equivalent of approximately ZAR20 million of this 55 million rand per annum industry. The relatively low levels of Black ownership and participation in this fishery may be ascribed to the following factors:

- **Access to capital:** As with most other highly capital intensive fisheries, the ability for black persons to access capital to finance a horse mackerel operation has been extremely difficult, particularly due to the fact that rights were historically allocated for 1 year periods (pre 2001) and for a 4 year period in 2001 (2002 to 2005). A four year long right in this fishery has proved to be too short to secure adequate finance.
- **Value of fishery:** Unlike hake or tooth fish, horse mackerel is not a high value species. In addition almost 100% of horse mackerel caught is exported to west African states. South African consumption of horse mackerel is negligible.
- **Mid-water trawling:** To date, more than 80% of horse mackerel caught has been by a single dedicated foreign flagged mid-water trawler, the *Desert Diamond*, which is owned and operated by South Africa's largest fishing group, the *Oceana Group Ltd*. The remaining 20% of the catch has been by hake deep sea trawlers who have recorded these landings as by-catches.

### 2.5.8 Small Pelagics (Anchovy and Sardines)

The small pelagic fishery dates back to the late 1940's when a fleet of privately owned purse-seine vessels began targeting sardine and horse mackerel. In 1953 an annual maximum catch limit of 270 000 tons was set but was never enforced. As a result, catches regularly exceeded this figure. By 1961, the maximum limit was repealed. In 1962, more than 410 000 tons of sardine were landed, but by 1966, the catch had dropped to 100 000 tons. The fleet then started targeting anchovy, using nets with a smaller mesh size. In 1987 anchovy catches peaked at 600 000 tons, but catches declined thereafter and in 1996 only 40 000 tons of anchovy were landed. Anchovy and sardine catches have subsequently increased, with landings of both species averaging around 250 000t each over the past five years. The fishery is currently managed in terms of an Operational Management Procedure ("OMP") that sets annual Total Allowable Catches ("TAC") for anchovy and sardine.

In terms of catch volumes, the small pelagic fishery remains the largest in South Africa. It is the second most important in terms of value. This fishery's management procedure is the most complex of the commercial fisheries. Two species are the main targets, namely sardine (*Sardinops sagax*) and anchovy (*Engraulus encrasicolus*), with associated by-catch species being red-eye round herring (*Etrumeus whiteheadii*) and Cape horse-mackerel (*Trachurus trachurus capensis*). Sardine are canned for human consumption while anchovy and most of the by-catch species are reduced to fishmeal, fish oil and fish paste.

Small pelagic targeting occurs inshore, primarily along the Western Cape's west and south coasts (anchovy and sardine) and the Eastern Cape coast (sardine).

The pelagic fleet consists of wooden, GRP and steel hulled purse-seine vessels, ranging in length from 15 metres to 30 metres. The industry employs approximately 7 800 people. Of

these, 5 300 are employed on a permanent basis and 2 500 on a seasonal basis. The average annual income of sea-going workers is ZAR94 000 – the highest in the fishing industry. Ninety-five percent of workers in this fishery are historically disadvantaged persons. The value of fish landed is presently worth approximately ZAR800 million per annum. The market value of the 106 vessels operating in this fishery is more than ZAR600 million (the average vessel is worth ZAR 7 million). The fishery is capital intensive, with right-holders having to invest in vessels and processing and marketing infrastructure, or gain access to such through catching and processing agreements.

In 1992, historically disadvantaged persons controlled some approximately seven percent of the small pelagic fishery. The accommodation of new entrants since 1992, has resulted in a narrowing of the gap between the largest and smallest allocations. Over the same period there has been a ten-fold increase in black involvement and ownership in the fishery (from seven percent to 73 percent). In 2001 and 2002, the Department allocated 113 medium-term (four-year) commercial small pelagic fishing rights. Of these:

- 73 percent were allocated to black-owned entities;
- 75 percent of the TAC is controlled by black-owned entities;
- 85 percent of right-holders are small and medium enterprises; and
- 50 percent of all vessels in this fishery belong to black-owned entities.

The levels of transformation attained in this fishery were indeed unexpected, especially if regard is had to the fact that the small pelagic fishery is capital intensive and like all other large commercial fisheries in South Africa, was dominated by large white owned entities prior to 1994. However, the transformation levels achieved in this fishery may be explained as follows:

- **Transformation of the traditional / pioneer right holders:** This fishery is largely dominated by three of largest fishing groups in South Africa, the Oceana Group Ltd, Premier Fishing and Lusitania. These three right holders have all implemented black economic empowerment strategies internally, which has assisted in the transformation of this fishery;
- **Abundance of pelagics:** The abundance of small pelagic stocks over the past 5 years has encouraged smaller black companies to enter the fishery, as this fishery is a high volume / high margin fishery.

### **2.5.9 The Tuna and Swordfish Long Line Fisheries (The Large Pelagic Fisheries)**

Since the 1970s, the Japanese longline fleet has had access to South Africa's territorial waters. Until recently, Taiwanese longliners have also been fishing in South Africa's Exclusive Economic Zone for albacore, sharks and swordfish in the inshore waters, and big-eye tuna in the South African offshore waters.

In 2003, the then Minister of Environmental Affairs and Tourism, Mohammed Valli Moosa, decided to not renew the bilateral licensing agreements with Japan and Taiwan, specifically intending to reserve this resource for South African fishermen. However, in anticipation of this decision, the South African government had in 1995 issued experimental large pelagic long line experimental permits to joint ventures between foreigners and South Africans interested in catching tunas and swordfish. These joint venture agreements were predominantly between South Africans and Japanese operators. The results of this experiment proved that tuna could indeed be profitably exploited by longline fishing in South African waters. In addition, this experiment revealed a lucrative by-catch of large swordfish (*Xiphias gladius*). A further 30 experimental longline permits were issued in 1997, 20 of which were granted to existing tuna pole quota holders, while 10 went to other fishers.



In March 2004, the Department issued its final policy on the Management and Allocation of Commercial Fishing Rights in the Large Pelagics (Tuna and Swordfish Longline) Fishery. This policy was issued after consulting with the industry and affected parties during 2003. By December 2004, rights were separately allocated for the targeting of tunas and swordfish by long line. In total, 17 swordfish rights were allocated and 26 tuna rights were allocated.

The final large pelagics fishery policy made clear that its primary objectives were to allocate rights to South African persons only. In addition, and if possible, the policy would affirm those applicants that were black empowered as well. The large pelagic policy records the South African government's objectives in allocating long term or 10 year long fishing rights in paragraph 3 of the policy document as follows:

*"3.1. Consolidation of fisheries targeting large pelagic species*

*It is a policy objective to consolidate all commercial large pelagic longline fisheries, including the existing pelagic shark longline fishery. The commercial harvesting of pelagic sharks by the existing shark longline fishery will not be allowed subsequent to 31 December 2005. Instead, right holders in the commercial shark longline fishery who intend to harvest pelagic sharks should apply for a commercial large pelagics right in terms of this policy to target tunas and swordfish. A pelagic shark by-catch will be permitted. The targeting of pelagic sharks will not be permitted with effect from 1 January 2006. The targeting of demersal sharks using longlines will be unaffected by this policy and will continue as a separate commercial fishery.*

*3.2. A South African Large Pelagic Longline Fishery*

*A fundamental objective of this policy and the allocation of commercial large pelagic longline fishing rights is the allocation of rights to South African persons<sup>28</sup>. This policy objective does not preclude non-South Africans from entering into joint ventures with South Africans.*

*3.3. Catch database*

*Stocks of highly migratory species, such as swordfish and tunas are managed by RFMO's. Country allocations are based on various criteria, the most important being catch history. Accordingly, a key policy objective is to allocate rights to develop a South African catch record, particularly for tuna, that would entitle South Africa to a larger share of the available country allocations."*

Accordingly, at the heart of this policy was the South Africanisation of a fishery that had historically and because of reasons related to apartheid sanctions busting been dominated by foreign long distance coastal fleets. The policy however recognised that 100% South African ownership of this fishery would not be possible; indeed it would not be in South Africa's interests to completely oust foreign involvement in this fishery.

Accordingly, the policy made it possible for South Africans to partner with foreign entities provided that a skills transfer plan was made available to Marine and Coastal Management and provided further that South Africans controlled the joint venture. In addition, foreign flagged vessels were permitted entry into this commercial fishery provided that these vessels were re-flagged as South African within 12 months of being allocated a right and while foreign

<sup>28</sup> For a definition of *South African person* see section 1 of the Marine Living Resources Act, 18 of 1998. A South African person includes South African citizens and South African owned and controlled legal entities such as companies.

flagged, the flag country had to authorise that all catches landed by that vessel would accrue to South Africa.

The Minister authorised Shaheen Moolla, then Chief Director of Fisheries Management and Fisheries Compliance, to allocate the commercial fishing rights in this fishery. By 06 December 2004, the Chief Director allocated commercial fishing rights. Of the tuna directed rights allocated –

- 90% are allocated to black controlled right holders;
- 100% are allocated wholly owned South African companies; and
- 76% of the right holders are more than 76% South Africa managed.

Of the swordfish directed rights allocated –

- 73% are allocated to black controlled right holders;
- 100% are allocated wholly owned South African companies; and
- 86% of the right holders are more than 76% South Africa managed.

The short term policy objective to allocate rights to South Africans in this fishery has been more than adequately met. The longer term objectives – that of establishing a credible and internationally competitive tuna catch record and ensuring that South Africans are properly skilled in the management of tuna long line business operation – will require careful medium to long term monitoring.

## **2.6 Measuring Transformation in South Africa**

The South African commercial fishery has indeed been transformed during the first ten years of a democratic government. It has successfully broadened the participation base from approximately 400 quota holders in 1994 to more than 3900 ten years later but importantly without threatening the sustainability of any fishery. In fact, fisheries such as lobster (both South Coast Rock Lobster and West Coast Rock Lobster) and small pelagics have seen significant TAC increases over the past four years.

This part of the report will provide an analysis as to whether the South African government has itself recognised the transformative challenges and successes noted above and whether it has committed itself to addressing the challenges as the medium term commercial fishing rights period comes to an end during the last quarter of 2005. In doing so, an analysis of the South African Government's overarching fisheries policies pertaining to transformation will be provided, followed by a sector by sector analysis of those fisheries applicable to this report.

### **2.6.1 South Africa's Overarching Fisheries Transformation Policy**

As stated above, on 30 May 2005, the Minister of Environmental Affairs and Tourism published a final volume of fisheries policies intended to guide the allocation of long term commercial fishing rights (of periods varying from 8 years to 15 years) and to guide decision-making on a range of the most important management matters that would affect the fisheries over the medium term.

On 15 June 2005, the Minister invited prospective applicants in the most capital intensive fisheries (the Cluster A fisheries) to apply for commercial fishing rights. This invitation was published in the South African Government Gazette under Notice 27683 of 15 June 2005.<sup>29</sup>

The General Policy issued as an overarching statement on a range of policies that affect multiple fisheries similarly spells out the South African Government's commitment to further transformation in the South African fishing industry. Paragraph 7.3 of the General Policy states the following:

### *"7.3. Transformation*

*The MLRA requires decision-makers to have regard to the need to restructure the fishing industry in order to address historical imbalances and to achieve equity within all the branches of the fishing industry. Transformation is also a constitutional imperative in South Africa. The Broad-Based Black Economic Empowerment Act 53 of 2003 is one of a number of statutory instruments giving effect to this constitutional imperative. This Act provides that the Minister of Trade and Industry may by notice in the Gazette issue codes of good practice on black economic empowerment. Draft codes on certain aspects have been published for comment. The codes provide for a "balanced scorecard" to measure progress and status within enterprises as well as the adoption of transformation charters for specific sectors of the economy by the major stakeholders in those sectors.*

*The Act and the draft codes were considered in the development of this policy and the fishery specific policies. However, owing to the nature of the rights allocation process, the Minister of Environmental Affairs and Tourism has thus far not encouraged the adoption of charters for fishing sectors and has not adopted the weighting and benchmarks set in the draft codes relating to ownership and management. When allocating fishing rights, the delegated authority is called upon to compare applicants with each other, rather than against an external benchmark. Transformation is an extremely important consideration in this comparative balancing process. The process is competitive and no "benchmark" can be set in advance. In a sector that is not sufficiently transformed, applicants with higher transformation scores than others will always stand a better chance of being allocated a right or a larger proportion of the available TAC or TAE. The policy is that within such a competitive comparative process, the adoption of charters or benchmarks is not always the appropriate vehicle to further transformation.*

*The policy is to further transformation and to improve on the levels of transformation achieved during the medium-term rights allocations. In the long term rights allocation process, only quality transformation will be recognised, that is, transformation which results in real benefits to historically disadvantaged persons.*

*Persons were historically disadvantaged in the fishing industry on account of their race in respect of access to rights. It is accordingly necessary to promote the participation of such historically disadvantaged persons within all branches in the fishing industry. It is also necessary to address historical imbalances and achieve equity within the fishing industry insofar as the participation of women is concerned, as they too, were marginalised in the past. In the allocations process*

<sup>29</sup> The Minister had decided to cluster South Africa's fisheries into four clusters so as to ensure a seamless and efficient process of rights allocations that would also ensure tailor made processes for each fishery cluster. The four clusters are those described above under paragraph 1 of Part A, except that the Small Scale / Artisanal Fisheries cluster was further divided.



*the race and gender of applicants, and in the case of juristic persons, the race and gender of the applicant's shareholders or members, management, suppliers and workforce, may therefore be taken into account. This will be done in the manner described below. In addition, corporate social investment may be taken into account in the manner described below."*

The further statements on transformation further commit the fisheries policies to ensuring that the transformation sought is beneficial and does not amount to fronting. Each of the elements of South Africa's Broad Based Black Economic Empowerment Act<sup>30</sup> is then given effect to. These include measuring whether during the medium term process black shareholders and managers benefited equitably, whether skills plans and affirmative action plans were given effect to, whether workers who were members of share schemes benefited equitably and whether women have been affirmed as required under South Africa's Employment Equity Act, 1998.

In addition, the General Policy remains committed to ensuring that fishing rights are held by South African persons. Paragraph 7.2 of the General Policy states the following:

*"7.2. Form of right holder*

*Section 18 of the MLRA provides that only South African persons may hold fishing rights. Section 1 of the Act defines a South African person as a South African citizen or a company, close corporation or trust."*

### **2.6.2 The Fishery Specific Policies and Transformation**

The Minister of Environmental Affairs and Tourism has published fishing policies for each of the fisheries under discussion. Each of the policies is committed to effecting transformation as considered applicable to that particular fishery. The transformation criteria in each applicable fishery policy are discussed below in light of the previously presented analyses.

### **2.6.3 The Hake Fisheries**

South African hake stocks are currently being managed in terms of a "conservative management strategy".<sup>31</sup> Accordingly, increasing the numbers of participants in these fisheries would not be a viable or sustainable option to South African Fisheries managers. Indeed, the hake deep sea trawl fishery states the following in this regard:

*"The hake deep-sea trawl fishery is presently over-subscribed with 53 right-holders participating. The current levels of catch have been reviewed and a conservative management plan has been implemented over the past three years. The TAC has been reduced and further reductions may be required in the near future.*

*Although no additional participants would be allowed to enter the hake deep-sea trawl fishery, new entrant applicants will be considered where appropriate. Current right-holders that have not transformed or have insignificant investment or involvement in the fishery over the medium-term period may be replaced with a suitable new entrant."*

The hake inshore trawl fishery states the following:

<sup>30</sup> See further paragraph 3, Part A, above.

<sup>31</sup> See the various Hake policies issued by the Minister – [www.mcm-deat.gov.za](http://www.mcm-deat.gov.za).

*“Hake and sole stocks are presently managed in terms of a recovery plan as there are indications that these stocks are declining. Furthermore, the accommodation of new entrant applicants in the fishery between 1992 and 2002 had resulted in the hake allocation decreasing from an average of 900 tons to an average of 600 tons per right-holder. Sole allocations were similarly reduced from an average of 80 tons to an average of 50 tons per right-holder.*

*The Department considers the current number of participants and fishing capacity as optimal. However, the transformation profile of this fishery is below the fishing industry average (66 percent). The Department will therefore prefer new entrant applicants over existing right-holders that have not transformed. New entrants may also be preferred over existing right-holders that have not performed and/or invested in the fishery over the period that they held a medium-term commercial right.”*

The hake long line policy says the following:

*“South Africa’s hake stocks are presently managed in terms of a conservative management plan as there are concerns that the current level of fishing effort may not be sustainable in light of decreasing catch rates and increasing catch efficiency. In the longline fishery, the accommodation of large numbers of new entrants has also resulted in much uncertainty and a lack of substantial investment in infrastructure and human resources.*

*The level of transformation in the fishery is satisfactory and a large number of small and medium sized enterprises (“SMEs”) operate in the fishery. However, new entrant applicants may be selected over right holder applicants that have, amongst others, failed to transform qualitatively, have not performed adequately or have not adhered to the MLRA, its regulations or permit conditions.”*

Finally, the hake handline policy records the following:

*“The hake handline fishery is currently over-subscribed. There are many more handline fishers than the resource is able to sustain. However, the poor transformation profile of this fishery, coupled with the fact that many hake handline fishers, particularly black skippers, did not apply for commercial rights in 2001, means that rights may instead be allocated to a substantial number of new entrant applicants, particularly black new entrants.”*

Clearly, the South African government is of the view that the current level of effort to which hake stocks are being subjected may be regarded as being “optimal”. However, the status quo is certainly not guaranteed. Indeed, the above policy statements regarding the admission of new entrants are unambiguous in that the constitutional imperative of transformation will mean that those right holders who failed to transform will be replaced by new entrant applicants that are transformed and who meet the criteria applicable to each fishery. This latter statement is important as it indicates that South Africa’s commitment to transformation will not be at the expense of environmental sustainability and economic performance.

### **2.6.3.1 Hake Deep Sea Trawl**

South Africa’s most important and valuable commercial fishery is also its principal example of skewed transformation. Although the number of black right holders in this fishery number 74% of right holders, these 74% only control 25% of the hake deep sea trawl TAC.

South Africa's hake deep sea trawl policy has recognised this as a key objective that must be corrected. One of the policy's overall objectives is to –

*“Notably improve the transformation profile ... by increasing black ownership of the TAC and to redistribute the TAC so as to affirm right holders with smaller allocations in this fishery that are transformed and have performed well.”*

As far as transformation is concerned, paragraph 7.2(a) of the policy states the following:

*“One of the objectives with the process of allocating long-term fishing rights in this fishery is to improve on the present level of transformation. As set out in the General Fisheries Policy, applicants will be assessed on –*

- *The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;*
- *Whether employees (other than top salary earners) benefit from an employee share scheme;*
- *Affirmative procurement;*
- *Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also have regard to the wage differentials between the highest and lowest paid employees;*
- *Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and*
- *Corporate social investment.”*

Finally, the hake deep sea trawl policy makes provision for the redistribution of quantum (TAC). The redistribution of quantum should be recognised as a crucial tool which, in the final instance and once successful applicants in this fishery have been identified, will allow for the redistribution no less than 10% of the hake deep sea trawl quantum to small quota holders that are transformed and had performed adequately during the medium term rights allocation process.<sup>32</sup>

In our view, the hake deep sea trawl policy recognises the most significant shortcoming of the medium term process with regard to transformation, and more importantly, has placed at the disposal of decision-makers the tools to correct the current skewed transformation profile of this fishery. These tools include the following:

- **A warning:** Right holders in this fishery should have recognised that they will be replaced if they failed to effect transformation plans and strategies. Rights will not be re-allocated to untransformed right holders for a further 15 year period. This warning should also serve as encouragement to black right holders in the inshore trawl and long line fisheries that have invested in their operations to compete against untransformed deep sea trawl right holders for a hake deep sea trawl fishing right;
- **Broad based black economic empowerment:** The previous fisheries policy (2001) focused extremely narrowly on the meaning of transformation – recognising only management and ownership. Measuring applicants on their broad commitment to transformation will mean that applicants will not be able to easily front black management and ownership as they will also be measured on criteria such as corporate social investment, empowerment of workers (other than management) and commitment to employment equity and skills development;

<sup>32</sup> See paragraph 7.3 of the Hake Deep Sea Trawl policy ([www.feike.co.za](http://www.feike.co.za)).

- **Redistribution of quantum (TAC):** This may prove to be the most important and decisive tool given to effect greater equity in the hake deep sea trawl fishery.

### 2.6.3.2 Hake Inshore Trawl

The principal challenge for South Africa's fisheries managers responsible for the hake inshore trawl fishery is to increase black participation and ownership of TAC. In this fishery (as is noted above) 50% of right holders are black and they control 37% of the hake TAC (and 46% of the sole TAC).

As is the case with the hake deep sea trawl policy, the hake inshore trawl fishery policy has as an overall objective the following –

*“Notably improve the transformation profile ... by increasing black ownership of the TAC and to redistribute the TAC so as to affirm right holders with smaller allocations in this fishery that are transformed and have performed well.”*

As far as transformation is concerned, paragraph 7.2(a) of the policy states the following:

*“One of the objectives with the process of allocating long-term fishing rights in this fishery is to improve on the present level of transformation. As set out in the General Fisheries Policy, applicants will be assessed on –*

- *The percentage black and women ownership and black and women representation at top salary, board of directors and senior official and management levels;*
- *Whether employees (other than top salary earners) benefit from an employee share scheme;*
- *Affirmative procurement;*
- *Compliance with the Employment Equity Act 55 of 1998 and the representivity of blacks and women at the various levels of employment below senior official and management level. The Department may also have regard to the wage differentials between the highest and lowest paid employees;*
- *Compliance with legislation on skills development and the amounts spent on the training of blacks and participation in learnership programmes; and*
- *Corporate social investment.”*

Finally, the hake inshore trawl policy also makes provision for the redistribution of quantum (TAC). The redistribution of quantum should once more be recognised as a crucial tool which, in the final instance and once successful applicants in this fishery have been identified, will allow for the redistribution of no less than 10% of the hake inshore trawl quantum to not only small quota holders (that may be large businesses) but also small enterprises that are transformed and had performed adequately during the medium term rights allocation process.<sup>33</sup> The reason why small enterprises are included as possible beneficiaries of a redistribution strategy is because the inshore trawl fishery is significantly less capital intensive than the deep sea trawl fishery.

As with the hake deep sea trawl fishery, in our view, the hake inshore trawl policy recognises the most significant shortcoming of the medium term process with regard to transformation, and more importantly, has placed at the disposal of decision-makers the tools to correct the current skewed transformation profile of this fishery. These tools include the following:

<sup>33</sup> See paragraph 7.3 of the Hake Inshore Trawl policy ([www.feike.co.za](http://www.feike.co.za)).

- **A warning:** Right holders in this fishery should have recognised that they will be replaced if they failed to effect transformation plans and strategies. Rights will not be re-allocated to untransformed right holders for a further 10 year period. This warning should also serve as encouragement to black right holders in the long line fishery, in particular, that have invested in their operations to compete against untransformed inshore trawl right holders for an inshore trawl fishing right;
- **Broad based black economic empowerment:** The previous fisheries policy (2001) focused extremely narrowly on the meaning of transformation – recognising only management and ownership. Measuring applicants on their broad commitment to transformation will mean that applicants will not be able to easily front black management and ownership as they will also be measured on criteria such as corporate social investment, empowerment of workers (other than management) and commitment to employment equity and skills development;
- **Redistribution of quantum (TAC):** This may prove to be the most important and decisive tool given to effect greater equity in the hake inshore trawl fishery.

### 2.6.3.3 Hake Long Line

The hake long line fishery is South Africa's most transformed fishery with 89% of right holders being black controlled and 90% of the hake long line TAC being controlled by black persons.

This notwithstanding, the South African government has identified that the transformation levels in this fishery may be statistically more impressive than the actual state of black empowerment in this fishery. For this reason, one of the overarching objectives in this fishery is to improve the quality of transformation in this fishery. However, as with the other hake fisheries, every applicant will be measured on their respective commitments to transformation by evaluating applicants on a number of transformation criteria.<sup>34</sup>

The hake long line fishery is however significantly different to the hake trawl fisheries as it has effectively been transformed, equitably representing the demographic composition of the South African people. However, the tools to at least maintain the current transformation levels provided to the decision-makers in the hake trawl fisheries, have again been provided to the decision-maker in the hake long line fishery. However, because the hake long line fishery is substantially less capital intensive than the deep sea trawl fishery and because the long line fishery is substantially more transformed than the trawl fisheries, the redistribution strategy for hake long line is significantly different. Paragraph 7.3 of the hake long line policy reads as follows:

*“As far as right-holder applicants are concerned, the basis for the allocation of quantum will be the allocations made to right-holders for the 2005 fishing season. If the fishery remains transformed after the allocation of rights, and comprises a significant percentage of small businesses, the delegated authority may disregard these criteria when considering re-distribution of quantum. The delegated authority may then redistribute quantum based on other criteria, such as performance. Should the delegated authority decide to redistribute the TAC for this fishery, applicants shall be consulted once all applications have been evaluated and the successful applicants have been identified.”*

The hake long line fishery's redistribution strategy accordingly, focuses on affirming those right holders that have been the best performers during the medium term period, provided that the current levels of transformation in this fishery are maintained.

<sup>34</sup> These criteria are identical to those stated above under the hake trawl fisheries.



#### 2.6.3.4 Hake Handline

An analysis of the transformation profile of the hake handline fishery indicates that the low levels of black involvement in this fishery may be attributed to the fact that undue weighting was placed on criteria such as past involvement and vessel ownership coupled with the fact that the handline fishery is extremely seasonal has made access by black persons to this fishery unduly onerous.

The 2005 hake handline policy appears to have recognised the above analysis and attempts to address these challenges as follows. With respect to the criteria to be used, the policy directs that a number of criteria must be used to ensure greater access to the fishery by black persons. The criteria now include measuring applicants on transformation, investments made in the fishery, reliance on the hake handline fishery as a source of income, commitment to land fish in small fishing communities and the applicant's compliance record with respect to fisheries laws and regulations. To mitigate against excluding fulltime line fishers, the policy makes provision for the allocation of traditional line fish rights to hake handline fishers as well. This is a significant policy shift as Marine and Coastal Management had since 2000 initiated a policy that prohibited traditional line fishers from being involved in other fisheries such as hake handline.

#### 2.6.4 Horse Mackerel

The analysis provided above establishes that low levels of black participation in the horse mackerel fishery may be as a result of a combination of the short duration of commercial fishing rights (4 years), the low value of the fishery and the domination of a single mid-water trawler.

The 2005 horse mackerel policy aims to overcome these challenges in the following way:

- The policy confirms that commercial fishing rights in the horse mackerel fishery will be allocated for a 10 year period. The 10 year period is recognised as being sufficiently long to attract either black new entrants to the fishery or black investors interested in investing in current right holders;
- The policy is explicit in its intention to encourage larger volumes of horse mackerel being landed in South Africa and the creation of a local horse mackerel market. The potential for a local horse mackerel market does exist as horse mackerel could be an important alternative and cheap protein food source for South Africa's poor;
- As far as mitigating against the dominant presence of a single dedicated mid-water trawler, the policy now offers horse mackerel right holders two options. Firstly, right holders may target horse mackerel using the dedicated mid-water trawler, *the Desert Diamond*. These right-holders may only use a mid-water trawl net and all hake harvested will be regarded as a by-catch. The hake by-catch limitations will apply in this regard. Secondly, those right-holders that hold a hake deep-sea trawl right in addition to a horse mackerel right may carry both deep water and a mid-water trawl nets. All hake caught in this instance will be deducted from the right-holder's hake allocation and all horse mackerel from the right holder's horse mackerel allocation. The right-holder will have to specify the trawl net (midwater or demersal) used for taking each catch;
- Additionally, the policy makes available to the decision-maker similar tools as are available in the hake deep sea trawl policy to ensure that transformation in this fishery occurs as envisaged. These tools include the following:



- **A warning:** Right holders in this fishery should have recognised that they will be replaced if they failed to effect transformation plans and strategies. Rights will not be re-allocated to untransformed right holders for a further 10 year period;
- **Broad based black economic empowerment:** The previous fisheries policy (2001) focused extremely narrowly on the meaning of transformation – recognising only management and ownership. Measuring applicants on their broad commitment to transformation will mean that applicants will not be able to easily front black management and ownership as they will also be measured on criteria such as corporate social investment, empowerment of workers (other than management) and commitment to employment equity and skills development;
- **Redistribution of quantum (TAC):** This may prove to be the most important and decisive tool given to effect greater equity in this fishery.

### 2.6.5 Small Pelagics

The small pelagics fishery is currently considered to be transformed with more than 74% of the TAC controlled by black persons. Transformation levels in this fishery, as noted above, may be ascribed to the internal transformation of the largest right holders in this fishery and the present abundance of small pelagics in South African waters. As right holders in this fishery are allocated a percentage of the small pelagics TAC, the current inflated TAC has artificially sustained may current right holders, the majority of whom are small and medium sized black right holders.

The concern that must be facing small quota holders in this fishery and the Government of South Africa is what will become of these small quota holders when the small pelagic TAC has to be decreased substantially in the near future as a result of natural decreases in abundance of small pelagic fish.

The small pelagic policy does not explicitly or directly address this increasingly possible challenge. The only reference to this challenge is made in addressing whether new entrant applicants will be accommodated. The policy in this regard is as follows:

*“Given the current abundance of anchovy and sardine, together with the inherent variability of stocks of small pelagic fish, it is very likely that the abundance of either or both species will fall substantially in the near future. A substantial decline in the TAC and effort in this fishery is predicted. In addition, this is a high volume, low margin fishery. This means that financially viable long-term allocations need to be substantial.”*

This policy statement merely recognises that a downward TAC adjustment will be required in the near future and small quotas are therefore to be guarded against. However, an indirect answer to this challenge is provided under paragraph 11.6 of the policy (“Introduction of a TAE”). Although the introduction of effort controls to further manage the fishery is premised as a possible tool to aid fisheries reporting and therefore compliance, the consequences for small quota holders of significant decreases in the TAC may be mitigated against by reducing effort, which may include sea day limitations and/or gear limitations.

### 2.6.6 Tuna and Swordfish Long Line

As noted above, the short term objectives set by the Minister for this fishery have been surpassed. The fishery is significantly transformed in terms of South African and, particularly

black South African, participation and ownership. The challenge for South Africa is to effectively and regularly monitor –

- The tuna catching performances of the tuna and swordfish fleets;
- Ensure that these catches are properly recorded and lodged with the applicable regional fisheries management organisations;
- The transfer of tuna targeting, harvesting, processing and marketing skills from non-South Africans to South Africans; and
- Fishing activities on the High Seas for compliance reporting in terms of applicable regional and international obligations.

## 2.7 Conclusion

Transforming South Africa’s commercial fisheries has been achieved over a relatively short period of some ten years. The commercial participation base was increased ten fold between 1994 and 2002, notwithstanding that fish abundance had decreased across almost every fishery. Transforming South Africa’s fisheries has been particularly successful because the process of allocating fishing rights, whether annually, every four years or fifteen years, requires everyone interested in obtaining a fishing right to compete against other applicants based on criteria such as transformation and broad based black economic empowerment.

However, the allocation of long term commercial fishing rights over periods of between 8 years and 15 years will pose a new challenge. The allocation of medium term commercial fishing rights over a 4 year period was sufficiently long to secure impressive levels of black investment in the fisheries but short enough to ensure that right holders do not become complacent and lose focus on maintaining black equity and control. The allocation of *long term* rights may allow for complacency or added incentives to front black persons for the medium term, believing that the South African Government may become disinterested in monitoring transformation levels beyond years 5, 8 or 12. To guard against any future Minister or fisheries manager not religiously and diligently monitoring each fishery and right holder over the long term, every 2005 fisheries policy advances a novel “performance measuring” policy mechanism. The following is an example of such a “performance measuring” mechanism extracted from the small pelagics policy (paragraph 12):

*“The Department will institute a number of formal performance measuring exercises for the duration of the 15-year period. It is envisaged that the first set of performance measuring exercises will take place after two years and thereafter every four years.*

*Although the Department will finalise the precise criteria against which right-holders will be measured after the allocation of commercial fishing rights - and after consulting with right-holders - the following broad performance-related criteria may be used:*

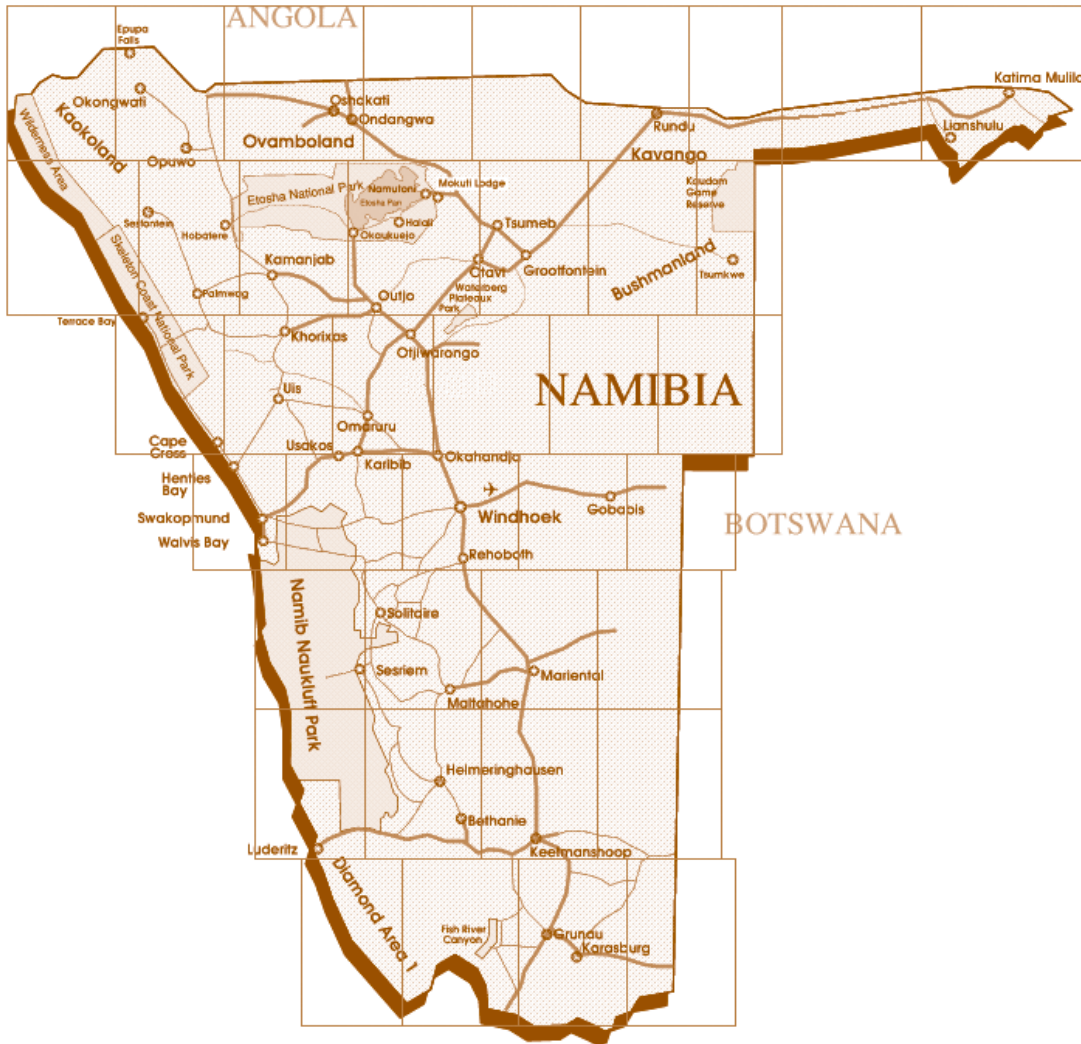
- ***transformation;***
- *investment in vessels and gear;*
- *sustainable utilisation, and in particular by-catch mitigation and measuring the ecological impacts of purse seining;*
- *compliance with applicable laws and regulations.*

***The purpose of performance measuring will be to ensure that the objectives of the fishery are being met and that management methodologies and procedures remain current and suitable for the fishery.***

[own emphasis]

Accordingly, it is our view that the South African fishing industry is *transformed*. This notwithstanding, the future challenges identified above for the small pelagic and large pelagic fisheries, in particular, is to be carefully monitored. In addition, the Department must ensure that the *performance measuring* mechanisms provided for in each of the policies are timeously applied and the data properly interpreted and where applicable appropriate measures implemented to ensure that only are fisheries sustainably and ecologically managed but transformation levels achieved at rights allocation are carried through the respective *long term* rights allocation periods.

### 3. MEASURING TRANSFORMATION IN NAMIBIA



#### 3.1 Introduction

Namibia's fishing industry is regulated by the Ministry of Fisheries and Marine Resources ("the MFMR"). Its stated mission is to strengthen Namibia's position as a leading fishing nation and contribute towards the achievement of our economic, social and conservation goals for the benefit of all Namibians.

Namibia's fishing industry is considered to be highly productive when compared internationally. Over 20 commercially important fish species are landed using various fishing methods. To prevent overexploitation and to promote economic viability in the industry, the MFMR issues rights of exploitation, fishing vessel licenses, and in some fisheries, TACs and individual catch quotas. Namibia sets quotas for a diversity of fish including –

- Pilchards
- Hake
- Rock lobster
- Red Crab
- Horse mackerel

- Alfonsino
- Orange roughy
- Monk fish
- Large pelagics
- Mulletts
- Seals
- Guano
- Line fish

The Namibian fishing industry employs between 14500 and 15000 persons. The number of Namibians employed as crew has continually increased from 47% in 1996 to 66% in 1998. On-shore workers are predominately Namibian. Of the current 8,000 to 8,500 workers, at least 95% are Namibian.

The Fisheries sector plays a key role in generating revenue for Namibia. Revenues are generated through various fees and levies. During 2003, Namibia collected more than N\$100 million from its fishing industry. During this period some 665 000 tons of fish was landed worth approximately R3.5 billion to the Namibian economy.

Since Namibia's independence in March of 1990, fisheries have assumed an increasingly important role in her national economy. So much so, that the rich marine resources have arguably become the most important renewable resource of the country.<sup>35</sup> Implicitly they have become a central aspect to Namibia's development strategy.<sup>36</sup> An essentially related question thus arises, as to who is truly and substantively benefiting from this lucrative natural resource. Namibia's policy objectives have been aimed at securing these benefits to the advantage of the Namibian peoples, both at a level of poverty eradication, empowerment, job creation, and, more importantly, to serve as an overall infrastructural development tool.

This report addresses the following two key aspects as they relate to the transformation of the Namibian fishing industry:

- The Distributional and / or Transformative<sup>37</sup> Effect caused by the Implementation of the Namibian Government's Post-Independence Fisheries Policy as it emerged in 1991, and its bearing on questions concerning the issue of substantive equality, equity and income distribution throughout the country; and
- An Assessment of the Namibian Government's policies on transformation, and how these have been interpreted and applied to the Fisheries Sector, in terms of its alignment and compatibility with Namibia's overall Development Objectives and Strategy Action Plans.

### 3.2 Understanding transformation in Namibia

At independence Namibia had to address the problems associated with an over-fished and unregulated marine fisheries sector. Namibia's pre-democratic fisheries sector was generally characterized by a combination of bad management, over-fishing and undesirable environmental conditions, which in turn led to the depletion of the hake, pelagics and rock lobster stocks. A high percentage of the catches was processed on board the foreign trawlers that dominated the industry. The remainder was shipped overseas for processing and

<sup>35</sup> Manning, P. (2004) Review of the Distributive Aspects of Namibia's Fisheries Policy p. 1.

<sup>36</sup> See, for example: National Development Strategy and Action Plans, (NDP) I and II, accessible at the National Planning Commission (NPC), Windhoek, Namibia.

<sup>37</sup> See Manning, P. (2004) Review of the Distributive Aspects of Namibia's Fisheries Policy p. 1.



marketing. As a result, few onshore processing facilities were initiated or maintained, depriving Namibia of its rightful entitlement to foreign currency, revenue, growth and employment.<sup>38</sup>

At independence Namibia declared a 200 nautical mile Exclusive Economic Zone (“EEZ”) in terms of the Territorial Sea and Exclusive Economic Zone of Namibia Act of 1990, (which was one of the first Acts of Law passed through Parliament after the country’s independence on 21 March 1990.)<sup>39</sup>

Post independent Namibia accordingly faced a challenge similar to that which faced by post apartheid South Africa – ensuring that Black Namibians had equitable access to fisheries resources and ensuring that Namibia’s fisheries benefited Namibians.

### 3.3 Regulating Transformation in Namibia’s Fishing Industry

Namibia’s fisheries regulatory environment is, like South Africa’s, managed in terms of a Constitution, fisheries legislation and regulations and policy.

In December 1991 Namibia took its first democratic steps toward sustainable and transformative fisheries regulation with the publication of a White Paper titled *Towards Responsible Development of the Fisheries Sector*.

#### 3.3.1 The Namibian Constitution

Article 95(1) of the Namibian Constitution of 1990 requires –

*“...that ecosystems, essential ecological processes and biological diversity are maintained and living natural resource are utilised on a sustainable basis for the benefit of Namibians, both present and future...”*

The overall but fisheries-specific development objectives as they have evolved from the Constitution and been incorporated into the 1991 White Paper which requires the Namibian government –

*“To utilise the country’s fisheries resources on a sustainable basis and to develop industries based on them in a way that ensures their lasting contribution to the country’s economy and overall development objectives.”*

Two significant goals become apparent from this overarching objective. Firstly, the need to effectively address the detrimental depletion of several species that took place before independence and to rebuild these stocks to their ‘full potential’. Secondly, the policy aims to maximise the benefits for Namibians from the fisheries sector, both in the processing and harvesting branches of the fisheries industry. This is to be achieved by increasing the employment of Namibians in both branches through the development of service and support industries, like boat-building, can production, production of other inputs for the processing industries (like retail outlets and packaging) and the establishment of distribution and marketing networks.

The *White Paper* policy document further argues that the best way to achieve an increasing contribution to national income is through the creation of a Namibian fishing sector,

<sup>38</sup> Only rock lobster and pilchard were landed for onshore processing. See National Development Plan 1 (NDP1), Volume 1, published by and obtainable at the National Planning Commission, Windhoek, Namibia. Chapter 12, P. 185.

<sup>39</sup> It was the third legislative Act of Parliament to be passed by the Government.



controlled and used by Namibians. Four principal strategies have been used to implement these policy objectives<sup>40</sup>:

- i) Rebuilding its **depleted fishing stocks**;
- ii) Establishing a **national fishing and processing** industry;
- iii) Introducing measures aimed at the **Namibianisation** of the fishing sector, so that the advantages of rebuilding the stocks and supporting the fishing industry would accrue mostly to Namibians through employment creation, increasing Namibian ownership in vessels and fishing companies, and the replacement of foreign labour with Namibian labour; and
- iv) **Empowerment** of Namibia's indigenous people disadvantaged and marginalised by South Africa's apartheid policies.

Article 23 of the Namibian Constitution enshrines the principle of affirmative action, and prohibits racial and other forms of discrimination. On 6 August 1999, the Affirmative Action (Employment) Act of 1998 came into effect. Employers that employed fifty or more employees fall within the scope of this Act. The main objectives of the Act integrate Namibia's indigenous peoples into the formal economy, such as fisheries, and to eradicate workplace discrimination.

Formal sector employment in the traditional labour-intensive sectors of fishing, manufacturing and tourism was intended to increase the incomes of previously unskilled and semi-skilled Namibians, who were also to be further assisted through tax measures.<sup>41</sup>

### 3.3.2 Fisheries Laws and Regulations

In 1992 the Sea Fisheries Act was passed by the Namibian Parliament. However, soon thereafter, a number of new international fisheries agreements, conventions and arrangements prompted the legislature to revise the 1992 Act, which was repealed by the Marine Resources Act of 2000. International instruments like the 1982 Law of the Sea Convention, the 1995 Straddling Stocks Convention<sup>42</sup>, the FAO Compliance Agreement<sup>43</sup>, ICCAT<sup>44</sup>, CCAMLR<sup>45</sup>, the FAO Code of Conduct for Responsible Fisheries and the SADC Regional Protocol on Fisheries had necessitated this need to reflect Namibia's subsequent fishing status as that of a more inclusive foreign fleet or high seas fishing nation as well, in addition to the formerly exclusively coastal state perspective.<sup>46</sup> This increasing capacity to participate in fishing operations in other states' waters as well as on the high seas is a definite sign of maturity in Namibia's fisheries sector, facilitated by her growing membership to international fisheries organisations.<sup>47</sup>

<sup>40</sup> Nichols, P. (2004) Marine Fisheries Management in Namibia: Has it worked? P. 4. Personal interview with the author, who is the special advisor to the Honourable Minister of Fisheries and Marine Resources, Dr. Abraham Iyambo, Namibia, 27 May 2004.

<sup>41</sup> NDP2 – Volume One: Macroeconomic, Sectoral and Cross-sectoral Policies: Part 4: Cross-sectoral Policies: Chapter 40: Labour and Employment. P. 696.

<sup>42</sup> Agreement for the Implementation of the Provisions of the UN Convention on the Law of the of 10 December 1982 relating to the Conservation and Management of Fish Stocks and Highly Migratory Fish Stocks; also known as the 'UN Fish Stocks Agreement'.

<sup>43</sup> FAO Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

<sup>44</sup> International Commission for the Conservation of Atlantic Tunas

<sup>45</sup> Convention on the Conservation of Antarctic Marine and Living Resources

<sup>46</sup> Personal interview with Paul Nichols, special advisor to the Honourable Minister, MFMR, 27 May 2004, Windhoek, Namibia.

<sup>47</sup> The texts of all international conservation and management measures to which Namibia had become party were gazetted, and then deemed to have legal force in terms of section 37 of the Marine Resources Act no. 27 of 2000

### 3.3.2.1 *The Sea Fisheries Act and Regulations, 1992*

The promulgation of the Sea Fisheries Act in 1992 and the publication of the Fisheries Regulations in 1993 marked the commencement of the implementation phase of Namibia's 1991 fishing policy.

The 1992 Act and the 1993 regulations required the Minister to consider a significant number of social objectives and criteria when considering applications for fishing rights. The criteria that had to be considered were the following:<sup>48</sup>

- whether or not the applicant is a Namibian citizen;
- if the applicant is a company, whether Namibians have beneficial ownership thereof;
- whether Namibians have beneficial ownership of any vessel that may be used by applicant;
- the applicant's ability to exercise the prospective right in a satisfactory way;
- the advancement of people in Namibia who have been economically, socially or educationally disadvantaged by discriminatory laws or practices enacted or practiced before independence;
- regional development within the country;
- co-operation with other countries, particularly those within the Southern African Development Community ("SADC"); and
- the conservation and economic development of marine resources.

These criteria were clearly aimed at redressing the various socio-economic impacts of apartheid, including the need to ensure equitable access to fisheries resources by Namibia's citizens, particularly those disadvantaged under apartheid, and to ensure that the benefits of the fishing industry are distributed as equitably as possible along Namibia's coastline.

### 3.3.2.2 *The Marine Resources Act of 2000*

The Marine Resources Act repealed the Sea Fisheries Act in 2000. Section 2 of Marine Resources Act empowers the Minister to determine the general fisheries policy regarding the conservation and utilisation of marine resources in order to realise the greatest benefit for all Namibians both present and future.

Part VI of the Marine Resources Act regulates the commercial harvesting of marine resources: Section 33 vests the Minister with the discretion to announce a period during which applications for rights of exploitation can be submitted. Section 33(4) lists the criteria the Minister may consider in the granting of these rights:

- a) whether or not the applicant is a Namibian citizen;
- b) where the applicant is a company, the extent to which the beneficial control of the company vests in Namibian citizens;
- c) whether Namibians have beneficial ownership of any vessel which will be used by the applicant;
- d) the ability of the applicant to exercise the right in a satisfactory manner;

<sup>48</sup> Section 14(6) of the Sea Fisheries Act (1992) and Regulation 2(2) of the Fisheries Regulations (Namibia, 1993)

- e) the advancement of persons in Namibia who have been socially, economically or educationally disadvantaged by discriminatory laws or practices which were enacted or practiced before the independence of Namibia;
- f) regional development within Namibia;
- g) co-operation with other countries, especially those in SADC;
- h) the conservation and economic development of marine resources;
- i) whether the applicant has successfully performed under an exploratory right in respect of the resource applied for;
- j) socio-economic concerns;
- k) the contribution of marine resources to food security; and
- l) any other matter that may be prescribed.

Section 33(6) provides –

*“If at any time before the expiry of a right, the holder of that right has met the **prescribed criteria that would have permitted a longer term** at the time of granting the right, **or no longer fulfils the prescribed criteria for the term that was granted, the Minister may vary the period of validity of the right to the period for which the holder qualifies, and when so varying the period, may also vary any condition attaching to the right or impose any additional condition.**”*

[own emphasis]

Namibia’s fishing rights are (as South Africa’s) allocated for a limited time period, not transferable except by Ministerial consent, and indivisible so as to not undermine the Government’s goal of Namibianisation and empowerment within the sector.

The MFMR has repeatedly withstood pressure to make quotas fully tradable, transferable and permanent.<sup>49</sup> Once a TAC has been determined for the fishing season, it is distributed among the right holders in each fishery in the form of quotas. The annually established quotas are, likewise, not made freely transferable, for exactly the same policy requirements (namely Namibianisation and empowerment within the fishing sector) as the above-mentioned rights of exploitation.

To this effect, paragraphs 30 and 31 of the updated *Policy Statement on the Granting of Rights of Exploitation to utilize Marine Resources and on the Allocation of Fishing Quotas*<sup>50</sup> provide:

*“Quotas will not be able to be transferred permanently, except in association with the sale of a vessel and with the approval of the Minister. It is planned to allow rights holders to make one transfer annually of some amount from the annual they cannot fully utilise to other vessels which they own or to other rights holders for use by their vessels. The transfers will be taken into account when subsequent quota allocations are made.*

*Fishing effort will continue to be regulated by measures such as limits on the number of vessels to be licensed in fisheries such as the line fish and tuna fisheries where there are no limited quotas and such measures are necessary to prevent over-exploitation.”*

<sup>49</sup> Manning, P. (2004) Review of the Distributive Aspects of Namibia’s Fisheries Policy p. 28.

<sup>50</sup> First Issued on 23 June 1993 and Updated on 8 July 1993.

### 3.3.3 Fisheries Policies

Between 1991 and 1994 Namibia put in place National Development Plans (“NDP”) to alleviate poverty, reduce unemployment, stimulate economic growth and reduce income inequalities.

Within fisheries, the NDP determined a number of fisheries and marine resource targets<sup>51</sup> as follows:

- Increase in employment through the fishing sector by 9000 to 21 000 formal employees by 2000;
- Achieve 80% Namibianisation of the fishing fleet (except for mid-water trawlers) by 2000;
- Achieve 80% Namibianisation of the crew (excepting the mid-water trawlers) by 2000;
- Achieve 50% shore-based processing of hake by 2000;
- Achieve Namibianisation of patrol vessels by 2004;
- Increase to 12% (from 8%) the fisheries sector contribution to Namibian GDP.

In order to better understand and analyse how fishing rights were used as an instrument to implement transformation in Namibia, a closer look at the country’s management regime is necessary.

#### 3.3.3.1 Policy on the Granting of Rights of Exploitation

Namibia’s principal policy statement pertaining to quota allocations is the *Policy Statement on the Granting of Rights of Exploitation to Utilize Marine Resources and on the Allocation of Fishing Quotas* of 8 July 1993. The core elements of this policy are the following:

- *Maintaining stock recovery:* This is required to ensure the sustainable utilisation of marine resources. This will be achieved by the promotion of stock recovery to long term sustainable yield levels through the conservation of marine resources and the protection of the Namibian EEZ. The current strategy is setting total allowable catches (“TAC’s”) at levels low enough to promote recovery of depleted stocks.
- *Compliance control:* To protect the Namibian EEZ, the Ministry will continue to curb illegal fishing and harmful fishing practices. Monitoring, control and surveillance will become an even more important issue in the future, since the enhanced status of fish stocks will become an increasingly attractive target for illegal fishing.
- *Industrial development:* To ensure that gains in rebuilding fish resources are translated into economic gains in terms of increased private incomes, employment and government revenue, the industry must be given a viable economic environment. This is especially important in on-shore processing and in areas such as quality control and export promotion.
- *Namibianisation:* To be able to take up opportunities provided for by development of the fisheries sector, Namibians must be able to acquire skills through training. In addition, to increase the role which Namibian businesses play in the sector, supporting policies and programmes are needed for the allocation of fishing rights and quotas. This goal will be achieved by strengthening the research and training capacities of the fishing industry.

<sup>51</sup> National Development Plan 1, Fisheries and Marine Resources, Chapter 12, p. 192

- *Advancement of socially or educationally disadvantaged persons:* To ensure greater beneficial participation in the sector for Namibians coming from groups previously subject to discriminatory laws and practices. This will be achieved through affirmative action.
- *Improving the services of the Ministry of Fisheries and Marine Resources:* This is required to ensure effectiveness, efficiency and economy of the MFMR. Achieving this requires the training of qualified and competent personnel in the fishing industry, as well as the MFMR. Also, fair returns from the fishing industry to the government need to be ensured. The MFMR must guarantee the conservation and protection of Namibia's freshwater fish resources. To remain a focused MFMR and to keep abreast of the changes in the industry, the MFMR has developed a strategic plan spelling out strategies and initiatives for a period of five years.
- *Successfully promoting regional co-operation in marine fisheries:* Regional co-operation is to be enhanced through the activities of the SADC Sector Co-ordinating Unit for Marine Fisheries and Resources.

### 3.3.3.2 Quota Allocations and Systems of Fishing Rights

The 1991 policy document<sup>52</sup> states that the main objective of the quota system and rights of exploitation is to control and limit fishing in terms of resource management strategies. More recently, the quota allocation system has been employed as a tool of Namibianising the sector, while research and quota levies were designed to boost Government income from the exploitation of a national natural resource. At both operational and ownership levels, these levies have built-in rebate systems, which provide incentives for Namibianisation.

*“The Government intends to constantly review the quota levy and rebate system and the various regulatory measures, with a view to making them more effective and less complicated to implement, reducing unintended effects, and providing the participants in the sector with sufficient stability for their planning and investments activities.”<sup>63</sup>*

The rebate system currently in place provides a three-pronged incentive scheme, aimed at encouraging increased levels of onshore processing, landings of fish catches by Namibian vessels and the employment of Namibian crew.

### 3.3.3.3 Quota Fees

Once the right-holders within the commercial fisheries sector have accepted their quota allocation, they become liable to pay the quota fee, irrespective of whether they fulfill this quota or not. Quota fees are an extremely useful policy tool available to the Government. Namibian-owned companies are charged preferential rates (referred to as rebates), as are companies who employ predominantly Namibians on their fishing vessels. Land-based processing of fish is encouraged in a similar way, as a smaller quota fee is charged for fish that is landed for shore-processing than catches that are processed at sea. According to the MFMR, quota fees have contributed significantly to increased participation by Namibians in the sector, in terms of both ownership and employment.<sup>54</sup> This becomes apparent from a perusal of quota fee tables, tracking contributions from the main commercial sectors during the years 1994 to 1998.<sup>55</sup>

<sup>52</sup> Towards a Responsible Fishing Sector p. 32.

<sup>53</sup> supra

<sup>54</sup> supra

<sup>55</sup> See [www.mfmr.gov.nam](http://www.mfmr.gov.nam) (“Revenue”).



During 2001 the Minister announced a policy shift affecting the quota fees leviable in the mid-water trawl fishery. It is understood that the rationale underpinning this policy shift was to accelerate the Namibianisation of the mid-water trawl crews. After consultation with the industry, a 3-year strategy was developed and initiated. The process was implemented in three separate phases, with the aim of achieving a Namibianised crew of 35% by the year 2002, projected to reach 45% by 2003 and 55% by 2004.

### 3.4 Analysis of Implementation

The measure of transformation in Namibia is its fisheries *Namibianisation* programme. Namibianisation reflects a political imperative that to “*be able to take up opportunities provided by development of the fisheries sector, Namibians must be able to acquire skills through training. In addition, to increase the role which Namibian businesses play in the sector, supporting policies and programmes are needed for the allocation of fishing rights and quotas. This goal will be achieved by strengthening the research and training capacities of the fishing industry.*”<sup>56</sup>

The first NDP set the Namibian government certain targets toward Namibianisation. Although stated above, these targets, within the fisheries context, were as follows:

- To increase the number of jobs in the fishing industry to 21000 by 2000;
- To achieve an 80% Namibian fishing fleet;
- To achieve an 80% Namibian fishing crew on board fishing vessels;
- To grow fisheries' contribution to GDP to 12%.

The second NDP (2001-2005) focussed on significantly more substantive goals:

- To increase the value of fish landed by promoting processing activities;
- To expand the Namibian fishing industry within the SADC region;
- To promote the integration of the Namibian fishing industry within the SADC region's fisheries management systems;
- Recognising the importance of fish as a source of food security.

In terms of both law and policy, ventures that are *beneficially* owned by Namibians, are clearly shown preference in the allocation processes of rights and quotas. From 1994 to 2001 fishing rights were only granted for periods of four, seven and ten years. Those companies with a minimum of 90% Namibian shareholding and investment in the fisheries were given 10-year rights. Companies with less Namibian shareholding but the requisite investments, were granted 7-year rights. Most of the new entrants to the industry ('newcomer companies'<sup>57</sup>) received rights for 4 years. As a company could be promoted from one category to the next, this system simultaneously addressed the two-fold objectives of increased investment and Namibianised shareholdings: for example, if a 7-year rights-holder increased its Namibian shareholding or investment, it could be up-graded to the 10-year rights category. The table below indicates the numbers and duration of Namibian fishery harvesting rights for different species.

<sup>56</sup> See [www.mfmr.gov.na](http://www.mfmr.gov.na) ("Laws & Policies").

<sup>57</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 3.



| Fishery        | 4 year    | 5 year    | 7 year    | 10 year   | 15 year   | 20 year  | Total      |
|----------------|-----------|-----------|-----------|-----------|-----------|----------|------------|
| Hake           | 4         | 0         | 10        | 5         | 19        | 0        | 38         |
| Monk           | 2         | 0         | 2         | 0         | 5         | 0        | 9          |
| Horse mackerel | 0         | 0         | 0         | 11        | 1         | 0        | 12         |
| Large pelagic  | 4         | 0         | 1         | 3         | 11        | 0        | 19         |
| Red crab       | 0         | 0         | 1         | 2         | 0         | 0        | 3          |
| Rock lobster   | 5         | 0         | 0         | 1         | 15        | 0        | 21         |
| Line fish      | 2         | 0         | 1         | 2         | 7         | 0        | 12         |
| Orange roughy  | 0         | 0         | 3         | 2         | 0         | 0        | 5          |
| Sardine        | 0         | 0         | 5         | 17        | 0         | 0        | 22         |
| Mullet         | 0         | 17        | 0         | 0         | 0         | 0        | 17         |
| Seals          | 0         | 0         | 3         | 1         | 0         | 0        | 4          |
| Guano          | 0         | 1         | 0         | 0         | 0         | 0        | 1          |
| <b>Total</b>   | <b>17</b> | <b>18</b> | <b>26</b> | <b>44</b> | <b>58</b> | <b>0</b> | <b>163</b> |

Source: Nichols, 2002<sup>58</sup>

It is important to note the following. Firstly, the majority of rights allocated are in the ten and fifteen year categories, indicating that the quota holders are 90% plus Namibian owned and these are applicable to the most valuable of the fisheries. Secondly, no rights have been allocated for the 20 year period category.

The 20-year right category is applicable to those companies that employ 5000 and more Namibians in shore-based facilities on a permanent basis. Total capital investment in shore infrastructure and fishing vessels over the past decade has exceeded N\$2 billion. The four-year rights initially allocated proved too short for sufficient planning in terms of vessel and shore-based infrastructure. It also adversely affected the “new comer companies” most.

### 3.4.1 Fishing Licenses<sup>59</sup>

In order to fish commercially in Namibia’s 200-mile EEZ, vessels are required to obtain a license. In addition, vessels flying Namibia’s flag in order to harvest marine resources outside the Namibian EEZ<sup>60</sup> are required to have a specific license.

As Namibians have increasingly taken over control of the major companies in the sector, expressing the desire to invest in their own vessels and fly the Namibian flag, the actual fishing fleet operating in the country’s waters has become predominantly composed of Namibian-registered vessels.<sup>61</sup>

During 2002, 335 vessels were licensed for commercial fishing.<sup>62</sup> The proportion of Namibian vessels contributing to this figure had risen from 51 % (of the 214 vessels operating in 1991) to 71% during 2002.

In conjunction with the above developments, more sea-based employment for Namibians has mirrored the increased Namibianisation of the fishing fleets. These successes have contributed to substantial rises in the numbers of Namibian officers and crew. Another noteworthy example is found in the development of whitefish processing plants, which has

<sup>58</sup> Nichols, P. (2004) Marine Fisheries Management in Namibia: Has it worked? P. 4.

<sup>59</sup> Licenses are commonly employed as useful tools for limiting effort in fisheries that are not subject to TACs or quota allocations.

<sup>60</sup> For example in terms of existing regional arrangements, like the SEAFO Convention. Presently there is a significant gap in the governing legislation, as the Marine Resources Act does not provide for the situation where foreign vessels-owners (for example in terms of joint venture agreements with local quota-holders) fish outside Namibian waters, but under the Namibian flag, and land their catches in Walvisbay. This is a serious oversight and should be addressed urgently.

<sup>61</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 4.

<sup>62</sup> See Table in 2002 Annual Report of the MFMR, p. 24.

grown from zero in 1991 to more than 20 in 2002<sup>63</sup>, creating a concomitant growth in employment.

By way of summary, between 1993 and 2004, the number of jobs in the Namibian fishing industry grew from 11500 to approximately 15500. In 1993, Namibians comprised 45% of sea going and 50% of land based workers. By 2004, Namibians comprised 68% of sea going and 98% of land based workers.

### 3.4.2 Fees

In Namibia's Fisheries Management structure, fees serve two important functions: firstly, they earn important revenues for the government, and, secondly, they provide incentives aimed at encouraging the policy goals of Namibianisation of the industry and long-term, sustainable conservation of the resource. The most significant here are the quota fees, payable on the allocated quotas. These quota fees were established to encourage Namibian registration and ownership of fishing vessels.

Namibia has successfully implemented a rights-based fisheries management system. Notwithstanding the need to grow its fishing industry, thereby furthering the *Namibianisation* policy, Namibia has commendably resisted subsidising its fishing industry, recognising that subsidisation would lead to the over-capitalisation of the industry<sup>64</sup>, as well as unfair trade distortions;<sup>65</sup> left unchecked, this can easily result in over-fishing, and increased incidences of illegal, unreported and unregulated ("IUU") fishing activities.<sup>66</sup>

However, a more suitable arena for subsidies should be acknowledged with regard to cleaner technology and productions standards.<sup>67</sup> This encourages significant investment in the above, whilst simultaneously leading to improved resource quality, awareness, external markets and savings of water and energy.<sup>68</sup>

In the past, fishing quotas were allocated according to various criteria, which, however, proved too cumbersome to operate smoothly.<sup>69</sup> For example, pilchard quotas were set so as to both control fishing, as well as attempting to satisfy the demands of the processing industry. This double quota system required part of the quotas allocated to processing plants, to be fished specifically by vessels owned by the same processing company, while different, smaller quota allocations were made to other independently-owned fishing ships. Such a system was tedious to operate, and did not actually limit fishing effort.

In the hake fisheries, processing and fishing quotas were combined in the allocation process: this system ignored the realities of the actual numbers and capacities of vessels involved, which resulted in a number of short-term arrangements with chartered vessels. Thus it was decided, according to international best practice, to rather emphasise the actual *licensing* of fishing vessels, and then allocate quotas to the *owners* of these vessels. This results in equal opportunities for all owners, in terms of obtaining quotas, as well as clearly regulating fishing through effort controls. It does however necessitate the need to carefully monitor the number of vessels licensed, and, accordingly, differentiate between Namibian as opposed to foreign fishing effort.

<sup>63</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 5.

<sup>64</sup> An example is the 'overgrown' fishing fleet of the European Union.

<sup>65</sup> See p. 18 and above, in respect of phenomena like transfer-pricing etc., (as a result of the EU's over-subsidisation of their fishing vessels), against which Namibia needs to guard herself, especially in the context of policy implementation with regard to her joint venture arrangements between Namibian rights-holders and foreign vessel-owners.

<sup>66</sup> See Armstrong, C. W., Munro, G. and Sumaila, R. U. (2002) Transboundary Fisheries off the Namibian Coast.

<sup>67</sup> For example, see (2004) The Issue of Subsidies in 'Cleaner Production in the Industry', project publication, p. 31.

<sup>68</sup> *supra*

<sup>69</sup> See 1991 policy document: Towards a Responsible Fishing Sector p. 33.

Accordingly, the fisheries policy requires the following:

*“The Government will strictly limit the number of fishing vessels being licensed. Preference will be given to Namibian vessels. Secondly mixed vessels may be considered, provided that the number of Namibian vessels is not sufficient. Only if the total number of Namibian-registered vessels is not sufficient, will there be room for chartered or other foreign vessels on a year-to-year basis. In the longer term, these might be phased out and may subsequently be utilized to cope with temporary variations in the fish resources, if any.”<sup>70</sup>*

### 3.5 Case Studies

If one tracks the performance in terms of ‘Namibianising vessels’ between 1994 and 1998, one finds a steady rise from 66% in 1994, to 84% in 1998. However, this proportion of licensed vessels flying the Namibian flag indicates that there is still significant room for improvement in policy implementation.<sup>71</sup>

#### 3.5.1 Policy Implementation in Hake Sub-Sector

The policy objectives motivating this TAC apportionment in the hake sector have been successfully met in so far as they have contributed to the ‘forced development’<sup>72</sup> of numerous land-based processing factories, together with the consequent employment creation and social, infra-structural development of the country. However, a knock-on effect of this mechanism has also become apparent in that economic scenarios that would otherwise probably not have developed, (according to prevailing market conditions and aspects of profitability analyses): Wetfish operations are more costly to manage due to the associated land-based processing costs. Although some of these costs are offset by the increased revenue derived from their higher quality products, there are nevertheless generally fewer economic shortcomings commonly associated with the operation of the freezer vessel businesses ( the most notable limitations in this respect reflects in their reduced value-addition and subsequent revenue-generating capacities). It has been illustrated that the wetfish sub-sector has thus been forced into the economic situation, where it is becoming more and more difficult to compete with freezer production fleets.<sup>73</sup>

Only as long as the biological and financial dynamics of the fishery (catch rates, exchange rates, labour costs and the stock’s stability) either remain stable or improve, can the policy objectives of job creation and empowerment be sustained.<sup>74</sup> These economic cost and risk factors affect wetfish operations much more intensely than their freezer counterparts in the industry. In addition to these complexities, the wetfish sector currently has excess capacity in terms of both vessel and factory production components.<sup>75</sup> Possibly the most appropriate of a large range of recommendations would be to reduce the vessel capacity operating in the wetfish sub-sector, in order to provide for a more optimal harvest and catch of the 60/40 apportionment between the wet-fish and freezer quota allocations.<sup>76</sup>

<sup>70</sup> White Paper, *Towards a Responsible Fishing Sector*, p. 34.

<sup>71</sup> Policy drafters and implementers continuously have to guard against the entrenchment of negative effects from phenomena like transfer pricing and EU vessel subsidies.

<sup>72</sup> *Supra*, p. 22.

<sup>73</sup> *Supra* p. 23.

<sup>74</sup> See Japp, D. and Steenkamp, Z. (2004) Optimum Proportioning of the Hake TAC between Wetfish and Freezer Fish Operators in Namibia. P. 23.

<sup>75</sup> *supra*

<sup>76</sup> *supra*

### 3.5.2 *Economic Rents Generated by the two Categories of Apportioned Hake TAC's*

Revenues earned from the land-based factories are notably higher than those received from the freezer vessel operations. The shore-based facilities (also) contribute more to the diversity inherent in value-added products.<sup>77</sup> From a policy point of view, the land-based, wet-fish sub-sector is clearly a preferred tool for the Government, as opposed to the freezer vessels that comprise a much higher foreign flag capacity in addition to a larger percentage of foreign crew.<sup>78</sup> Conversely, the shore-based wet-fish operations produce an extensive range of value-added products that result in higher net returns than the limited range of value-added products from freezer vessels. Importantly however, the economic rent obtainable from the wetfish operations, is slightly less than that derivable from the freezer vessel operations.<sup>79</sup>

In terms of the implementation of the requisite policy objectives therefore, the advantages of the freezer operations to their rights-holders and participants are clearly likely to be outweighed by the benefits that accrue to the country, its Government and the Namibian people as a whole through the wet-fish sub-sector; this explains the enforced 60/40ratio allocation of Namibia's hake TAC, between land-based wet-fish operations as opposed to the more lucrative freezer fish operations that yield higher profit margins to their rights-holders. In order to rationalize the present vessel and factory production capacity, the best recommendation is probably to consolidate the 60:40 policy.<sup>80</sup>

### 3.5.3 *A Closer Look at the Role of Resource Rents in Rights-based Fisheries Management*

A characteristic of all natural resources for which demand exceeds supply is that these resources produce a rent: for a renewable natural resources, like fisheries, 'the limit of what can be produced is determined by how much the resource (itself) can produce'.<sup>81</sup> In other words, biologically speaking, the optimal productivity of a certain stock (like pilchard) obviously limits the amount of pilchard actually produced. If the market price increases, the suppliers of the stock or fishing companies cannot merely respond by automatically also increasing the quantity produced, if the biological capacity of the stock's limits has been reached. This leads to the generation of extra-ordinary profits, in excess of what would usually constitute the 'normal profits',<sup>82</sup> and it is these excess profits that are termed 'resource rents'.<sup>83</sup> In Fisheries, resource rents can be potentially huge and in Namibia's highly productive resource system of the Benguela Current upwelling one would almost automatically expect this, especially of the commercially more valuable fisheries. However, another characteristic of the resource rent potentially available to fisheries, is that it can easily be dispersed on unsuitable 'competition to harvest the resource'.<sup>84</sup> The worldwide, enormous overcapacity in the fisheries sector wastes a significant chunk of this resource rent.<sup>85</sup> As indicated, the marine resources of Namibia are publicly owned and should be allocated by the State acting as a representative for its nation, with the aim of benefiting Namibian society

<sup>77</sup> Supra p. 22.

<sup>78</sup> On the other hand, however, although the wet fish vessels employ more crew, salaries on board these vessels are generally lower than on the freezer trawlers.

<sup>79</sup> Assuming that the Namibian Government does indeed capture all of the available resource rent obtainable from these freezer-vessel operations, which is by no means necessarily the case.

<sup>80</sup> See Japp, D. and Steenkamp, Z. (2004) Optimum Proportioning of the Hake TAC between Wetfish and Freezer Fish Operators in Namibia. P. 24.

<sup>81</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 11.

<sup>82</sup> supra

<sup>83</sup> supra

<sup>84</sup> supra

<sup>85</sup> supra

<sup>85</sup> In this context especially, see the sections of this report addressing the effects of EU vessel subsidization of their foreign fleets on third world countries, like Namibia; also how this contributes to transfer-pricing, in conjunction with the declarations of profit margins that maximize the benefits derived from the countries with the lower tax-base, where multi-national companies have numerous company branches. (See pages 18, 19, supra.)

as a whole, in line with its relevant policies and ideologies. Thus the recipients of the substantial chunk of fishing rights, and the fishing industry legitimately, realistically and obviously does expect to make long term profits, and should therefore readily acknowledge and even endorse the Government's collection of this rent, as a *quid pro quo* for reaping this benefit of the productivity of the public(ly owned) fisheries resources.<sup>86</sup>

The costs of the management of the resources by the fisheries authorities should thus be treated as/ included in the (running) costs of fishing, and borne by the industry. Put differently, resource rent is collected by the Government to cover (part of) the costs of managing this lucrative public resource. In this respect, the Namibian Government has fared relatively well, as it has accumulated adequate revenue from its fisheries sector, to cover most of the costs associated with the management thereof. On the other hand, the abundance of this lucrative resource in Namibia should easily exceed (and has) full cost recovery, on behalf of the Government.<sup>87</sup> A perusal of the revenue derived from the quota, by-catch and license fees collected between 1994 and 1998 indicates a general decline, which can largely be ascribed to increasing levy rebates claimed and received by the companies, as a result of the so-called, relatively 'successful' Namibianisation policy.

This rent available from the industry is to be used for development purposes.<sup>88</sup>

Ways in which resource rent is commonly dissipated, or, put inversely, factors influencing resource rents otherwise attainable in a fishery include environmental conditions that affect harvesting costs of species, marketing costs, and the efficacy of the industry; - especially in terms of over-capacity. The last-mentioned variable directly and powerfully influences how much of the additional resource rent that could otherwise be generated, is wasted.

Namibia's two commercial hake species are the Cape hake (*Merluccius capensis*) and deep water hake (*Merluccius paradoxus*). Hake presently accounts for approximately half of the value of Namibia's fish production, with Spain providing the main market. Between 1994 and 1998 the landed value of hake rose by 51%, according to the MFMR.<sup>89</sup> In contrast, for the same period, the ex-coldstore value of gutted and headed hake in Spain rose by 96%. Earlier on, when the Namibian State was still recovering a greater part of the rent (i.e. before the Namibianisation policy of the Companies had had time to have any real/noticeable effect), the Spanish market price had borne much more resemblance to the landed value recorded by the Namibian Government. This indicates that the true picture of influences on the market prices is not necessarily always accurately reflected in the survey data received by the MFMR, and, more importantly, that a non-negligible sum of the resource rent is not accruing to the country, as it in fact should. Even though allowance needs to be made for adjustments and differences in costs to provide for cold storage and transport overheads, significant resource rent is nevertheless accruing outside Namibia, contrary to policy objectives. This could be due to transfer pricing.<sup>90</sup> Transfer pricing occurs when multi-national corporations arrange their affairs in order to facilitate declarations of their greatest profit margins in countries with the lowest tax bases. The external vessel subsidization of the European

<sup>86</sup> In accounting terms this is referred to as selective taxation, and is to be distinguished from the so-called 'user-pays' principle which is increasingly being adopted in first-world, capitalist economies, where fisheries, however, does not play as vital a role to the overall economy of the countries concerned, as it does in Namibia. In Namibia on the other hand, fisheries, after mining, is the major component of the economy, and seen as one of the sectors with the greatest potential for growth in terms of both export revenues and employment creation. For example, between 1990 and 1994, this sector's share of real GDP increased from 4,5% to 7,7%, while employment in the fisheries sector was projected to have reached 16 000 workers in the year 2000, from an estimated 13500 in 1997. On the other hand, the sector registered a decline of 7,7% during 2001, compared to a growth of 2,9% the previous year. This was however ascribable to a decrease in both fish catch and quota allocations. See UNCTAD/WTO (1999) Subregional Trade Expansion in Southern Africa: Supply Survey on Namibia's Fish and Fish Products p. 7. obtainable from <http://www.intracen.org/iatp/surveys/fish/fishnam.html>; accessed on 2004/04/20.

<sup>87</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 13.

<sup>88</sup> In this regard see the sections in this report addressing the implementation of Namibia's National Development Plans I and II, above. Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 15.

<sup>89</sup> Supra, p. 16

<sup>90</sup> Personal Interview with Paul Nichols, special advisor to the Honorable Minister of MFMR; supra, p. 17.



Union's foreign fishing fleet exacerbates the effect this has on Namibia's economy, as the end result is the transfer of significant profits, derived from her rich fish resources, flowing overseas. This phenomenon, together with its adverse effects on Namibia's economy and general efficiency, is often accompanied and exasperated by other market interferences, as is the case with the vessel subsidization of the EU fishing fleets.<sup>91</sup>

Another exasperating factor is that between 1994 and 1999 an over-capacity in processing facilities developed in Namibia's hake sub-sector.<sup>92</sup> This occurred as a result of MFMR's public policy, as applied to the quota allocations process (namely, that participants with investments in onshore processing facilities would fare comparatively better in the applications), as well as stock improvements during the early nineties. Conversely, a rise in the market price of hake, and decrease in the harvesting costs support the notion that stronger resource rents should have been available from this industry.

In order to redirect the resource rent towards the broader interests of Namibia's society, and especially towards poverty alleviation, the Government would have to substantially raise the quota fees for hake especially, but also for other species. Obviously such an exercise requires a significant degree of precision and caution, as prevailing market conditions and the variability of the resource would have to be carefully trailed.<sup>93</sup>

### **3.5.4 Quota Allocations and Production Capacity: Shortcomings and Recommendations**

Currently there is much unutilised or under-utilised production capacity, as many land-based factories were erected so to receive and process massive quantities of fish, and also create more employment. However, due to limited quota allocations, these have not all materialized. A simple solution to this problem could be to address the under-utilized capacity by encouraging the processing of non-restricted fish species caught outside of Namibian waters. For example, processing of the huge quantities of orange roughy and toothfish that are discharged by foreign fleets in Walvis Bay each year should be encouraged. In addition, Namibia has the advantage of being close to good supplies of tuna in the equatorial waters of the Atlantic. These and other species could be imported and processed at Walvis Bay, with strong economies of scale through the development of capacities in fish processing equipment and skills, quality control, packaging etc.<sup>94</sup>

#### **3.5.5. Horse Mackerel**

Most of the cost component of the horse mackerel mid-water trawl fishery relates to the actual fishing fleet, as a large part of this catch is frozen at sea. Between 1994 and 1998 all of the vessels were foreign registered, and most of them were also owned by non-Namibians. Other than this, a similar argument in relation to over-capacity has been constructed, as in the above-mentioned hake sector.<sup>95</sup>

There is however an important qualification to make in respect of the above assertion in relation to over-capacity, the situation seems to have changed significantly in recent years. At his keynote address to the Oceana Brand Sales Conference during September of 2003, the Honourable Minister, Dr. Iyambo, intimated that horse mackerel currently fell into the

<sup>91</sup> Personal Interview with Paul Nichols, Special Advisor to the Honorable Minister of MFMR, Windhoek, 27 May 2004.

<sup>92</sup> The MFMR database indicates that in 1998, 85000 tonnes of hake were allocated for onshore processing, while the facilities for processing such landings were pitted at approximately 160 000 tonnes of white fish per annum. Such facilities should at least also be used to process other minor commercial species.

<sup>93</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 53.

<sup>94</sup> For example, Thailand and the Phillipines have been very successful in this regard. See UNCTAD/WTO (1999) Subregional Trade Expansion in Southern Africa: Supply Survey on Namibia's Fish and Fish Products p. 7. obtainable from <http://www.intracen.org/iatp/surveys/fish/fishnam.html>; accessed on 2004/04/20.

<sup>95</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 20.



category of ‘under-utilised pelagic species’<sup>96</sup>. He encouraged the production of novel products using this and other species, in terms of value-adding processes. Presently horse-mackerel is frozen at sea and a large proportion is processed into fishmeal.

### 3.5.6 Pilchard

A *prima facie* case is intimated, that there is a significant excess in both the processing – and the actual fleet capacity of this pelagic fishery.<sup>97</sup> For two decades this fishery has been in crisis. Most of the licensed canning factories and fishmeal plants registered with MFMR have been standing idle since independence. Investment in this fishing industry, in terms of fleet age is relatively long-termed, which makes infra-structural adaptations according to ‘the fortunes of a short lived pelagic fish stock’<sup>98</sup> complex and difficult, due to the inherently less flexible nature of this industry and its capacity. In the hope that this fishery may revive more towards its prime, potential resource rent has been absorbed into maintaining such overcapacity that is well in excess of the fishery’s needs. Manning’s opinion is that this change in the balance of the pelagic populations is likely to be long-term, which calls for more mechanisms aimed at effecting capacity-adjustments in order to reflect this reality.<sup>99</sup> In other words, the system of granting access should implement incentives that prompt the industry to match its capacity with the productivity of the resource to supply. The maintenance of this (over)capacity obviously brings with it multi-faceted, inherent costs.

The financing of overcapacity drains a significant amount of resource rent. At the same time, there is a considerable degree of uncollected (by the Government) resource rent accruing to the fishing industry. As hinted at earlier in this report, an intimately related question is *who* exactly receives the benefit of these excess profits, derived from a public resource, from whom all citizens within a constitutional democracy should arguably benefit, directly or indirectly. Conversely, by allowing resource rents to remain in the industry could be seen as a form of subsidization,<sup>100</sup> albeit one lacking in any real accountability or targeted precision.<sup>101</sup> The Namibian Government has recognized that its fishing industry generates resource rents, and expected newcomer companies (entering the industry as a result and part of the affirmative action programme for this sector) to employ these rents in order to support their firm establishment and viable positions within the industry. Although fishing companies that receive rights of exploitation and quotas are expected to act accountably in a general sense, the fisheries management system is operated in a manner that does not expressly acknowledge this (use of) resource rents as a subsidy. Thus we see how the Government indeed does consider this resource rent as a subsidy available to the entities in the fishing industry, without categorically labeling them as such. Manning argues that as these benefits emanate from a publicly owned resource, more specific accountability in terms of explicit expectations should be demanded in return for the ‘subsidies’<sup>102</sup>.

Calculations derived from the National Accounts are further supported by circumstantial evidence that substantial resource rents are being generated in the Namibian Fishing Industry, without being collected by the Government.<sup>103</sup>

This may in turn be contributing to so-called rent-seeking, which tends to prevail more in resource-rich economies than in their less fruitful counterparts. Such behaviour gears itself towards seizing the resource rent associated with any given natural resource. Bhagwati

<sup>96</sup> Keynote Address to the Oceana Brand Sales Conference, by Dr. Abraham Iyambo, Minister of Fisheries and Marine Resources, Swakopmund, 10 September 2003.

<sup>97</sup> Manning, P (2004) The Distributive Aspects of Namibia’s Fisheries Policy p. 21.

<sup>98</sup> Supra, p. 22.

<sup>99</sup> supra

<sup>100</sup> The reader is reminded of Namibia’s strong stance and position against subsidization in this respect, as indicated above.

<sup>101</sup> Manning, P (2004) The Distributive Aspects of Namibia’s Fisheries Policy p. 22.

<sup>102</sup> Supra, p. 23.

<sup>103</sup> supra

describes this phenomenon as a cluster of 'directly unproductive, profit-seeking activities that represent a way of making a profit (i.e. income) by undertaking activities which are directly unproductive'.<sup>104</sup> Thus entrepreneurship can become synonymous with a 'national orientation towards grabbing the rents generated by the country's natural resource endowment'.<sup>105</sup> Such conduct may appear completely legal, in its well-known forms of political lobbying, or entertaining decision-makers with the intention of influencing their exercise of discretion; the illegal embodiment thereof is 'acknowledged' bribery. Both can potentially lead to a complete waste of the resource rent, and the associated loss to the broader public good or entitlement: 'Expenditure on inappropriate competition for access to a renewable resource also wastes valuable resource rent'.<sup>106</sup>

In order to trace and analyse the waste of resource rent in Namibia's fisheries sector, one needs to scrutinize the system of fisheries management that positions senior civil servants in potential situations of being subjected to either intense lobbying or some other forms of procurements or inducement.

'Providing subsidies by allowing substantial resource rent to remain in the industry is too indiscriminate an instrument for the efficient achievement of policy objectives'.<sup>107</sup> (If at all, subsidies should be expressly targeted for specific purposes through transparent procedures that provide for accountability. However, Namibia's specific policy stance against industry subsidization in the fisheries sector for the reasons mentioned on page 24-25 is recalled and re-iterated here, in the face of the above, tentative suggestion. There is no legitimate reason for the powerful, established companies in the industry to receive the gifts of resource rent from the Government.

According to Peter Manning, many of the so-called newcomer companies<sup>108</sup> have been involved more by way of rent seeking than any real, meaningful involvement and capacity-building, infra-structural investment or pursuance of legitimate policy objectives: they have traded rather 'in the *opportunity* to fish'<sup>109</sup>, (own emphasis) than by substantively involving themselves in the development of technical and human resource capacity required to undertake actual fishing actions, thereby quasi-manipulating the overall structure of the industry.

In most cases the blame for this is not necessarily attributable to the newcomer companies themselves, as they are very often forced to partake in such behaviour, due to so-called market circumstances or conditions: a shortage of credit facilities suited to the unique needs of an evolving and maturing fishing industry, as well as a severe lack in a sufficient, well-serving technical and managerial support framework.

### 3.5.7 *Where Should the Resource Rents Go?*

The question of resource rents is so pertinent to transformation of the fisheries industry in Namibia, because its Government has chosen a system of quota allocations and the granting of rights of exploitation to *Namibian* Companies as its preferred methodology of directing the benefit derived from its commercial fisheries to Namibians. The rationale motivating this methodology is essentially that the resource rent produced by the fisheries sector should flow to the actual/true recipients of rights and quotas.<sup>110</sup> In terms of the legal and policy framework as presented in Parts I and II of this report, these companies (provided they illustrated the

<sup>104</sup> Bhagwati, J. N. (1982) Directly Unproductive, Profit-seeking (DUP) Activities *Journal of Political Economy* 9(5), p. 989.

<sup>105</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 22.

<sup>106</sup> Supra, p. 24.

<sup>107</sup> Manning, P. R. (2004) Review of Distributive Aspects of Namibia's Fisheries Policy p. 54.

<sup>108</sup> Recognized as the term commonly used to denote those entities that entering the industry as part of the affirmative action programme for the fisheries sector in Namibia.

<sup>109</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 24.

<sup>110</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 24.

necessary technical and managerial competence) were carefully selected according to the requisite policy objectives: Namibian ownership, the degree to which they provided participation and entitlements to Namibians who had pre-independence been 'socially, economically or educationally disadvantaged by discriminatory laws or practices'<sup>111</sup>, whether there was sufficient regional coverage among companies applying for exploitation rights so as to 'promote regional development within Namibia'<sup>112</sup>, and a consideration of their contribution to the community from which they emanated.

According to Manning, the Namibian Government implicitly and in part equated the allocation of a quota with the distribution of a considerably valuable right<sup>113</sup>, which could potentially be transformed into revenue. Apparently this brings an 'acknowledged subsidy element'<sup>114</sup> into the quota allocations.

Although not strictly in economic terms, it is nevertheless broadly acknowledged that there is a certain rent component associated with these rights - and quota allocations processes: they come with value attached, which varies, depending on the species. An implicit recognition hereof becomes evident through the behaviour of the participants in the industry: the perception that this value goes beyond a mere opportunity of starting a business results in the phenomenon whereby certain rights-holders 'lease out'<sup>115</sup> their quotas and entitlements. MFMR itself acknowledges this fact. By allowing this rent to stay in the fishery, and not collecting it as revenue, an effective subsidy is made out to the rights- and quota – recipients.<sup>116</sup>

Another implicit/almost forgone aspect/characteristic of the quota allocations process is that the most marginalized and poor in Namibia are almost necessarily excluded, due to the expected threshold levels of literacy and technical competency generally required almost as a forgone conclusion for successful applications. By their nature, applications tend to necessarily emanate from the wealthier, and literate members of society in any case. The only benefit potentially obtainable by the poorest sector of the country is thus indirectly, via the quota levies that are paid into the State's general revenue fund and, feasibly, through employment creation (by labour as opposed to capital intensive enterprises).

Although fishing rights and quotas are rightly granted inclusively according to harvesting competence or at least potential capacity, so as to ensure efficient and effective use of the fish resources, this does not alter the fact that the present system does not sufficiently or accurately function to ensure that the advantages derived from the publicly owned resource are meaningfully received by those who were indeed the victims of the previous dispensation, as required in terms of the above-mentioned Regulation 2a), although this provision clearly reflects and expresses the Government's clear intentions and commitments to redress the inequalities that have developed over decades.

From an isolated legal perspective then, this allocation process is not necessarily securing sufficient implementation of the stipulated policy objectives, if the envisaged beneficiaries of the policy objective(s) are not being sufficiently targeted. It is not advocated nor conceivable that Namibia's poor and destitute be awarded the rights to exploit and harvest Namibia's fish resources, however, more precise and efficient systems or arrangements are required, to ensure that that 'portion of the benefit from the resource that rightly belongs to the country as a whole'<sup>117</sup> is truly and effectively (re)distributed to those recipients as envisaged by the

<sup>111</sup> Namibia 1993a, Regulation 2(a).

<sup>112</sup> Namibia 1993a, Regulation 2(b)

<sup>113</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 25.

<sup>114</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 25.

<sup>115</sup> Supra, p. 28

<sup>116</sup> supra

<sup>117</sup> supra

policy and intended in terms of the apposite laws, enacted and implemented accordingly, in its targeted attempts of addressing inequality.

### 3.5.8 *Where are the Resource Rents Going? Ownership and Control of the Namibian Fishing Industry*

Resource rents generated within the fishing sub-sectors, and not collected by the Government, are presently accumulating as additional profits.<sup>118</sup> In Namibia's representative democracy<sup>119</sup>, the Government together with its Institutions is mandated to decide on the use to which resource rents are put, provided these serve the interests of the population.

Upon closer analysis of the Government's objectives of securing added advantages to Namibians, from the country's commercial fisheries, one finds that the main methodology has been to grant rights of exploitation and allocate quotas to certain companies that satisfy the affirmative action criteria as contained in the relevant policies, legislation and regulations.<sup>120</sup> Such an approach raises the following questions:

- 1) Is the underlying assumption, that the resource rent will accrue to the recipient companies, in proportion to their respective Namibian ownership (or holdings), realized and / or even realistic?
- 2) Are those receiving the quotas in terms of the allocations process the most appropriate holders of this wealth in the form of resource rent?
- 3) Are there more suitable avenues and mechanisms of employing fisheries' resource rent in ways that support Namibia's national development objectives and fisheries-specific policies?

These inquiries necessitate a closer examination of the ownership structure of the fishing companies operating in Namibia's commercially significant fisheries, as well as their relationships in terms of the politics inherent in the quota allocations process.

Peter Manning has eloquently succeeded in his thesis on the distributional outcomes of the country's first fisheries policy, in pointing out that immense profits, excessively above ordinary profits, must be accruing to large, established enterprises, both national as well as foreign, because these entities have adapted themselves to operating in ways that superficially appear to satisfy stipulated laws and criteria, although they effectively circumvent the desired policy objectives. This supports his *prima facie* strong case, that substantial benefits, derived from the exploitation of Namibia's national fisheries resources, which should be collected and disseminated by the Namibian Government (as the elected representative and guardian of the nation's natural heritage)<sup>121</sup> are flowing elsewhere, and not being collected by the Government. Thus a 'valuable opportunity for development finance is being forfeited.'<sup>122</sup>

Especially in the hake fishery, evidence indicates that resource rents are wrongly accruing to private companies. As uncollected rents (by the Government) present excessive profits to the industry (beyond what is usually considered under 'normal profits') this wrongly amounts to subsidization of the industry, from a publicly owned resource.<sup>123</sup> Additional evidence related to international hake export prices also suggests that some (un-reflected) resource rent must be accruing overseas.<sup>124</sup>

<sup>118</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 26.

<sup>119</sup> Namibia is a multi-party democracy, in terms of her Constitution, the supreme law of the country, providing for a separation of powers between the executive, legislature and the judiciary.

<sup>120</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 27.

<sup>121</sup> See pages. 24, 26, 28, 30.

<sup>122</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 26.

<sup>123</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 51.

<sup>124</sup> *supra*

### 3.5.9 *The Structure and Quality of Namibianisation:*<sup>125</sup> *Where has the Rent been Dispersed to?*

As mentioned briefly in the introduction, pre-independence the offshore fisheries of Namibia were dominated by foreign fleets, especially by the USSR targeting horse mackerel, Spanish ships plundering hake and the Japanese harvesting our red crab stocks. Tuna was caught by foreigners out of our present EEZ. None of these fleets operated from any Namibian base, while the nationally based fisheries sector as it existed was monopolized by 'a tightly knit cartel of South African companies'<sup>126</sup>, who were primarily interested in Namibia's pelagic and rock lobster sectors.<sup>127</sup>

From 1987 on, fishing companies were granted rights for seven year cycles, which were effectively terminated at the end of 1993. At this time, MFMR began implementing its first new fisheries policy, armed with the 1991 Policy document<sup>128</sup>, the 1992 Sea Fisheries Act, with its associated 1993 regulations. Consequently, new rights of exploitation were granted in 1993, to be activated from January of 1994. Following this process, claims like '*...nearly 70% of the rights holders are effectively wholly-owned Namibian businesses and another 23% are majority Namibian owned*'<sup>129</sup> became common place, both amongst Government and within the industry. So it was posited that 93% of the corporations that received rights of exploitation were either majority or wholly owned Namibian. The implication of this and other similar statements made during this time is the view, that by granting rights and quotas to seemingly Namibian companies, the advantages from the country's fish resources would also indeed be felt by the country's inhabitants. However, in reality, this change towards Namibianisation was not nearly as drastic as may have been portrayed, nor did those benefits necessarily accrue to Namibian nationals.<sup>130</sup>

Closer scrutiny of the consolidation of the industry, in terms of a few larger companies 'absorbing'<sup>131</sup> many of the newcomer companies in various ways reveals peculiarities caused by the Government's Namibianisation policy, as well as some of the 'unintended effects'<sup>132</sup> warned against in this policy.<sup>133</sup> A wide interpretation of 'Namibianisation' extends beyond mere ownership or beneficial control by Namibian citizens, so as to also favour companies that were significantly contributing to employment and infrastructure throughout the country as a whole, for example through shore-based processing activities and investment, which in turn contributed to growing employment, increased GDP etc. Importantly, according to the implementation of Namibia's fisheries policy, profits derived from its fishing industry, are also aimed at supporting welfare structures, schools, old age homes and infrastructural improvements in the lesser-developed regions of the country, through the targeted rebates on fish levies and license fees, as discussed above.<sup>134</sup>

Although the requisite legal framework clearly required Namibianised companies to be more favourably considered in the allocations process, this did not automatically imply that those corporations that were not at least 51 % Namibian owned were penalized.<sup>135</sup> As one example, NovaNam (formerly Pescanova), was 100% Spanish owned when it received the

<sup>125</sup> In the present context, Namibianisation is interpreted to mean increased ownership in companies and vessels of the fishing sector by Namibians. See Internal Memorandum, MFMR, 17 November 2003. p. 4.

<sup>126</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 27.

<sup>127</sup> Moorsom, (1984) Exploiting the Sea, p. 33.

<sup>128</sup> 1991 White Paper: Towards a Responsible Fishing Sector.

<sup>129</sup> Kankondi, R. (1994) 'Namibianised' – Speech by the Permanent Secretary to the MFMR, delivered to the Food and Allied Worker's Union of South Africa; this speech was also published in Fishing News International 24 - 27.

<sup>130</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 27.

<sup>131</sup> Supra, p. 32.

<sup>132</sup> White Paper: Towards a Responsible Fishing Sector p. 32, also referred to in Parts I and II above.

<sup>133</sup> supra

<sup>134</sup> Personal Interview with Dr Moses Maurihungirire, Deputy Director: Resource Management, MFMR, Namibia, 27 May 2004.

<sup>135</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 31.



largest hake quota, on the basis of its 'significant' investment in onshore processing facilities, thus contributing to the requisite onshore employment creation and capacity-building.

The previously mentioned levy rebates<sup>136</sup> granted on the allocations also acted as a powerful financial incentive (and thus useful policy tool) to Namibianise.

Closer scrutiny of the consolidation of the industry, in terms of a few larger companies 'absorbing'<sup>137</sup> many of the newcomer companies in various ways reveals peculiarities caused by the Government's Namibianisation policy, as well as some of the 'unintended effects' warned against in this policy:

Manning has successfully portrayed how the so-called 'Namibianisation' of NovaNam was achieved through a 'judicious mix of ordinary and preference shares'.<sup>138</sup> Before its registration in 1995, the same company was referred to as Pescanova Fishing Industries of Namibia, a wholly owned subsidiary of Pescanova SA, a Spanish multinational. Pescanova SA has adapted its shareholding structure in a way that enables the company itself, as well as the Namibian Government, to allege that NovaNam is 51% Namibian owned, although the new shareholders are not publicly known, nor can one ascertain whether certain sales of shares to so-called Namibian nationals and institutions entail/contain any management agreements.<sup>139</sup> Irrespective of the actual mechanism employed, the same management team presently commands NovaNam as that which managed Pescanova's interests before the changed shareholding arrangements<sup>140</sup>. In addition, NovaNam has set up a number of joint venture arrangements with newcomer companies. One of the notable (if not the most significant) failure in the implementation of the 1991 fisheries policy<sup>141</sup> can be noted in this respect, as the so-called 'Fish Bank'<sup>142</sup>, intended to facilitate the newcomer companies in terms of start-up-capital, as a viable alternative to high interest bank loans, was never created<sup>143</sup>. The objective/reasoning behind this requisite policy tool, was the prevention of unequal power relationships and unfair bargaining tactics in the negotiations leading to joint venture agreements between the powerful likes of Pescanova SA and the more fledgling, weaker, newcomer companies who were just starting off in the industry. It is easily conceivable that joint venture arrangements in this context are typified by unequal bargaining relationships and power dynamics. The larger and established operating companies usually enter the deal from their considerable (ad)vantage points of power, technical know-how, marketing access, financial -, harvesting – and processing capacity. Had the support structure intended in terms of the Fish Bank policy idea existed, these smaller companies would not necessarily have found themselves in their frequent positions of lacking access to finance, as well as needing to harvest and sell sufficient catches in terms of their quotas and fishing rights. Frequently it is these reasons of inadequacy that forced the newcomer companies into the joint venture arrangements, where, relying on a majority of shares matters little difference, if the majority shareholders, through '...force of circumstance, have no real options available to them.'<sup>144</sup> Access to finance and credit is generally a constraint for the establishment and development of smaller firms, due to commercial banks' conservative lending policies and high interest rates. Namibia does not provide any financial instruments, (other than commercial banks) specifically aimed at assisting exporting companies. For example, there is no Export Risk Scheme offering insurance against the risk of non-payment for export consignments caused by political and other risk factors not included in conventional insurance. Likewise, there is no Export Credit Guarantee Scheme assisting companies in the shipment of export

<sup>136</sup> See pages 18, 34 and 35.

<sup>137</sup> Supra, p. 32.

<sup>138</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 32.

<sup>139</sup> Section 35 of the Marine Resources Act.

<sup>140</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 33.

<sup>141</sup> White Paper: Towards a Responsible Fishing Sector.

<sup>142</sup> Personal Interview with Dr. Moses Maurihungirire, Deputy Director: Resource Management, MFMR, Windhoek, 27 May 2004.

<sup>143</sup> Personal Interview with Paul Nichols, Special Advisor to the Honorable Minister, MFMR, Windhoek, 27 May 2004.

<sup>144</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 33.



consignments or the financing of production.<sup>145</sup> Although superficial conclusions, based on the mere external questioning of some companies themselves, may conclude that in the fishing industry 'most companies surveyed have access to export credit and finance facilities through local banks'<sup>146</sup>, with the majority of those questioned being financially independent, and thus not experiencing problems associated with the non-availability of suitable credit and finance facilities, this is not a true reflection of the true plight of the intended recipients in terms of the policy objectives motivating the Institution of the Fish Bank. As this has been a significant failure in the implementation of the fisheries policy, it is now hoped that the recently established 'Development Bank of Namibia' will provide a substitute avenue to the newcomer companies' credit requirements.<sup>147</sup> Another significant policy objective behind this initiative is the support of more small to medium-sized enterprises, otherwise commonly referred to as 'SMEs'.<sup>148</sup>

Counting on share structures in joint ventures to reflect and determine where resource rent accrues is neither realistic nor do these shares very frequently portray the realities behind the real power dynamics.<sup>149</sup> Manning succeeded in un-bungling and revealing some of the complex corporate structures that have evolved / been created, as a consequence of the Namibianisation policy, which can however be classified as some of the 'unintended effects' referred to in that policy.<sup>150</sup> An example can be seen in Diaz Fishing, which is one of the newcomer companies with whom NovaNam structured a joint venture company: Diaz Fishing (Pty) Ltd is one of the newcomer companies granted a quota under the affirmative action provisions<sup>151</sup> of the fisheries policy. According to Manning's hypothesis, it appears that two thirds of the ultimate shareholders of Diaz Fishing were not Namibian.<sup>152</sup>, and the vessel 'Diaz' is registered as Namibian-owned, although 57% of its ultimate ownership, namely 'Diaz Trawling', are not Namibian.<sup>153</sup>

Another newcomer company contributing its quota to a joint venture with NovaNam is Nautilus Fishing Industries, which has a 42% interest in Nautilus Fishing Enterprises, which owns the 'Nearvera' fishing vessel. 'Empire Trawling' and 'Omuhuka Trawling' make up the four joint venture operations run by NovaNam's management. A perusal of the Register of Fishing Vessels indicates that the license applications for the fishing vessels owned and used by these joint venture companies are made in the newcomer companies' names. In reality, these newcomer companies have very little if any operational involvement in the harvesting, processing or marketing of their quotas, as well as in the operational aspects of the vessels. According to Manning, their most active involvement in the industry seems to be a 'collection of the proportion of the rent in exchange for passing on the quota to NovaNam to fish, process and market'.<sup>154</sup>

Examples such as these expose the weaknesses in the development and implementation of the equity element of the Government's policy. The aim behind such analyses is to suggest

<sup>145</sup> See (1999) Subregional Trade Expansion in Southern Africa – Supply Survey on Namibia's Fish and Fish Products – sponsored by the International Trade Centre UNCTAD/WTO. P. 14. Obtainable from: <http://www.intracen.org/iatp/surveys/fish/fishnam.html>. (accessed on 2004/04/20)

<sup>146</sup> See, for example, (1999) Subregional Trade Expansion in Southern Africa – Supply Survey on Namibia's Fish and Fish Products – sponsored by the International Trade Centre UNCTAD/WTO. P. 14. Obtainable from: <http://www.intracen.org/iatp/surveys/fish/fishnam.html>. (accessed on 2004/04/20)

<sup>147</sup> Personal Interview with Christo October, Zurelia Steenkamp, chief environmental economist, fisheries policy, economics and planning section, MFMR; Paul Nichols, Special Advisor to the Minister, MFMR, Windhoek, 27 May 2004.

<sup>148</sup> In September 1997 Namibia launched a national policy and programme on small business development; this was designed to diversify activities within the different sectors' businesses, increase the rate of business formation and employ additional labour. An entity's registration as a small business facilitates access to tenders, support programmes, sub-contracts and incentives; this registration is dealt with by the Ministry of Trade and Industry (MTI), through its Directorate of Industrial Development.

<sup>149</sup> supra

<sup>150</sup> White Paper: Towards a Responsible Fishing Sector p. 32, presented in Parts I and II above.

<sup>151</sup> See p. 24 above.

<sup>152</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 34.

<sup>153</sup> supra

<sup>154</sup> In addition, NovaNam enjoyed the benefit of the rights in the horse mackerel fishery as well as control over 23% of the total hake quota.

improvement on both the policy and the implementation thereof, not a 'blacklisting' exercise of the major companies involved.

In the first rights application process, MFMR initially required details concerning the beneficial share ownership of the applicant companies, to enable their determination of the extent of Namibian ownership. In an example, Namsea (Namibia Sea Products), together with its sister company, Namfish (Namibia Fishing Industries, which has a dual listing on the Johannesburg and Namibian Stock Exchange) replied that it was impossible for them to determine and identify the nationality of their shareholders, as they had over 299 hundred shareholders each, due to their public listings; instead, the residency of shareholders was to be considered. However this proposal was accepted by the Ministry.<sup>155</sup> In addition, the company's main shareholders made extensive use of nominee shareholders, (defined as 'a person, trust or company holding shares on behalf of the beneficial shareholders').<sup>156</sup> Effectively this hides the real identity of beneficial rights-holders, thereby nullifying the efficacy of the Companies Act, which makes it an offence for a company to withhold information regarding its shareholders.

Another example of Manning's skilful unravelling exercises in attempting to find the true beneficial majority shareholders resulted in the discovery that the main shareholder in both Namsea and Namfish finally turned out to be P. C. Kuttel, the notorious fisheries entrepreneur from the Cape.<sup>157</sup> The nominee concept in this instance had been used to 'present a veneer of being Namibian, and thereby claim the generous levy rebates'.<sup>158</sup> Other closer scrutinizes/analyses by Manning of companies' transactions and inside corporate structures have revealed certain anomalies. For example, the acquisition of a monk concession together with the vessel MVF Estra Cruz from Namcoast (Pty) Ltd as from 1 December 1998, for N\$9,1 million. In Gendor's annual report emphasis was placed on the acquisition of a right well suited to the company's asset and resource base. The age and size of the vessel, built in 1964, with a gross tonnage of 76,7. The tiny, aged vessel was effectively replaced with the newer 'Whitby', (pitted at a market value significantly far below the listed purchase price),<sup>159</sup> which had been converted into a freezer trawler and provided a notable increase in fishing effort.

With the formation of Hangana Seafoods, additional consolidation in the hake fishery took place. Consortium Fisheries Ltd., (ultimately owned by the List family of Namibia) and Kuiseb Fish Products (controlled by the large, established, South African Irvin and Johnson Ltd., which, together with Sea Harvest dominate South Africa's hake industry) had formed a joint venture with one another.<sup>160</sup> When Namibia became independent, Kuiseb Fish Products was a wholly owned subsidiary of Irvin & Johnson, which is controlled by the South African Hersov family, primarily through Anglovaal Industries Ltd.<sup>161</sup>

In the early 1990's, I&J's parent company, Anglovaal, provided finance to enable a newly registered Namibian company, Naras Investments, to buy 51% Of Kuiseb Fish Products' shares. However, 2% hereof were composed of non-voting preference shares, thereby effectively retaining control of Kuiseb in I&J's hands. In addition, a management marketing agreement between the two companies obliged Kuiseb to sell their production through I&J.<sup>162</sup>

<sup>155</sup> Les Clark, Special Advisor, MFMR, 1994.

<sup>156</sup> See the Companies Act no. 61 of 1973, contained in the Company Legislation Handbook 2001.

<sup>157</sup> JSE Handbook, 1996.

<sup>158</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 37.

<sup>159</sup> In 1999 Gendor purchased two corporations, Mangetti Fishing and Eros Fishing, with quotas in both freezer and wet fish vessels of the hake fishery. The latter companies had been involved in a joint venture arrangement with their parent company, Zebra Holdings (the beneficial shares of which turned out to be held by businessmen with close ties to the ruling party) and Oya Namibia, which is wholly owned by the Spanish fishing company Barcenoya SA.

<sup>160</sup> See Manning, P (2002) The Distributive Aspects of Namibia's Fisheries Policy p. 43.

<sup>161</sup> supra

<sup>162</sup> Manning, P. R. (1998) Managing Namibia's Marine Fisheries: optimal resource use and national development objectives p. 52.

(Thus the reality of Naras Investments exercising any effective control over the substantively operational aspects of the industry could seem pretty remote.)

In this convoluted way, I&J used its partnership agreement with an entity whose shareholders had been 'socially, economically or educationally disadvantaged' (as legally prescribed to 'Namibianise'), thereby ensuring for itself 'favourable consideration'<sup>163</sup> when applying for the renewal of rights (of exploitation) at the end of 1993.<sup>164</sup>

### 3.5.10 Vertical Integration of the Fishing Industry

According to Manning, vertical integration and consolidation of businesses enables corporations to filter and shift revenues and costs within company groups to their best advantage.<sup>165</sup> Especially in Namibia, there is not much effective price competition for fish that is landed in port. These two factors put together easily facilitate the internal structuring and engineering of prices, in addition to the well accepted fact that it is usually via the value-adding operations of processing and marketing fish products that the largest profits are made. Thus the major companies exercising effective corporate control over these avenues, structure their industry operations, so that resource rents accumulate in those stages of the process that concentrate most of them in these "engineering companies"<sup>166</sup> hands. Depending on the legal and policy framework regulating such activities, this behaviour can be viewed as entirely predictable, rational and expected of companies operating in sectors that allow for (– or maybe even facilitate ?) this. Similar manipulation of the vertical nature of the industry also occurs in joint venture arrangements where the percentage share held by each party to the venture is used as the basis for dividing the quota, although the explicit terms of the joint venture contract externally stipulate that one party provides the quota allocated, while the other controls the harvesting and processing aspects to the operation.

For example, in the pelagic fishery, the entire catch must be landed at either canning or the fishmeal facilities. However, during extremely low TAC years, the companies arrange amongst themselves for the whole catch to be landed at one plant, where it is either turned into fishmeal or canned, as the viability of the process does not survive otherwise. Fishing companies whose vessels operate and fish independently thereby have no (fair market) choice regarding where to land their catch.

On part of the major companies, there is a long history of cartel like behaviour<sup>167</sup>, as the factories fix the prices paid for catches received and bought from those vessels operating independently of them, so that these cannot be influenced by the market; - otherwise the factories would be forced to compete as in any fair and rational market economy.

The converse view, on the up-sides of vertical integration, also proves informative, and is necessary for analytical completeness: for example, when a company merely markets wholesale or catering products, its entire livelihood becomes dependant on commodities that are at the mercy of supply and demand, and as dictated by others. On the other hand, retail sales, carrying a known and trusted brand name, should act as a strong incentive to companies, in terms of adding value to their products, through local, on-shore processing. Companies marketing their own, branded retail products directly to retail outlets, like supermarkets, create favourable situations in the market where fish products manufactured in Namibia can be bought directly off the shelf by private consumers. Retail sales like these present obvious and strong incentives to companies to add-value through local, on-shore

<sup>163</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 44.

<sup>164</sup> The dividend costs of the acquisition of the 51% share ownership in Kuiseb Fish Products, by Naras Investments, could be covered by management and marketing costs as set by I&J in terms of charges and prices of products the latter acquired from Kuiseb Fish Products, in the mentioned marketing contract between the two.

<sup>165</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 44.

<sup>166</sup> supra

<sup>167</sup> Moorsom, (1984) Exploiting the Sea p. 32.

processing, in line with Namibia's fishery's policy objectives. In fact, the benefits attached to retail products are two-fold: they both lead to increased earnings in foreign revenue, as well as the enhancement of Namibia's image in foreign markets.

The logical evolution of a successful fishing industry is said to be vertical integration, as the sector matures along its requisite policy objectives.

Generalised, underlying assumptions that benefits of quotas accrue(d) in proportion to share ownership of companies mostly only hold true for larger, powerful companies that exercise effective control within the industry, and the validity of this assumption in the case of smaller, weaker companies is often questionable. It is more likely that when large, powerful companies hold shares in the newcomer companies, or where major operating companies enter into joint venture arrangements with the weaker, newer and smaller companies, the latter fledgling newcomers do not manage to capture their requisite share of rent in proportion to the shares they hold, and thus according to an ideal functioning of the requisite policy objectives. Evidence has been put forward and presented, that this is indeed the case.<sup>168</sup> The real targets of the quota allocations policy, namely the newcomer companies, are thus not sufficiently or necessarily benefiting from their allocations. According to some authors, should an open trade in quota be allowed, in terms of both temporary leases as well as permanent transfers, companies would obviously not go through the 'antics of such complex corporate structures<sup>169</sup> to achieve the intended fluidity of rights and quotas.<sup>170</sup>

There is an urgent need to address problems caused by misdirected distribution of resource rent generated in Namibia's fishing industry<sup>171</sup>, even more so due to the fact that problem skilfully disguised under claims of success re implementation of Namibia's policy. If resource rent is not collected by Government, and rights are traded (in whatever form), these rights turn into extremely valuable assets, as the '...future rent associated with the right becomes capitalised'.<sup>172</sup> Rights start changing hands at exorbitant prices, eventually generating their own racket and/or illegal (black-) markets. (Evidently this is what Moorsom is referring to in coining the phrase 'cartel-like behaviour' on part of the fishing companies.<sup>173</sup>) This has already become apparent in Namibia, where the sale price associated with the value of shares (i.e. the price paid for the explicit sale of rights) reflects increasing proportions of the discounted future stream of resource rents<sup>174</sup> (own brackets). Once this has occurred, future benefit streams, arising from the earning of rents associated with the rights, become 'capitalized as assets owned by the companies'.<sup>175</sup> This makes it increasingly difficult for the Government to collect any future rent.

Serious long-term effects detrimental to Namibia and the country's overall economic and social well-being and development will result in the face of the current trend of declining rent collection by the Namibian Government.

Another discrepancy between the stipulated policy objectives and implementation thereof is that many of the main, established fishing companies have substantial quotas in a significant number of different fisheries.<sup>176</sup> For example, in the mid-water trawl horse mackerel fishery,

<sup>168</sup> Manning, P. R. (1998) Managing Namibia's Marine Fisheries: optimal resource use and national development objectives p. 50.

<sup>169</sup> The Distributive Aspects of Namibia's Fisheries Policy p. 48.

<sup>170</sup> See p. 13.

<sup>171</sup> See Manning (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 50.

<sup>172</sup> supra

<sup>173</sup> Referred to on p. 40 above

<sup>174</sup> supra

<sup>175</sup> supra

<sup>176</sup> Thus total landings showed a growth from 1991 to 1993, but experienced a decline between 1994 and 1997. From 1997 to 2000, desirable weather conditions provided a more productive pattern again. In 1998, the National Fishing Corporation (Seaflower Lobster Corporation), together with Sea Harvest (Lalandii) held two thirds of the entire rock lobster quota, while Gendor held half of the orange roughy quota. Five of these major operating companies rights in the sole and monk fisheries, and



nine of the twelve rights of exploitation and the associated quotas, were dominated by Namsof Fishing Enterprises, Erongo Sea Products and their associated, dominant groups, thereby effectively reaping the benefits of 85% of the total quotas allocated.

The second reason why collection of a greater part of the resource rents generated in fisheries becomes essential can be traced to the requirements of Namibianisation in the country's fishery policy. Other than providing the requisite labour, an important form of involvement by previously disadvantaged Namibians is seen in the acquisition of shares in quota-holding companies, together with the collection of a portion of the resource rents associated with these rights.<sup>177</sup> However, compared to the real size of the industry, substantive operational participation by the newcomer companies has not been sufficient. Many were mercilessly used as 'conduits for quota' by the established giants of the industry. Due to the failure of the intended support framework, (supposed to provide new entrants to the fishing industry with access to credit, financing arrangements, market data and strategies, technical advice<sup>178</sup>), many of the newcomer companies were subsumed into large corporate conglomerates.<sup>179</sup> In contrast, so as to effectively participate, the newcomer companies were intended to become functioning fishing companies in their own right, including the daily making of their own operational decisions etc.<sup>180</sup>

Although the sector may appear to accommodate and involve many newcomer companies, this is largely the outcome of a system that encourages the semblance of diversified ownership of this type. Instead, a 'massive consolidation of the industry into a handful of large conglomerations'<sup>181</sup> has occurred. If companies were left to openly trade in quota, (which is what they are doing at any rate), the industry would not need to evolve itself into such complex, corporate conglomerates. However, maintaining the façade of a large number of operational, newcomer companies throughout the industry, allows the Government to proclaim the success of its policies.<sup>182</sup> Instead of directly buying quotas, which is forbidden by the policy, company control is achieved either directly, by purchasing a share majority, or indirectly, in terms of any array of a choice of different forms of agreements: eventually these place the right, as well as the quota associated with it, in the hands of the major company. The latter can be in the form of either management agreements, or joint venture arrangements, or even mortgage bonds with certain, attached conditions of repayment. As companies find 'acceptable' guises and terminologies, one realizes that rights of exploitation and quota are in reality a lot more transferable than appears at first glance or from an examination of the formal rules. In reality the system of rights of exploitation and quotas that has become entrenched in Namibia's fishing industry has effectively granted the majority of the fishing industry's harvesting opportunities to the major companies, whether in the former of mergers and acquisitions, or directly.<sup>183</sup>

Evidence suggests that power relationships within the industry are more related to the distribution of rent than to the ownership of shares.<sup>184</sup> In Namibia's current fully established industry, with its ample harvesting and processing capacity, the larger, operational companies have the calibre to extract at least part of the resource rent attached to the smaller companies' quotas, where the former harvest, process and market these newcomer

together they held 23% of the pilchard quotas. The tuna and horse mackerel fisheries were also represented here. See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 48.

<sup>177</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 51.

<sup>178</sup> 1991 White Paper: Towards a Responsible Fishing Sector p. 31.

<sup>179</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 51.

<sup>180</sup> 1991 White Paper: Towards a Responsible Fishing Sector p. 31.

<sup>181</sup> supra

<sup>182</sup> See Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 51.

<sup>183</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 52.

<sup>184</sup> Manning, P. R. (1998) Managing Namibia's Fisheries: Optimal Resource Use and National Development Objectives. LSE p. 37.

companies' quotas. Even if the accrual of resource rents mirrored the proportionate share ownership in these companies, the newcomer companies nevertheless receive a relatively small proportion of these rents. Rent is mostly accruing to the major companies, both Namibian and foreign.<sup>185</sup> To compound this, these newcomers probably do not even receive their adequate share of the rent, proportionate to their respective quota shares, although some of the resource rent clearly does accrue to the shareholders of the newcomer companies.<sup>186</sup>

If the rationale and aim of leaving the resource rent to the industry, (instead of it being collected as revenue by the Government) was to facilitate the entry of the newcomer companies into the industry, then this 'rent subsidy is largely accruing to the wrong recipients. Leaving the rent with the private sector in the hope that it will help newcomer companies develop, has proved a very inexact instrument in achieving these objectives.'<sup>187</sup>

### 3.6 Measuring Transformation in Namibia

The foreign fishing capacity that had dominated most of the fish stocks prior to 1990 was forced to leave with the advent of Namibia's newly declared EEZ. This led to a vacuum in fishing effort, which could relatively simply be replaced by Namibian fishing entities. As these consisted to a large degree of Namibian companies establishing themselves, the pressure for high TAC's, exerted by companies with a large and developed infrastructure, (as reflected in their capital investments in both vessels and processing establishments) lessened. This enabled a drastic reduction in the horse-mackerel and hake TAC's, as well as leading up to a speedy recovery of stocks such as hake, and thus improved catches, in the years immediately succeeding independence. Similarly, the gap left by the departure of vessels previously fishing in terms of the ICSEAF regime, could be suitably replaced by granting fishing rights to Namibian companies. Thus a degree of stability and economic infrastructure was relatively smoothly retained, whilst simultaneously accommodating new Namibian entrants – this could be implemented without having to 'take fish away from other rights holders'.<sup>188</sup> During this initial period, the Namibianisation of the industry was thus achieved relatively painlessly.<sup>189</sup>

<sup>185</sup> Manning, P (2004) The Distributive Aspects of Namibia's Fisheries Policy p. 52.

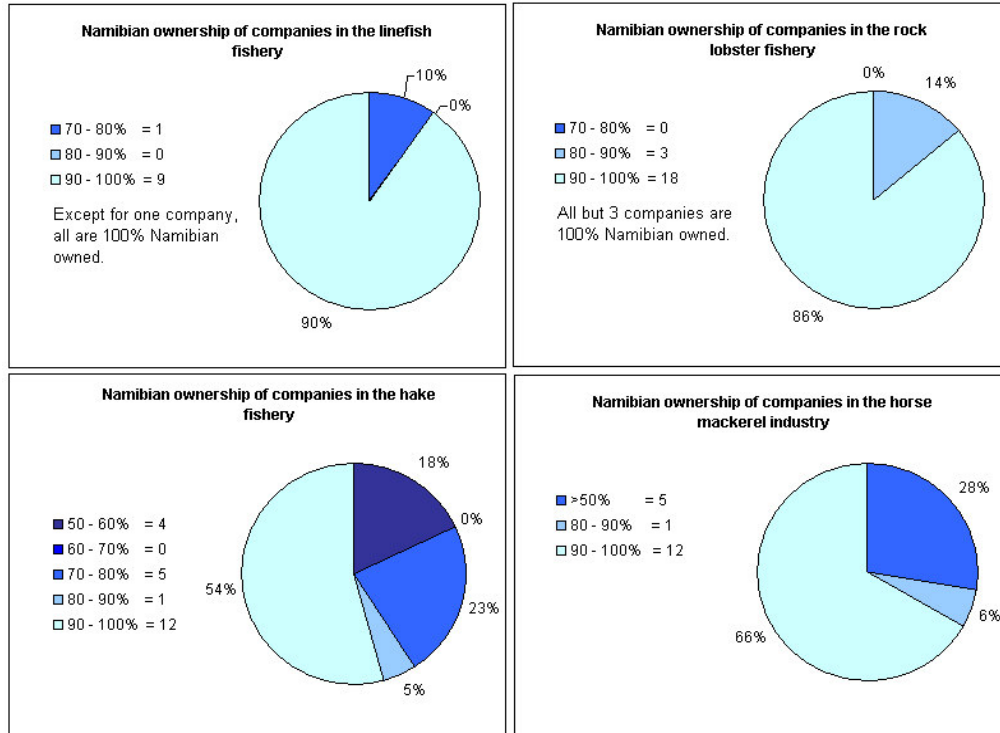
<sup>186</sup> supra

<sup>187</sup> supra

<sup>188</sup> Oelofsen, B. (2003) A Political Will and Management Transparency p. 34.

<sup>189</sup> supra





### 3.7 Empowerment and Namibianisation

As indicated, before Namibia's independence in 1990, numerous foreign factory trawlers would fish in Namibian waters, process this catch at sea, and then land it at exclusively foreign ports, without generating any benefit for Namibia at all. The embedded inequity created by such a legacy was one of the challenges facing the newly elected Government at independence. Thus Namibianisation, meaning '*greater involvement and benefit for Namibians from fisheries*'<sup>190</sup> necessarily became a key element of the fisheries policy, aimed at redressing the legacy that had arisen.

The Namibianisation and empowerment aspects of the fisheries policy have been relatively successful, as they have simultaneously secured real economic advantages for Namibians whilst attracting the foreign investment, skills, capital and market access required by successful development of the sector. This becomes apparent in the appraisal towards the end of this report, which measures the progress in the Namibianisation of the fleets, fishing vessel crews and businesses in the sector. This progress illustrates how there is a much broader-based shareholding, involving Namibian nationals either directly as individual shareholders or indirectly through investment by insurance and pension funds that represent a Namibian workforce and 'small savers'.<sup>191</sup> This form of progress reflects the Government's ongoing commitment to empowerment within its hugely important fishing sector.

All except for one of the 163 rights-holders during 2003 were majority Namibian-controlled. These goals have been achieved in two primary ways: almost all the major, foreign-owned companies brought in Namibian investors with the advent of Namibia's independence and consequent new fisheries policy. The main vehicle used for such investment was provided by pension and insurance schemes. In the second place, many new businesses, most of which are wholly Namibian-owned, have entered the sector since Independence. Simultaneous to

<sup>190</sup> See Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 2.

<sup>191</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 2.

such corporate developments, foreign investors have found valuable opportunities in the sector, most notably as partners to Namibian companies in terms of joint venture arrangements.

According to the Minister, presently most of the shares in the 'right-holding'<sup>192</sup> companies are owned by Namibian majority-owned Trusts or Community Projects, individual Namibian share-holders or Namibian majority-owned companies. Such Trusts and Community Projects<sup>193</sup> further, and in a more integrated, general way, empower Namibian nationals: staff share schemes, funds and trusts are incorporated on behalf of and for the benefit of workers, pensioners, the youth, impoverished communities and the handicapped.<sup>194</sup> This reflects one of the notable characteristics of the social, civic emphasis to Namibia's integrated transformation strategy, as implemented through the country's resource-rich fisheries sector.<sup>195</sup>

It is estimated that about 4200 Namibians have been empowered and are directly benefiting through individual Namibian shareholders.<sup>196</sup> To this figure can be added those nationals who have been enriched and empowered through participation in Trusts, Community Projects, and share ownership of Namibian-owned corporations – at least 3840 nationals. This brings the number of Namibians benefited by – and empowered through – the participation of shareholders in Namibia's fishing industry to around 7700, indicating that there is nevertheless still ample room for improvement. These achievements are commendable and not to be overlooked, especially in the context of Namibia's past history and relatively small population of approximately 1,75 million inhabitants.

The above illustrates a worthy achievement of the fisheries sector that goes largely unnoticed: fishing companies have made significant and unyielding contributions to social development schemes throughout the entire country, including the construction of road networks into the interior and far north.<sup>197</sup> Needy social and civic structures and facilities have received generous contributions, to aid the implementation and construction of clinics and schools. Over the past 11 years, the fishing industry has contributed more than N\$33 million to these causes; especially the newcomer companies made noteworthy achievements in this respect, as their contributions hereto capped N\$11,1 million dollars.<sup>198</sup>

Importantly, this drive to implement real socio-economic benefits for the Namibian nation, by employing the vehicles of Namibianisation and empowerment in the exploitation of the country's fishery resources, has not constrained this sector's growth or its overall contribution to the national economy. Fisheries has consistently maintained second position (behind mining) in terms of export earnings.<sup>199</sup>

### 3.8 Conclusion

Fisheries development since 1990 has been characterised by upward and downward trends, due to significant short-term and long-term fluctuations caused by the variability of the oceanographic and atmospheric processes affecting the Benguela System.<sup>200</sup>

<sup>192</sup> supra

<sup>193</sup> Personal Interview with Dr, Moses Maurihungirire, Deputy Director: Resource Management, Ministry of Fisheries and Marine Resources (MFMR), 27 May 2004, Windhoek, Namibia.

<sup>194</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 4.

<sup>195</sup> Personal Interview with Dr, Moses Maurihungirire, Deputy Director: Resource Management, Ministry of Fisheries and Marine Resources, MFMR, 27 May 2004, Windhoek, Namibia.

<sup>196</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 4.

<sup>197</sup> Personal Interview with Ms Emma Boys, department of policy and planning, MFMR, Windhoek, 28 May 2004.

<sup>198</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 6.

<sup>199</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 6.

<sup>200</sup> (1999) Subregional Trade Expansion in Southern Africa – Supply Survey on Namibia's Fish and Fish Products – sponsored by the International Trade Centre UNCTAD/WTO. P. 2. Obtainable from <http://www.intracen.org/iatp/surveys/fish/fishnam.html>. (accessed on 2004/04/20)

One of main characteristics of Namibian fishing industry is said to be its orientation towards external markets.<sup>201</sup> The relative success of fisheries management in Namibia has been ascribed by various acclaimed authors<sup>202</sup> to the strong political will and the transparency of management and governance measures. Namibian fisheries are acclaimed to be one of the most open and efficient in the world, increasingly dynamic and well established, as well as outward-looking<sup>203</sup>, with significant investors in both high seas fishing operations, as well as other countries. Substantial structural changes have been effected throughout the industry, facilitating meaningful investment.

An increasingly broad and balanced, substantive participation in the sector, by Namibians from various backgrounds has been secured, through the **integrated** nature of Namibia's fisheries policy in relation to her overall economy.<sup>204</sup>

Of the three BCLME countries, Namibia currently has the most favourable commercial arrangements with the EU,<sup>205</sup> enjoying free access to the latter's markets and entering them under preferential trade conditions. (South Africa on the other hand merely enjoys partial membership.<sup>206</sup>) Namibia has expressly opted not to enter a free access agreement with the EU, as the countries' resources are not sufficient enough to sustain this.<sup>207</sup> Namibia's independent fishing industry provides more than ample capacity to satisfy her TACs. However, *joint venture partners* from EU member states *do* play an important role in Namibia's fishing sector, and therefore gain significant access to a large portion of her quotas. In stark contrast to the old-type foreign access agreements, the joint venture arrangements are more sustainable, as the fish caught in Namibian waters is not immediately removed for value-adding processes elsewhere. Fish exports to the EU have increased substantially to Namibia's advantage.<sup>208</sup> In addition, Namibia has become renowned for her high quality products that are exported to and sold on five different continents, due to commendable progress made in the country's value-adding strategies. The first-sale value of fish production has grown from €50 million in 1991 to €250 million in 2001.<sup>209</sup>

The guide to the marine fisheries policy for the past thirteen years has been the above-mentioned 1991 White Paper. Namibia's interests have been served in terms hereof in the following ways:

- Direct employment in the sector has expanded to about 14000 people.
- On-shore processing incentives have resulted in an increase of whitefish processing plants from none in 1991 to about 20 in 2003.
- Sixty-five per cent of the approximate 7600 employees on board fishing vessels are Namibian. This has been one of the most noteworthy achievements in terms of the fisheries sector's Namibianisation policy, as the state of the human resource development aspect in this sector was an express 'matter for concern'<sup>210</sup> in the first

<sup>201</sup> In any event, Namibia's sparse population of approximately 1.6 million people, would never be able to consume the recent annual tonnage of landed fish (around 780 000 tons), even at the highest degree of domestic demand.

<sup>202</sup> See references to articles by Dr. Burger Oelofsen and Paul Nichols supra.

<sup>203</sup> See UNCTAD/WTO (1999) Subregional Trade Expansion in Southern Africa: Supply Survey on Namibia's Fish and Fish Products p. 7. obtainable from <http://www.intracen.org/iatp/surveys/fish/fishnam.html>; accessed on 2004/04/20.

<sup>204</sup> See the 'Fisheries and Marine Targets' as stipulated in NDP 1 referred to in section above.

<sup>205</sup> Unlike many other previously colonized states, Namibia (similarly to India), wisely decided not to exclude all foreign capacity en masse, but , chose to utilize foreign technical expertise and finance instead.

<sup>206</sup> (1999) Subregional Trade Expansion in Southern Africa – Supply Survey on Namibia's Fish and Fish Products – sponsored by the International Trade Centre UNCTAD/WTO. P. 2. Obtainable from <http://www.intracen.org/iatp/surveys/fish/fishnam.html>. (accessed on 2004/04/20)

<sup>207</sup> Internal Memorandum, MFMR, 17 November 2003, p. 3.

<sup>208</sup> For example, during 2000, the EU imported 99,410 tonnes of fish and fish products worth €250.2 million from Namibia: this positions Namibia as the fourth-largest developing country supplier of fish to the EU after China, Thailand and Argentina. supra

<sup>209</sup> supra

<sup>210</sup> NDP1: Part 3 – Sectoral Development: Fisheries and Marine Resources, Chapter 12, p. 194.

National Development Plan and Actions Strategy following Namibia's independence in 1991. In the latter, studies that examined the training needs in both the public and private sector indicated that a huge rate of 52% of sea-going officers had been *foreign* nationals.

Nearly all the land-based workers in the sector are Namibian. Real economic prosperity enjoyed by Namibians through substantive participation in the industry goes beyond this: in 2003, for example, 162 out of 163 rights were majority controlled by Namibians. Namibian control of the hake quota at the time of Namibia's independence was levelled at a meagre 17%, which had improved to around 80% in 2003.<sup>211</sup> In the small pelagic and rock lobster fisheries, the entire quotas are in Namibian hands. Namibian control over the horse mackerel quotas has improved from 14 % to approximately 80% during the past thirteen years. Ownership in vessels by Namibians has risen from 50% in 1991 to 80% in 2003. In conjunction with all of the above, the Namibian fishing sector has been securing the market access and foreign investment necessary to facilitate further growth and development. Long-term, private investment commitments were sought and secured.<sup>212</sup> The establishment of higher value fisheries such as the deepwater fisheries of tuna and orange roughy was successfully pursued.

Presently, the *local* processing of species like tuna, orange roughy and squid caught *outside* Namibian waters needs to be pursued, in terms of development potential and to appropriately reflect Namibia's current and evolved status as a matured and more inclusive high seas fishing nation (in terms of her international arrangements) as well as a coastal state.

### **3.8.1 The Dynamics of Policy Implementation and the Way forward: Suggested Avenues for Progress**

The rationale behind policies that stimulate on-shore processing of marine catch has always been one of employment creation. Successful implementation of this policy has already resulted in Namibia processing a larger percentage of commercial catches ashore than many industrialized countries.<sup>213</sup> Increased value-addition to currently under-utilised species like horse-mackerel offers significant potential: opportunities for new business developments in terms of improved product development and the marketing of expanded landings should be pursued. For example, if access to the markets could be secured, various value-added products like vacuum-packed and/or canned horse-mackerel for human consumption could yield significant profits.<sup>214</sup> In fact, one of the main areas with scope for improvement and business development in terms of Namibia's fishing policies and the industry itself, relates to that of market access, which shows huge potential in terms of new investment opportunities.<sup>215</sup> Avenues in terms of the development products from fish parts that are currently discarded, as well as the more sophisticated presentation of products and packaging should be pursued. A 'critical mass'<sup>216</sup> of production capability still needs to be achieved by many processors, to enable them to successfully enter lucrative business opportunities: considerable scope currently exists for initiating processing contracts with multiple retailers in overseas markets like the US, Asia and Europe. Namibian processors could 'produce to order'<sup>217</sup> regular quantities of high quality processed items in retail packs. It is especially in this arena of access to export markets, foreign currency and retail outlets that the most lucrative profit margin potential lies,<sup>218</sup> and where there is the most scope for

<sup>211</sup> Internal Memorandum, MFMR, 17 November 2003, p. 4.

<sup>212</sup> *supra*

<sup>213</sup> Internal Memorandum, MFMR, 17 November 2003, p. 7.

<sup>214</sup> Horse-mackerel is one of the most nutritious foodstuff, with proven health benefits.

<sup>215</sup> Personal Interview with Paul Nichols, Special Advisor to the Honourable Minister, MFMR, 27 May 2004, Windhoek, Namibia.

<sup>216</sup> *supra*

<sup>217</sup> Internal Memorandum, MFMR, 17 November 2003, p. 7.

<sup>218</sup> See, for example Manning, P. R. (1998) *Managing Namibia's Marine Fisheries: optimal resource use and national development objectives*; Manning, P. R. (2004) *Review of the Distributive Aspects of Namibia's Fisheries Policy*. NEPRU, Windhoek, Namibia.

improvement in terms of the Namibianisation policy of substantive transformation, if one interprets this in terms of returning the gains made off the country's resources to her nation. Simultaneously, Namibia's year-on-year growth for most stocks, (pilchard being the notable exception) contrasts sharply with a contraction in yield for many other global fisheries.<sup>219</sup> It is thus feasible that the profitability of Namibia's domestic industry should predictably increase along the above-suggested lines, along with the global trend of enhanced fish prices for ground fish on world markets.<sup>220</sup>

Other avenues for improvement exist along the axis of a cross-integration of the productive sectors, as the next logical and necessary step to the improvement and furtherance of Namibia's fisheries sector.<sup>221</sup> The logical evolution of the fishing sector is vertical integration. Too many raw materials used in the processing industries are still said to be imported, (mainly from Greece, Spain, the USA, South Africa, Israel and Iran) instead of being produced in Namibia herself.

One of the most important avenues for improvement exists in the simplification and shortening of the distribution chain from the fishing vessel itself to the consumer. Vertical Integration in this respect would require – and supports the notion that Namibians should effectively possess and operate the fishing fleets, the market, and the branding of the products, straight along the distribution and retail chains to the supermarket, for the end-consumer. The latter are increasingly becoming interested in high quality products, from known and trusted origins. This, together with the long-term protection and sustainable utilisation of the resource will promote the much-needed and desired stability throughout Namibia's fishing industry and sector. It is especially in the marketing aspect that much diversification and improvement, in terms of the delineated policy objectives, needs to be achieved.

Namibia's fishery sector could focus its policy goals and implementation even more towards streamlining its value-adding strategies, to lead to the country's own branded retail products, which can in turn be sold directly to the consumer off the supermarket shelf. This enhances income streams and cuts out the unnecessary and uneconomical 'middle-men' opportunists. In terms of diversified shareholdings, Namibianised Vertical Integration requires that Namibian Nationals own and control the fishing fleets, the marketing, branding and retail outlets.

Presently the most crucial concern of MFMR seems expressly related to human resource development.<sup>222</sup> The Namibian Government together with the appropriate stakeholders is continuing to build manpower and capacity, to facilitate the creation of an enlightened workforce and educated people, enabled to contribute in all dimensions of the marine sector.<sup>223</sup>

In the long term, the MFMR's approach regarding the transferability of quotas needs to be reconsidered. In spite of the laws and rules against this, both the purchase and temporary leasing of quota and rights has apparently been recurring, under various guises.<sup>224</sup> As reiterated, the Ministry's initial opposition to introducing ITQ's was founded on the legitimate fear that rights and quotas granted to the starting off, newcomer companies would easily be taken over by the more experienced, established and better financed fishing companies. This apprehension remains valid for two reasons: firstly, at this stage, few Namibians are in positions to independently run and control the industry. Hence one of the reasons for the

<sup>219</sup> Internal Memorandum, MFMR, 17 November 2003, p. 2.

<sup>220</sup> Internal Memorandum, MFMR, 17 November 2003, p. 2.

<sup>221</sup> Keynote Address to the Oceana Brand Sales Conference, by Dr. Abraham Iyambo, Minister of Fisheries and Marine Resources, Swakopmund, 10 September 2003, p. 5.

<sup>222</sup> Internal Memorandum, MFMR, 17 November 2003, p. 3.

<sup>223</sup> See the 'Fisheries and Marine Targets' as stipulated in NDP 1 and referred to in section 3.2.4. above.

<sup>224</sup> Manning, P (2004) Review of the Distributive Aspects of Namibia's Fisheries Policy p. 52.



MFMR's current strong focus on the building, strengthening of capacity, and human resource management.<sup>225</sup> In addition to this human resource and training element (to enable Namibian individuals to take over and operate established companies), Manning suggests a system of targeted, explicit and 'legitimate'<sup>226</sup> subsidization, aimed at enabling the newcomer (i.e. *Namibian*) companies to effectively and efficiently control the operations around the harvesting, processing and marketing of fish, and, importantly, these products on world markets. However, for the reasons mentioned previously, it is advocated<sup>227</sup> that subsidization of the fishing industry should be avoided. Alternative methods and methodologies need to be explored and established, especially pertaining to the positioning and leverage effected by Namibian Companies' and Namibia's lucrative fishing industry, at both national and international market level.

The second point of consideration centres around the policy and strategy implementation problems created when resource rents remain available to – or flow back into the industry. In a properly functioning system on the other hand, resource rents should be collected by the Government (i.e. they act as a source of revenue or income generation to the government, and can thus be suitably channelled into redistributive programs channelled towards redressing past inequities within the country); in such a case, industry is suitably left with reasonable returns on their inputs of capital and labour, as well as fair compensation for their risk and entrepreneurship.

Any notion concerning the efficient and justified use of a country's public resources necessarily entails an examination of where the rents generated by the resource concerned flow.<sup>228</sup> The alternative suggestion is to trade quotas on something like an open exchange, in terms whereof the rights and quotas follow the highest bidder, and their price ranges can be used as an indicator – and in order to monitor the available rent within the industry.<sup>229</sup> Such an imaginative approach may well be called for in the interests of the long-term viability of the industry, in conjunction with the equitable development and prosperous well-being of *all* of Namibia's population. For example, each year, a portion of the hake TAC could be set up for 'public auction', and this would automatically lead to the establishment of 'market- indicators', illustrating what companies are willing to pay therefore: this, in turn, would *not* be used to convert the fishing rights and quotas into tradable commodities, (as Manning suggests in line with traditional ITQ systems), but merely as an indicator to Government of the available economic rent in industry.

An essential caveat that goes hand in hand with the above suggestion, relates to the openness and transparency of information relayed from the industry, regarding its shareholdings, corporate structures and transactions. Importantly, the government must efficiently collect the requisite amount of resource rent from its fish resources, as it cannot be left up to the free market and ruthless corporate re-groupings to ensure an optimum, let alone even an adequate allocation of this constitutional democracy's precious and public resource.

A need to guard against, in the implementation of the above suggestion, is the well recognized corporate behaviour whereby companies negotiate and club together to fix an artificial auction price for the sale of quota. Another problem relates to the government's reluctance to initiate a framework, in terms of which revenue is separated from the general tax fiscus of the country, to flow into separate ministries (like MFMR, with its various kinds of funds as presented in this report).

<sup>225</sup> See Internal Memorandum, MFMR, 17 November 2003, p. 3, as well as this part of the report.

<sup>226</sup> Manning, P (2004) Review of the Distributive Aspects of Namibia's Fisheries Policy p. 54.

<sup>227</sup> Under Evaluation of Part I, Namibia's Rights-based System.

<sup>228</sup> *supra*

<sup>229</sup> Telephonic Interview with Paul Nichols, Special Advisor to the Minister, MFMR, 8 July 2004.



One of the most important avenues for possible improvement exists in the simplification and shortening of the distribution chain from the fishing vessel itself to the consumer. Vertical Integration in this respect would require – and supports, the notion that Namibians should effectively possess and operate the fishing fleets, the market, and the branding of the products, straight along the distribution and retail chains to the supermarket, for the end-consumer. The latter are increasingly becoming interested in high quality products, from known and trusted origins. This, together with the long-term protection and sustainable utilization of the resource would promote the much-needed and desired stability throughout Namibia's fishing industry and sector. It is especially in the marketing aspect that much diversification and improvement, in terms of the delineated policy objectives, need to be achieved.

Namibia's fishery sector could focus its policy goals and implementation even more towards streamlining its value-adding strategies, to lead to the country's own branded retail products, which can in turn be sold directly to the consumer off the supermarket shelf. This enhances income streams and cuts out the unnecessary and uneconomical 'middle-men' opportunists. In terms of diversified shareholdings, Namibianised Vertical Integration requires that Namibian Nationals own and control the fishing fleets, the marketing, branding and retail outlets.

Greater involvement and Namibian participation at senior management and company board levels is still desirable. Especially female management, (whether Namibian or not) in senior positions still needs to be encouraged, to attain a more desirable gender balance.<sup>230</sup> Presently the role of women is restricted to the processing arena, evident in the 80%<sup>231</sup> female proportionality amongst shore-based workers. (Similar patterns and shortcomings in policy implementations generally, across all sectors, have been experienced in South Africa).<sup>232</sup>

<sup>230</sup> Personal Interview with Dr. Ekkehardt Klingelhoeffer, Director: Aquaculture, MFMR, Windhoek, Namibia, 28 May 2004.

<sup>231</sup> Iyambo, I. (2003) Progress in Broad-based Empowerment in the Fisheries and Marine Sector p. 4.

<sup>232</sup> See Cape Times, p. 3, Wednesday, 13 July 2004.

#### 4. MEASURING TRANSFORMATION IN ANGOLA



##### 4.1 Introduction to the Angolan Fishing Industry

Angola is divided up into seven provinces, with a coastline of approximately 1650 km. From north to south these provinces are: Namibe, Benguela, Cuanza Sul, Luanda, Bengo, Zaire and Cabinda.

From the early nineties, the Angolan Government started actively regulating its fishing industry. An analysis of the Angolan legal system and comprehensive regulatory framework indicates that almost every aspect of the industry is regulated by law. Similarly to the other

luzophone countries (such as Mozambique and Brazil), the legal principles have been clearly enunciated. The courts themselves do not provide much oversight over the industry. Instead the entire industry is regulated by the Ministry of Fishing. Often, this Ministry is authorised to act upon mere suspicions of breaches of regulations and laws.

Angola's main fishery resources include horse mackerel, sardinellas, sardines, shrimps, dentex, lobster, crabs and other tropical bottom species. The fisheries sector is ranked as the third most important industry, behind oil and diamond-mining. In addition, it provides an essential source of protein<sup>233</sup> to the country's inhabitants.

Presently, around half the Angolan population is reliant on the fishing industry as their livelihood, with most of these involved in artisanal fishing. For this reason, and in the context of transformation, the present report focuses on Angola's artisanal fishing sector. Furthermore, the artisanal fishery in Angola is a fast-growing sector that is becoming an increasingly important part of their economy. For example, between 2001 and 2003, the artisanal sector's national catch increased from 20 % to 40 %.<sup>234</sup> A census conducted by the Institute for the Development of Artisanal Fisheries (the "IPA") during 2003, estimated a total of 4700 artisanal fishing vessels. This demonstrates that between 60 and 65 % of the total Angolan crew is represented by the artisanal sector.<sup>235</sup>

Only 5 % of the total landings are exported, of which prawns are the most important. This includes some high quality fish and lobsters from the artisanal fishery. Within Africa, there is a growing trend towards fish meal and fish oil exports.

## 4.2 Understanding Transformation in Angola

The Angolan fisheries economy is viewed as a significant tool to redress the poverty and marginalisation of poor Angolans. The Angolan government adopted in 2003/2004 a Programme of Government which put in place a *Poverty Reduction Strategy*.

The Programme of Government, which is comparable to Namibia's National Development Plans and *Vision 2030* strategies and planning documents referred to in the Namibian section of this report, prescribes the adoption of sectoral programmes. One of the cornerstones of the programmes for the fisheries and agricultural sectors relates to the provision of food security and adequate access to food. With regard to fisheries, the following programmes are prescribed under the broader rubric of fisheries development:

- the strengthening of surveillance activities;
- effective fisheries management with the intention of increasing total allowable catches in a sustainable way; and
- supporting artisanal fishing in particular.

Angola's fisheries are shared amongst Angolans, whether commercial or subsistence, and foreigners who exploit the most valuable of the fisheries. To address the socio-economic impacts of decades of civil war, and recognising the importance of fisheries to the Angolan economy, transformation of the Angolan fishing sector, whether at a subsistence, artisanal or commercial (industrial) is considered to mean:

- (a) ensuring equitable access to inshore fisheries by Angola's artisanal fishers; and
- (b) empowering Angolans by reducing foreign access to Angola's lucrative fisheries, such as prawns and pelagics.

<sup>233</sup> Approximately 50%.

<sup>234</sup> Institute for the Development of Artisanal Fisheries ("IPA").

<sup>235</sup> If one includes inland fisheries, this number increases to 75 %.

### 4.3 Regulating Transformation in Angola

#### 4.3.1 *The Southern African Development Community Protocol: 2001*

The SADC Protocol adopted in 2001 by, *inter alia*, Angola requires the advancement of the sustainable and responsible use of living aquatic ecosystems and resources within the jurisdiction of its member States. To this end, the SADC Protocol is aimed at enhancing food security and human health, safeguarding the livelihood systems of fishing communities, generating economic opportunities for nationals in the region and ensuring that future generations benefit from renewable resources through co-operation and co-ordination. In implementing the SADC Protocol, Angola intends establishing a committee exclusively dedicated to the promotion of subsistence, artisanal and small scale commercial fisheries.

Article 12 of the Protocol expressly addresses subsistence, artisanal and small scale commercial fisheries. It requires State Parties to seek an equitable and rational balance between economic and social objectives, as they pertain to the exploitation of living resources by artisanal and subsistence fisheries.

#### 4.3.2 *The Constitution of the Republic of Angola (Lei Constitucional da Republica de Angola), 1992*

Article 12 of the 1992 Constitution requires the state to protect and conserve Angola's natural resources and to protect the environment. In addition, Article 25 entrenches the right to a healthy and unpolluted environment.

Article 12 provides:

1. *All natural resources existing in the soil and subsoil, in internal and territorial waters, on the continental shelf and in the exclusive economic zone shall be the property of the state, which shall determine under what terms they are used, developed and exploited.*
2. *The State shall promote the protection and conservation of natural resources guiding the exploitation and use thereof for the benefit of the community as a whole.*
3. *Land, which is by origin the property of the State, may be transferred to individuals or corporate bodies, with a view to rational and full use thereof, in accordance with the law.*
4. *The State shall respect and protect peoples' property, whether individuals or corporate bodies, and the property and ownership of land by peasants, without prejudice to the possibility of expropriation in the public interest, in accordance with the law.*

#### 4.3.3 *Angola's Fisheries Regulatory Environment*

Angola's fishing regime is regulated in terms of the following laws and decrees (and regulations subsequently promulgated there under):

- Law 20/92 of Fisheries
- Law 21/92 on Internal Waters, the Territorial Sea and the Exclusive Economic Zone
- Decree 2/93 on fines for breaches of fishing laws
- Executive Decree 51/95 to update the fishing license fees



- Executive Decree 33/98 on the regulation and the management of fishing resources in Angolan jurisdictional waters
- Executive Decree 14/99 to approve the regulatory programme of inspection of fishing vessels and fish processing establishments and derivatives
- Executive Decree 13/99 as approval of the sanitary and quality inspection programme for fish products
- Executive Decree 47/98 to provide mechanisms for the regulation and conclusion of freight contracts for fishing vessels
- Executive Decree 10/97 regulating crustacean fisheries
- Executive Decree 17/80 regulating and updating requirements of net-fishing from mechanically propelled fishing vessels
- Executive Decree 2/99 on management measures for fisheries
- Executive Decree 48/98 on the co-ordination of national fisheries resources
- Executive Decree 42/98 to prohibit industrial fishing by foreign vessels within 12 nautical miles of the Angolan coastline
- Dispatch 182/94 concerning fishing crews' insurance contracts
- Undated Executive Decree to implement a vehicle monitoring system (VMS, or SIMAP in Portuguese)
- Executive Decree on the acquisition of any fishing vessel, including any (other) importation and / or modification that requires authorization by the Ministry of Fisheries
- Dispatch 112/96 setting up a register all companies exercising any activities that fall within the jurisdiction of the Ministry of Fisheries

The Law of the Principles for Private Investment of 2003, as well as the Environmental Basic Law of 1999 ("EBI") are both relevant to the regulation of Angola's fisheries. The EBI is a catch-all piece of comprehensive legislation, covering those environmental aspects of fishing that are not provided for in Angola's fishing laws, as well providing a shift away from the nationalist character of the earlier laws.

The laws and decrees that have impacted most significantly on the development of fisheries in Angola will be discussed below within the context of the transformation of Angola's fisheries.

#### **4.3.4 Fundamental Law of Angola**

The Fundamental Law of Angola<sup>236</sup> specifically encourages the development of family-based, private, mixed and co-operative initiatives, in order to encourage small and medium scale economic activity.<sup>237</sup> To this end, a draft 'cooperatives framework law' has been submitted to the Ministerial Council, and is currently awaiting approval. This law defines co-operatives as autonomous legal entities, established to satisfy the economic, cultural and social needs and aspirations of their members,<sup>238</sup> which can be constituted in various sectors, including fisheries.<sup>239</sup>

Chapter II contains detailed legal and procedural rules for the establishment and formation of cooperatives, while chapter IV defines the nature, admission, rights and responsibilities of the

<sup>236</sup> From 16 September 1992, as amended on 14 November 1996

<sup>237</sup> Article 11

<sup>238</sup> Article 2

<sup>239</sup> Article 4 (c)

members of cooperatives, while chapter VI addresses the responsibilities of the cooperatives themselves. This law, if adopted, will have retroactive effect, thereby being applicable to all existing cooperatives, including those in existence before the adoption of this law.

Another law relevant to the regulation of community fisheries in Angola is the Framework Law on the Environment<sup>240</sup>: Surveillance issues are dealt with in Article 32, which provides that the Government may constitute a body of community inspectors, in order to ensure effective and real participation of local communities, including adequate use of their capabilities and knowledge.

#### **4.3.5 Law 21/92 on Angola's Internal Waters, the Territorial Sea and the Exclusive Economic Zone**

Article 1 of Law 21/92 confirms Angola's sovereignty within its internal waters and creates a 200 nautical mile Exclusive Economic Zone ("EEZ") and a contiguous zone. Law 21/92 also determines the rights and obligations of the Angolan state to use, explore, manage and conserve Angola's natural resources. In this respect, these articles largely crystallize the broader principles of the international law of the sea, as reflected in the United Nations Convention on the Law of the Sea ("UNCLOS").

#### **4.3.6 The Angolan Fisheries Act (Lei das Pescas), No. 20/92, of 14 August**

Angola's Fisheries Act of 5 August 1992 applies to the country's territorial sea, contiguous zone and exclusive economic zone. Its main objective is to control and manage the fishing industry so as to ensure that fisheries exploitation in Angolan waters is sustainable. Fisheries is primarily regulated by managing fishing capacity and effort according to plans that are prepared and based on the potential available and exploitable catch.

From time to time, the Minister of Fisheries issues decrees under the Act, which regulate the industry and are intended to conserve marine resources.

Article 2(1) states that the country's fish stocks are a national asset and that their protection and conservation is a political and economic imperative for the Government. In terms of Article 2(2), the State reserves for itself the right to fish. Article 3(1) defines fishing as the "...act of capturing or extracting, by any means possible, biological species that normally or mostly live in water."

Article 11 categorises the different fishing activities into *commercial, subsistence, sport fishing or fishing for scientific research purposes*. Article 7 recognises three types of fishing vessels:

- **Angolan vessels.** These are Angolan owned fishing vessels that are registered in terms of Angolan legislation.
- **Foreign vessels based in Angola.** These are fishing vessels based in Angola but that fly a foreign flag. These fishing vessels are nonetheless registered under Angolan law.
- **Foreign vessels.** These are fishing vessels that have not been registered in terms of Angolan legislation but may fish in Angolan waters.

Article 10 empowers the Angolan Government to issue regulatory (fishing) laws by decree, whenever this is deemed necessary to achieve its objectives. Although this function is applicable to all fishing activities across a wide spectrum, paragraph (d) emphasizes the important requirement of the employing Angolan nationals on board foreign fishing vessels.

<sup>240</sup> Law 5/98, from 19 June 1998.



Article 10(f) provides for a special regulatory regime applicable to artisanal and industrial fishers.

#### **4.3.7 The Aquatic Biological Resources Act**

Up until November of 2004, Angola's legal framework was primarily composed of the 1992 Fisheries Law (LP), together with various other policies addressing fisheries management and planning, vessels, companies, surveillance and quality control.

More recently however, Angola's national authorities have acknowledged that the existing legislation was outdated, did not adequately reflect regional and international developments in the sector and tended to be incoherent and contradictory in some instances, due to the operation and implementation of various autonomous and unrelated laws and regulations.

Thus the new '*Lei dos Recursos Biológicos Aquáticos*' was drafted in 2003, representing a full revision of Angola's fisheries legislation.<sup>241</sup> This updated law sets up new principles and provisions regarding the sustainable management of Angola's aquatic resources, and reflects both regional and international developments in the fisheries sector. These include the important requirement of integrating the management of Angola's marine resources with her other national policies. This new Act was approved by Parliament on 23 June 2004. For the sake of completeness however, this report addresses both the previous fisheries law that was applied up to last year, as well as the present Aquatic Biological Resources Act. It is essential to address the transformative effects of Angola's fishing industry according to both the old and the new law, if one is to gain an efficient understanding and comparable measure of transformation within this country's fishing sector.

This new Aquatic Biological Resources Act provides a comprehensive set of laws, reflecting the Government's policies towards the sustainable use of natural resources and environmental protection. In an integrated and inclusive fashion, it draws on Angola's Environmental Framework Act, Constitutional Law and legislation that promotes Angolan business. This unpublished Act takes account of Angola's obligations in the international arena, under instruments like the SADC Fisheries Protocol, the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on Biological Diversity (CBD).

In this an Act, an attempt is made to harmonise various different pieces of separate legislation pertaining to Angola's marine resources. Article 6(3) provides for sustainable development, responsible fishing, optimal conservation and use of aquatic biological resources, the user-pays - , precautionary - , prevention- and polluter pays principles.

#### **4.3.8 Investment and Participation**

In recent years, there have been significant efforts to attract and incentivise foreign investment into all sectors of Angola's economy, including fisheries. To this end, international investment fora have been promoted, and existing legislation has been updated.

Article 11 of Angola's Constitution provides for the protection of property and foreign investment. The above-mentioned framework law on private investment (Law 11/2003) provides for the equal treatment of both foreign and national investors,<sup>242</sup> and to this end, Article 12 prohibits any discrimination between investors.

<sup>241</sup> Driven by Angola's Fisheries Minister, as well as international support. See <http://www.angolapress-angop.ao/governo.asp>.

<sup>242</sup> Article 11

## 4.4 Analysis of Implementation

### 4.4.1 Fishing Rights

The entire Chapter III of the new Aquatic Biological Resources Act is dedicated to the granting of fishing rights. These may be granted to any legal person (both national and / or foreign), or individual, provided the recipient of the fishing rights fulfils the legal requirements. Artisanal fishing rights may only be granted to Angolan persons, who are defined as follows in Article 1:

- An Angolan company
- An Angolan citizen;
- Any other legal person composed of a majority of legal or natural Angolan persons

Angolan persons are granted preferential treatment in the allocation of 'fisheries rights', without prejudicing the provisions of international law.<sup>243</sup> So-called 'fisheries rights' include the right to be granted a fishing quota, if and when TAC(s) are set, the right to undertake fishing activities and the right to property and commercialization of catches.

The competent authority for issuing artisanal fishing licenses is the provincial delegation of Angola's Fisheries Ministry. According to the IPA, the fact that the application for these licences requires the payment of a specified fee, discourages Angolan fishers from applying: thus not all artisanal vessels registered in the above-mentioned census actually have a fishing license. The power of law enforcement and application of respective sanctions is vested with the fiscal authorities.

In terms of this new Act, subsistence fishing is not made subject to previous authorization, whereas the commercial fishing categories do require a license. The requisite article 43 bases this on the underlying premise that the former constitutes fishing activity aimed at providing familial sustenance, is exercised across a limited range of fisheries and with low-level technological means. It is legally permissible to occasionally sell any surplus catches.

Another distinction drawn by the new Act relates to the different obligations imposed upon different categories of right-holders. Article 38 expressly requires commercial fishing right-holders to pay license fees, cooperate in monitoring activities of both fishing and resource levels, and provide legally stipulated information.

Subsistence right-holders are nevertheless required to pay regard to fishing gear, method and type restrictions, fishing zones and protected species. Article 39 requires subsistence fishers to provide information as requested by competent authorities, for the compilation and elaboration of fisheries management plans.

Articles 39/2 and 158 nevertheless provide that when subsistence fishers do make use of vessels, they are subjected to existing legislation that provides conditions for the operation of vessels: accordingly they must possess valid navigation – and property certificates.

Fishing license fees for the commercial fisheries will be established by regulation. The new law indicates that the granting, validity, renewal and payment for fishing licenses in future will be regulated by a joint order between the Ministries of Finance and Fisheries.

Article 53 provides that those artisanal fishers, who invest in land-based facilities, may be exempted from payment of the license fee for up to 5 years. The type of investment required from the artisanal fishers in such a case is however not defined in any more detail. Article 35

<sup>243</sup> Namely the SADC Protocol and the UN Convention on the Law of the Sea (UNCLOS)

stipulates that those applicants who can demonstrate significant land-based processing investments, transformation and 'distributions installations'<sup>244</sup>, will be preferred.

#### 4.4.2 *Categories and Types of Fisheries*

Traditionally there has been a long, theoretical debate regarding the precise definition of artisanal fisheries. Angolan legislation presently differentiates these artisanal fishers from subsistence fishing according to the objective of the fishing activity in question: whether the fish caught is used for direct consumption by the fisher's family, or for 'commercial' purposes.

Article 4 differentiates between commercial and non-commercial fisheries, and provides for the following categories of so-called 'non-commercial' fisheries (according to the above-mentioned objectives with which the fishing activity in question is conducted):

- subsistence
- research
- recreational

Article 5 defines the following categories of commercial fisheries:

- artisanal fishers using vessels up to 10 metres in length have now been extended to 14 meters in the new Aquatic Biological Resources Law)
- semi-industrial fishery (using vessels between 11 and 25 meters in length)
- industrial fishery (utilizing vessels over 25 meters long).

Article 5 furthermore provides that the distinguishing criteria between industrial and artisanal (commercial) fisheries are to be defined by regulation, by taking account of catch capacity and autonomy, (other) characteristics of fishing vessels, as well as social, economic and technical criteria.

Article one defines recreational fisheries as a non-profit activity, (undertaken for leisure or as sport competition).

#### 4.4.3 *Characteristics of Angola's Fishing Sectors*

The above definitions contained in the new law are based upon the following characteristics (in more detail):

##### **Subsistence:** (Art. 1 / 57)

- Purpose: non-commercial,
- intended for family consumption, occasional surplus is allowed to be sold

##### **Artisanal:** (Art. 1 / 55)

- Purpose: commercial
- Vessel up to 14 meters in length
- Propulsion system: paddles, sail, onboard and outboard engine
- Fishing gear: hand lines, gill nets, entangling nets
- On-board refrigeration: rarely ice on board

<sup>244</sup> Direct translation from Portuguese Act of Law

**Semi-industrial:** (Art. 1 / 60)

- Purpose: commercial
- Vessel up to 20 meters in length
- Propulsion system: inboard engine
- Fishing gear: mechanical trawling, hand lines, drifting longlines, entangling nets, seine nets and others
- On-board refrigeration: ice on board

**Industrial:** (Art. 1 / 58)

- Purpose: commercial (either catch-specific species with a high commercial value, or large quantities of fish with a lower commercial value)
- Vessel over 20 meters long
- Propulsion system: engine
- Fishing gear: mechanical
- On-board refrigeration: ice and other processing methods on board.

**4.4.4 Fishing Licenses**

**4.4.4.1 Angolan Fishing Vessels**

Chapter Two of Title II of the 1992 Fisheries Law provides for the licensing regime that is applied to Angolan fishing vessels. Article 11 stipulates that all fishing activities are conditional upon the prior issue of a fishing license from the Ministry of Fisheries. Every owner or ship operator, as well as every fishing vessel, is required to possess a valid fishing license. These have a duration of one year and are issued on a fishery-specific basis. Subsistence fishers are however not required to obtain a license. Article 13 requires a license fee to be set by regulation. Article 14 provides that these fishing licenses are not transferable from one fishing vessel to another. In terms of article 15, the Fisheries Minister may prescribe conditions subject to which the license to fish must be exercised: these relate to fishing zones, vessel dimensions, exploitable species and so on. These fishing licenses can be refused or revoked under a list of circumstances outlined in article 17, including the following: non-use of the license for over sixth months, sustainability of fish stocks, political reasons, if the fishing operations for which the license was issued are considered to be unsuited to Angola's overall development objectives.

Article 16 provides that the Ministry of Transport is responsible for the regulation and authorization of the construction, importing and modification of Angolan vessels.

**4.4.4.2 Foreign Vessels**

Usually the international access agreements concerned<sup>245</sup> determine the conditions under which fishing licenses are issued to foreign fishing vessels. However, other than foreign fishing vessels being listed in a foreign ship's registry, their fishing licenses are similar to those issued to Angolan fishing vessels.

<sup>245</sup> Article 19

Article 18 of the Fisheries Act makes an international access agreement a precondition to foreign fishing vessels being granted access to Angola's fishing waters. In the absence of an agreement between Angola and the foreign state, the Ministry of Fisheries may require the foreign fishing fleet to provide a bond; this is to ensure compliance with the license conditions, fisheries laws and regulations.<sup>246</sup>

#### **4.4.4.3 Scientific Licenses**

Article 23 regulates the issuing of licenses for scientific research purposes. The Ministry of Fisheries is mandated to authorize fishing operations in Angolan waters, when these are required for scientific research. A program detailing the operations to be conducted according to international law must first be submitted. Somewhat surprisingly, vessels with this form of fishing license are exempted from compliance with environmental protection measures. However, the Ministry does prescribe various conditions for the exercise of a scientific research license, although these are more in terms of ensuring the presence of Angolan observers on board the scientific vessel for the entire duration of its operations in the country's waters, as well as the submission of all results acquired to their Fisheries Ministry.

#### **4.4.4.4 Foreign Access Agreements (F/A Agreements)**

Article 19 of the Fisheries Act regulates the contents of Angola's Foreign Access agreements, by providing minimum terms and conditions (MTCs) for foreign fishing vessels' access. This provision stipulates that the following must be contained:

- a) the number and technical specifications of fishing vessels allowed to fish in Angolan waters, as well as limitations regarding species that are allowed to be captured,
- b) fees payable for the right to fish,
- c) regulations compelling ship owners to report regularly to the Angolan fishing ministry regarding fishing statistics,
- d) a provision placing an obligation on the country of the flag flown by the vessel that all measures have been taken to ensure that the vessel(s) respect the provisions, agreements or other contracts of Angolan laws and regulations;
- e) dispute resolution mechanisms, and
- f) the number of Angolans that must be aboard these vessels.

## **4.5 Case Studies**

### **4.5.1 Reserved Fishing Zones for Small Scale Fisheries**

Article 34 of the new Aquatic Biological Resources Act reserves a four nautical miles zone exclusively for subsistence, artisanal, recreational and 'scientific investigation' fisheries. This has finally ended the previous longstanding controversy that existed between the different fishing sectors in Angola. This controversy and clash was attributable (among others) to the fact that two different Decrees provided conflicting positions: Decree 42/89 (prohibiting foreign vessels from fishing with Angola's territorial waters<sup>247</sup>), limited this fishing zone to three nautical miles within Angola's coastline, while Decree 08/02<sup>248</sup> extended this zone to four nautical miles. This approach of exclusively reserving coastal fishing zones for small

<sup>246</sup> Article 20

<sup>247</sup> Within twelve nautical miles of Angola's coast

<sup>248</sup> which creates and regulates Angola's Fisheries Information and Monitoring System



scale fishers is in line with legal trends in other ACP countries, like the Philippines<sup>249</sup> and Chile<sup>250</sup>.

Article 83/3 of the Aquatic Biological Resources Act creates 'Integral Aquatic Nature Reserves', where subsistence fishing is restricted to a daily limit of 20 kg per person. Article 83/4, which creates 'Partial Aquatic Nature Reserves', provides that the competent Ministry is to promulgate regulations addressing subsistence and artisanal fishing in these areas.

#### 4.5.2 *Small Scale and Artisanal Fisheries*

Artisanal fishing rights are presently registered by the Institute for Development of Artisanal Fisheries ("the IPA") in coordination with the Fishing Ministry's competent authority. Since 1996, IPA and its provincial representatives have conducted a census, of the number of fishers and boats involved in artisanal fisheries along Angola's coast. The numbers and types of vessels, fishing gear, crew (fishers), processing facilities and other socio-economic data is collected; every two years this information is updated. During 2003, the total number of artisanal fishing vessels recorded in the census stood at 617113.<sup>251</sup>

#### 4.5.3 *The Nature of Angola's Artisanal Fishers and Fishery*

The majority of the artisanal fishing vessels land their catches on the beach. Fish is sold either fresh or processed. The two main markets for their produce are provided at the community level by the women fish sellers in the towns, or the larger, main markets in the provinces. Even when a common vessel is used or shared by a number of artisanal fishers, the total catch made is commonly shared out according to the actual catch made by each individual.

At a community level, the processing and commercialization of the artisanal catches is predominantly regarded as the woman's job: Thus it is familiar practice for the wife to buy the fish from her husband, then process and sell it.<sup>252</sup> An important rider to add to this statement, is that this occurs in a context where one man has several wives, to whom economic independence thus becomes an important issue.

In some of the larger towns however, some women form together in seller's associations, for example the 'Women's Association of Street Sales' in Luanda.<sup>253</sup>

Between 2001 and 2002 the total catch for artisanal fisheries tripled, although it decreased again during 2003. This was attributed by IPA (Institute for Development of Artisanal Fisheries) *inter alia* to oil waste spills in the Cabinda and Namibe bays, the reduction of fishing vessels in some provinces as well as ongoing projects restricting certain types of artisanal fishing gear (for example the *banda banda*).<sup>254</sup>

An innovative introduction by the new Aquatic Biological Resources Act relates to the 'community observers', which has proved very helpful in incorporating the concerns of coastal communities, as well as involving IPA as an important stakeholder in the drafting of this new Act.

<sup>249</sup> A fishing zone exclusively reserved for artisanal fishers was extended from 4 to 8 nautical miles from the coast line.

<sup>250</sup> A five mile exclusive fishing zone was reserved for artisanal fishing.

<sup>251</sup> This programme ArtFish was established by the IPA in 1996, with funding from the French Cooperation in Angola and FAO assistance; since 1997 it has been running with funds from the Angolan Fishing Ministry.

<sup>252</sup> Amador, T. (2004) Review and Audit of the Legal Provisions and Institutional Arrangements that impact on the Artisanal Fisheries Sector, p. 41.

<sup>253</sup> Angola's Fishing Associations are addressed in more detail below, under

<sup>254</sup> Amador, T. (2004) Review and Audit of the Legal Provisions and Institutional Arrangements that impact on the Artisanal Fisheries Sector, p. 23.

Article 152 defines community observers as members of riparian or coastal communities, who are instructed and mandated to monitor fishing activities within the maritime zones reserved for artisanal and subsistence fisheries. Their mandate includes the following:

- Report any fisheries infractions discovered to the competent authorities
- gathering of evidence of fishing by industrial and semi-industrial fleets in the reserved zones
- collection of samples and biological data, including catches, in the reserved zone

The surveillance regulations as drafted partially specify the role played by community observers: they are to communicate infractions observed in the fishing zones reserved for artisanal fishing. It is however important to note that these community observers are actually exclusively vested with monitoring mandates. They do not have specific surveillance roles, and are as such not entitled to any government security or salary provisions.

#### **4.5.4 Financial – and other Support Structures for Small-scale Fisheries<sup>255</sup> in Angola**

##### **4.5.4.1 The Institute for the Development of Artisanal Fisheries (IPA)**

The IPA was created in 1992, and promotes and regulates small-scale fishing activities, along the coast and inland waterways. Artisanal fisheries are encouraged through the promotion cooperatives, technical assistance projects, the administration of subsidies and credit facilities, training and community development. The IPA oversees its own administrative and economic autonomy. It is funded directly out of the General State Budget, as well as receiving contributions from independent sources.

This Institute has its base in Luanda, and is divided into seven provincial delegations in Bengo, Cabinda, Luanda, Zaire, Cuanza-Sul, Benguela and Namibe.

IPA oversees and manages various funded projects, which include capacity building, training of fishing communities, the establishment of fishing cooperatives, subsidizing materials and constructions for fisheries infrastructure etc. Most of these are internationally funded projects, although some are undertaken collaboratively with local NGOs.

During 2000 IPA prepared a programme for the Development and Promotion of Artisanal Fisheries<sup>256</sup>. The main objectives and priorities of this programme were defined as follows:

- i) the organization of fishing communities: encouraging the establishment of micro enterprises, the creation of fishing cooperatives and training courses
- ii) providing suitable infrastructure to support the artisanal fishery, for example processing facilities, landing sites access roads, health centres and schools
- iii) sustainable resource management: encouraging the replacement of beach netting with more resource-friendly alternatives, the assessment of coastal stocks, conserving fresh fish on selling rags and constructing cool boxes.

##### **4.5.4.2 The African Development Bank**

In addition it is anticipated and hoped that further centres of support throughout 10 different coastal communities will be established, through loans from the African Development Bank

<sup>255</sup> This term is used for the purposes of this report to collectively refer to Angola's artisanal and subsistence fishing sectors.

<sup>256</sup> Programa de Fomento e Desenvolvimento da Pesca Artesanal

(“the ADB”). Such centres are to include fuel pumps, refrigeration and ice facilities, fuel pumps and small stores of fishing gear and equipment.

#### 4.5.4.3 Fund for the Development of Fishing Industries (“FADEPA”)

This Fund for the Development of Fishing Industries (FADEPA) is a financial instrument employed by the government of Angola, in order to develop the country’s fishing sector. FADEPA was created by Decree N.45-D/92, and is administered under the auspices of Angola’s Fisheries Ministry. It operates by financing those projects and initiatives that are considered priorities by the Ministry of Fisheries (MF). This fund may be employed to support projects in the areas of scientific research, technical training, surveillance activities, different fishing sectors, transformation, stocking, commercialization and the export of fish products. In addition it is utilized to support small businesses and entrepreneurship in the artisanal and industrial fisheries of Angola. Individual fishers, fishing associations, companies, individual economic agents<sup>257</sup>, and other bodies or entities involved in the development and promotion of Angola’s fishing industry are eligible to benefit from this fund.

As indicated above, the administration of FADEPA falls Angola’s Fisheries Ministry, although, legally speaking, it displays financial and administrative autonomy. Because of its affiliation to the Fisheries Ministry however, it is not regarded as an autonomous fund by the State or in terms of the Government’s General State Budget (“OGE”).

FADEPA’s terms of reference and mandate include the provision of funds or financial assistance in the form of both subsidies and / or credit. In principle, subsidies are non-returnable.<sup>258</sup> In addition, FADEPA’s financial support in any given case is limited to a period under 10 years. In the case of subsidies in foreign currency, aimed at production facilities, FADEPA commonly requires a so-called ‘counter-value’<sup>259</sup> or the provision of security or other form of co-lateral.

This fund is composed of contributions from the General State budget (OGE), bilateral assistance, 75 % of the profit derived from Angola’s foreign access fishing agreements, 75 % of the amount composing fisheries infractions, fines, loans, and other sources. In addition, all companies in the fishing sector pay a two % tax on all invoices, towards the fund.

Angola’s Minister of Fisheries chairs the Management Council in charge of the fund. The rest of this Management Council is composed of the Director of DNP (National Fisheries Directorate), the national Director of GEPE (Office of Studies, Planning and Statistics), provincial fisheries delegates, representatives of the fishing associations, Ministry of Finance and National Bank. Although it appears that the fishing associations are members of FADEPA’s management council, in terms of existing regulations they have no voting rights on this council, and their participation is dependant upon invitation. According to some critics, this constitutes a legal contradiction, and may give rise to serious conflicts and problems of interpretation regarding the roles and capacities of fishing associations in Angola in the future.<sup>260</sup>

<sup>257</sup> Direct translation from Portuguese.

<sup>258</sup> Amador, T. (2004) Review and Audit of the Legal Provisions and Institutional Arrangements that impact on the Artisanal Fisheries Sector, p. 35.

<sup>259</sup> Direct translation from Portuguese.

<sup>260</sup> See Amador, T. (2004) Review and Audit of the Legal Provisions and Institutional Arrangements that impact on the Artisanal Fisheries Sector, p. 36.

#### **4.5.5 Further Support Initiatives for Small-Scale Fisheries in Angola: INATIP (Institute for the Import of Fishing Equipment)**

The IPA (Institute for the Development of Artisanal Fisheries) provides further general assistance in the form of direct assistance to candidates applying for fishing rights, on specific application forms for artisanal fishing. The IPA also plays an important intermediary role between the fishing cooperatives, FADEPA, the artisanal fishers and fishing associations. On an annual basis, part of the fund is mobilized towards the import of fisheries inputs, like motors, vessels and kits of fishing gear and material. On an operational level, this gear is imported by the so-called Institute for the Import of Fishing Equipment (INATIP). Such material is then distributed to Angola's fishing communities in terms of a credit scheme, whereby the communities are contracted and committed to gradual repayment. Unfortunately however, such repayment schemes have not always worked too favourably. Thus INATIP is presently in the process of selecting those entities that have indeed honoured their contractual repayment commitments, as being eligible for further support, before ceding further shipments of fishing equipment to some of the communities who have not yet even paid for the first shipment received.<sup>261</sup>

#### **4.5.6 Public Participation and Ownership Stakes in Angola's Fishing Sectors**

##### **4.5.6.1 Fishing Associations and Co-operatives**

Various existing fishing associations and co-operatives in Angola represent the industrial, semi-industrial and artisanal fleets of the country's main provinces. Different associations and groupings are usually formed according to both the geographical location and sub-sectors they represent.

##### **4.5.6.2 Industrial Fishing Associations (*Associação dos Armadores Industriais de Pescas*)**

The main industrial associations are represented by the *Associação dos Armadores Industriais de Pescas*, which is based in Luanda. It comprises around half of the ten fishing companies operating out of Angola. Two of these are partially owned by the state and a foreign Spanish company, while three are private joint-ventures with Spanish companies. All companies of this above association have not invested in any onshore establishments, and merely operate from fishing vessels: demersal longliners, shrimp trawlers and pelagic trawlers. The individual members of these associations have commonly been employed in positions on former Government teams, and have good relations with / to Government Institutions and officials.

##### **4.5.6.3 Semi-industrial Fishing Associations (*Associação dos Armadores de Pesca Semi-Industrial de Luanda*)**

Semi-industrial Fishing Associations (*Associação dos Armadores de Pesca Semi-Industrial de Luanda*) are based in Luanda, and the Namibe, Benguela and Cuanza Sul provinces.

The Luanda-based semi-industrial Fishing Association represents around 50 % of Angola's national fleet in this sector, and 100 % of Luanda's semi-industrial fleet. Five of these members are incorporated as companies, and the remainder is constituted by individual vessel owners.

Twenty-five members of this association are drawn from the small-scale fishing sector, representing mainly the artisanal vessels with outboard motors (chatas) and some gillnet and

<sup>261</sup> supra

linefishing vessels, with an average crew component of 8 – 10 men on board vessels of 8-14 metres in length.

#### **4.5.6.4 Provincial Fishing Associations (*Associação Provincial de Pesca Industrial e Semi-Industrial - APPIS*)**

Provincially the associations are represented via the provincial Fisheries Directorates of the Ministry of Fisheries. This association was extensively consulted on the drafting of the recent Aquatic Biological Resources Act.

#### **4.5.6.5 Artisanal Fisheries and Cooperatives**

By and large, Angola's artisanal sector organizes itself into co-operatives of small-scale fishing activities. Legally these cooperatives are formally established through local government, in terms of the Statute of Fishing Cooperatives (Order N.58/87 of 14 September 1987). The Ministry of Justice officially approves and publishes these orders of co-operative formations. The fishing co-operatives provide a necessary and useful vehicle of accessing governmental support (through the FADEPA fund mentioned above), as well as marketing a large proportion of catches made by the artisanal sector.

#### **4.5.7 Fishing Agreements**

Also referred to as 'Fisheries Partnership Agreements', F/A Agreements between Angola and the European Community (EC) have been conducted since 1987. However, Angola has not renewed its last Agreement, which expired in August 2004. That F/A contract had provided the second most important fishing opportunity for EU vessels.<sup>262</sup>

The last European Community (EC) access agreement with Angola stretched over the two-year period from 3 August 2002 to 2 August 2004. (This replaced an earlier foreign access contract that expired in May 2002. This FA agreement cost the European Union (EU) 31 million EUR, of which 36 per cent was targeted at supporting measures.<sup>263</sup> In reciprocity, the EU received access for around 851 EU fishing vessels that targeted primarily shrimp, tuna, demersal fish and the pelagic fisheries. The vessels operating in terms of this contract originated from France, Portugal, Italy, Spain, Ireland, Greece and the Netherlands.

The above contract formed part of an integral network, enabling the EC to follow migratory and straddling stocks in the Atlantic zone, primarily targeted at fishing tuna.

The total cost of the agreement amounted to EUR 31 million, of which EUR 11,5 million was employed as a range of targeted measures, aimed at development of Angola's artisanal fishers and fishing communities, scientific programmes, quality control, marketing measures and support to the Fisheries and Environment Ministry. Of this, EUR 1,15 million was earmarked as support for fishing communities and development of small-scale fisheries, as an attempt by the country to aid its people in settling and finding sustainable livelihoods and means of survival in the aftermath of one of the deadliest civil wars.

A glaringly visible phenomenon currently relates to the urban flux of masses of young and uneducated Angolans, who have only ever been taught how to fight in the war. – According to some Angolan citizens, the only possibility of absolving these people in terms of sustainable livelihoods, could possibly be the pursuit of agricultural practices in Angola's rich and fertile interior; - however, for the immediate future this is thwarted by the presence of

<sup>262</sup> The most important fishing opportunity to the EU is provided through the EC – Mauritania F/A.

<sup>263</sup> This indicates some similarity to the Namibian example, where the emphasis of financial measures extends to infrastructural support, bearing in mind the important qualification that Namibia presently has not FA agreements in place.



landmines riddling the country, which are being cleared in terms of various projects, that include Norwegian-funded initiatives.<sup>264</sup>

No total catch limits were set in terms of Angola's FA agreements with the EC, except for shrimp.<sup>265</sup> Up to 22 shrimp vessels, 15 tuna freezer seiners, around 283 demersal vessels, 2 pelagic vessels and 18 surface longliners were granted access to Angolan waters.

The tuna vessels were required to undertake to supply Angolan canneries, and EU vessels were not allowed to fish within 12 nautical miles of the countries' coastline. Additional and further restrictions applied to the shrimp and demersal vessels, although these related mostly to the zone close to Namibia's EEZ.

Notably, the main change in the above FA agreement compared to its predecessor relates to a significant increase from around EUR 8.05 million to 11.05 million contributed towards the Angolan fisheries sector; - measures extended include marketing and aquaculture development. However, a severe shortcoming in both, is that there was no restriction on the allowable amount to be taken by freezer and longline vessels targeting Angola's tuna stocks.

#### 4.6 Measuring Transformation

As indicated above, significant improvements have been made in the promotion of Angola's small-scale and artisanal fishing sector. In addition, recent developments indicate that the Government is making significant efforts and progress in curbing the negative effects on Angola's fishers by foreign access agreements. According to deputy Fisheries Minister, Victoria Christovao de Barros Neto, fishermen from abroad my only fish in Angolan waters, if they partner with local firms.<sup>266</sup> According to her, '...new laws were putting Angolans first'. This applies especially to shrimp and tuna stocks along Angola coast, fished by ships from Spain, Korea, Japan and China up to now.

Current figures indicate that local industrial and semi-industrial fishing firms catch around 250 000 tons of fish annually, and subsistence fishers harvest 50 000 tons. As a former Portuguese colony, Angola was a major fish meal and oil producer. This industry however faded during the past 30 years of civil war in the country.

According to the deputy Minister above, foreign firms and / or vessels may now only fish in Angolan waters in terms of a joint venture with an Angolan company, which must own the '...majority stake in the partnership. Any catch is deemed Angolan property and subject to export controls<sup>267</sup>.

Importantly, these joint ventures are only permitted to target 'surplus species', thereby ruling out fish stocks that provide important food sources for the local population (sardine and horse mackerel) and those which are in decline.<sup>268</sup>

The implementation of these new rules is to be enforced through a joint control and surveillance programme between the Angolan navy and Ministry of Fisheries. These developments have had profound effects on the Angolan – EU relationship, which has caused the EU to withdraw from a new 'pay, fish and go'<sup>269</sup> deal. According to the European Commission's director-general for fisheries and maritime affairs, '...this draft protocol is even

<sup>264</sup> Personal Interview with Svein Munkejord, and Nkosi Luyeye, IIM, Luanda, Angola, October, 2004.

<sup>265</sup> EU catches by shrimp vessels were limited to 5000 tons, of which 70 per cent was allowed for prawns, and the remaining 30 per cent for shrimp.

<sup>266</sup> *Cape Times* 'Angola closes net on foreign fishing', 30 June 2005.

<sup>267</sup> supra

<sup>268</sup> supra

<sup>269</sup> supra

more restrictive than any other presented up to now by Angola and cannot be considered as a basis for further negotiations.<sup>270</sup> According to more diplomatic channels however, these new terms do not mean that European fishing in Angolan waters will cease altogether, merely that local, Angolan partners must own a majority in such ventures. This illustrates a significant improvement to the past EU foreign access agreements with Angola, which have been regarded as extremely restrictive and harmful to the Angolan people.

Around 15 Spanish vessels have chosen this new joint-venture partnership option. Unsurprisingly, this has important implications and effects on export conditions and control of operations.

#### 4.7 Conclusion

A significant gap exists in the current management regime of Angola's fisheries, in that there is no provision that expressly forbids the issue of fishing authorisations if a specific vessel is not registered in any regional or national registry. However, the granting of access to foreign fishing vessels is prohibited, unless an access agreement has been concluded with the flag State concerned; this access agreement must require the flag State to ensure that its vessels comply with both the terms of the access contract, as well as the national laws of Angola.<sup>271</sup> However, Angola has discontinued its policy of entering into foreign fisheries access agreements.

Often the appointed leaders of cooperatives have less than four years of formal education and / or literacy. Further constraints include the lack of infrastructure for conserving and commercialising catches, as well as a very limited understanding of marketing issues and information.<sup>272</sup>

The main problems associated with Angola's artisanal fishery include illiteracy, inadequate knowledge and understanding of the markets, and ecological constraints. Conflicts arising between the artisanal fishers and industrial and semi-industrial fleets, as well as recreational fishers are common-place, and need to be more fully controlled and regulated.

A serious threat to the marine environment and coastal zone is currently caused by the rapid expansion of populations along the coast, with little infrastructure and similar services to cater for this development, as well as the booming, foreign investment in the oil industry.

Further participants and activities that have the potential to organize themselves into associations and / or streamlined operations include the processing and selling of salted fish. (This activity generally makes use of salt from the local markets, and takes around three to four days.) Such sales of everyday commodities, together with agricultural products for instance, could eventually become the focus of cooperatives and associations.

Presently there is a draft general cooperatives law under discussion, as an attempt to incentivise and encourage the development and formation of cooperative initiatives. Especially small and medium-sized enterprises are supported under this initiative, and the draft law provides conditions for their formation.

The adoption of the newly drafted cooperatives law in terms of Angola's Fundamental Law (mentioned above under the regulatory framework) should go a long way towards promoting

<sup>270</sup> Letter from 14 June, to Angola's Ministry of Fisheries.

<sup>271</sup> Article 18 of the Fisheries Act

<sup>272</sup> Amador, T. (2004) Review and Audit of the Legal Provisions and Institutional Arrangements that impact on the Artisanal Fisheries Sector, p. 41.

the efficient organisation of fishing communities. In addition, due to its retroactive effect, it should assist in harmonising, validating and supporting existing cooperatives.

More general areas of improvement brought about by the enactment of Angola's new Aquatic Biological Resources Act in November 2004 have included a more adequate regime to regulate Angola's small-scale fisheries sector, simplifying the licensing regime applicable to the artisanal fisheries and the establishment of exclusion zones. However, much scope for improvement still exists regarding institutional arrangements, effective support for fishing communities in terms of infrastructure and capacity, and more direct involvement in the decision-making processes that affect their livelihood and the sustainable management of resources. Examples in the region include the co-management system of Mozambique, where the legal regime provides sufficient tools for involving the local fishing communities in the decision-making process.

In Angola, there is a need for specific legislation to enable and empower local co-management committees. These should incorporate traditional practices and local rules that provide a basis for settling disputes over access, as well as minimising the harmful effects of uncontrolled fishing. A degree of decentralization could go a long way towards empowering the local representatives of the IPA (Institute for the Development of Artisanal Fishers) and the DNF (National Surveillance Institute), facilitating their interaction and more effective enforcement of management plans.

A further requirement that has been mooted is the creation of a financial security scheme, against damage caused by the industrial fleets.<sup>273</sup> This could provide for a strict liability regime, making the owner and master / operator of fishing vessels jointly and severally liable for damage caused.

More general improvements relate to the need for stronger protection of Angola's small-scale fisheries, as well as improved access of fishing communities to schools and hospitals, as their constitutionally guaranteed right.

The effective enforcement of exclusion zones in Angola's territorial waters is urgently called for, as a measure to prevent over-exploitation of the country's fish resources by foreign fleets.

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<sup>273</sup> See Amador, T. (2004) Review and Audit of the Legal Provisions and Institutional Arrangements that impact on the Artisanal Fisheries Sector.

## 5. RECOMMENDATIONS

Although we recognise and indeed commend each of the three member states on the strides made in redressing the injustices of apartheid, colonialism and internal conflict, the following recommendations are made to further *substantive transformation* in each of the three BCLME member countries.

However, before the recommendations are made on a country – by – country basis, it may be relevant to note that the intended Benguela Current Commission envisaged in the BCLME SAP, could have an important role to play in the co-ordination, reporting and monitoring of transformation initiatives within each member state. This assertion is made particularly having regard to the following:

- Although all three countries are politically reformed, South Africa, Namibia and Angola continue to struggle to redress the socio-economic impacts of past socio-economic conflicts. All three countries are increasingly looking to fisheries (whether capture or aquaculture) and coastal resources as possible interventions. As the three countries share many fish stocks and the marine environment is incapable of division into sovereignties, shared knowledge, experience and monitoring of socio-economic impacts on marine and coastal resources would be vital;
- The pressure on African states to increasingly allow foreign access to marine and coastal resources will continue to grow.<sup>274</sup> South Africa will soon have to commence negotiations on its trade agreements with the European Union. Access to fish stocks will be discussed. Although recently cancelled, Angola remains economically vulnerable to be persuaded to once again allow foreign access to its marine resources. The BCC could position itself as an important resource and knowledge tool to empower (SADC) South Africa, Angola and Namibia to move discussions from access to pressured and increasingly valuable capture fisheries to perhaps responsible aquaculture or fish processing, which are becoming prohibitively costly to undertake in the EU;
- Development of capacity within the fisheries management, research and compliance fields by partnering with universities and government departments responsible for fisheries and the environment.

### 5.1 South Africa

1. The South African commercial fishing industry currently displays high levels of transformation. Upon close scrutiny, the transformation is not only statistical but substantive, with black South African ownership of equity, mirrored in management and control of the TAC. This conclusion has been drawn after regard was to had to statistical data received from quota holders applying for long term fishing rights. The particular data considered here is that of linking equity ownership, management, voting rights, dividend receipts and board representation.
2. The fishing policies approved by the South African Cabinet in May 2005<sup>275</sup> are unambiguously committed to pursuing continued substantive transformation. The challenge for the Minister of Environmental Affairs and Tourism and his Department is to effectively implement these policies.
3. A successful implementation of these policies would necessarily mean not only maintaining or increasing the current transformation profile of the South African fishing

<sup>274</sup> It is important to note the EU's recent conclusion of a fisheries access agreement with Morocco.

<sup>275</sup> These policies are available at [www.feike.co.za](http://www.feike.co.za) ("fisheries management")

industry, but also increasing black control of the TAC across the 22 commercial fisheries.

4. The allocation of long term fishing rights or quotas must not allow for complacency on the part of either right holders or the Minister or his Department, permitting the dilution of transformation over the medium term (first 2 to 6 years). In this regard, the performance measuring mechanism provided for in each fishing policy must be implemented with regularity and keeping the fishery specific objectives in mind.
5. With respect to the large pelagic fishery – South Africa’s newest commercial fishery, the most significant challenges relate to ensuring the South Africanisation of the fishery. It is recommended that to further the South Africanisation of this fishery, the following must be implemented:<sup>276</sup>
  - 5.1 The current foreign flagged vessels permitted to fish in South African waters must have their flags changed to South African. Those that fail to do so must have their fishing permits suspended.<sup>277</sup>
  - 5.2 Joint ventures with foreign partners and shareholders must be monitored to ensure the requisite transfer of skills and the empowerment of South Africans to manage and operate a large pelagic industry.
  - 5.3 Properly and regularly record catch data so as to effectively negotiate for greater tuna allocations at the applicable regional tuna management organisations, such as ICCAT and CCSBT.

## 5.2 Namibia

1. Although the first NDP targets set shortly after independence have not been met (such as the target to employ 21000 people or to grow fisheries’ contribution to GDP to 12%), Namibia has succeeded in attracting Namibian and foreign (including South African) investments, increasing the numbers of Namibians employed by the fishing industry and increasing Namibian equity in the entities that have access to Namibian fishing stocks. The most significant concern with respect to the Namibian ownership of fish stocks is whether the ownership is *real*.
2. As is the case with South Africa, the competitive allocation of quotas allows for rapid attainment of political objectives. We recommend that competitive allocations of fishing rights continue, particularly in fisheries where 4, 5 and 7 year fishing rights are still applicable.<sup>278</sup> In this regard, the processes followed by South Africa may be relevant and applicable.<sup>279</sup>
3. It is recommended that fishing rights or quotas not be freely transferable but access must be strictly regulated in terms of rights allocations by the MFMR so as to attain acceptable levels of Namibian empowerment in and ownership of fishing industry. It is further recommended that even once fishing rights are allocated, the fishing companies be subjected to regular and strict monitoring and reporting requirements.

<sup>276</sup> It has only recently emerged that a number of right holders that are using Korean vessels that were permitted conditional entry into this fishery had forged certain documents. This should be investigated and concluded as a matter of urgency.

<sup>277</sup> Foreign flag vessels must change their flags to South African within 12 months of the allocation of their fishing rights – 08 December 2005.

<sup>278</sup> These fisheries include hake and monk, large pelagics (the most valuable fisheries), rock lobster, line fish, orange roughy, sardines, mullet, seals and guano.

<sup>279</sup> Feike’s professionals are currently directly involved in advising on the allocation of commercial fishing rights and were responsible for the writing of all 21 fishing policies and the design of the allocations process.



4. It is recommended that foreign control and access to Namibian resources be further diluted but without sacrificing the relevance of the fishing industry or threatening the economic stability of the industry. In this regard, Namibia ought to give serious consideration to the increasing need within the EU to access stable developing countries with good infrastructure for the purposes of fish processing establishments and aquaculture development.

### 5.3 Angola

1. The European Union's Foreign Access Agreement with Angola, which expired on 02 August 2004, was not renewed by the Angolan Government. It is understood that the Angolan Government has adopted a policy to not enter into any future such arrangements.<sup>280</sup> It is recommended that this financial void be filled having regard to Angola's *Angolans First* policy.
2. It is further recommended that any allocation of fishing rights to fill the void left by foreign fishing vessels be competitive and substantive, ensuring that rights allocated are for the benefit of Angolans.
3. It has been noted in the report above that a significant problem in the transformation of the Angolan commercial fisheries, particularly the artisanal fishery, is the illiteracy levels of artisanal fishers. The lack of literacy will hamper the ability of the Angolan Government to properly regulate and transform the fisheries. It is accordingly recommended that –
  - 3.1 The illiteracy levels amongst artisanal fishers be attended to as a matter of urgency, such as via adult basic education and training courses; and
  - 3.2 Artisanal fishers are trained in fisheries management regulations and laws so as to ensure that current conflicts between industrial fishers and artisanal fishers are reduced and the lack of understanding of fisheries laws and regulations are eliminated.
4. With respect to the user conflicts between fishers, it is recommended that Angola consider implementing a territorial user rights fishery system (TURFS), allowing fishers access to specified parts of the coastline;
5. It is further recommended that Angola give serious consideration to the implementation and enforcement of marine protected areas. Marine protected areas could be used as an effective tool to –
  - 5.1 Promote eco-tourism and other alternative sustainable livelihoods projects and reduce current pressures on capture fisheries. In South Africa, for example, the Table Mountain National Park MPA located off the Cape Peninsula coast, provides international and domestic tourists access to boat based whale watching, white shark cage diving and SCUBA diving;
  - 5.2 Reduce the tensions between different fishery sectors (such as the industrial and artisanal sectors) and between mining interests and the fishery sector by, for example, establishing sanctuary zones (no fishing but perhaps limited amounts of low impact mining) and controlled fishing zones reserved for fishing

<sup>280</sup> This policy intention was made explicit by the Angolan government representatives during a BCLME work session in Windhoek on 22 September 2005.

but under strict conditions so as to encourage allow for the regeneration of collapsed or over-fished stocks.

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- 1995    UN Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Migratory Fish Stocks, 34 *ILM* 1542; (1995) 6 *RECIEL* 841.
- 1995    FAO International Code of Conduct for Responsible Fisheries.
- 1995    Declaration on the Protection of the Marine Environment from Land-based Activities (Washington), 6 *RECIEL* (1995), 883.
- 2001    SADC Protocol on Fisheries (signed 14 August 2001)
- 2001    Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (“SEAFO”) (Signed on 20 April 2001 by South Africa, Angola and Namibia and came into force on 13 April 2003)

### Internet Resources

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## APPENDIX 1: PERSONS CONSULTED

In compiling this Report, the following persons and organisations were consulted:

1. The Deputy Director-General, Marine and Coastal Management, South Africa
2. The Chief Director, Fisheries Management and Fisheries Compliance, South Africa
3. Special Adviser to the Minister of Fisheries, Namibia
4. Fisheries Minister of Angola
5. Director, Cabinet of International Relations, Ministry of Fisheries and Environment, Angola
6. IIM and BCLME Representatives in Angola
7. Director of Aquaculture, Ministry of Fisheries and Marine Resources, Namibia
8. Chief Environmental Economist, Ministry of Fisheries and Marine Resources, Namibia
9. Director, Directorate of Policy, Planning and Economics, Ministry of Fisheries and Marine Resources, Namibia
10. Deputy Director, Resource Management, Ministry of Fisheries and Marine Resources, Namibia
11. Chief Economist, National Planning Commission of Namibia (Office of the President, UN Systems and Affiliated Organisations, Multilateral Programmes, Directorate of Development Cooperation (DDC))
12. Managing Director of NAMSOV Fishing Enterprises (Pty) Ltd., Walvis Bay, Namibia



## APPENDIX 2: NATIONAL LEGISLATION

| Country             | Law  |
|---------------------|--|
| <b>Angola</b>       | <p>Constitution of the Republic of Angola (<i>Lei Constitucional da República de Angola</i>)</p> <p><i>Aquatic Biological Resources Act, 2005</i></p> <p>Environment Framework Act (<i>Lei de Bases do Ambiente</i>), No. 5 of 1998 of June 19; and the Environmental Impact Assessment Decree (<i>Decreto sobre Estudos de Impacte Ambiental</i>) No. 51/04 of 23 July</p> <p>Fisheries Act (<i>Lei das Pescas</i>), No. 20/92 of 14 August</p> <p>Territorial Sea, Contiguous Zone and Exclusive Economic Zone Act (<i>Lei sobre águas interiores, mar territorial e zona económica exclusiva</i>), No. 21/92 of 28 August</p> <p>Water Act (<i>Lei de Águas</i>), No. 6/02 of 21 June</p> |
| <b>South Africa</b> | <p>Constitution of the Republic of South Africa, Act No.108 of 1996</p> <p>Marine Living Resources Act, Act No. 18 of 1998</p> <p>Employment Equity Act, No. 55 of 1998</p>  |
| <b>Namibia</b>      | <p>Constitution of the Republic of Namibia, 1990</p> <p>Aquaculture Act, No. 18 of 2002</p> <p>Marine Resources Act, No.2000</p> <p>Territorial Sea and Exclusive Economic Zone of Namibia (No 3 of 1990, amended by Act 30 of 1991)</p> <p>Companies Act No 61 of 1963</p>  |



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