

# Mere Window Dressing

**South Africa's draft small-scale fishing policy seems situated outside current realities of fisheries governance and management in fishing communities**

In 2007, an Equality Court in the Western Cape of South Africa ordered the national fisheries authority, together with representatives from the small-scale sector, to devise a national sector policy specific to the needs of artisanal fishers. After the circulation of numerous drafts of varying quality and credibility, the current draft small-scale policy was gazetted in August 2010. A month later, the newly appointed fisheries authority within the Department of Agriculture, Forestry and Fisheries (DAFF) presented the draft to fishers along the Cape Peninsula through a series of road shows. As invited spaces of public participation, the road shows were ostensibly represented as participatory interactions, where the government could debate the draft with resource users. Those events represented a potentially crucial interface between the State and the citizens in whose interests the small-scale fishing policy was drafted.

The road shows were held in areas commonly associated with small-scale fishing. Through their inclusion in the proposed policy, it is envisaged that these 'fishing communities' will have their historic rights to marine resources restored, and be eligible for developmental support from the State. With the exception of one senior scientist who attended the Kalk Bay road show, none of the officials facilitating these events were in high-ranking positions, nor did they have the decision-making power necessary to revise the policy in line with views expressed by fishers. No other government departments were represented. This was problematic because the policy emphasizes a

developmental approach that relies upon collaboration between different government agencies. Another important absence was that of the policy's key architects. By presenting the policy in a descriptive, technical manner, without being able to explain the process behind its design, the DAFF officials acted as messengers, effectively playing the role of de-politicizing the road shows.

Though most fishers in the Western Cape speak Afrikaans, the draft was presented in English. Fortunately, a DAFF employee managed to provide

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some clarification in Afrikaans. The draft itself was written and presented using a technical discourse that was virtually impenetrable to the average artisanal fisher. Terms and phrases such as 'holistic', 'bold new paradigm shift', 'implementation', 'empowerment', 'progressive realization of livelihood rights', and 'integrity of ecosystems' echoed through community halls without sufficient explanation. The technical jargon presented in PowerPoint slides led one woman at the Hangberg road show to comment: "We don't understand this 'nice' stuff".

## **Follow-up process**

Considerable anxiety was expressed at the road shows about the follow-up process, with one woman arguing that without meaningful integration

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of their input, “this policy is nothing but window dressing for my people”. The official presenting the draft was only able to relay his instructions in this regard. These were simply that “all comments will be considered”. As a senior DAFF official emphasized, “We are not here to debate the policy; after the road show, we will take account of your comments”. The mandated role of road shows is to facilitate rational and democratic interaction between fishers and the State. Though the DAFF should be acknowledged for creating these participatory spaces, it must be noted that there was little meaningful communication.

The draft policy rests on principles and objectives that reflect a human-rights-based approach by recognizing the cultural, political and economic rights of small-scale fishers. The inclusion of these principles and objectives is significant in the context of South Africa’s colonial and apartheid history, during which the rights of artisanal fishers were not formally recognized by the State. For this reason, the small-scale fishing policy process is symbolically significant.

The draft claims to represent a “paradigm shift” in the way artisanal fishing in South Africa is governed. This fundamental shift is encapsulated

in the policy’s emphasis on ‘community’ as the principal unit of small-scale fisheries governance. The key components of the draft constellate around this focus on community. They include the fostering of co-management between fishers and the State, the allocation of fishing rights on a collective basis, and the possibility of formalizing the preferential access of local fisher groups to coastal and marine areas adjacent to them. These policy components are all part of the policy’s “developmental approach” that seeks to increase the capacity of small-scale fishers to have greater control of their own fishing activities, from compliance to post-harvest processing and marketing. This developmental approach depends fundamentally on a particular conception of community.

The policy implies that a community is spatially distinct and socially bounded. Point 5.4.2 of the policy states: “Small-scale fishing rights must be allocated to community-based legal entities. The community-based legal entity will be made up of members who are individual persons that make up a small-scale fishing community”. While this conception of community may be more appropriately applied to parts of South Africa like the rural coastal villages of the Eastern Cape, it remains the case that the ideal type of the spatially bounded community has no empirical basis. The Western Cape, broadly, and the Cape Town Metropole, in particular, provide stark examples of this fact. Here, small-scale fishers often reside far from the coastal settlements where their fishing activities are based. They move between different areas to live and to fish—social and economic networks and relations flow between different places, contradicting the idea of a spatially bounded community. It is in the urbanized Cape Metropole in particular, that the paradigm shift towards community-based fisheries management will be most difficult to implement.

In addition, the draft policy requires that social boundaries be

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Commercial west coast rock lobster boats moored in Kalk Bay harbour, Cape Town. These vessels represent a sub-sector that is included in the draft small-scale fishing policy

drawn to designate small-scale fishing communities, who are expected to function as the basic unit for achieving pre-determined governance outcomes outlined in the draft. The assumption of socially bounded communities reveals another flaw in the conception of community implied by the language of the draft policy, namely, that in community there is significant unity and cohesion. The people who fall within, and between, the constructed borders of a particular community are not homogeneous in their interests or aspirations. As with the problem of imposing artificial spatial and social boundaries on small-scale fishing communities, the assumption of social cohesion is in tension with the reality experienced by small-scale fishers on the Cape Peninsula and in the Western Cape, more broadly.

Here, the history of poverty and social fragmentation among urbanized artisanal fishers has undermined not only their organizational capacity, but also their collective solidarity in a more dramatic way than in coastal towns and villages in rural areas. Yet the draft emphasizes the role of communities in co-management committees, and community-managed fishing rights, both of which require a substantial degree of social cohesion and organization. For example, the policy states that “the members of the small-scale fishing community will draw up a list with the names of the fishers who, in their view, may be entitled to harvest or fish for marine living resources”. The policy’s neglect of power relations and spatial complexity within a constructed small-scale fishing community means that this burden of self-identification will likely exacerbate pre-existing fault lines. Yet point 5.4.8 stipulates that the government will not mediate community disputes: “[N]o appeal is available to the Minister”. For all other disputes, individuals must make use of internal conflict resolution mechanisms within the community-based legal entity. Individuals are effectively left by the State to resolve these conflicts at the community level. This assumes that fishers are equipped to negotiate critical issues in

an equitable manner, and that conflict is peripheral and can be solved by the same players who are themselves involved in the conflict. Yet the necessary conditions for assuming a greater role in decisionmaking are not fully in place. According to one exasperated community member, “Each area is different! Who will come in to say: ‘This is the community’? They fight like cats and dogs”.

The reality facing many of these fishers is that they may need support to resolve conflicts emerging from the increased role envisioned for communities in fisheries governance

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and management. These conflicts revolve around access to resources in a context of resource scarcity—the stakes are so high that conflict is inevitable. The flawed conception of community underpinning the policy creates practical challenges for implementation on the Cape Peninsula because it does not adequately reflect the situation on the ground.

The viability of the policy is further hindered by the fact that the draft does not include specific plans for implementation. A footnote in the document indicates that the “draft policy is not a strategy, implementation plan or procedural guideline, and, therefore, does not spell out the operational details”; these “will be determined and may be spelt out in regulations or operating procedures once the draft policy is adopted”.

### **Broad principles**

Yet the implementation plan or procedural guidelines are as crucial as the broad principles and objectives upon which they are based. While it is critical to get stakeholder support on principles before deciding on details, the lack of even preliminary proposals for

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A young man handling snoek caught on hand-held lines in St. Helena Bay on the Cape west coast. The small-scale policy also includes those who participate in post-harvest processes

It is understandable that the architects of the policy were concerned to leave room for communities to establish the kind of legal entity that best suited them. However, the general lack of clarity regarding the paradigm shift to community-based legal entities is significant in shaping perceptions of fishers towards the draft. As mentioned, the community-based approach is more feasible—and thus has more grass-roots support—among fishers in rural coastal areas, compared to the Cape Peninsula. Here, community-based legal entities have an infamous history associated with economically unviable quotas and an unequal distribution of benefits.

Many people at the road shows expressed opposition to the idea of ‘community quotas’ managed by community-based legal entities. One fisher claimed that these arrangements “rob the people over time ... we have had bad experiences”. Indeed, on the Cape Peninsula, it appears that the lack of clarity regarding community-based legal entities has invigorated support for the policy to adopt an individualized rights system. A theme throughout the road shows was eloquently expressed by one fisher: “We need individual transferable quotas (ITQs) to control our destiny”.

It is important to note that some of the opposition to the community-based approach set out in the policy stems from the common misperception that the policy is proposing to implement ‘community quotas’. This misperception is itself the result of the ‘bad experiences’ mentioned above - many fishers are suspicious of any mention of ‘collective’ or ‘community-based’ arrangements. Yet the policy does not propose a quota system, where small-scale fishers would have to compete with other sectors for a quota. Rather, the intention is to implement a *rights-based* system where small-scale fishers would have their historical rights restored, and would have access, as a class, to all nearshore resources. This access would be managed jointly with State fisheries managers and scientists.

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An example of the lack of clear guidelines for implementation is the proposal for “legal entities” to be set up in each small-scale fishing community. These legal entities would work with the State as local partners in co-management, and would administer their own collective fishing rights and post-harvest processes. The document recognizes the need for State and non governmental organization (NGO) support to assist communities in establishing and running these bodies, and includes suggestions of what this legal entity could look like (for example, closed corporation, co-operative, trust).

On an institutional level, the draft does not acknowledge that the DAFF lacks the skills and resources required to implement the developmental approach envisaged in the document. As a DAFF employee explained, the department is struggling to fulfil its mandate to manage inshore fish stocks sustainably; it is even less equipped to deal with the additional policy mandate of developing social capacity among small-scale fishers. It is common knowledge that the State does not have sufficient institutional capacity to implement the policy's proposal. As one DAFF official admitted, the policy is "something that DAFF doesn't yet have the capacity for, but it is something the department would like to investigate".

Asked about the cost of implementing the policy, a senior DAFF scientist responded to one fisher: "At this draft stage, no one has worked out exactly how much all of this will cost. You are right, there needs to be more money. The minister has said building the required resources and capacity will take 10-15 years". To which an elderly fisher replied: "Captain, I am 72 years old, I will be dead by then, Captain".

Ultimately, the draft also evades several 'elephants in the room'. The fact that small-scale fisheries are embedded within a broader fisheries system is alluded to, but the implications of this critical issue are not confronted explicitly. Just how small-scale fisheries are governed in relation to these other sectors is crucial to the success of the draft policy. It is not clear how DAFF will accommodate the new small-scale sector in relation to other sectors in the broader fisheries system.

The fundamental dynamic is how marine resources will be distributed. Exactly how the small-scale sector is to be accommodated within the broader system of allocation is not clearly dealt with in the draft; yet it is the case that more equitable quota allocation across all sectors is a pre-requisite for realizing the policy's objectives.

Another 'elephant in the room' is the critical concern raised by

stakeholders (in both the fishing and scientific communities) about the potential space opened by the policy for unsustainable levels of fishing in inshore waters. According to section 4.2.1 of the draft, the three tiers of government will "provide support to ensure that the small-scale fisheries sector is able to contribute to poverty alleviation and food security as well as to the growth and development of vibrant economies based on principles of social justice, participatory democracy and sustainable marine resource utilization".

The shift from restitution to an emphasis on small-scale fisheries as a means of poverty alleviation implied in the draft could be dangerous in the context of a developing country such as South Africa, where unemployment and poverty levels in coastal areas are high, and opportunities are scarce. The policy is not sufficiently explicit about the limited capacity of marine resources to absorb new entrants. In the period that the policy has been drafted and made public, expectations have been raised, and there is a sense among many individuals that being poor and living in a coastal area makes one eligible to access marine resources through the implementation of community-based fishing rights. This may result in increased legal

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and illegal fishing effort, placing even more pressure on DAFF's already overburdened enforcement capabilities.

#### **Fisheries governance**

These evasions betray the fact that the policy does not fit with the broader context of fisheries governance and management in South Africa, embodied by the Marine Living Resources Act of 1998 (MLRA). DAFF remains oriented toward

conventional resource-based management of large-scale commercial sectors, and does not have the institutional capacity to adopt the development-focused management of small-scale fisheries. In addition, it is not clear where the space required for the creation of this new sector will be found in terms of the existing sectors, and in terms of available marine resources. The small-scale fishing policy is thus situated

gradual and selective implementation of the community-based approach to fisheries management in suitable situations. At the same time, this would avoid having to impose the community-based approach upon fishers in communities on the Cape Peninsula, where local social dynamics may not be conducive for its implementation. **3**

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outside current realities of fisheries governance and management; yet its successful implementation depends fundamentally on the manner in which it is integrated into the broader fisheries context.

The alienation experienced by fishers at the road shows on the Cape Peninsula serves to undermine their support for the policy process, and further erodes their relationship with the government. It must be emphasized that a policy for artisanal fishers marginalized by the MLRA is long overdue, and is a move towards promoting “transformation and the redress of past injustices in the sector”. However, the significant opposition to the draft’s key elements observed in places like the Cape Town Metropole has to be properly considered by the State. History, communal politics and geographic specificity should not be glossed over or they will inevitably undermine the viability of the interventions to be guided by the policy. For fishers on the Cape Peninsula, it is highly likely that the policy’s flawed conception of community will introduce a new set of inequalities, and entrench many that already exist.

It appears that the policy should be designed and implemented in a flexible manner, allowing for prescriptions to be moulded to local contexts. This would allow for the

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[www.info.gov.za/view/DownloadFileAction?id=131201](http://www.info.gov.za/view/DownloadFileAction?id=131201)

#### **Draft Small-scale Fishing Policy**

[icsf.net/icsf2006/uploads/publications/samudra/pdf/english/issue\\_44/art04.pdf](http://icsf.net/icsf2006/uploads/publications/samudra/pdf/english/issue_44/art04.pdf)

#### **Fisheries management: Fishing rights vs human rights? SAMUDRA Report No. 44**

[www.plaas.org.za/pubs/op/occasional-paper-series/pb18.pdf](http://www.plaas.org.za/pubs/op/occasional-paper-series/pb18.pdf)

#### **“It’s all about money!”:**

**Implementation of South Africa’s New Fisheries Policy. Occasional Paper No. 18. Programme for Land and Agrarian Studies, University of the Western Cape, Cape Town**