

Analysis of the allocation of rights to the hake inshore trawl fishery in FRAP 2015/16

Introduction

In July 2017, when announcing his first appeal decision with respect to the allocation of rights to the hake inshore trawl fishery, former minister of Agriculture, Forestry & Fisheries, Senzeni Zokwana, undertook to ensure the results of the Fishing Rights Allocation Process of 2015/16 (FRAP 2015/16), were subjected to a verification process/forensic audit. To date, this has not taken place. Nor has the Department of Environment, Forestry & Fisheries (DEFF) analysed the allocation of rights to determine whether the objectives of the *Policy on the Allocation and Management of Fishing Rights in the Hake Inshore Trawl Fishery* (16 November 2015) were achieved, and whether there were lessons learned that might inform the forthcoming FRAP 2021.

In view of these shortcomings, the South African Deep-Sea Trawling Industry Association (SADSTIA), which is closely linked to the hake inshore trawl fishery, undertook its own analysis of FRAP 2015/16. The analysis is currently under peer review and will be published in full in due course. Its key findings are published here with the objective of contributing to the policy formulation process ahead of FRAP 2021.

The primary finding of the analysis is that FRAP 2015/16, as it pertained to the hake inshore trawl fishery, was a costly policy and administrative error. The allocation of small quotas to a large number of new entrants has compromised the stability and competitiveness of the hake inshore trawl fishery. The economic and environmental impacts will be felt for years to come.

Almost five years after it began, the allocation of rights to the hake inshore trawl fishery is not yet complete. On 19 March 2020, the DEFF called for new entrant rights holders and appellants to file documents supporting their applications for a share of 30% of the total allowable catch. The closing date for submissions was set for 17 April 2020 and later extended to 8 May 2020. The allocation decisions of the Minister of Environment, Forestry and Fisheries are expected later this year.

1. The impact on established rights holders

The National Development Plan (NDP)¹ made two clear recommendations for the allocation of fishing rights to the industrial fisheries: allocate economically viable fishing rights and ensure that the allocation of rights maximises employment. The allocation of rights to the hake inshore trawl fishery in FRAP 2015/16 did not adhere to the recommendations of the NDP. The number of rights holders in the fishery was dramatically increased – from 16 to 37 – and the share of the allowable catch allocated to established companies was reduced by 30%. This resulted in large losses for the companies with the assets and experience to add value to the catch and maximise employment. At the commencement of FRAP 2015/16, these companies were already 82% black-owned.

The allocation of small quotas to a large number of new entrants rendered the business models of the established companies unviable and resulted in job losses in the processing factories of Mossel Bay and Port Elizabeth (see #3 The impact on employment). Moreover, the promotion of the interests of new entrants over those of established rights holders necessarily curtailed the aspirations for growth of: (i) the black-owned companies that gained rights in the hake inshore trawl fishery in the Medium Term Rights Allocation Process (MTRAMP) of 2002 and the Long Term Rights Allocation Process (LTRAMP) of 2005; (ii) the companies that had transformed their ownership and complied with the Broad-Based Black Economic Empowerment Act (2003). At the commencement of FRAP 2015/16, these companies owned fishing and processing assets worth R390 million and employed an estimated 1 143 people in good jobs with regular wages and employee benefits.

The impact of FRAP 2015/16 on established rights holders in the hake inshore trawl fishery is illustrated by the examples of company A and company B.

Company A has held rights in the hake inshore trawl fishery for 30 years. In 1992, company A was 100% white-owned, but when it applied for 15 year rights in FRAP 2015/16, it was 84.86% black-owned and a poster child for broad-based black economic empowerment (BBBEE).



¹ **National Planning Commission.** 2012. National Development Plan 2030. Our future – make it work. Tshwane, Government of South Africa. 70 pp. Available at <https://www.gov.za/sites/default/files/Executive%20Summary-NDP%202030%20-%20Our%20future%20-%20make%20it%20work.pdf>

Company A employed 486 people and all employees had access to medical aid, a retirement fund, and an on-site clinic providing free healthcare. By landing, processing and distributing its catch in Mossel Bay, Company A sustained hundreds of jobs in a rural area where good jobs are scarce, and made a significant contribution to local economic development. Enterprise development proactively advanced company A's procurement policies, and social investment amounted to 2.5% of the company's net profit. In FRAP 2015/16, company A lost as much as 33% of the rights it had held during the period 2005 to 2016. It was only by challenging Government's allocation decisions in the Western Cape High Court that company A was able to regain some of these rights. Even so, it has lost 19% of its rights to new entrants with no employees, investments or performance record in the hake inshore trawl fishery.

Company B is a 100% black-owned company based in Mossel Bay. It was started by a skipper, marine engineer, an administrator and seven fishers. Company B received its first quota in the hake inshore trawl fishery in 1999. Over the period 2002 to 2016, company B invested in two fishing vessels with the combined capacity to catch approximately 1 000 tons of hake and 30 tons of sole per year. Company B catches its own allocation as well as the quotas of other small companies.

In spite of its 100% black ownership, 15-year experience in the fishery and an investment in two fishing trawlers, company B lost 35.45% of its rights. Today it holds 5 tons more hake and 3 tons less sole than it was first allocated as a new entrant in 1999. Moreover, company B's allocation is 33% less than the average allocation made to new entrants with no employees, no investments and no previous experience in the fishing industry.

The example of company B illustrates the failure to recognise and reward the struggle and commitment demonstrated by black-owned companies promoted in the MTRAMP and LTRAMP rights period 2000 to 2016. By failing to advance a SME like company B in FRAP 2015/16, government failed the fishing people it had endeavoured to advantage when it passed the Marine Living Resources Act (MLRA) in 1998.

2. The impact of unviable quotas

Between 2016 and the present, the allocation of rights to the hake inshore trawl fishery has been challenged in the courts on eight separate occasions and 30% of the rights in the fishery remain disputed and subject to an appeals process. To date, the allocations made to new entrants have been very small; on average 129 tons. A rough calculation based on this allocation, shows that new entrants who eventually secure a quota in the hake inshore trawl fishery can expect to generate an average income of R5.50/kg and an annual return of about R700 000 per year. This is insufficient to meet the minimum requirements to operate in the fishery – access to a suitable vessel, access to docking, discharge and storage facilities, and working capital. Moreover, the ability to process and market the catch, and achieve the vertical integration that makes business models in the hake trawl fisheries viable, is entirely out of the reach of a very small quota holder.

Because small quotas are not economically viable, new entrants are unlikely to secure the finance necessary to invest in a vessel, build factories or participate in the fishery in a meaningful way. Consequently, they enter into agreements with established industry participants. This almost always takes the form of selling their quotas for a usage fee – rent-seeking behaviour that is so well known in the fishing industry it is termed “paper quota” holding. **The conversion of small quotas into paper quotas does not advance transformation, nor does it build black-owned SMEs. Instead, it robs established black-owned fishing companies of the opportunity to grow and thrive, thereby breaking the compact made with them in 1998 following the passage of the MLRA.**

3. The impact on employment

Both fishing and fish processing operations are labour and capital intensive. To make investments in processing assets worthwhile, the volume of fish that is processed needs to be sufficiently large so that overhead costs (infrastructure, labour, water, electricity) are spread as thinly as possible. The loss of quota to new entrants has added to the overhead costs of the factories in Mossel Bay and Port Elizabeth. For example, company A, is compelled to purchase a substantial volume of hake to keep its fillet and portion producing factory operational (and its considerable workforce employed). Where it cannot source quota from new entrants, it must source raw material from the hake deep-sea trawl fishery.

Sourcing raw material from the hake deep-sea trawl fishery impacts the profitability of the processing factories in Cape Town and Saldanha Bay. These plants employ a value-adding strategy which maximises employment – adding value to hake creates more than 100 jobs per ton of quota, whereas the production of headed and gutted hake (the industry's baseline or commodity product) creates fewer than 15 jobs per ton. A value-added strategy requires large volumes of hake. **Directing volumes of hake away from the hake deep-sea trawl fishery to keep the three factories in the inshore trawl fishery operational, is a classic case of robbing Peter to pay Paul.**

4. The impact on broad-based black economic empowerment

Over the almost five-year period of FRAP 2015/16, the black ownership of rights holders in the fishery increased by 6.9%, i.e. from 82.2% to 89.1%. Over the same period, the black shareholding of established companies grew from 82.2% to 85.6%. This is as a result of the sale of Viking Fishing Holdings, which was 34% black owned, to a BBBEE consortium which was 88% black-owned.

Arguably, therefore, the as yet incomplete allocation of rights to the hake inshore trawl fishery has achieved an increase of 3.5% in the black ownership of rights in the hake inshore trawl fishery. This small increment was achieved at considerable economic cost. It is also important to point out that black ownership provides an extremely narrow measure of BBBEE. As demonstrated by the example of company A, the contribution of the established companies is in keeping with the five pillars of the BBBEE Codes of Good Practice: equity ownership, management control, skills development, enterprise and supplier development, and socio-economic development.

Granting fishing rights to established companies has a fundamentally different impact compared to the allocation of very small quotas to a large number of new entrants.

5. The impact on the environment

The hake inshore trawl fishery is a dual quota, multi-species fishery focused on Agulhas sole and Cape hake. The annual catch consists of approximately 9 000 tons of hake (predominantly shallow water hake, *Merluccius capensis*); 300 tons of Agulhas sole and 2 700 tons of joint product species, including linefish, gurnards, St Joseph sharks, skates, horse mackerel, monk, kingklip and squid.

Both the Agulhas sole and Cape hake stocks are finite and carefully regulated, therefore it is not possible to increase the annual allowable catch to accommodate the large increase in the number of rights holders in the fishery. Instead, an incentive is created for vessel owners to improve the economic viability of their quotas by landing bigger catches of joint product species. Attwood, Petersen and Kerwath (2011)² ascertained that the smaller the hake and sole quotas allocated, the more important the joint product species are to the profitability of a right-holder in the hake inshore trawl fishery.

The incentive to catch greater volumes of joint product species raises concerns about the continued certification of the inshore trawl fishery by the Marine Stewardship Council (MSC)³ because the MSC considers the control of the catch of non-target species as a measure of sustainability. It also creates problems for other fisheries because there is significant overlap between the hake inshore trawl fishery and the line fishery.

The NDP cautions: "It is fundamental that fishing rights are economically viable and not allocated in a way that threatens compliance. If sustainability is not maintained, the entire fishing industry will collapse and everyone will be affected." (NDP, p. 229). The NDP correctly recognises the critical importance of sustainability for the long-term prosperity of the fishing industry. **The allocation of small quotas to a large number of new entrants in FRAP 2015/16 has compromised the sustainability of the hake inshore trawl fishery.**

6. Conclusion and recommendations

SADSTIA's analysis concludes that the 2016 allocation of rights to the hake inshore trawl fishery was a costly policy and administrative error that should not be repeated when rights are allocated to 12 other commercial fisheries in 2021.

A key finding is that if the DEFF had comprehensively evaluated Government's success in transforming the fishery, and correctly assessed the investments and jobs created by the established operators, it would not have chosen to fundamentally restructure the fishery through the allocation of 15-year rights.

It is noteworthy that the allocation of rights to the hake inshore trawl fishery took place without the completion of a socio-economic impact assessment study (SEIAS), a criterion introduced by the Department of Planning, Monitoring and Evaluation (DPME) on 1 October 2015, with the objective of (i) minimising unintended consequences caused by policy initiatives, regulations and legislation; and (ii) to anticipate implementation risks and encourage measures to mitigate them.

Moreover, the policy and administrative decisions made in the allocation of rights to the hake inshore trawl fishery were taken in the face of strong warnings that the fragmentation of the industrial fisheries – taking substantial tonnage away from established operators in order to allocate it to many small new entrants – would impact their

² Attwood, C.G., Petersen, S.L. & Kerwath, S.E. 2011. Bycatch in South Africa's inshore trawl fishery as determined from observer records. *ICES Journal of Marine Science*, 68(10): 2163–2174. doi:10.1093/icesjms/fsr162

³ The South African trawl fishery for hake (comprising the inshore and deep-sea fisheries) is certified sustainable by the MSC, the world's leading certification and eco-labelling programme for sustainable, wild-caught seafood. It is the only fishery in Africa to have achieved the coveted certification of the MSC.

socio-economic contribution; as well the clear recommendation of the NDP that fishing quotas should be “viable” and fisheries policy should determine the best way to allocate rights to maximise employment.

These shortcomings resulted in a flawed process that – five years after it began – is not yet complete, and has been the subject of litigation on no less than eight separate occasions.

SADSTIA is encouraged that the DEFF has undertaken to conduct a SEIAS of the hake deep-sea trawl fishery prior to the start of FRAP 2021. The Association is optimistic that the SEIAS will be conducted by reputable economists and will accurately assess the state of transformation, and the depth of investment and job creation, achieved by the fishery. It is only by ensuring that those who are responsible for rights allocation have in-depth knowledge of the hake deep-sea trawl fishery, that the DEFF can avoid making the same mistakes it made with FRAP 2015/16.

The hake deep-sea trawl fishery has transformed to a similar degree, and in comparable ways, to the hake inshore trawl fishery. When allocating rights to this fishery, government cannot make the same mistakes as it did with the hake inshore trawl fishery. Fragmentation will substantially reduce its socio-economic contribution for little or no gain in transformation. The socio-economic metrics of the hake deep-sea trawl fishery have been accurately measured by independent economists and include:

- An estimated annual socio-economic contribution of R6.7 billion to the economy each year.
- The direct employment of 7 225 people in good jobs with employee benefits and scope for career progression. Indirect jobs are estimated to be 28 900.
- Total investments in fishing and processing assets of R6.6 billion.
- An export industry that generates annual sales of R4.5 billion.
- A 66.6% black-owned industry and a Level 2 contributor to BBBEE.

SADSTIA emphasises that rights allocation policy must be formulated and aligned to the NDP and President Cyril Ramaphosa’s priorities of preserving and creating jobs, encouraging investment and promoting inclusive growth. Decisions need to be based on facts and they must ensure that progress in transformation and job creation are rewarded.

For more information:

Hodge, J., Ntanzu, A., van der Hoven, Z., Moses, P.J. & Msimango, N. 2018. *Economic study of the hake deep-sea trawl fishery and the implications for future fishing rights allocation policy*. Johannesburg, South Africa, Genesis Analytics. 107 pp.



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