

Policy inputs for the development of the new Small-scale Fisheries Policy for the near-shore in South Africa

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In January 2008 an old lady from Doringbaai, Western Cape, approached a Coastal Links leader. He could have been her grandson. All she wanted was to express her sincere gratefulness. She understood that because of the work of Coastal Links, her husband could now go to sea with a legal right to fish. It took fourteen years of democracy before the husband, farther and grandfather finally was recognised as a honest and hard working traditional fisher.

- its about time to get that new Small-scale Fisheries Policy right.

1 The document is prepared by Carsten Pedersen, Jackie Sunde, and Naseegh Jaffer. For more information on Masifundise visit the website: www.masifundise.org.za

2 Coastal Links has been instrumental in shaping the contents of this document. The endless conversations with Coastal Links members, the numerous meetings and workshops and the contributions at the National Summit in Port Elizaeth on 1 and 2 November 2007 have made the finalisation of this document possible. For more information on Coastal Links visit <http://www.masifundise.org.za/coastallinksabout.html>

Glossary of abbreviations and acronyms

| | |
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| DEAT | The Department of Environmental Affairs and Tourism |
| DG | The Director General of the Department of Environmental Affairs and Tourism |
| FAO | Food and Agricultural Organization of the United Nations |
| ICMB | Integrated Coastal Management Bill |
| IDP | Integrated Development Plan |
| KZN | The Province of KwaZulu Natal |
| LED | Local Economic Development |
| MCM | Marine and Coastal Management, Department of Environmental Affairs and Tourism |
| NCC | National Coastal Committee |
| NJTT | National Joint Task Team elected at the National Small-scale Fisheries Summit held in Port Elizabeth on 1 and 2 November 2007 |
| NORSA | Norwegian/South African Cooperation in the Fisheries Sector |
| TAC | Total Allowable Catch |
| TAE | Total Allowable Effort |
| TC | Technical Committee – appointed by the NJTT |
| TURF | Territorial User Rights in Fisheries |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| WCRL | West Coast Rock Lobster |

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1 Background

The Small-scale Fisheries National Summit held in Port Elizabeth on 1 and 2 November 2007 elected a National Joint Task Team (NJTT) whose responsibility it is to facilitate the process of developing a new Small-scale Fisheries Policy. The NJTT consists of representatives from National Government, Provincial Governments, fishing communities in each of the four coastal provinces, Artisanal Fishers Association³, Masifundise and Coastal Links⁴. Subsequent to the nomination of the members of the NJTT at the National Summit, Marine and Coastal Management (MCM) decided to expand the task team to include representatives from South African United Fishers Front⁵, Fishers Engine of South Africa⁶, and the West Coast Rock Lobster Association⁷. The MCM is responsible for ensuring that the NJTT meets on a regular basis and that all the representatives nominated at the National Summit are invited and assisted with transport and accommodation issues. The National Summit agreed that MCM and the NJTT must ensure that a draft Small-scale Fisheries Policy must be finalised on 31 March 2008, and thereafter made public for comments.

MCM called for the first NJTT meeting on 20 December 2007. At that meeting representatives from fishing communities as well as Provincial Governments from Northern Cape and KwaZulu Natal (KZN) were not present. Transport was not arranged by MCM for the community members from Northern Cape and KZN. Western Cape Provincial Government was also not present. The meeting took place in absence of these members, and the parties invited onto the NJTT by MCM, as mentioned above, did participate.

At the NJTT meeting on 20 December 2007 it was decided to appoint a Technical Committee (TC) that would be a smaller, more focused group that would enable the work of the NJTT to proceed more easily. It was also suggested to make the NJTT more inclusive with representatives from organised labour and scientists. However, no agreement was made on this matter.

3 Artisanal Fishers is chaired by Andy Johnston

4 Coastal Links is a fisher organisation with more than 1200 members from Western Cape and Northern Cape. For more information on Coastal Links visit <http://www.masifundise.org.za/coastallinksabout.html>

5 South African United Fishers Front is represented by Pedro Garcia. SAUFF is a membership based organisation for fishers. Mr. Garcia has also been a partner on MCM's evaluation team that verified the lists of Interim Relief fishers.

6 Fishers Engine of South Africa is represented by Abigail Smith. FESA is assisting previously disadvantaged fishers in creating economically viable and sustainable opportunities (from http://www.wesgro.org.za/enews/enews_view.asp?id=26)

7 Peter Foley represented the West Coast Rock Lobster Association at the meeting on 20 December 2007.

The second NJTT meeting was held on the 25 January 2008. At that meeting fishing communities from all coastal provinces was present, but only Provincial Government from Northern Cape attended. Besides the parties nominated at the National Summit in Port Elizabeth and those subsequently invited onto the team by MCM, an additional number of stakeholders from research departments, management institutions, and the fishing industry were invited by MCM to participate⁸. The presence of the fishing industry at that meeting proved to be most problematic, not least because a good half of the meeting was spent on discussing the relevance of the industry's presence. We note that civil society and fishers are effectively excluded from participating in the development of fishing policy for the large-scale commercial industry. This was most evident in the process of developing the draft policy for the Transfer of Commercial Fishing Rights, 2007. The presence of the industry at the NJTT meeting was a clear sign of uneven power relations in the fishing sector. However, at the meeting the following mandate and responsibilities of the TC were agreed upon:

- 1.1 Undertake a review of all relevant national and international documentation on small-scale fisheries
- 1.2 Develop a discussion paper for the NJTT that identifies the key principles and elements for inclusion in the Small-scale Fisheries Policy; recommend objectives and definitions of the policy; and highlight contentious areas that require specific legal and other expert assistance.
- 1.3 Present this discussion document for debate to the full NJ TT in early March 2008
- 1.4 Synthesize comments from the NJTT and prepare a draft for the Policy Drafting Team that will be identified by MCM to complete a First Draft by mid March.

Masifundise and communities that were present at the National Summit in Port Elizabeth expressed the view that this new policy must be comprehensive and not just a mere piecemeal edit of the existing draft as prepared by MCM. Whilst this draft should be considered, a comprehensive participatory process should produce

8 Gillian Rhodes and Cedric Coetze from Ezemvelo KZN Wildlife
Merle Sowman from the University of Cape Town
Serge Raemakers, Rhodes University
Moenieba Isaacs, University of Western Cape
Donald Grant, West Coast Rock Lobster Association
Gaston Fernandes, Cape Lobster Association; Lusitania Fishing; and West Coast Rock Lobster Association.
Neville Brink, Managing Director, Oceana Lobster and West Coast Rock Lobster Association.

a substantially improved draft that accommodates a new conceptual approach to this sector. We are mindful that the processes of reaching consensus on a policy might require various deadlock breaking mechanisms that would ensure that the process does not fail and that there subsequently is a substantial 'buy in' into this new policy. It is in this context, and having considered the due time pressure, that Masifundise has prepared this proposal to assist MCM, the TC and NJTT in their respective tasks.

Below, we elaborate on key objectives, definitions and principles that the TC and NJTT should grapple with. It is important to discuss all these aspects, not least in order to reach a common understanding of the meaning of principles and definitions. It is, for example, well known that government, the industry and civil society have very different perceptions on co-management and the preconditions for such a management system to be effective. We also discuss issues that pose cross departmental challenges, and suggest how the TC and NJTT should deal with possible disagreements and other blockages that may arise.

Masifundise has decided to make this document available for all stakeholders and the public, in order to improve transparency in the policy development processes and to facilitate a dialogue among all interested stakeholders.

2 The Small-scale fishing sector in a global perspectives

The important role played by Small Scale Fisheries is recognised in a number of key international instruments including:

2.1 Article 17 of Agenda 21

<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>

2.2 The United Nations Fish Stocks Agreement

<http://www.fao.org/fishery/topic/13701>

2.3 The 1995 FAO Code on Responsible Fisheries

<http://www.fao.org/DOCREP/005/v9878e/v9878e00.htm>

2.4 The SADC Protocol on Fisheries

<http://www.tralac.org/scripts/content.php?id=449>

These instruments, among others, urge parties to the agreements to recognize and prioritise the rights of the small-scale fishers. The contribution that this sector makes towards poverty relief and social development in coastal communities has been highlighted in several FAO Technical Guidelines. Integral to these guidelines

is the recommendation that member states develop specific policies that give small-scale fishers preferential rights to the marine resources.

3 Policy objectives

- 3.1 To give formal, legal recognition and protection to all traditional small-scale fishers of South Africa.
- 3.2 To ensure social and economic sustainability of the small-scale fishing sector.
- 3.3 To protect traditional livelihoods and enhance the food security and social development of the small-scale fishing sector.
- 3.4 To ensure environmental sustainability of the Marine and Coastal environments.
- 3.5 To ensure fishers' participation in policy development and resource management.

4 Definitions

- 4.1 *The Small-scale Fisheries sector*. The small-scale fisheries sector comprises all those who fish for marine resources on or within the near shore, use no or relatively low technological gear and who have traditionally depended on these resources for their livelihoods, ranging from those who fish primarily for food security to those who sell their catch in order to sustain their livelihoods. In addition, small-scale fishers are predominantly personally involved in the harvesting of the resource. As such, small-scale fishers include artisanal fishers, traditional fishers, subsistence fishers, and bona fide fishers. For a discussion on this definition see <http://www.masifundise.org.za/publicationsPaper1.html>
- 4.2 *“Fish”*. The definition from Marine Living Resources Act applies in this document: “fish” means the marine living resources of the sea and the seashore, any aquatic plant or animal whether piscine or not, and any mollusc, crustacean, coral, sponge, holothurian or other echinoderm, reptile and marine mammal, and includes their eggs, larvae and all juvenile stages, but does not include sea birds and seals.
- 4.3 *“Fishing”*. The definition from Marine Living Resources Act applies: “fishing” means searching , catching, taking or harvesting fish or an attempt to any such activity.

4.4 *Traditional small-scale fisher.* A set of criteria will be set up for the purpose of identifying traditional fishers. In coastal communities in the Western Cape Province fishers have begun developing criteria for the identification of a traditional small-scale fisher. This process was triggered by the implementation of the Interim Relief in 2007. In KZN a large number of fishers have been identified as subsistence fishers according to the Marine Living Resources Act. While the definition of subsistence fishers is conflicting with principles and definitions as outlined in this document, the list of identified subsistence fishers can be used as a basis to develop new criteria and a corrected list of small-scale fishers in KZN. We acknowledge that there remain challenges ahead with regard to developing lists of traditional fishers from each fishing communities, not least because of local power dynamics in some fishing communities and pressure by poor and unemployed non-fishers who wants to become fishers.

5 Principles

5.1 *Participation.* Participation requires the devolution of responsibility that enables the marginalised people from fishing communities, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the marginalised people take part in determining how information is shared, how goals and policies are set, and how management systems are shaped. It is the means by which they can induce significant social reform which enables them to share in the benefits of the marine resources. This understanding of participation is also in line with the definition of peoples participation as stipulated in the National Environmental Management Act 1998 (section 2.1.4.f): "...all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be assured"; as well as in the Integrated Coastal Management Bill (section 52.1.a): the Minister or other person exercising the power must "consult with interested and affected parties by means of a fair consultative process that enables them to participate effectively in the decision making process."

The participation of people from fishing communities is a prerequisite for the achievements of the policy objectives. Participation will contribute to:

5.1.1 empowerment of people and groups of people;

5.1.2 increase management capacity at the local, regional and national level;

5.1.3 increase and spread ownership;

5.1.4 strengthen the democracy in coastal regions;

5.1.5 and improve compliance.

Participation is the key to the development of a sustainable management system and to assure sustainable utilisation of marine and estuarine resources.

For a more detailed discussion on participation see

<http://www.masifundise.org.za/publicationsPaper2.html>

5.2 *Empowerment.* In this context, empowerment means the improvement of individual people's and groups of people's consciousness and confidence, so that these people have the skills and qualifications to participate. Empowerment takes place through information sharing, in both directions, between the marginalised and the empowered, and on a continual basis. It is of particular importance to understand that empowerment in relation to co-management not only relates to the knowledge and skills around predefined eco-centric issues. Empowerment goes much further, and addresses:

5.2.1 social and political consciousness at local, national and international levels;

5.2.2 reversals of power relations in the favour of the marginalised;

5.2.3 people's dignity;

5.2.4 acknowledgment of peoples skills and knowledge, e.g. fishers' traditional knowledge;

5.2.5 ownership of democratic processes and rights to fish for marine resources;

Through empowerment processes individuals and groups of people become capable of taking their future into own hands and participating in democratic and political processes on a range of broad social and economic rights.

5.3 *Equity.* Equity in relation to the new Small-scale Fisheries Policy refers to various issues. These include:

5.3.1 fair and equitable access to natural resources;

5.3.2 equal rights to fishery development in the small-scale fishing sector;

5.3.3 equal rights to engage in and benefit from the marketing sector;

5.3.4 equal rights to participate in developing fishery policy;

5.3.5 equal rights to take part in the development and implementation of fishery management plans;

5.3.6 and equal rights in evaluating and improving on the management system.

In general terms, the principle of equity means citizens' equal opportunities and treatment, and equality before the law as stated in the South African's Bill of Rights. In the joint statement agreed upon by government and civil society at the National Summit in Port Elizabeth on 2 November 2007, the principle of equity in all spheres of the fisheries sector was endorsed.

5.4 *Co-management.* Co-management of marine resources means that local stakeholders, including fishers and other men and women from fishing communities, are empowered to participate and given the mandate to participate together with government in developing, implementing and evaluating fishery policies and management plans. Co-management requires devolution of decision making power to the fishing communities and municipal level. For co-management to be successful it is a prerequisite that fishing communities are given ownership (read: "rights to fish") of marine resources and co-ownership of the management of resources. Literature on experiences of co-management in South Africa as well as abroad clearly points to this fact. An additional prerequisite, also mentioned by various managers and researchers⁹, is the aspect of empowerment. In co-management, the marine resources will be managed by co-management committees. People from fishing communities representing the small-scale fisheries sector in a given area (TURF) together with local and provincial government should make up the co-management committees.

⁹ E.g. Jentoft, Svein. 2005. Fisheries Co-management as Empowerment. Marine Policy 29, pg. 1- 7.

5.5 *Enabling policy.* An enabling policy ensures equitable rights in the fisheries sectors. For example, small-scale fishers shall have the same right to sell and/or market their catches as their large scale commercial counterparts (the Quota holders under the Long Term Fishing Policy of 2005). Furthermore, they shall receive the necessary skills training and financial support in order to realize this right. Presently, traditional fishers are being exploited by the established marketing and export companies that control the market. One reason for this exploitation is that under the current fishing policy, the fishers are obliged to have a contract with a marketing company in order to receive their fishing permits.

An enabling policy shall also have mechanisms in place for the development of additional programmes, e.g. tourism; ranching of lobster and abalone; marine aquaculture; training in the field of management; and financial, technical and educational support for local marketing of fish products.

5.6 *Community Based Fishing Rights.* Fishers around the coast have on several occasions indicated that they want fishing rights in their own names. When discussing the different types of fishing rights systems, it becomes apparent that fishers want to have a decisive say with regard to who should qualify for fishing rights and who should not. It also becomes apparent that there is general support to a system that designates decisive power to the community level, including the power to decide who qualifies for a fishing right and who does not.

The ideal solution for a system that would suit these wishes and, at the same time contribute to a high level of “buy in” by community people is the Community Based Fishing Rights system. In this rights system, communities are allocated a certain Total Allowable Catch (TAC) and/or Total Allowable Effort (TAE), and it then becomes the responsibility of the co-management committees, to distribute the fishing rights (TAC and/or TAE) amongst those who qualify as small-scale fishers.

A Community Based Fishing Rights system like this would in effect lead to the individual fishers being given individual fishing rights. It is then up to the fishers to decide if they want to work as individual entities or if they want to form structures such as fishing cooperatives. A system like this does not imply that decision making power rests with community people exclusively. It implies that decisions are made in co-operation (co-management) with government.

5.7 *TURF.* Territorial User Rights in Fisheries. TURF in the small-scale fisheries sector refers to the exclusive rights of traditional small-scale fishers to fish for

marine and estuary resources within a zone that is exclusively for that particular sector. Other stakeholders that are not identified as traditional fishers within the TURF are prohibited from fishing in that particular TURF. Mechanisms for exemptions can be developed for the recreational fishing sector. The geographical boundary of a TURF depends on the geographical region and will vary from region to region. A TURF stretches from the high tide water mark to somewhere in between five and fifteen nautical miles offshore, depending on the nature of the marine habitats and species availability. The coastline will be divided into numerous TURFs and each TURF will be managed by co-management committees. The length of a TURF will depend on environmental specificities, the species within it, and the number and extent of coastal communities within that give area. All species within the TURFs are managed by the co-management committees, and management “input” and “output” regulations will be mutually agreed upon. Measures for input regulations could be days at sea, number of vessels and/or gear restrictions. Measures for output regulations could be total allowable catch, closed seasons for specific species and/or daily bag limits.

5.8 *The Basket System.* Traditionally, fishers have fished for a variety of species throughout the year. This tradition has secured basic income and food security for generations, and provided work for fishers and other community people throughout the year. The basket system has always been an integral part of the culture and livelihoods in fishing communities and as such play a very important social and economic role. The basket system is characterized by fishers catching specific species at specific times of the year when the season for the particular species is favourable. As such the Basket System allow for the utilisation of all the species available in the particular TURF, from low to high value species.

5.9 *Transformation.* The small-scale fishery sector shall become recognised and prioritised for its social, socio-economic and macro-economic importance. The contributions by the tens of thousand people who directly or indirectly work in the small-scale sector is of great importance to the national economy. While no studies have been undertaken on the combined economic importance of the sector, some quick figures point to its importance. Using a conservative estimate that 50.000 people nationwide make a living from the small-scale sector, and that the value of their work equals R2000 per month on average, the overall economic value amounts to R1.2 billion. In addition hereto, it is important to recognise the high quality of fish products landed in this sector because of the use of selective fishing gear (i.e. insignificant levels of by-catch and). The sector must be transformed so that these important aspects are used to the maximum

benefit for the state as a whole as well as for the fishing communities. This transformation requires that traditional fishers regain their rights (read: both fishing rights, and broader human and socio-economic rights) and are given opportunities to work within an enabling environment.

5.10 *Human rights based.* The fishing policy must put human rights first. Not only are human rights universal, they also constitute the key to a sustainable social, political, economic and environmental environment. A fishing policy centred on human rights will contribute to sustainable livelihoods and social development in the coastal communities.

5.11 *Gender equality.* Women's equal rights must be a key principle in the Small-scale Fisheries Policy. This issue will be elaborated in section 6.2.

5.12 *Devolution of management responsibility.* The devolution of fishery management power should take place from the national level to the fishing community level through Provincial and Municipality government structures and Local Co-management Committees. According to the Marine Living Resources Act, the overall responsibility for the management of the marine resources rests with the Minister of DEAT. While acknowledging this level of responsibility, it is important to also acknowledge that South Africa as well as many other countries has failed to manage marine resources, by applying a top down state controlled management system. In fact, this latter approach has led to the complete lack or failures of management of marine resources in many areas around the world, including South Africa.

6 Cross Cutting Policy Considerations

6.1 *Fishing rights.* Only the fishers identified as traditional fishers, on the basis on the criteria developed by co-management committees, will be given fishing rights. A register of traditional fishers from each fishing community will be developed. A traditional fisher holds the right to fish as long as he or she is on the register. Co-management committees hold the responsibility of updating the register of traditional fishers. As a principle there is no limit to the number of traditional fishers that can be granted fishing rights, but the co-management committees hold the authority to set exclusionary criteria. It is important to understand that such a management system does not resemble an “open access” system. Rather it is a management system that authorises a co-management committees to set “input” and “output” regulations and thus to make decisions on how much each fisher can benefit from the overall TAC and/or TAE. In the case of resource scarcity, more traditional fishers on the register means less fish for each fisher.

6.2 *Gender Equity.* The need to ensure that men and women enjoy equitable benefits from the small scale fisheries policy presents a major challenge to MCM and the NJTT in the context of past policies and entrenched patriarchal beliefs and practices. Women have always played a major role in the pre and post fishing activities in South Africa, and in some communities women are the primary harvesters of inter-tidal resources. In the Northern and Western Cape, women have played a significant role in the development of the fishing industry by providing labour for processing and packaging. Over the recent years, the impact of globalization, the consolidation of processing plants and changes in the geographical location of fish landing sites have led to job losses in the rural areas.

The introduction of gender equity legislation in the 1990's, coupled with the emphasis on women's equal rights in the new Constitution resulted in a move within government to encourage women to apply for fishing rights during the Medium Term (2002) and the Long Term (2005) application rounds. This impacted primarily on women in the Northern and Western Cape in the Medium Term period, where they were allocated quotas in the commercial WCRL and Line Fish sectors. A significant number of these women, with no previous experience as fishers, did not fish their quotas personally, but as a result of being quota holders they came to see themselves as being legitimate stakeholders in the fisheries. This presented a number of problems in the Long Term rights allocation process as these women believed that they were entitled to rights. Those who were unsuccessful have now turned towards the Interim Relief (2007 and 2008) as a means of getting an income. The majority of these women are wives, mothers, daughters, and girlfriends of fishers, and many of them worked in the processing plants before they were closed down due to retrenchments. In the coastal towns there are so few opportunities for alternative employment that most maintain their focus on the fisheries as the prime source of an income.

A limited number of the women who received quotas in the Medium Term period have received training and got their safety certificates. These women are now eager to go to sea personally but very few of them have access to vessels. In the Eastern Cape and KZN most of the women who previously received subsistence permits have been fishing traditionally.

Discussions with men and women from fishing communities indicate that most women want the option of going to sea if they so chose. However, few women would actually choose to go to sea. Even though women in general do not want

to go to sea, they still want to benefit in the small-scale fisheries sector and they believe that they should be accommodated in the Small-scale Fisheries Policy. Much of this expectation stems from their previous involvement in the sector, and some stem from the very high levels of poverty in their communities and the lack of alternative sources of income. As primary caretakers and providers of food security these women some times articulate this demand in the absence of a viable alternative.

In the Western Cape Province, most men are not supportive of women getting fishing rights. Partly because they believe traditional fishermen should be given preference; and partly because of stereotypical notions of the sexual division of labour and women's place in the home as mother and wife.

Gender specific areas the policy must cover include:

- 6.2.1 Women must be ensured their rights to participate in the management of the marine resources. This is particularly important because women generally give high prioritisation to socio-economic issues and food security.
- 6.2.2 Women must be ensured to participate in fisheries policy development, implementation, and evaluation.
- 6.2.3 Training of women to participate in marketing. This includes skills training in the areas of business administration, processing, and marketing.
- 6.2.4 Training of women to engage in tourism and additional coastal economic opportunities as managers, chefs, tour operators, guides etc.
- 6.2.5 Education for women to ensure employment and ownership in the aquaculture and mariculture industries.
- 6.2.6 A fund for women partners and wives of deceased seamen should be established by government.
- 6.2.7 Marine Protected Area Management must include women from communities living in or adjacent to MPA's and must ensure women benefit equally from the MPA.

Integral to an appropriate response to gender equity is the need for the policy to include the institutional mechanism that will enable local fishing communities to engage in and benefit from a range of local economic development alternatives centred on the broader marine economy. This will relieve the pressure on

marine resources and enable women to draw equitable benefits from the local marine economy as a whole.

6.3 *Social Security and labour rights*: The right of small-scale fishers to social security and basic conditions of employment should be recognised. This will require an integrated approach across the Department of Labour, the Department of Transport and DEAT and MCM. As, with farm workers and domestic workers, fishers are vulnerable in times of unemployment, illness and on the death of a breadwinner. They are also vulnerable to exploitation by unscrupulous boat owners, marketers and commercial rights holders. A fund should be set up that will accommodate both traditional fishers who are self employed and do not have any insurance as well as those who work for a boat owner or skipper. All parties could contribute towards this fund along the lines of an unemployment fund.

Minimum labour standards for the sector should be developed, in line with the International Labour Organisation recommendations, and should accommodate the needs for safety at sea in the small-scale fisheries sector.

6.4 *Management of the fishery*. Co-management of the fishery will be implemented and strengthened on an ongoing basis. For co-management to succeed it is important that all above mentioned key principles are incorporated and prioritised in the new policy. All the key principles should be viewed as vital components of the co-management system.

Experiences from around the world and particular South Africa clearly indicate that co-management is no “quick fix” to the challenge of sustainable management of marine resources. On the other hand, the conventional management systems applied all over the world, including the present South African management system, have by and large failed to ensure sustainable utilisation of the resources (this is evident when looking at the global figures of overfishing and dwindling fish stocks). Fisheries managers have adapted new approaches over and over again since the introduction of conventional fisheries management, starting with single species models, then multi species models, followed by precautionary approaches, ecosystem approaches and now adaptive learning. In fact, this historical development indicates that fisheries management always has been characterised by adaptive learning. Failures with all these management systems have been widely accepted. Explanations for the failures include the complexity of the marine ecosystems, and management difficulties in fishery systems involving many stakeholders and interests. Failures with a new co-management system likewise have to be accepted.

In the long term co-management of the small-scale fisheries, based on the principles and cross-cutting issues mentioned in section 5 and 6 respectively, will facilitate:

- 6.4.1 improved social and environmental responsibility among fishers and other community people;
- 6.4.2 improved compliance in fisheries;
- 6.4.3 individual and collective empowerment in fishing communities;
- 6.4.4 strengthened democracy;
- 6.4.5 and ultimately, sustainable utilisation of marine resources.

Considering the varying nature of the marine and coastal environment and the different fishing and livelihood strategies along the South African coastline, different fishery management plans will have to be developed for different areas.

One approach could be to develop overall and broad provincial management plans. Within the framework of these plans there would be a need to develop more specific plans at municipality level and again for each designated TURF. A management system along these lines would allow for flexible systems, where the management plans at TURF level on a continuous basis can be reassessed and adapted to changes in stock sizes.

Monitoring programmes for each TURF should be established by the co-management committee and a local monitor in each fishing community should be appointed and trained by MCM. In larger fishing communities it may be necessary to appoint more than one monitor. The information captured by the monitors combined with fishers' knowledge in general, would feed directly into the co-management committees' knowledge base, and thereby facilitate the continuous reassessment of the management plans and allow for almost immediate responses to declines in fish stocks.

6.5 *Fishers' knowledge in management and research.* In a recent book on fishers knowledge in management it is stated that "it is impossible not to acknowledge that fishers'... knowledge about the sea has sometimes proven a fast and inexpensive shortcut to information essential to our scientific understanding of

the marine environment”¹⁰. This book resembles a snapshot of all the cases of fishers' knowledge that is documented in the scientific literature. It provides numerous examples of how management of marine resources has been improved by the incorporation of knowledge of fishers. This knowledge is not an alternative to conventional scientific management. It is rather a knowledge system that plays an equally important role in today's fisheries research and management many places around the world.

When talking with traditional fishers in the Western Cape Province it is common to hear stories about the shortcomings of the scientific surveys carried out by MCM. The “one survey at one particular time of the year in one particular area” approach has led to the notion of “mandated” science among traditional fishers. There is a general feeling that the science is “mandated” by government in order to justify the fishing policy and the political decisions made by DEAT and MCM. One example is researcher's unwillingness to listen to fishers recommendations on where to catch particular fish. As a result, fish surveys have been carried out in areas known by traditional fishers to be bad fishing grounds. This has led to wrong conclusions about stock sizes for certain species in particular areas.

Another interesting example is the common belief that the West Coast Rock Lobster (WCRL) has migrated south as a result of global warming. In 2007 the head of MCM told the Parliament's environmental affairs portfolio committee that “As far as the migration of lobsters... is concerned, scientists have not categorically stated it is caused by climate change, but we do note that the reduction of fish along the West Coast... has been associated with extraordinary warmer water”. This message, told over and over again by government, environmentalists and journalists, has created a notion of truth without being scientifically verified. Another couple of hypothesis have come to our knowledge following an interview survey with 63 traditional fishers from Lamberts Bay and Doringbaai – two of the areas affected by the decrease in WCRL stocks. Two explanations were given for this decrease in stock sizes, and the most dominant was the dredging of the sea floor by the mining industry. The other explanation was overexploitation by the offshore WCRL fishery. At this moment this knowledge, that could be instrumental in getting a much better understanding of the marine dynamics, rests with the traditional fishers.

The use of fishers' knowledge not only serves the purpose of strengthening the knowledge base and improving management. It serves a just as important aspect of management: it improves relationships between fishers and

¹⁰ Fishers' Knowledge in Fisheries Science and Management. 2007. Ed. Nigel haggan, Barbara Neis and Ian G. Baird. UNESCO Publishing. Chapter 3.

governmental researchers and managers and thereby facilitates that fishers buy into the management system. It is important that Marine and Coastal Management as well as independent South African research institutions improve their skills and capacities to work together with fishers and incorporate the knowledge of the fishers into fisheries management.

6.6 *Marketing.* The marketing requirements as stipulated in the Long Term Fishing Policy are in practical terms limiting the opportunities for the fishers to sell their catches at good and fair prices. Fishers are required to sign a marketing contract for at least one year with a marketing company in order to have their fishing permits renewed. In doing so fishers lose the opportunity to sell at better prices in times where demand is high and supply low. The well established industries, such as Cape Lobster, Lusitania Fishing, and Oceana Lobster, as well as marketing agents, have taken advantage of this policy requirement, and made huge profits while fishers hardly have been able to make a living. In addition hereto is the issue of marketing agents offering payments in advance, so that the fishers can repair boats, buy bait and other investments. In principle this is not problematic, but the reality is that the conditions attached to these payment advances make it a very expensive arrangement for the fishers. The West Coast Rock Lobster Association should be well aware of these issues, since they are closely connected with many of the WCRL quota holders. Unfortunately, they have failed to assist the traditional fishers in this respect.

Furthermore, many of the fishers signing contracts with the marketing companies do not receive copies of their contracts, and they have no idea about the real price they will receive for their catches. While the contract may explicitly state that fishers will receive R90 per kg. of WCRL, for example, the fishers receive much less because the marketing companies subtract various production costs.

Traditional fishers from all provinces have been exploited in many other ways. The vast majority of the fishers do not have the business skills to challenge the marketing company and nor do they have finances to appoint lawyers.

Instead of developing policy requirements that in practical terms makes the fishers more vulnerable to exploitation, the new Small-scale Fisheries Policy must provide enabling mechanisms to assist fishers with marketing. As a basic principle of equity, all fishers must be free to sell their catches without being bound by legal obligations to sign marketing contracts. The principle of equity must obviously also apply to those fishers who until today have been categorised as subsistence fishers according to the Marine Living Resources

Act. Some additional mechanisms that the policy must have in place include:

- 6.6.1 Subsidy schemes for the storage of fish. This could be in the form of financial support for storage facilities and ice machines.
- 6.6.2 Skills training of people from fishing communities, fishers or non-fishers, in the areas of processing, storing, packaging, marketing, transporting and exporting of fish, and basic business skills such as finance management, human resource management, logistics, and business management.
- 6.6.3 Subsidy schemes for the establishment of locally based and owned marketing companies; especially companies focussing of high quality fish products caught by the small-scale fishers by use of environmentally friendly catching methods with no by-catch.
- 6.6.4 Development of a South African label/certificate for fish products caught by small-scale fishers in an environmentally friendly manner with traditional fishing methods and with insignificant levels of by-catch. Furthermore, this certificate should guarantee that the marketing companies adhere to high levels of social and ethical responsibilities.

There are several argument for why government should support the small-scale sector in the marketing of fish. These include:

- 6.6.5 The global market for high quality fish products from environmentally friendly fisheries with no or very low levels of by-catch have been increasing significantly over the past several years, and continues to increase.
- 6.6.6 The global market for products, including fish, that comes from companies that adhere to high social and ethical responsibilities (“fair trade”) is increasing. This added value of the fish product will be to the benefit of fishers, marketing companies, and South Africa as a whole.
- 6.6.7 The traditional fishing sector is already a significant tourist attraction. By supporting and developing this sector, not least with regard to locally based marketing, the number of tourists visiting the fishing communities is most likely to increase.

7 Linkages with Marine Living Resources Act

In terms of the Marine Living Resources Act (MLRA) section 14(3) “the Minister determine that the total allowable catch, or the total applied effort, or a combination thereof, shall apply—

- (a) in a particular area, or in respect of particular species or a group of species of fish; and
- (b) in respect of the use of particular gear, fishing methods or types of fishing vessels.”

In legal terms, section 14(3) authorises the Minister to demarcate particular areas as TURFs for the small-scale fishery sector.

Section 17 of the Act is also relevant in relation hereto: “ If the Minister is of the opinion that special measures are necessary to ensure that authorised fishing within any area of the South African waters is not impeded or otherwise interfered with, he or she may, after consultation with the affected parties, by in the —

- (a) declare such an area to be a priority fishing area for the purposes stated in the ; and
- (b) prohibit any activity determined in the notice.”

While section 14(3) makes possible the implementation of TURFs, section 17 authorises the Minister to give priority to the small-scale fishing sector in these TURFs and exclude fishers who are not traditional small-scale fishers from fishing marine resources in these areas.

We recommend that TURFs are implemented along the entire coast of South Africa, and that exclusive fishing rights are given to the traditional small-scale fishers. The recreational fishing sector could have limited access to the TURFs, and principles and regulations for their access should be negotiated between the small-scale fisheries sector, MCM and the recreational fishing sector.

Section 19 of the Act provides legal provision for the Minister to declare a specific area or zone for an exclusive area within which only subsistence fishers are allowed to fish. This section needs amendments so that it covers traditional small-scale fishers. It is important to acknowledge that subsistence fishers as most other fishers want to develop their fishery and make maximum benefits of their catches. However, the Act prohibit those classified as subsistence fishers from engaging “... on a substantial scale in the sale of fish on a commercial basis” (MRLA), and thereby severely limits the possibilities for subsistence fishers to benefit from social and economic development.

8 Linkages with the Integrated Coastal Management Bill

Like the MLRA, the Integrated Coastal Management Bill (ICMB) provides the Minister the authority to demarcate specific marine areas as exclusive zones for

traditional fishers. Section 23 (1 and 3) are particularly interesting in this respect:

23. Declaration of special management areas

(1) Subject to section 85, the MEC (the member of the Executive Council of a coastal province who is responsible for the designated provincial lead agency in terms of this Act) may, and after consultation with the Minister, by notice in the Gazette –

(a) Declare an area that is wholly or partially within the coastal zone to be a special management area.

(3) An area may be declared as a special management area only if environmental, cultural or socio-economic conditions in that area require the introduction of measures, which in the opinion of the MEC, are necessary in order to more effectively–

(a) attain the objectives of any coastal management programme in the area;

(b) facilitate the management of coastal resources by a local community;

(c) promote sustainable livelihoods for a local community; or

(d) conserve, protect or enhance coastal ecosystems and biodiversity in the area.

9 Institutional Arrangements

Currently, fishery policy and management is a national government responsibility and this is a good oversight obligation. But national government is not the only shareholder in the obligation to ensure transformation and poverty eradication in coastal communities. Provincial governments, local and municipal authorities have an equal role to play in this task. That each province and local authority has to develop an Integrated Development Plan (IDP) confirms this point. It is not possible for a coastal province or a coastal municipality to formulate an IDP without considering how it will address issues of coastal environmental management, fishing rights, and poverty eradication, if they do not own a share in how it is to be done. The one coexists with the other.

Likewise, and more importantly, democratization and sustainability would not be reached if local communities are not included in policy formulation and management of these processes. So people in fishing communities themselves are an important element in the sustainable governance of marine resources and coastal management. Ultimately it is the people in these communities who use the resource hence, logically, their participation is essential.

Implementation of policy therefore requires all affected entities to be involved and engaged in the institutional mechanisms needed to implement and manage the

policy. It is therefore necessary to explore the range of institutional changes and mechanisms that devolves aspects of small-scale fisheries management responsibilities to other structures beyond the MCM.

In doing so it would be necessary to consider administrative and legislative changes where it would contribute to the overall achievement of key national prerogatives. This should be carefully and responsibly considered in order to ensure meaningful delivery. It is necessary also for such institutional mechanisms to accommodate the idiosyncrasies of the constituency that it is intending to serve. In the context of the Small-scale Fisheries Policy the needs of local, especially rural communities, who are far removed from the resources of metropolitan centres should be carefully considered. It is essential, therefore, for such arrangements to also consider the developmental needs of specific communities at local level, and it would be unproductive to apply a “one size fits all” approach when deciding on institutional mechanisms. The peculiarities of each province and each local community must be a primary factor that influences the mechanisms and structures needed to manage this fishery in that area.

Most critically, these institutional arrangements must unlock the integration of local marine resource utilisation and local economic development. This means that local government responsibility for Local Economic Development (LED) and provincial government responsibility for economic development and tourism are key components in any planning processes. TURF management plans would need to be integrated with local IDPs. Currently there is little or no integration at this level in any areas.

In more practical terms, the institutional capacity within MCM at national level must be significantly improved. This requires that DEAT's and MCM's leadership give significant prioritisation to the small-scale fisheries sector. Governments of Angola and Mozambique have already followed this route, and both countries have established national departments responsible for the policy and management of the small-scale fisheries sector. In addition to the institutional capacity building at national level, obviously it also becomes important to allocate financial and human resources to the establishment of institutional mechanisms at provincial, municipality and community level.

In terms of institutional arrangements, the Integrated Coastal Management Bill provides a most useful framework for the co-management of the fisheries. According to section 35.3 the Minister holds the authority to establish a National Coastal Committee (NCC). With administrative support from the Department, the

NCC must “promote integrated coastal management” and “effective co-operative governance” -

(35.3.a.i) within each sphere of government;

(35.3.a.ii) between spheres of government; and

(35.3.a.iii) between organs of state and other parties concerned with coastal management.

Section 35.3.b states that the NCC must promote the integration of coastal management concern and objectives into implementation plans as well as into national, provincial and municipal development policies, plans and strategies.

More specifically, the ICMB's section 37 to 41 outlines specific institutional structures that must be in place at Provincial and Municipal levels. The committees that must be established according to the ICMB, would be ideal structures for the new Small-scale Fisheries Policy to integrate with. This would assure that the objectives and implementation of the fisheries policy is integrated with other governmental policies and goals; including transformation, democratization and poverty eradication (as per the Constitution, Bill of Rights and related legislation).

10 Roll out of policy

The level of success of the roll out of the policy is related to a number of issues. Firstly, the governmental institutional structures at national, provincial, municipal and community level must be built. In geographical regions where some structures already exists, this may be a smooth process. In other areas there is a complete lack of such structures and capacity, and implementation will therefore take longer. Secondly, the co-management structures in the fishing communities must be in place, and equally important, they must be seen as legitimate in the eyes of the broader community. In some areas, e.g. Doringbaai, Western Cape, these structures are already in place and functioning. In other areas, such as Ocean View, Cape Town, communities are very split as a result of past fishery legislation. Implementation in these areas will require governmental investments of human and financial resources, in order to unify the community and build capacity to a level where co-management is likely to succeed.

The policy must have an implementation plan with clear milestones that makes it possible to perform ongoing evaluation and adjustments of the implementation process.

11 Funding

The Result and Impact Review of Norwegian/South African cooperation in the Fisheries Sector, 2005, (NORSA - sector funding from the Norwegian Government) strongly recommends that the development of the Small-scale Fishery Policy is prioritised and that co-management is conceptualised and implemented (the report refers to a “subsistence fishery policy”, but at the National Summit in Port Elizabeth it was explicitly agreed that the Department in participation with civil society shall develop one overall policy for the small-scale fisheries sector, including the sub-sectors previously referred to as the Subsistence and the Small-scale Commercial sectors). Furthermore, the report recommends that MCM develop appropriate institutional structures to address the small-scale fisheries sector and co-management. The report is available at www.nfh.uit.no/norad/reports/sa%20fisheries%20report%202005%20%20final%20version%20.pdf

With these key NORSA recommendations in mind, we believe that MCM is in good position to urgently negotiate with the Norwegian partners in order to secure funding from the Norwegian government for the prioritisation of the small-scale fisheries sector.

The DEAT must be held responsible for securing funding for the process of developing the Small-scale Fisheries Policy and for the implementation of that policy. It is important that DEAT allocate financial resources for the building of institutional and human capacity at national, regional and municipality level in order for these institutions to be capable of working towards the policy objectives, and empowering the small-scale fisheries sector.

12 Deadlock and ‘blockages’ breaking mechanisms

It is likely that it will not be easy to reach quick or timeous consensus on some of the issues that should be contained in policy. Previous Masifundise experiences with MCM shows that negotiation processes take time and, given the urgency of this process, it would be imperative to develop deadlock and blockages breaking mechanism ahead of time so that there can be no further delays during the actual process.

In this regard we would propose the following mechanisms to be applied:

12.1 MCM scientists and legal staff will be involved in the NJTT in order to ensure that all processes run concurrently and that agreement is not delayed at the tail end of the process.

12.2 Substantive disagreement or fundamental points of divergence should be formally noted within one week by any NJTT member. This matter should then be fully discussed, by a special committee set up by the NJTT (including any other person the NJTT feels should be included) with the view of seeking consensus within one week of the notice being lodged.

12.3 Failing to reach consensus shall result in an independent person or persons being called on to mediate and/or arbitrate on the matter and to present their conclusion within two weeks of appointment. The decision of the mediator shall be binding.

12.4 Disagreement matters of process or the lack of progress with respect to process/timelines shall be lodged within three days by any member of the NJTT. This blockage shall be unblocked within 48 hours of it being noted and failure to do so shall result in either party approaching the previously appointed legal representative, to seek a solution within 48 hours. Such solution shall be designed to ensure that progress is constant and that no administrative or practical obstacle, of whatever kind, shall cause a delay in the proceedings of the NJTT.

In case of failure of any of the above, the intervention of the Director General of DEAT, as prescribed in National Environmental Act, shall be invoked within seven days of either party informing the DG of their desire of such intervention.

13 How to accommodate current quota-holders into the policy?

Traditional fishers with fishing rights under the Long Term Fishing Policy may retain his or her fishing rights under the provision of this policy. At the time of expiration of the fishing rights, the traditional fisher will be incorporated in the new Small-scale Fisheries Policy, provided that he or she meet the criteria of a traditional fishers. The individual part of the TAC or/and TAE that he or she was entitled to under the Long Term Policy will be added to the TAC and/or TAE of the Small-scale Fisheries Policy.

A traditional fisher with fishing rights under the Long Term Policy may choose to become accommodated in the new Small-scale Fisheries Policy. In this case he or she will not be entitled to retain the fishing right under the Long Term Policy. The combined TAC or/and TAE from permit holders under the Long Term Policy who decide to become accommodated under the new policy will be added to the TAC and/or TAE of the new TURFs. This new policy must accommodate the expectation that current rights holders will be re-allocated long term rights if they perform

adequately. As such the policy must ensure that the rights of these fishers are not compromised in a future policy.

There are several different categories of rights holders under the current Long Term Fisheries Policy that pose critical legal challenges for the development of the new policy. For example, a large number of traditional small-scale fishers have had their names and ID's used to set up companies that hold commercial rights outside of the near shore. Many of these fishers have not been paid regular or consistent dividends and remain dependent on the small-scale fisheries sector for their livelihoods. Therefore mechanisms should be in place to ensure legal rights in the small-scale fisheries sector for these fishers. Current rights holders who hold (lucrative) majority shares in fishing companies should however be considered excluded from the new Small-scale Fisheries Policy.

Fishers with licence under the Long Term and the Small-scale fishing policy have equal rights to participate in the process of developing the Small-scale fishing policy and in the management of the resources.

14 The process of developing the Small-scale Fishery Policy

MCM have developed a plan and a time frame for the development of the Small-scale Fishery Policy (see below) and proposed it to the NJTT. In order to avoid previous mistakes and assure continuous progress, it is important to outline the levels of responsibility. As part of the NJTT and the TC, Masifundise stresses that the NJTT in itself can not be held responsible for the writing of this new policy. This policy must be comprehensive and that stand up to all scientific, legal, conceptual and social scrutiny. Hence the NJTT and TC would require the assistance of a special technical team that will help with all research, writing and technical aspects of policy development. The establishment of such a technical team was agreed upon at the NJTT meeting on 25 January 2008.

Time frame proposed by MCM at the NJTT meeting on 25 January 2008:

- 19 February 2008 – discussion document to be prepared by the TC
- 4 March 2008 – NJTT meeting to discuss the discussion document
- 5 March 2008 – The TC meet to incorporate the comments from the NJTT meeting and submit a document to the policy writing task team
- 11 March 2008 – The policy writing task team prepares first draft
- 11 to 31 March 2008 – the draft is discussed by key stakeholders
- 31 March 2008 – Draft policy gazetted by the Minister