
Multi-stakeholder process of co-designing small-scale fisheries policy in South Africa

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Abstract

In 2005, a group of researchers, community-based organizations and lawyers got together with small-scale fishers to launch a class action law suit against the government of South Africa in its allocation system of Individual Transferable Quotas (ITQs), on the ground that the system was unfair to small-scale fishing communities and threatened their right to practise their livelihoods. This effort resulted in the cabinet adoption of a new Small-Scale Fisheries Policy in 2014, with amendments being made to fisheries law (the Marine Living Resource Act 18 of 1998) to accommodate the issues and concerns of small-scale fisheries. Draft regulations and an implementation plan have recently been released, paving the way for the implementation of small-scale fisheries allocations in 2016. These legal and policy shifts are of great significance for small-scale fisheries, both in South Africa and elsewhere, and deserve careful examination.

This paper discusses the processes leading to the development of a new small-scale fisheries policy and what has followed since. Specifically, the analysis focuses on a variety of collaborations between scholars from different disciplines; researchers from multiple fields; community practitioners representing diverse professional and community perspectives; and community organizations across local, state, national, and international levels. The paper uses a model of change that crosses research and practitioner boundaries based on three key strategies: getting noticed; organizing at scale; and getting a seat at the negotiation table. It also considers the process of strategic, collective, reflection–action–reflection–action “from below”, which was crucial in the co-designing of this small-scale policy formulation in South Africa - a transdisciplinary process that needed to include all relevant actors, especially non-academics, in the policy formulation process.

Introduction

Fisheries governance in South Africa requires the building of bridges not only between people of different personalities, cultures and politics and across race, class and gender, but also between scholars from different disciplines and research fields. Since the

industry has marginalized small-scale fishers whose livelihoods depend on marine resources (Isaacs & Hersoug 2002; Crosoer et al. 2006; Van Sittert et al. 2006; Isaacs et al. 2007). Though reform in fisheries was supposed to lead to the equal distribution of wealth within the broader society, not just amongst a few individuals (Raakjær-Nielsen & Hara 2006), the MLRA structure mainstreamed economic competitiveness and favoured established private businesses in a way that created a new local and non-local elites (explained in detail in the case study) that impaired an equitable distribution of fisheries-related wealth.

Challenges to a broader reform process for small-scale fisheries

As part of the fisheries reform process, the established fishing firms were required to improve their race and gender complements by partnering with Black Economic Empowerment (BEE) firms if they wished to maintain their quotas. The DAFF argued that BEE would fit into the government's broader macroeconomic policy of reducing poverty, the rationale being that ITQ and BEE in established fishing businesses would provide secure, quality jobs based on the government's minimum wage regulatory framework, and that benefits would 'trickle down' to vulnerable fishing communities

The allocation system opened the door to local elites ("rights grabbers") within communities, who captured the benefits of participation in the industry (fishing rights) at the expense of communities and the marginalized small-scale fishers who were supposed to benefit from the transformation (Isaacs 2011c). Many small-scale fishers were left without fishing rights and therefore no longer had access to the sea. Others were able to exist by working for rights holders in certain sectors at various times of the season, but often had no income during the rest of the year (Sunde 2006).

Transformation created an action space for many new entrants to access fishing rights to achieve equity, without the necessary infrastructure, financial capital, and business skills to manage the quota: they had no option but to enter into catching, processing and marketing agreements with large industrial concerns (resulting in "armchair" fishers). In South Africa fishers called these businesses "paper quota holders". The consequence of restructuring was the concentration of rights in the hands of a few rights holders.

Local rights grabbers that had the necessary social and political capital manoeuvred within the new action space to maximize their access to quotas. With the shift to privatize community organizations, they acted as gatekeepers, withholding from the fishers in their organizations crucial information they had received from the DAFF. This strategy was crucial to their success as new entrants in the fishing industry from 1996 to 2000. Successful new entrant fishing firms from 1999 onwards were those that were

able to downscale, remove, manoeuvre around or buy out poor fishers from their newly privatized enterprises.

Fisheries reform in South Africa was therefore compromised by allocating rights through the ITQ system, as this created more opportunities for the elite (rights grabbers) than for the poor to access fishing rights in the post-apartheid era. This left the small-scale fishers outside the formal allocation process (Isaacs 2004, 2006; Isaacs & Hara 2008; Isaacs et al. 2007).

The established industry – the existing rights holders – challenged the need for a new small-scale fishing policy and did not support a collective rights allocation system. They insisted that the rights system should be individual.

Opportunities: Human rights based argument for allocating fishing rights

In response to fisheries reforms, in 2005, the Artisanal Fishers Association, Masifundise and the Legal Resources Centre, with support from academics, launched a class action suit against the Minister of the Department of Environmental Affairs and Tourism (DEAT). This case, “Kenneth George and Others vs. the Minister”, used the Constitution (1996) and the Equality Act (2000) to litigate against the reform process (ITQ allocation of fishing rights) in light of its social and economic impacts.

The main argument for this case was based on a human rights approach, focusing specifically on three main rights: the right to be recognized; the right to a livelihood; and the right to food and nutrition. These rights are protected in the South African Constitution of 1996. The claimants challenged the mainstream ITQ system in South Africa that favoured large firms, Black Economic Empowerment to achieve race and gender equity, and rights grabbers in the fishing communities (local elites). The claimants supported a paradigm shift from ITQs (neoliberal, privatized rights) to a collective rights allocation, a creation of legal entities, a multi-species approach, and preferential access to inshore species.

The class action case was the start of a research collaboration between academics, practitioners and fishers started in 2005 at the local scale, with poor, marginalized small-scale fishers, the community based organizations Artisanal Fisher Association and Coastal Links, the non-government organization Masifundise, researchers, and lawyers from the Legal Resource Centre aligned to develop the heads of argument and affidavits, and to launch the class action case. The main goal of the collaboration was to ensure social justice for small-scale fishers through the class action case. In preparation of the court papers, researchers played a key role in providing expert evidence on the impact of the ITQ system on fishers in South Africa. Local researchers worked closely with the Artisanal Fishers Association, Coastal Links, Masifundise and the Legal Resource Centre to develop evidence, and formed a strong alliance to support this case.

The case was to be heard in the Equality Court, but in April 2007, the claimants of Kenneth George and Others agreed to put the case on hold, on the condition that the small-scale fishers were allocated interim rights and a new small-scale fisheries policy was developed (Isaacs 2006; Sowman 2006; Sunde 2006; Hauck 2008; Isaacs 2011a, 2011b & 2011c). In 2012 the Small-Scale Fisheries Policy was adopted, and in 2013 the Amendment to the Small-Scale Fisheries Policy formally recognized small-scale fishers.

Governance from below

In 2007, an out of court settlement with the Minister of Environmental Affairs and Tourism (DEAT) and Kenneth George and others was reached, in which the DEAT agreed to allocate interim rights to fishers who had not been successful in obtaining long-term ITQ allocations in west coast rock lobster and linefish, and agreed to draft a new small-scale policy with community representatives.

In the same year a national small-scale fisheries summit was organized by the Ministry of Environmental Affairs and Tourism with fishing community representatives around the coast to recognize this sector that as group that was neglected in terms of long-term rights allocation in 2007. At this meeting a National Task Team (NTT) was formed to draft a new small-scale fisheries policy. The alliance (a group of CBOs, NGOs, lawyers and researchers) that initially launched the class action case formed part of this National Task Team, which also included fisher representatives from all coastal provinces and DAFF officials. In the following year, 2008, the NNT met to begin the process of drafting a new small-scale fisheries policy for South Africa.

Relationships in the task team were complex as roles, responsibilities, mandates, and representivity needed to be clarified. As the group worked through the sticky issues of the type of rights allocation, the definition of small-scale fishers, the definition of a small-scale community, and the inclusion of customary rights, the task team realized a paradigm shift was taking place both in the process and the outcome. A participatory process had emerged in which collaboration between community leaders, NGOs, legal experts, researchers and government officials was key to the drafting of small-scale fisheries legislation.

Forming national and international alliances

In the shadows of policy development, national and international collaboration around this social and economic justice case for small-scale fisheries gained traction. The advocacy and awareness-raising of this case started at the local level with fisher groups (Masifundise, Coastal Links, Artisanal Fishers Association) collaborating with the

Confederation of South African Trade Union's (COSATU) fishing desk, and the African National Congress fishing desk. The small-scale fishers also aligned with small-scale farmers attending national workshops organized by Trust for Community Outreach and Education (TCOE). The fishers collaborated with regional bodies to highlight the inequities in ITQ allocations in South Africa at the Southern African Development Corporation (SADC), the Benguela Current Commission (BCC), and New Partnership for Africa's Development (NEPAD).

The case also drew strong international support and collaboration with small-scale fishery NGOs such as the International Collective in Support of Fishworkers (ICFS), and the World Forum of Fisherpeople (WFFP) who use the plight of small-scale fishers as an awareness raising and advocacy tool at the United Nations Food and Agriculture Organization (FAO) Committee on Fisheries (COFI) meetings.

The human rights approach to fisheries management also garnered attention internationally, including that of the FAO unit responsible for drafting voluntary guidelines for the UN, the UN right to food Special Rapporteur Oliver de Schutter, the ICFS and the WFFP. These bodies highlighted the right to livelihoods and food security link to the SA small-scale fishers, making strong links between research, advocacy and policy. The case was highlighted at numerous international academic conferences, and also the conferences of the FAO on rights-based approaches and small-scale fisheries. At these platforms researchers and community-based organizations worked closely together to highlight the consequences of using rights based ITQ allocations to achieve equity and social and economic justice. The South African small-scale fisheries case study also featured in the Too Big To Ignore (TBTI) network of international researchers, made up of 15 different types of organizations including NGOs across 27 countries linking research, network and advocacy at local, regional and global level.

Outcomes: A new Small-Scale Fisheries Policy for South Africa

The final draft of the Small-Scale Fisheries Policy agreed by the National Task Team and DAFF in 2010, the release of the policy two years later, and the Kenneth George and others court case raised the profile, importance and interest in small-scale fishers in the policy landscape. The release of the draft policy for public comment meant that the NTT drafting the policy ceased to exist, but the core group that initiated the class action case regrouped and initiated a series of round-table meetings. These meetings were held regularly and the group expanded to include representatives of the World Wildlife Fund (WWF) Marine Programme, Masifundise, Coastal Links and other community representatives, legal practitioners, trade union representatives and academic researchers. The main objectives of the round-table meetings were to discuss strategic interventions into key legislation affecting small-scale fishers, which were:

- the release of the new Small-Scale Fisheries Policy in 2012
- draft rights allocations for all the sectors in 2013
- amendments to the Marine Living Resources Act, 5 of 2014
- linefish allocations in 2014
- public submissions to the Parliament Portfolio Committee in 2014
- draft implementation regulations for small-scale fisheries in 2015.

With the release of the small-scale fisheries policy in 2012, organizations including conservation NGOs, WWF, Fair Trade, Marine Stewardship Council (MSC) and Environmental Monitoring Group (EMG) showed a keen interest in the implementation of small-scale policy.

The outcomes of this case include the new Small-Scale Fisheries Policy gazetted on 20 June 2012 and approved by Cabinet, which constituted a paradigm shift from ITQs to a collective system of quota allocation, incorporating the following:

- Fishers and fishing communities will co-manage marine resources with the DAFF at local, district and national levels.
- Rights will be allocated to a community-based legal entity.
- In August 2013 the DAFF started a consultation process with small-scale fishing communities on the implementation plan.
- The fisheries policy (MLRA of 1998) was revised through the Marine Living Resources Amendment Act 5 of 2014 to accommodate small-scale fishers, small-scale communities, and small-scale fisheries allocation.

In achieving these outcomes, the group representing research, lawyers, fishing communities and NGOs had meetings with policy makers, and provided inputs, as a group and individually, to the policy processes. South African leading council on restitution, customary rights, and fishing rights to communities, Mr Henk Smith, advised the group on engaging with the state: “use the space created by the policy to state our discontentment with the process, and then use the alliance to get a seat at the negotiation table, use the media to write an open letter. In essence, we need to use all avenues when engaging with the state – get a seat at the negotiating table and criticize their policies where necessary. Use all the opportunities given to engage with the state” (pers. comm. June 2013).

Stokols et al. (2003, 2006) argues for Transdisciplinary Action Research that links the research process with outcomes. This case study on South African small-scale fisheries clearly demonstrates this link in which a process of collaboration between research, community and policy yielded the positive outcome of a new small-scale fisheries policy for South Africa. In this case there are clear linkages between the process, outcomes, ways in which research links with broader action and the key events of the class action

case, and how co-designing the new small-scale policy with government led to the formal recognition of small-scale fisheries.

Discussion

The South African government has formally recognized small-scale fisheries through a participatory process that led to the policy that was adopted by Cabinet in 2012. The new Small-Scale Fisheries Policy promotes a human rights-based approach, food security, co-management, customary practices, and allocates multi-species (basket of rights) to community legal entities with a strong development agenda. The Marine Living Resources Act 18 of 1998 is now the Amended Marine Living Resources Act 5 of 2014 to formally recognize the livelihoods of small-scale fishers. In 2015 draft regulations will be released to guide small-scale fisheries, and in 2016 DAFF will release plans to allocate rights to small-scale fisheries. The amendment will enable DAFF to focus on livelihoods, food security, value-chains, local economic development and overall benefits to small-scale fishing communities.

The collective rights system is based on multi-species allocation and also known as a basket of rights will be allocated to a legal entity formed by the community. Co-operatives seems to be the preferred form of legal entity to manage the fishing rights for communities. Women will play a key role in the pre- and post harvesting sector and will be allocated fishing rights if they are active fishers. This policy makes a key shift to active rights – rights are granted only to fishers who are practicing fishing as a livelihood. Management responsibilities are integrated in the fishing rights system and fishers will play a key role in co-managing the marine resources.

Academic transdisciplinary collaboration research should play a key role in transdisciplinary action research and it is a necessary step in the research process (see Stokols 2003). Challenges that can arise include this type of research remains stuck in conceptual underpinnings and relationship issues, and time being wasted on team building and struggles between disciplines. In addition, if links to community-based organizations and practitioners are missing from collaborative transdisciplinary research, this will interfere with the potential for constructive action.

The case study presented here illustrates a combination of research, advocacy and collective action to achieve social and economic justice for small-scale fishers in South Africa. This case demonstrates how community collaboration with other partners (research, legal NGOs, Unions) can alter the nature of collaboration in significant ways. Contrary to the suggestion by Stokols (2006) that the nature of relationships progress from simple to complex, the collaboration between researchers, NGOs and CBOs at the start of the collaboration started out as complex, as finding a group of people who

supported the court case against the ITQ system of allocation was not a straightforward process. However, the support of this class action case connected the group and built strong links for research and advocacy, and the collaboration became easier. The initial complex relationship was made simpler by the focus on achieving social and economic justice for small-scale fishers in South Africa. Constraints and challenges were mainly with the State on what should be in the small-scale fisheries policy.

Cross-scale collaborations

While key partners (Legal Resource Centre, Artisanal Fisher Association, Masifundise, Coastal Links and the author) remained constant, the transition from academic/community collaboration to intersectoral partnerships spanning local, national, regional and global levels gained momentum and drew the interest of various organizations. The temporal scope of this case study shows key partners collaborating over a number of years – starting in 2005 with the collaboration being ongoing. At various stages of the collaboration between research, community and collective action in the case of small-scale fisheries in South Africa, the partners had various roles, levels of engagement, and relationships with each other. In the early stages, during 2004-2005, getting the group together to launch the class action case was complex, and complex contractual relationships with the State could compromise existing and future funding. Hence, getting the support and interest in this case from researchers was very difficult initially. When an out of court settlement was reached in 2007 more researchers took a keen interest in the small-scale policy development process. The use of cross-scale strategies by the alliance (transdisciplinary collaborations) is a critical component in linking policy objectives with community mobilization (see Rios 2011).

In addition to use of local cross-scale collaboration, there was also strong international collaboration formed due to links to international research networks (TBTI), placing the case of South African small-scale fisheries at the centre of international debates on adopting a human rights based approach to fisheries governance. The International Collective of Fishworkers (ICFS) and World Forum of Fisher Peoples (WFFP) were key international social partners in support of the case of small-scale fishers in South Africa. In addition, the UN's Special Rapporteur on the right to food makes the explicit link between the right to food and rights of those who produce it, and uses the right to livelihoods of small-scale fishers in South Africa in the report (see United Nations 2012). A small-scale community handbook of the Small-Scale Fisheries Policy for South Africa was developed with research and community representatives in 2014.

This case study also crosses disciplines, for example in the complementary mix between social sciences and legal practitioners. This case study is situated in a pro-reform transdisciplinary initiatives that are likely to have “broader and deeper institutional

impacts if they are accompanied by processes of strategic interaction between policymakers and civil society counterparts that helps the latter to target and weaken obstacles to change” (Russell et al. 2008). This case study also fits into what Hadorn et al. (2005: 121) explain as “transdisciplinary research is seen as part of a social process with strong elements from the bottom up”. The social and policy processes of small-scale fishers led to a change in the policy landscapes and could lead to change in livelihoods, food security and nutrition for small-scale fishers. This will depend on how the policy is implemented and rights allocated in 2016.

Towards a model for change

The emphasis of this approach is on the quality of interactions when engaging with the major issues facing small-scale fisheries such as social justice, sustainable livelihoods and food security, as in the case of South Africa. This case study illustrates a collaboration between research, legal practitioners and community representatives on a social and economic justice issue facing small-scale fishers in South Africa, which in turn developed a tool for change in the context of securing rights to livelihoods and food security. The collaboration’s model of change for small-scale fisheries in South Africa covered three key strategies:

1. getting noticed (social protests);
2. organizing at scale (local, national, regional and international); and
3. securing a place at the negotiation table (co-designing small-scale fisheries policy for South Africa).

The pooling of multiple approaches, the process of getting organized at scale, the identifying and refining of strategies to launch the class action case, and co-designing a new framework for small-scale fishers were all necessary to effecting change in the livelihoods of fishers. The collaborative model of change for small-scale fisheries is situated in a collective action–reflection–action–reflection process with engaged scholarship. This project was not conceived initially as a research collaboration with fishing communities and legal experts; the goal for social justice organically created an informal yet strong relationship and collaboration to support the class action case. The right for recognition, food security and practising livelihoods were key campaign tools during the court challenge situated within the human rights based approach to governing fisheries.

The model of change comfortably fits into an interactive governance framework, starting with the complexity of the problem (to achieve social and economic justice for small-scale fishers), and moving on to organization at various scales to raise awareness of the main issue, and to securing a seat at the negotiation table to draft a new small-scale

fisheries policy. The quality and nature of relationships within the core team of community representatives, researchers, NGOs, CBOs and government officials enabled small-scale fisheries to raise their profile, importance, and significance in the South African landscape, indicating the high level of governability in small-scale fisheries in achieving a change in legislation.

Conclusion

Marine resources play a key role in the multiple livelihood strategies, and in the food security of poor and marginalized fishery dependent communities around the world. The Big Number Project (BNP), Global Conference on Small- Scale Fisheries in October 2008, organized by the FAO, and the first World Small-Scale Fisheries Congress in October 2010 and subsequently the second in 2014 have reconfirmed the importance, scale and size of this sector (FAO 2009; Chuenpagdee 2011b). Research, advocacy and policy all emphasize the value of holistic and people-centred approaches to the management and governance of marine resources. They also indicate the importance of research being more action oriented and transdisciplinary in nature, and involving affected groups in research design, problem identification, research, analysis and reflection. Transforming societies and a deeper understanding of social change are key elements in International Social Science Council (ISSC) research projects contributing to Future Earth. There is a strong call for more research to enter into meaningful engagement with affected communities in the co-designing and co-producing of knowledge.

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