



# On the back foot

## The spin about fixed term fishing rights, future fisheries management

In the wake of industry jitters prompted by huge quota reductions for existing large right holders in hake inshore trawl and sole, two of South Africa's top fisheries scientists, Kevern Cochrane (KC) and Doug Butterworth (DB) voiced public concerns about fixed term fishing rights and the future of South African fisheries management. They believe the country urgently needs a new policy approach that could simultaneously advance transformation and provide much-needed industry stability. *Fishing Industry News Southern Africa* quizzed them about some of the current industry talking points.

**Q** Would you say the time has arrived to seriously revisit the whole notion of fixed term rights, in contrast to a system that provides potentially more security? What about longer term rights - or is this simply deferring the problem? What have you seen overseas that could help inform the debate?

KC: Yes, I think it would be good to reconsider the approach to access rights that is currently being applied in South Africa. However, it is important to realise that the primary problem is the challenge of transformation. Good progress has been made towards achieving transformation but until the process has been completed and we have an equitable and more or less stable distribution of rights, there will be problems.

There are many approaches to access rights, all of which will come with particular advantages and disadvantages. There are no single, miracle solutions that will satisfy the goals and objectives for all and each of the country's fisheries. What is most important is that DAFF, together with the legitimate stakeholders, considers the options carefully and determines the approach that will best suit each fishery, taking into account each fishery's objectives and, using the best available local and international knowledge and experience. A key objective in all cases must be to provide rights holders with sufficient security to give them a stake in the future of the fishery and thereby encourage responsible behaviour from them.

DB: The starting principle (near universally accepted) is that rights must have a lengthy duration for two reasons:

i) The conservation ethic: effective control of fisheries is not practical without the buy-in of those controlled – the right holders – and those holders will hardly cut-back today because of the option to then better utilise tomorrow if someone else will be given

the right tomorrow instead of themselves.

ii) Investment – the offshore fisheries in particular are capital intensive, requiring expensive vessels for which time is needed to pay back loans to cover the costs. Without sufficient time to recover the outlay on an investment, there'll be no further investment.

The most favoured approach internationally is ITQs (Individual Transferable Quotas) – rights awarded in perpetuity, and freely transferable to promote economic efficiency. But there are problems unless restrictions are added, particularly maximum holdings to preclude monopolistic practices, and development of "paper quota" asset holders who lease out the fishing of their right to others, which is understandably unpopular with those actually doing the fishing.

In SA the ideology of the current governing party does not accept private ownership of a right (in perpetuity), and there are also restrictions on transfers to try to prevent "transformation reversal". Lengthening the existing 15 years maximum allocation period won't solve the problem – it simply puts it off until the end of the period is approached.

**Q** The transformation issue obviously introduces a greater deal of complexity. How does one factor this into the debate? 'Permanent' rights might obstruct transformation, or is the converse true?

KC: Transformation has to be resolved in a way that satisfies, or at least is accepted by, the large majority of legitimate claimants. Once that has been done, the country could consider a system of permanent, tradeable rights that could be based on catches, fishing effort or, in some cases, designated areas. These would probably need some constraints to avoid the development of monopolies and there could also be other restrictions or incentives to help achieve policy goals. For example, if desired, in small scale fisheries ownership could be restricted to cooperatives. However, until we have reached that relative stability,

government must retain sufficient flexibility to achieve the goal "to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry" (from the MLRA).

DB: Indeed permanent rights might introduce an impediment. In principle in an ITQ system one could promote transformation by making cheap finance available to preferred groups so that 'LEGITIMATE CLAIMANTS' could readily "buy-in".

This does though beg the question of what is sufficient to constitute "legitimate", as there will always be more claims than government is able to satisfy given a finite cake. To devil's advocate, amongst the problems are:

What constitutes sufficient transformation, when the fishing industry under widely accepted measurement systems (I gather) is already amongst the most transformed in the country (Oceana, for example, has ranked either first or second on the JSE over the last three years in this respect).

How serious are newcomers regarding investment – the current round has already led to a number who have been offered (non-viable anyway) allocations, and are simply asking existing industry to catch those for them.

KC: Regarding 'legitimate stakeholders', Doug is right, of course: the term is easy to write but very challenging to put into practice. However, that is a bridge that has to be crossed if we are to make long-term progress in our fisheries. DAFF needs to consult and work with those who have a demonstrable stake in or claim to the country's fishery resources. As Doug points out, there will not be enough fish to satisfy all of them and some will have to be disappointed but discussions must start at that level. In full consultation, criteria need to be developed and refined as to who, in the end, will be the winners and who the losers. The losers will complain and there will be protests and legal challenges but those will be easier to handle if DAFF goes through fair, transparent and participatory approaches to get to the final decisions.

**Q** In your experience is there a willingness within government to debate the scrapping of fixed term rights? Is there another forum where this could be discussed? Kevern, you spoke about implementing EAF. Could this help address the issue?

KC: My experience and observations are that there is little willingness by senior management in DAFF to discuss the problems and to involve the various affected and disaffected parties in trying to find solutions. This was the primary problem that I raised in my recent Cape Times article. This approach violates common understanding of the principles of good and effective governance and runs counter to best-practice globally.

*Continued on Page 10*



From Page 9

EAF is recognised globally and nationally to be the best approach for achieving sustainable fisheries. South Africa is committed to implementation of EAF and, on the whole, is making reasonable progress in implementing it, particularly in our offshore fisheries. EAF does not, however, bring anything new or particularly helpful to solving the access rights problems. Conversely, the access rights problems need to be resolved if we are going to continue to make progress in implementation of EAF.

DB: Regrettably the standard of debate of the rights issue in SA has been rather poor. When started in the mid-1990s the initial discussions involved little more than newcomers saying we want it all, and existing industry saying you can't have anything – a complete stand-off. There were nevertheless some advances made in some specialist groups appointed to advise. But at the end of that day the MLRA was rushed through without proper debate of the issue. Since then the issue has been raised a number of times, and certainly in the last call for comments on the MLRA (though that ended up addressing only some requirements for small scale fisheries and co-operatives without really anything else). But government has shown no urgency to discuss more fundamental problems with the current rights allocation system – there seems to be a weakness at the level of strategic vision which is failing to comprehend the wider picture (with its more than short term problems) and plan how to deal with them, instead dealing with the consequentially inevitable problems in an ad hoc manner as they occur.

**Q It seems to me the rights process is seriously compromised by a seeming inability to undertake proper evaluation and assessment. Political interference is reportedly rife. Mindful that you surely want to avoid any kind of political commentary, would you have any comment to add here?**

KC: This is a fundamental problem that several of us have been referring to for the last 20 years or so (including prior to democratic elections in 1994).

Decisions are being made on allocations and reallocations with minimal information on the social and economic implications of those decisions. This was a core message in my *Cape Times* article. The small-scale fisheries policy is a prime example. I acknowledge and welcome the good and necessary intentions of the policy but its implementation is fraught with challenges and DAFF has not yet seriously considered those challenges and practical approaches to addressing them in implementation.

High level policy decisions are being made with very limited information and, apparently, little interest in obtaining such information. That has to change if our fishing sector is going to avoid being driven to the point of social, economic and biological collapse.

DB: I suspect the wrong rainbow is being chased with the highly complex points system that DAFF attempts for allocations. I doubt that's viable to set up reasonably objectively, and I see invidious elements – an existing right holder should know WELL before-

hand exactly what is expected of them – otherwise this process becomes unfair or at best a lottery.

My preference is for a much simpler system based on a few simple clearly defined minimum bars. After that let the market decide – maybe an auction (the revenue from which benefits the public) - and it is the business of banks, not civil servants to decide who constitutes a viable risk in respect of loans.

I can't speak directly as to how possible it is for the current points system to be subject to political distortion, being unaware of all the procedures. Whatever, my pressing for greater simplicity (at government level) is to get to a process that is as objective as possible, so that possible interference would be more difficult to hide.

**Q Fixed term rights appear to be deeply embedded in our fishing 'culture'. How realistic is it to think of an entirely new regime? And would you say a new regime is imperative if we want to achieve sustainability?**

KC: Transformation is a uniquely South African problem but the issue of access rights is a global one and many other countries have found solutions that work and provide fishers and the fishery sector as a whole with secure and stable rights (albeit still vulnerable to the vagaries of nature). Again, once we have satisfactorily solved the transformation challenge, appropriate solutions for fixed term rights should be relatively easy to agree upon, drawing on local and global experiences and knowledge.

DB: I suspect certain current actions in the rock lobster industry are being driven by an attitude of let's take as much as we can now, as very soon we might no longer still have the chance to take anything. Is "fixed term" embedded? I speak under correction, but I think the concept is no older than the MLRA (1998). Prior to that quotas were handed out annually by the Minister (and inertia plus a fishing industry then well-connected to cabinet ministers saw little change). To his credit, when John Wiley was made Minister in the 1980s, he specifically introduced an "independent" quota board to take over this responsibility because he wanted to distance politicians from the allocation process. The quota board continued on the annual basis that Ministers had used beforehand.

Then in the early 1990s after briefly visiting New Zealand, I gave a talk locally about their newly introduced ITQ system and asked why not here? A number of the quota board attended and agreed, taking it to the then Minister Pienaar who asked me to explain the system to him. But before much further could occur we had 1994 followed by the exercise I describe in C), which ultimately did at least realise that annual allocations made little sense when large investments were involved, and hence opened the way to longer periods.

I guess my bottom line though is that on analysis the interpretation of "fixed term" being deeply embedded is wrong – such is actually rather shallow.

**Q Is there a place for 'attrition' – where right holders return a small proportion of their total holding each year to help accommodate newcomers?**

DB: Yes, I'd argue attrition has much to offer, particularly with problems related to ITQs becoming more evident (and the continued and fundamental allocation problems internationally in Regional Fishery Management Organisations).

With the attrition system, something becomes available every year which could be allocated with a transformation intent. This system avoids the "end" problem of a fixed period, gives sufficient time to recover investment, allows newcomer introduction, and doesn't give full ownership in perpetuity to the awardee.

KC: I agree that attrition could be a useful component of a rights allocation system for the reasons given by Doug. However, it is not without its potential costs too. One important issue that needs to be considered is the impact attrition would have on fishing capacity at the company and national level (fishing capacity is the full potential fishing effort of a fleet, even if it is not put to full use).

How would a company develop its fishing fleet within a system of attrition where it loses a portion of its quota each year?

Would they ensure that they had sufficient capacity to catch their full, 100% quota at the start of a rights allocation knowing it would not be fully used for much of the rights period, or would it make more economic sense for them to have less capacity at the start, knowing that they would not be able to catch their full quota for the earlier years?

Their decisions would have national implications too and could potentially lead to serious over-capacity in the national fleet in the later years of a rights holding or, alternatively, some wasted social and economic opportunities if companies opted for fewer vessels and could not catch their full quotas in the early years of a rights holding. This is not to say that attrition could not have a role to play but it too needs to be thought through carefully in consultation with stakeholders and, if applied, applied in a way that makes most sense from ecological, social and economic perspectives.

DB: While Kevern raises issues that require consideration, particularly the need to avoid over-capacity, the attrition system can and should readily be tuned to deal with them. The key element is to set the attrition rate at the inverse of the typical vessel lifetime in the fishery concerned, so that losses of rights roughly balance natural wastage. Other balancing effects are that one develops investment plans from the current situation in SA of generally fully subscribed fishing effort situation, not in a "new fisheries" context, and that for many fisheries there are effort as well and TAC controls in place.

**Q SA remains highly rated from a fisheries management point view. Some might say 'so what is the problem?' - the system works fine. Or not?**

KC: Some of South Africa's fisheries, in particular the offshore ones such as the demersal and small pelagic fisheries, are undoubtedly well managed at present. The high rating that South Africa enjoys is largely based on those examples. However, if the country was judged on all of our fisheries, including the inshore rock lobster, abalone and linefish fisheries, I anticipate that we would slip a considerable way



down the rankings.

A further point is that, particularly because of thinly stretched human resources and risks of poor decisions by DAFF as we have recently seen, the good performance with the offshore fisheries is precariously balanced. Unless carefully watched and managed, those fisheries too could easily slip into a position of excess capacity and overfishing and all that goes with it. There is no room for complacency but, on the contrary, good cause for concern.

DB: SA is highly rated in systems like the Melnychuk-Hilborn fisheries management index primarily because since 2000 we've barely differed from the scientific recommendations in regulating our fisheries. The system is being kept going at this seems-good level - which international ecolabelling schemes whose approval is critical to economic viability of our major fisheries require - by scientists and by industry paying for aspects such as observer programmes which are normally the responsibility of government.

But now with the increasing lobster and abalone poaching, and DAFF no longer sticking to scientific TAC recommendations for those fisheries - matters that are already being noted in international circles - I regret that our rating will probably start to fall.

**Q What is your view on the small-scale policy? How would that fit in to a hypothetical new fishing management regime?**

DB: For small scale I have sympathy, but there's not nearly enough to go around to match implied government promises, plus no evidence yet of any viable compliance plan (interestingly in discussions I hear views from those with insight that very little of the poaching is for "subsistence" - it occurs because it's a profitable business - is there any real hope of sustainability here? Don't we need a parallel initiative to equip many of these people for occupations other than fishing?

KC: The adoption of a small-scale fisheries policy was necessary to address the historical neglect and marginalisation of traditional, artisanal fishers in the country and I welcome its underlying goals. I am con-

cerned, however, about the feasibility and implications of insisting on issuing rights only to community based legal entities, which will be a new experience for South Africa. A second challenge is that there are not enough fisheries resources to provide reasonable livelihoods to all the people who would like to participate in small-scale fisheries, especially with the already depleted state of many of our inshore resources. Some major upheavals seem inevitable in implementation of the policy and I reiterate the importance of full engagement of stakeholders to resolve outstanding issues in going forward.

DB: Certainly further discussions are needed to ensure better understanding on all sides. Small scale is the biggest problem because it simply seems not to have been thought through properly, and needs to be attempted in an adaptive and gradual way to avoid irreversible damage.