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The chimera of redistribution in post-apartheid South Africa: ‘Black Economic Empowerment’ (BEE) in industrial fisheries

Stefano Ponte and Lance van Sittert

ABSTRACT

Black Economic Empowerment (BEE) is an attempt to marry redistributive and neo-liberal economic policies. The South African state, however, has differing degrees of power to force redistribution on different sectors of the economy. Fisheries is one of the sectors where state allocation of licenses, exploitation rights and quotas makes the prospects for BEE promising. In this paper, we examine redistributive processes in the hake trawl industry. We conclude that BEE, despite its redistributive intentions, has been doubly conducive to the interests of large-scale South African capital. To begin with, it has by and large confirmed the historical share of fishing rights to incumbent, largely white-controlled, operators. Second, it has created a layer of ‘black captains of industry’ to whom incumbents are increasingly outsourcing primary production in a volatile, high-risk, and currently loss-leading sector. While fishing operations are being outsourced under the banner of redistribution, the fish trade remains under the effective control of white capital.

Redistributive policies do not belong on the palette of neo-liberalism. Under neo-liberalism, inequality of resources can only be addressed by equality of opportunity. Even in ‘softer’ impersonations, corporate (mis)behaviour is tamed by corporate social responsibility, not by state disciplinary action. Yet in the context of post-apartheid South Africa, the state can not ignore political pressure for redistribution, even if only rhetorically. Since 1994, South Africa has embarked on a series of programmes aimed at empowering groups and individuals that had been negatively affected by apartheid. This has been attempted directly by government through efforts to deliver better public services and housing, and indirectly through the process of Black Economic

Empowerment (BEE). BEE, an attempt to marry redistribution and neo-liberal economic policy, emerged in the early 1990s with an initial focus on increasing ‘black’¹ ownership of shares in major corporations. In more recent years government and business have re-packaged the concept as ‘broad-based BEE’ following accusations that BEE was simply enriching a small number of well-connected black politicians and

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¹ In brief, the BEE Codes define ‘black people’ as South African citizens who are : ‘African, coloured or Indian’ (‘Statement 000: The Organisation of the Codes of Good Practice, the Elements of Broad Based Black Economic Empowerment and the Generic Scorecard,’ in ‘Code 000: Framework for the Measurement of Broad Based Black Economic Empowerment’ (Final Draft) (Department of Trade and Industry, DTI, Pretoria, December 2005), pp. 2-3. We are aware that there is substantial ‘Coloured’ involvement in Western Cape fisheries but for reasons of space and relevance we have avoided breaking down ‘black’ interests into its various components.

businesspeople in a context of persistent poverty.² Under this new umbrella, ownership is now only one of seven main criteria upon which the empowerment credentials of businesses in South Africa are assessed – the others being management representation, employment equity, skills development, preferential procurement, enterprise development and corporate social investment.

In this article, we examine the historical foundations of ‘empowerment’ in the last century or so, focussing on South Africa’s industrial fisheries in general and the hake-trawl industry in particular. We delineate the shifting identities of ‘previously disadvantaged groups’ and the changing relations between state and business, including the reactions of the latter to attempted redistribution. The South African state has differing degrees of power to force redistribution on different sectors of the economy. Fisheries, along with energy, telecommunications, and mining, is one of the sectors where the allocation of licenses, exploitation rights and quotas makes the state theoretically more likely to be successful in achieving BEE. It is also a primary test of the redistributive intentions of the state: South African fisheries are regulated via a conservative allocation of quotas; therefore, extractive growth can not be used to distribute extra resources; resources need to be redistributed from the same pool.

Viewed historically, the current process of BEE in South African fisheries is but the latest in a long series of ethnic makeovers by corporate capital in response to state pressure. What is unique about the current conjuncture is thus not the state’s use of access rights to leverage the position of its preferred ‘previously disadvantaged’ ethnic

² O. Iheduru, ‘Black economic power and nation-building in post-apartheid South Africa’, *Journal of Modern African Studies* **42**, 1 (2004), pp. 1-30.

constituency with incumbents,³ but the formalization of the practice into standards, measurement matrixes, and official policy, its extension from the inshore to the deep-sea sector, and the attempt to change the internal ethnic composition (shareholding) of incumbent players.

Following a brief introduction to BEE in South Africa, in the rest of this article we examine redistributive processes through a historical analysis of the principles, frameworks, narratives and management systems that have been used to identify certain groups as ‘legitimate fishers’ since the inception of the hake trawl industry in the late nineteenth century. We present this evolution as the background to a nuanced understanding of the first long-term fish rights (LTRs) allocation of 2006, which – given the current high political status of BEE processes in the country and the fact that the next allocation is only scheduled to take place in 2020 – was probably the last real possibility for the South African government to enact a meaningful redistribution of quotas.

BEE in South Africa

The notion of BEE in South Africa can be traced as far back as the Freedom Charter of 1955, which states that ‘the people shall share in the country’s wealth’ and that ‘the land shall be shared among those who work it’.⁴ The identification of BEE as a central

³ By ‘incumbents’, we mean fishing industry players that were already active at the time of re-negotiation of the ‘legitimacy’ of a particular ethnic profile. Usually, these players belonged to a ‘previously advantaged’ group.

⁴ African National Congress (ANC), ‘The Freedom Charter’, adopted at the Congress of the People (Kliptown, 26 June 1955) available at www.anc.org.za/ancdocs/history/charter.html (8 March 2007).

element in addressing the apartheid legacy was reflected in the ANC's Reconstruction and Development Programme (RDP) developed prior to the first democratic election in 1994, and then adopted in government. The RDP stipulated the need to 'deracialise business ownership and control completely through focused policies of 'Black Economic Empowerment'.⁵ Among other things, the RDP was seen as a programme which sought to mobilize all people and the country's resources toward the final eradication of apartheid and the building of a democratic, non-racial and non-sexist future.

Progress was slow, however, and on 29 May 1998, Thabo Mbeki opened the National Assembly debate on 'Reconciliation and Nation Building' with what became known in South Africa as his 'Two Nations' speech. In his address, Mbeki argued that national unity and reconciliation between black and white South Africans were impossible dreams if socio-economic disparities, which prevented black South Africans from exercising their citizenship rights to an equal extent to white South Africans, were not rapidly overcome. At around the same time the Black Economic Empowerment Commission (BEE Commission) was formed under the auspices of the Black Business Council in May 1998. The mandate of the Commission was to develop an accelerated National BEE Strategy that would provide concrete recommendations for the future of black business. The BEE Commission submitted its long-awaited report, the Integrated National BEE Strategy, to President Mbeki on 11 April 2001. The report emphasized that South Africa would not be able to achieve high levels of economic growth and development without the intervention of the state to facilitate BEE. The BEE

⁵ African National Congress (ANC), 'The Reconstruction and Development Programme: A policy framework' (Umanyano Publications, Johannesburg, 1994).

Commission report thus situated empowerment as part of a development strategy in response to the observation that unregulated market forces reinforced the existing inequalities.⁶

Between 1994 and 2000, the post-apartheid government enacted a raft of legislation aimed at correcting past injustices. This included legislation addressing education, skills development, procurement and employment equity. While this undid apartheid legislation, the transformative outcomes required to redress the apartheid legacy are much more substantial. In addition, trade liberalization, privatization, and tight macroeconomic policies oriented to reducing the government deficit and inflation failed to stimulate much needed employment growth, with important implications for the participation of black people in the ‘formal’ economy. Unemployment increased to around 40 per cent, with the unemployed being almost entirely unskilled and black. Employment and earnings did increase in highly skilled occupations, but disproportionately benefiting white South Africans – given their historically privileged access to education, training and skilled positions of employment.⁷

⁶ BEE Commission, ‘Black Economic Empowerment Commission Report’ (Skotaville Press, Johannesburg, 2001).

⁷ S. Ponte, S. Roberts and L. van Sittert, ‘To BEE or not to BEE? South Africa’s ‘Black Economic Empowerment’ (BEE), corporate governance and the state in the south’ (*DIIS Working Paper* 2006:27, Danish Institute for International Studies, Copenhagen, 2006); H. Bhorat and T. Hinks, ‘Changing Patterns of Employment and Employer-Employee Relations in post-*Apartheid* South Africa’, (paper presented at Stellenbosch University conference on South African Policy Under Democracy: A 10 Year Review, Stellenbosch, 2005)

This has led to a situation where political pressure for ‘effective BEE’ has mounted in the face of the perceived slow pace of change, whether measured in terms of black ownership or more broadly in terms of ‘meaningful participation’ by black South Africans in the economy. At the same time, ‘slow’ should be read in the context of 350 years of colonialism, segregation, and apartheid, and the absence of a post-apartheid policy of radical redistribution.

BEE has been viewed as a political effort directed at sometimes contradictory objectives. It is usually conceived as a project to redistribute productive resources to groups (or, more specifically, individuals) previously disadvantaged by the system of apartheid. Critical examinations of BEE have construed it as a vehicle for nepotistic accumulation – facilitating black capitalist class formation and installing a ‘rainbow’ neo-liberal economic and political system that guarantees the survival of the dominant ‘white capitalist class’⁸. Finally, it has been characterized as an African nationalist project.⁹ In the rest of this article, rather than taking *a priori* positions on these issues, we examine how BEE plays out in practice in one specific sector – distinguishing between intentions, practices, constraints and consequences.

The Hake Fishery in South Africa: Background and History

⁸ Iheduru, ‘Black economic power’; R. Southall, ‘Black empowerment and corporate capital’, in J. Daniel, R. Southall and J. Lutchman (eds) *State of the Nation: South Africa 2004-2005* (HSRC Press, Cape Town, 2005); R. Southall, ‘The logic of Black Economic Empowerment’, (*DIIS Working Paper* 2006:28, Danish Institute for International Studies, Copenhagen, 2006).

⁹ Ponte et al., ‘To BEE or not to BEE’.

The hake fishery of South Africa is organized into four sectors: deep-sea trawl (HDST), in-shore trawl, longlining, and handlining. The hake deep-sea trawl (HDST) sector is the most important fishery in South Africa and in the last decade has accounted for approximately half of the wealth generated from commercial fisheries in the country.¹⁰ The deep-sea trawl fleet amounted to 79 vessels in 2005, over half of which are factory vessels with freezing and/or processing facilities. Around 1/3 of the total hake trawl is processed into marketable products aboard factory ships at sea. The other 2/3 is landed for further processing in one of over 50 shore-based facilities.¹¹ Hake exports amount to approximately 40% of the total value of South African exports of fish and fishery products. In 2003 this represented a value of ZAR 2.6 billion or USD 143 million.¹²

The hake fishery started in the 1890s, with the employment of the first deep-sea trawlers, and grew steadily after World War II, with rapid growth in the 1960s and the first half of the 1970s upon arrival of foreign fleets. Before 1978, the fishery was by and large unregulated and catches peaked at over 300,000 tons in the early 1970s. Following the establishment of an Exclusive Economic Zone (EEZ) in 1977, the industry has been regulated through the allocation of an annual total allowable catch (TAC) quota and of

¹⁰ Marine and Coastal Management (MCM), 'General reasons for the decisions on the allocation of rights and quantum in the hake deep sea trawl fishery' (MCM, Cape Town, January 2006), p.6.

¹¹ T. Hutton, 'Industry-government co-management arrangements in the South African offshore demersal hake industry,' in M. Hauck and M. Sowman (eds.) *Waves of change: Coastal and fisheries co-management in Southern Africa* (UCT Press, Cape Town, 2003).

¹² D. Crosoer, L. van Sittert and S. Ponte, 'The integration of South African fisheries into the global economy: past, present and future', *Marine Policy* **30**, 1 (2006), pp. 18-29.

individual (non-tradable) quotas assigned to fishing companies. Foreign vessels have been excluded from the EEZ since 1983. The hake deep sea trawling TAC has fluctuated between a minimum of 105,000 tons (in 1983) and a maximum of 140,000 tons (in 1997), generally hovering around 130,000-135,000 tons from the early 1990s onwards. The regulatory agency currently in charge of fisheries in South Africa is Marine and Coastal Management (MCM), a branch of the Department of Environment and Tourism.

Although it has always presented itself as the epitome of free market private enterprise,¹³ historically, the HDST industry in South Africa has been a creature of the state. At the beginning of the 20th century, the HDST industry in South Africa was modelled after the steam trawler fisheries of Europe. This was made possible by a combination of mineral-led population concentrations in the interior of southern Africa, colonial state railway construction, and prospecting of the continental shelf for demersal fishing grounds that took place in the final quarter of the nineteenth century.¹⁴ The fishery was conducted by imperial trawling capital (Richard Irvin and Sons) subsidized by subventions from its Scottish parent company.¹⁵ Political union in 1910 improved the fishery's prospects by removing internal barriers and bringing the domestic market under a single political authority. Richard Irvin and Sons forged an alliance with imperial mining capital (Imperial Cold Storage) to exploit this opportunity by vertically

¹³ Irvin and Johnson, *South African Fish and Fishing* (Irvin and Johnson, Cape Town, 1963).

¹⁴ W. Wardlaw Thompson, *The sea fisheries of the Cape Colony* (Maskew Miller, Cape Town, 1913); L. Van Sittert, 'South Africa's seagoing proletariat: the Trawler and Line Fishermen's Union, 1939-1945', *International Journal of Maritime History* 6, 2 (1994), pp. 1-44.

¹⁵ Van Sittert, 'South Africa's seagoing proletariat'.

integrating white fish production and wholesale distribution. Together with a Norwegian trawler operator (Charles Ocean Johnson) they formed Irvin and Johnson (I&J) in 1910 and used the state railway network and Imperial Cold Storage's parallel system of refrigeration facilities to create a national urban white fish market.¹⁶

If vertical integration and monopolization were necessary economic solutions to the peculiarities of a colonial market, they were also increasingly politically unsustainable by the interwar period. I&J's imperial origins, local alliance with mining capital and monopolization of the HDST fishery made it a ready and regular target of both Afrikaner nationalists and organized white labour at a time when the issue of deepening white poverty dominated white politics. I&J was accused of complicity in creating 'poor whiteism' by dumping fish at sea to maintain artificially high white fish prices on the national market. Its detractors demanded that, as a private company profiting from public spending on the marine survey, it be called to account by the state.¹⁷

From 1932 onwards an interventionist national state gradually emerged, financed by the massive revenue windfall generated by abandonment of the gold standard.¹⁸ The state formally assumed control over marine fisheries from the Cape Province in 1940. The need for a wartime social contract with labour led to the drafting of a Fishing Industry Development Bill in 1943. The bill, strongly supported by Afrikaner nationalists and

¹⁶ Irvin and Johnson, *South African Fish and Fishing*; Van Sittert, 'South Africa's seagoing proletariat'.

¹⁷ L. Van Sittert, 'Those who cannot remember the past are condemned to repeat it: comparing fisheries reforms in South Africa', *Marine Policy* **26**, 4 (2002), pp. 295-305.

¹⁸ D. Yudelman, *The emergence of modern South Africa* (David Philip, Cape Town,, 1984).

organized labour, proposed to nationalize the HDST industry in the interests of higher wages and cheaper food for the urban working class. I&J had exposed itself to such a measure by profiteering from the war through leasing half its fleet to the state at exorbitant rates for seaward defence purposes and ruthlessly exploiting the labour force on the remainder to maintain pre-war catch levels. The company, however, successfully mobilized national commerce and industry to force a last-minute exclusion of the HDST sector from the bill in 1944.¹⁹ This preserved the historical relationship between state and capital whereby the public purse subsidized private profit through the provision of research and infrastructure at a nominal charge.

With the end of two decades of state pressure on the HDST sector, I&J was quietly reintegrated with mining capital through its takeover by Anglovaal in 1952. I&J's ability to expand its production was once again constrained by the lack of local demand for fish from the majority black population. Exports to neighbouring states with similar colonial market profiles were also limited by the dearth and cost of refrigerated shipping and by protectionism. Mining capital, seeking to offset the effect on operating costs of rising post-war meat prices, delivered the captive market of compound labour to the HDST as new fish consumers. But it was a combination of white middle class demand under apartheid, the application of quick-freezing technology, and the spread of retail and domestic refrigeration, that was to transform the hake industry. This new cold chain linking producer and consumer allowed the development of pre-processed and packaged hake products, of which the 'fish-finger' was the pioneer, marketed to white

¹⁹ Van Sittert, 'Those who cannot remember'; Van Sittert, 'South Africa's seagoing proletariat'.

middle class housewives as a cheap, quick and healthy food for the emerging bourgeois family.²⁰

Yet the South African hake fleet was steadily falling behind international technological advances in fishing. In 1961 the industry was rudely awakened to its technological backwardness by with the arrival offshore of the first foreign freezer trawlers.²¹ The HDST industry was largely left to fend for itself on the unregulated high sea commons it had so ruthlessly fought for and won in 1944. Under these circumstances, I&J pursued the only option open to it, a crash conversion program to diesel freezer stern trawling, in order to maintain catch levels in the face of foreign competition.²² The company belatedly ordered its first two stern trawlers in 1963. The escalating fishing arms race in the south east Atlantic, however, only hastened the inevitable ‘tragedy of the commons’

²⁰ Irvin and Johnson, *South African Fish and Fishing*; Van Sittert, ‘South Africa's seagoing proletariat’.

²¹ Amalgamated Fisheries was founded at Hout Bay by British capital (the Vestey group), which erected a new freezing and smoking factory in 1964 and the following year introduced the first stern trawler into the South African fleet. In 1965, Spanish capital (Pescanova SA) in partnership with South African (Imperial Cold Storage) and expatriate Dutch inshore fishing capital (Southern Sea Fishing Enterprises) established the Sea Harvest Corporation at Saldanha Bay – one of the most advanced trawlfish processing factories in the world at that time. See R. Lees, *Fishing for fortunes: The story of the fishing industry in southern Africa and the men who made it* (Purnell, Cape Town, 1969), pp. 264-5.

²² Republic of South Africa, ‘Report of the committee of inquiry into the offshore trawling industry of South Africa and South West Africa’ (Unpublished report, MCM Gilchrist Library, 1976).

signalled by the steady increase in the catch and concomitant collapse of catch-per-unit-of-effort in the hake fishery.²³

By the mid-1970s, both the national state and the HDST industry recognised the urgent need to end their longstanding mutual animosity in order to save the national hake fishery from extinction. The blueprint for a new relationship between state and capital in the HDST sector was provided by the International Commission on South East Atlantic Fisheries, formed in 1969 to manage the region's high seas fisheries, where South African senior state bureaucrats and captains of industry discovered their mutual interests and the benefits of co-operation.²⁴ The sacrifice of a series of state-managed fisheries to the profits of Afrikaner capital had also created a legitimacy crisis for the state, which it sought to resolve by closing the marine frontier and changing the basis of marine resource management from *volkskapitalisme* to scientifically-determined sustainability.²⁵ For its part, the HDST industry, facing imminent commercial extinction as spiralling fuel and vessel replacement costs ate further into returns already badly eroded by foreign competition both at sea and in the supermarkets, was finally willing to accept state regulation.²⁶

In the discourse of the emerging security state, hake was thus redefined as a strategic resource on the grounds of both its role in ensuring food self-sufficiency into the 21st

²³ Hutton, 'Industry-government co-management arrangements', p. 202.

²⁴ *Ibid.*

²⁵ Republic of South Africa, 'Report of the commission of inquiry into the fishing industry of South Africa and South West Africa' (Republic of South Africa, Pretoria and Cape Town, 1972).

²⁶ Republic of South Africa, 'Report of the committee of inquiry into the offshore trawling industry' (Republic of South Africa, Pretoria and Cape Town, n.d.).

century and as a foreign exchange earner. This mandated national state intervention in the HDST industry to annex the resource for the exclusive use of national capital – which took place via the declaration of a two hundred nautical mile Exclusive Economic Zone (EEZ) in November 1977. In return for the exclusion of all foreign fishing vessels from this zone, the HDST industry agreed to abide by state regulation setting an annual total allowable catch (TAC) and to ensure that the domestic market was fully supplied with cheap hake before exporting any surplus.²⁷

When the imposition of a TAC in 1978 failed to reverse the continued increase in fishing effort, individual producer quotas were allocated from the following year – on the basis of historical performance in the fishery. As a result, the quota holders organized themselves in the South African Deep-Sea Trawling Industry Association (SADSTIA). The new corporatist basis of the hake fishery was formalized with the establishment of a South African Deep-Sea Resource Management Committee (DSRMC) in 1982, comprising SADSTIA and the state’s fisheries managers and scientists, to effectively govern the sector and the expulsion of all foreign vessels from the EEZ the following year.

The state’s enclosure of the hake resource in an EEZ and imposition of restrictions on its harvesting by national capital arrested the decline of the hake resource and stabilized the CPUE.²⁸ The recovery, however, nowhere near approximated the optimistic predictions of the mid-1970s. This suggests that the natural capital of the hake fishery

²⁷ Hutton, ‘Industry-government co-management arrangements’.

²⁸ Hutton, ‘Industry-government co-management arrangements’, p. 202.

was largely mined out during the hake rush of 1962-77, and that the fishery has subsequently survived on a much reduced patrimony.

Reforming the Corporatist Fishery: Neo-liberalism and BEE

Following Namibian independence and the unbanning of the black nationalist movements in 1990 there was a growing awareness on the part of capital of the inevitability of redressing the racially-skewed ownership structure of the apartheid fisheries. In 1992, just ahead of the first democratic election, hake access rights were redistributed in the form of community quotas to help secure the ‘coloured’ vote for the National Party (NP) in the Western Cape Province. This was a purely token redistribution, however, as the high entry costs to the hake fishery forced the recipient community trusts to immediately sell their rights back to the HDST industry to realize their value.²⁹

At the same time as quota redistribution stalled, the HDST sector was also conspicuous by its absence from the early efforts to ‘blacken’ its shareholding. In 1996, I&J transferred 2.2% of its share capital to employees, while Sea Harvest transferred 8%; but otherwise the incumbent monopoly’s embrace of BEE dates only from 1998 (see Table 1). By comparison, in the inshore fisheries, the dominant interest (Oceana)

²⁹ Republic of South Africa, *Report of the commission of inquiry in fishermen’s community trusts* (Republic of South Africa, Pretoria and Cape Town, 1994). P.G. Du Plessis and D.W. Schutte, ‘The socio-economic effects and implications of fishermen’s community trusts in South Africa’, in D.A. Hancock et al. (eds), *Developing and sustaining world fisheries resources; The state of science and management* (CSIRO Publishing, Collingwood, 1997).

instituted an Employee Share Option Purchase (ESOP) scheme in 1994 and concluded a BEE deal with Real Africa Investments the following year.³⁰ The HDST sector's tardy response to political change was perhaps due to a misplaced sense of its own invulnerability derived both from the high entry costs to the fishery and its cosy relationship with the state, which had reserved any increase in the TAC exclusively for incumbents. The creeping liberalization of the late apartheid corporatist state had also substantially disarmed the interventionist state in the fisheries and further contributed to SADSTIA members' sense of security.³¹

TABLE 1 HERE

The formation of a government of national unity (GNU) following the first democratic election in 1994 and the appointment of National Party politician Dawie de Villiers as minister of The Department of Environmental Affairs and Tourism (DEAT) with responsibility for reforming ownership in the fisheries seemed to confirm SADSTIA in its assumption of business as usual. De Villiers duly appointed a Fisheries Policy Development Committee (FPDC) in 1995 to draft a new fisheries act. The FPDC was dominated by the better-resourced and -organized incumbent rights holders. SADSTIA, in alliance with organized labour and marine science, bluntly refused to countenance any redistribution of hake quotas as prejudicial to the sustainability and economic

³⁰ L. Van Sittert, 'Leviathan bound: the post-1994 reform of the South African fishing industry', in A. Lemon and C.M. Rogerson (eds.) *Geography and economy in South Africa and its neighbours* (Ashgate, London, 2002).

³¹ Van Sittert, 'Leviathan bound'; see also B. Hersoug and P. Holm, 'Change without redistribution: an institutional perspective on South Africa's new fisheries policy', *Marine Policy* **24**, 3 (2000), pp. 221–31.

stability of the sector and demanded the effective privatization of the fishery through the conversion of the existing annual access rights into individual transferable quotas (ITQs) held in perpetuity and tradable as corporate assets.³² The only thing more surprising than SADSTIA's revanchism was that the FPDC both endorsed its demands and wrote them into the first draft of the new Marine Living Resources Act (MLRA) in 1997.³³

On the cusp of an improbable and unprecedented victory, SADSTIA's planned privatization of the apartheid hake fishery was undone at the last minute by the disintegration of the GNU at the end of 1996. The subsequent appointment of an ANC minister, Pallo Jordan, and deputy-minister, Peter Mokaba, in the DEAT heralded a

³² See Republic of South Africa, 'Fisheries policy development committee: Towards a national marine fisheries policy for South Africa' (Department of Environmental Affairs and Tourism (DEAT), Pretoria and Cape Town, 1996); R. Martin and J.R. Nielsen, 'Creation of a new fisheries policy in South Africa: The development process and achievements', in A.K. Normann, J.R. Nielsen and S. Sverdrup-Jensen (eds), *Fisheries co-management in Africa* (Institute for Fisheries Management and Coastal Community Development, Hirtshals, 1997); R. Van der Elst, G. Branch, D. Butterworth, P. Wickens and K. Cochrane, 'How can fisheries resources be allocated ... who owns the fish?', in D.A. Hancock, D.C. Smith, A. Grant and J.P. Beumer (eds) *Developing and sustaining world fisheries resources: the state of science and management* (CSIRO Publishing, Collingwood, 1997); K.L. Cochrane and A.I.L. Payne, 'People, purses and power: developing fisheries policy for the new South Africa', in T.J. Pitcher, P.J.B. Hart and D. Pauly (eds), *Reinventing fisheries management* (Kluwer, Boston, 1998); and Van Sittert, 'Leviathan bound'.

³³ Republic of South Africa, 'White paper: A marine fisheries policy for South Africa' (CTP Book Printers, Cape Town, 1997); Republic of South Africa, *Marine Living Resources Bill (as introduced)* (Republic of South Africa, Pretoria and Cape Town, B94-97, 1997); Van Sittert, 'Leviathan bound'.

dramatic shift leftwards towards a radical redistribution of access rights in the fisheries. This reflected not only Mokaba's personal populist predilections, but also the looming second democratic election in 1999 and the ANC's determination to wrest control of the rebel Western Cape Province from the NP. The ANC-led Portfolio Committee on Environmental Affairs and Tourism (PCEAT) thus duly rejected the draft MLRA and fundamentally rewrote it, fully restoring the interventionist state to the final version of the MLRA promulgated in 1998.³⁴ This sudden shift in policy exposed the HDST sector as the least transformed of all national fisheries, where un-reformed I&J and Sea Harvest between them still controlled 75% of the TAC. The latter belatedly sought to avert external redistribution of their quotas by internally redistributing share ownership through BEE deals with politically-connected black capital. In 1998 I&J's parent Anglo Vaal Industries (AVI) transferred a 20% stake in the company to a BEE triumvirate comprising Siphumele Investments (10%), Ntshona Investment Enterprises (5%) and Dyambu Holdings (5%), in a deal valued in excess of ZAR 162 million. In the same year, Sea Harvest's parent Tiger Brands sold a 27% share in its operations to a consortium controlled by Brimstone, the BEE company headed by the former ANC provincial MEC for economic development, Chris Nissen, valued at ZAR 148m. This included a 10.8% stake in Sea Harvest (see Table 1).

The danger of quota redistribution was further heightened by the steady devaluation in the national currency in the late 1990s, which turned hake export into a foreign

³⁴ Republic of South Africa, *Portfolio committee amendments to Marine Living Resources Bill*, (B94A-97, 1997); Republic of South Africa, *Marine Living Resources Bill (as amended by the portfolio committee on environmental affairs and tourism (National Assembly))* (B94B-97, 1997); Republic of South Africa, *Marine Living Resources Act (MLRA)* (Act 18 of 1998); Van Sittert, 'Leviathan bound'.

exchange bonanza and the hake fishery into the primary target of the populists.³⁵ The latter, however, in their eagerness to seize the prize, overreached themselves. Jordan's attempt to use the MLRA to redistribute ownership in the inshore sector was interdicted by incumbents in the courts, while popular anticipation of an imminent radical redistribution of all access rights saw the state fisheries administration incapacitated by a deluge of applications.³⁶ The legal and administrative crippling of the state and the failure of the populists to deliver the Western Cape to the ANC in the 1999 election, saw them swiftly purged in its wake.

The Mbeki presidency's preference for orthodox neo-liberal economic policy³⁷ was clearly signalled in the fisheries sector by the appointment of Valli Moosa as minister for the DEAT in 1999. Moosa resumed responsibility for the fisheries from his deputy-minister in 2000 and announced a five-year timetable for the transition from annual to medium-term rights (MTRs), and eventually to long-term rights (LTRs), to be allocated according to criteria determined in consultation with established players in the industry.³⁸ This led to a switch in emphasis away from 'external' (quotas to new entrants) to 'internal' (shares to BEE consortia) redistribution – justified in the interests of economic efficiency and international competitiveness.³⁹ The final neo-liberal

³⁵ Crosoer et al. 'The integration of South African fisheries'.

³⁶ Van Sittert, 'Leviathan bound'.

³⁷ A. Handley, 'Business, government and economic policy-making in the new South Africa, 1990-2000', *Journal of Modern African Studies* **43**, 2 (2005), pp. 211-239.

³⁸ Van Sittert, 'Leviathan bound'.

³⁹ See D. Mather, P.J. Britz, T. Hecht and W.H.H. Sauer, 'An economic and sectoral study of the South African fishing industry. Volume 1. Economic and regulatory principles, survey results, transformation and socio-economic impact' (Report prepared for MCM by Rhodes University, Grahamstown, 2003); and W.H.H. Sauer, T. Hecht,

restoration in the HDST fishery was completed by Moosa's successor, Martinus van Schalkwyk, the former leader of the National Party following his appointment to minister of the DEAT in 2004. The granting of hake LTRs in January 2006 marked the final transformation of the fishery in two senses: from exclusive white to 'black-er' ownership; and from a publicly-managed to a quasi-privatized fishery.⁴⁰

The so-called 'tripod' of sustainability, stability and equity on which the quasi-privatized HDST fishery rests may not be as stable as its architects believe, however. First, there are increasing signs that the hake resource is not as healthy as everyone had thought. The 2005/06 hake TAC was the lowest in fifteen years – back at a level last seen during the late apartheid corporatist regime's 'rebuilding' phase – and it shrunk further in 2006-07. The political discounting of the hake stock in the 1990s to accommodate new entrants without dispossessing incumbents,⁴¹ possibly exacerbated by climate change,⁴² would thus appear to have jeopardized the long-term profitability of the fishery and of its players. Falling catches and average fish size – coupled with a strengthening in the ZAR and fuel price inflation – has burst the post-apartheid hake export bubble.⁴³ It has sent balance sheets, flush just a few years ago with the profits of

P.J. Britz and D. Mather, 'An economic and sectoral study of the South African fishing industry. Volume 2: Fishery profiles' (Report prepared for MCM by Rhodes University, Grahamstown, 2003).

⁴⁰ L. Van Sittert, G. Branch, M. Hauck and M. Sowman, 'Benchmarking the first decade of post-apartheid fisheries reform in South Africa', *Marine Policy* **30**, 1 (2006), pp. 96-110.

⁴¹ Van Sittert, 'Leviathan bound'.

⁴² B. Clark, 'Climate change: a looming challenge for fisheries management in southern Africa', *Marine Policy* **30**, 1 (2006), pp 84-95.

⁴³ Crosoer et al. 'The integration of South African fisheries'.

exporting, on a precipitous plunge.⁴⁴ The linked environmental and financial crises have put the post-apartheid social contract in the HDST sector under increasing strain. The controlling capital interests demand cost-cutting plant closures and redundancies that are detrimental to organized labour. At the same time, BEE partners recruited during the boom have been looking at ways to exit the sector.⁴⁵

⁴⁴ On I&J, see: AVI, 'Operations' available at <http://www.avi.co.za/operations/3.2_divisional_ij.html> (26 January 2007); on Sea Harvest, see: Tiger Brands, 'Adding value to life' available at <<http://www.tigerbrands.co.za>> (26 January 2007).

⁴⁵ I&J's 1998 BEE deal unravelled in 2003 when Siphumele Investments sold its 10% stake back to AVI (*Cape Times Business Report*, 6 July 2004). The remaining BEE partners – Dyambu Holdings and Ntshona Investment Enterprises – then negotiated to also sell their 5% stakes back to AVI the following year in return for shares in a reconstituted BEE consortium with an enlarged 25% interest in I&J valued at ZAR 201m and including a new BEE partner, Mast Fishing (*Cape Times Business Report*, 6 July 2004). Dyambu and Ntshona were each to have a 36% stake in the consortium and Mast the remaining 28% (*Ibid.*). Dyambu, however, failed to meet unspecified criteria leading AVI to exclude it from the deal. The deal finally went ahead in 2005 with Ntshona and Mast Fishing taking a reduced 20% share in I&J, and AVI electing to redistribute the remaining 5% of the original deal as an ESOP to I&J employees instead (*Cape Times Business Report*, 10 March 2005) (see Table 1). Sea Harvest has had similar problems retaining its BEE partner, Brimstone. The latter doubled its stake in Sea Harvest to 21.5% following delisting in 1999 (*Cape Times Business Report*, 1 December 2000). But two years later Brimstone exploited Sea Harvest's need for credible BEE partners ahead of the LTR allocation by securing a 'put option' from Tiger Brands to buy back its stake at a specified price at a specified date (*Cape Times Business Report*, 24 May 2005). The option was extended in December 2003 – when Brimstone paid ZAR 85.1m to its partner, Coronation Capital, for the second 10.8% share in Sea Harvest – to between 8 December 2006 and 8 December 2009, bleeding ZAR 94m from Tiger Brands net profits over three years 2003-05 to cover the exposure (*Ibid.* and *Cape Times Business Report*, 9 December 2003). Although Brimstone has not

The increasing instabilities in the tripod underpinning the post-apartheid HDST sector has been accompanied by the equally striking, but seldom noticed transformation of the state in the HDST from a corporatist to a neo-liberal manager and the simultaneous degradation of its management capacities on a broad front. Neo-liberal state 'management through the market' in the HDST fishery has involved the imposition of a slate of steadily escalating user charges for everything from hake access rights applications to landings. As a result, the HDST sector's levies increased fivefold from ZAR 5 million in 2000 to ZAR 25 million in 2003. The generalization of cost recovery to the fisheries as a whole has seen the state's direct revenue yield approach break-even point with its non-capital expenditure on fisheries administration.⁴⁶ Yet, at the same time the state's fisheries research and management capacity is steadily degraded by the haemorrhaging of skilled personnel to the private sector and abroad. Thus, in 2000 the DSRMC ceased to function⁴⁷ and in 2005 the annual hake survey did not take place because of a pay dispute between MCM scientists and management. The increasing inability of the state to fulfil its basic management functions in maintaining and, when necessary, stabilizing the neo-liberal tripod amplifies rather than alleviates the inherent environmental, economic and social instabilities of the tripod, increasing the likelihood of the critical failure of one or more of its legs.

yet used its golden parachute, the steadily worsening conditions in the HDST sector suggest it is not a question of if, but when. In January 2000, Sea Harvest also sold a 50% share in Mariette Fishing, its Mossel Bay hake and sole fishing operation, to BEE fishing company Vuna Fishing and the following year re-launched it as a joint-venture, SeaVuna Fishing Company (*Cape Times Business Report*, 4 June 2001).

⁴⁶ Van Sittert et al. 'Benchmarking the first decade'.

⁴⁷ Hutton, 'Industry-government co-management arrangements', p. 216.

The 2006 Allocation of Long-Term Fishing Rights: Background

It is hard to underestimate the significance, economic and political, of the allocation process for long-term rights (LTRs) in the South African hake deep-sea trawling sector for a variety of reasons: (1) it was probably the last real possibility for the South African government to enact meaningful transformation – given the current high political status of BEE processes in the country and the fact that the next allocation was scheduled to take place only in 2020;⁴⁸ (2) due to deteriorating managerial and scientific capacity at MCM, corrective measures are unlikely to happen in the interim;⁴⁹ and (3) the newly enacted BEE Codes have given legal and moral legitimacy to the process of transformation, which together with recent judicial history makes it more difficult to reverse allocation decisions in court.⁵⁰

At the time of the medium-term rights (MTR) allocation of 2001, MCM had developed a generic policy, but left substantial space for decision to industrial associations. The policy included a skeleton of content and a list of items to be covered – industrial bodies were supposed to fill in the details – but no specified criteria. MCM relied on the incumbents to write its sectoral policies. What came back from the latter, however, was the unambiguous provision for their own entrenchment. In 2001, there was too little time for MCM to devise clear and coherent sectoral policies of its own, and very few specifics were in place at the time of allocation. The 2001 allocation of medium-term

⁴⁸ Van Sittert et al., ‘Benchmarking the first decade’.

⁴⁹ Van Sittert et al. ‘Benchmarking the first decade’; S. Ponte, ‘Ecolabels and fish trade: Marine Stewardship Council (MSC) certification and the South African hake industry’, *TRALAC Working Paper 9/2006* (Trade Law Centre for Southern Africa, Stellenbosch, 2006).

⁵⁰ E. Witbooi, ‘Law and fisheries reform: Legislative and policy developments in South African fisheries over the decade 1994-2004’, *Marine Policy* **30**, 1 (2006), pp. 30-42.

rights thus maintained the status quo in the HDST industry prompting a second wave of litigation, not by incumbents as previously, but by historically disadvantaged individuals (HDIs). From 2001 to early 2004, the state fisheries administration successfully defended no fewer than forty court cases.⁵¹

Contrary to the medium-term rights allocation, in the long-term rights (LTR) allocation the design was very detailed and thorough; a general policy and sectoral policies were devised, and meetings with stakeholders were held ‘with MCM maintaining a driving hand’.⁵² For the first time, information provided by applicants had to be audited. The information provided was much more detailed and reliable than in 2001. In the first version of the hake policy, released by MCM in early 2005, the quantum criteria of redistribution applied the following mechanisms: (1) 10% of the TAC was to be redistributed according to transformation scores; (2) 20% in accordance to the overall balancing score (other than transformation); and 10% was to be set aside for SMEs and SMMEs (ZAR 3-5 million turnover).⁵³

The provision for a redistributive pool for SMEs proved to be the most explosive issue. The technocratic explanation proposed by MCM was that SME clauses were devised to avoid the need for joint ventures to operate a vessel and the related risk of failure that comes with it. This was also officially linked to a policy of capacity minimization and

⁵¹ *Fishing Industry News Southern Africa* (Cape Town, April 2004), p. 23.

⁵² *Ibid.*

⁵³ Marine and Coastal Management (MCM), ‘Policy for the allocation and management of commercial fishing rights in the hake deep-sea trawling fishery: 2005’ (MCM, Cape Town, March 2005), pp. 12-13.

the need to optimize an oversubscribed fishery, thus putting less pressure on by-catch and illegal fishing to put together a viable ‘vessel package’.

The first draft of the policy was accompanied by a series of strong reactions by big fishing companies in the media. I&J claimed that the 10% SMME pool, if implemented, would cause ‘between 600 and 800 job losses . . . [and] idle capacity in processing plants ... [which would] “decimate” the industry’s black economic empowerment (BEE) partners’.⁵⁴ Sea Harvest was ‘concerned that the recommendations would fragment an industry already reeling from the effects of a strong rand and weaker markets’. It also estimated a possible loss of 900 jobs.⁵⁵ Oceana was reported to have even threatened to sue the government if the draft fishing policy were accepted. It also argued that the policy was scuttling a deal to sell Real Africa’s (its BEE partner) stake in the company due to the refusal of one of the banks to finance it under the new policy.⁵⁶ Big fish players warned of possible losses of ZAR 350 million due to reduction in export sales, redundancy of 12 vessels and equipment to the tune of ZAR 40 million.⁵⁷

As in earlier instances of resistance to redistribution, capital and unionized labour found themselves on the same side of the argument. The general secretary of the National Certified Fishing and Allied Workers’ Union was quoted saying that ‘the policy would affect the wellbeing of the union’s members because the majority of fishers come from

⁵⁴ *Cape Times Business Report*, 2 March 2005.

⁵⁵ *Cape Times Business Report*, 7 April 2005.

⁵⁶ *Ibid.*

⁵⁷ *Cape Times Business Report*, 8 April 2005.

a historically disadvantaged background'.⁵⁸ In addition to this, an argument was put forward by the CEO of Brimstone (Sea Harvest's BEE partner) which went as follows: the hake trawling industry is capital intensive, and thus it is counter-productive to favour SMEs; rather, BEE deals are the way to empower the industry. Thus, both capital intensity and job losses were used to justify the same argument.

Interestingly, BEE justifications were used by both capital and unionised labour against the SME provision; the former argued that it would be bad for 'black capital' involved in BEE deals; the latter because they feared job losses would affect 'black labour'. In defence of the SME provisions, a black entrepreneur argued that 'black investment in big companies is largely passive and funded by big capital, which has no allegiance to government policy, but is being driven by the narrow interests of profiteering'.⁵⁹ He also claimed that BEE investment in large companies 'effectively excludes black entrepreneurs, who should choose the much more credible and challenging route into the industry by investing in their own businesses'.⁶⁰ The spirit of the free entrepreneur is envisioned as a tool for overcoming passive/captive black capitalism.

In the wake of the massive criticism from incumbent players, the hake policy was revised. In its final version, the guiding principles for redistribution became the following: (1) the allocation of quantum would be determined in reference to the quantum held in 2005; (2) the redistribution of at least 10% of the TAC would take place to the benefit of holders with small allocations that have transformed and performed well during the medium-term rights period; and (3) the allocation of an

⁵⁸ *Cape Times Business Report*, 22 April 2005.

⁵⁹ *Fishing Industry News Southern Africa* (Cape Town, June 2005), p. 18.

⁶⁰ *Ibid.*

additional quantum would achieve objectives of transformation and performance; this would be designed in a ‘manner which should ensure that all successful applicants, regardless of the size of their previous allocations, will be able to benefit if they meet the criteria’.⁶¹ These changes made a potentially revolutionary redistribution process (encompassing up to 50% of TAC) into a relatively marginal one.

Some exclusionary criteria were applied in the allocation process, followed by specific redistribution mechanisms. The final score was divided into three elements: a first element, comprising 24% of total points, was allocated to ‘investment’ (the larger the investment over the industry average, the higher the score) and financial performance; a second element, amounting to 26% of total, to job creation, safety and value addition. These two elements entail that, for 50% of the score, larger companies were more likely to perform above average. A third element, encompassing the remaining 50% of points, was scored in relation to transformation, as re-engineered in the broad-based BEE approach. This meant less focus on ownership and the adoption of a broader set of indicators – eventually, only 35% of the total score was allocated to ownership.

‘Transformation’ in Practice: Evaluating the long-term rights (LTR) allocation

In relation to transformation objectives, the long-term rights allocation policy mentions the objective of improving the transformation profile of the industry, without setting specific goals. MCM calculates that 27% of the total TAC was re-allocated in the LTR process, against 5% in 2001: 10% on the basis of previous small allocations and good performance and transformation; and 17% on the basis of good overall score,

⁶¹ Marine and Coastal Management (MCM), ‘Policy for the allocation and management of commercial fishing rights in the hake deep-sea trawling fishery: 2005’ (MCM, Cape Town, May 2005), p. 13.

irrespective of size.⁶² As a result, 16% of the TAC was allocated to small rights holders that have scored well (the new ‘empowered captains’ of the hake fishery). This resulted in major gains for a set of companies that previously held smaller allocations. A new ‘middle class’ of companies was therefore created.

Of the current 46 LTR holders, 27 (or 59%) are more than 50% black-owned. Interestingly, the document does not mention that in 2002 this proportion was 74%.⁶³ The TAC controlled by these entities has increased to 43% (from 25% in the MTR allocation, and 0% in 1992).⁶⁴ Mean black ownership of rights holders (as opposed to the proportion of TAC allocated to black-controlled entities), however, increased from 59% to only 61%. Female shareholding remains at a low 22%. The ratio of black to white top salary earners is currently at 1.2, while the male/female ratio is 12.7. 75% of skippers are black. Interestingly, ‘new applicants’ (which were not allocated any rights) have a better profile, with an average black shareholding of 78% (much higher than current holders), an average female shareholding of 41%, a top salary earner black/white ratio of 1.3, and a male/female ratio of 2.

⁶² Department of Environment and Tourism (DEAT), ‘Where have all the fish gone? Measuring transformation in the South African fishing industry’ (DEAT, Pretoria and Cape Town, 2002). Marine and Coastal Management (MCM), ‘General reasons for the decisions on the allocation of rights and quantum in the hake deep sea trawl fishery’ (MCM, Cape Town, January 2006), p. 26.

⁶³ DEAT, ‘Where have all the fish gone?’ and DEAT, ‘Transformation and the South African fishing industry’ (DEAT, Pretoria and Cape Town, 2004).

⁶⁴ MCM, ‘General reasons’.

However, this official picture masks more than it reveals. Let us start from the picture of allocations before redistributive measures were applied (see Table 2).⁶⁵ Here, the industry structure is characterized by two large groups controlling 66% of the total HDST TAC, followed by three companies with medium allocations (2-10,000 tons) for a total of 9% of the TAC. These are all fairly large ‘pioneer’ companies – that is, historically-white capital and holders of quotas in fishing before the first attempts at opening up the industry started in 1992. The next group is eight companies with medium-small allocations (1-2,000 tons) with a combined allocation of 8% of the TAC. These are all new players (with one exception) that became involved in hake either in the first wave of the early 1990s or the second wave of the mid-to-late 1990s. The last group is 39 companies with small allocations (under 1,000 tons), constituting 17% of the TAC. These are all players who started being active in the 1990s.

TABLE 2 HERE

The new picture emerging from the LTR allocation (thus, after distributive adjustments; see Table 2, lower part) is the following: The ‘Big 2’ still hold 60% of TAC, down from 66%; below them, there is an enlarged group of seven companies with medium-size allocations, now holding 19% of the quota (up from 9%). Below these, we have eight companies with small-medium allocations (same number as before redistribution, but different identities in some cases) holding 10% of the quota (up from 8%). Finally, there is a much smaller group of companies with small allocations (28 instead of 41) holding 11% of the quota (down from 17%). Therefore, consolidation has happened mainly via

⁶⁵ A more detailed examination (including company by company allocation) is available from the authors.

the creation of a larger group of new and relatively ‘empowered’ players with medium-size allocations.⁶⁶

As far as transformation is concerned (see Table 3), on the one hand, very low scores resulted in major losses (especially for the companies that scored less than 11 out of 50 points). Two of the major ‘pioneer companies’ are in this group and their losses amount to a total 6,757 tons. Other companies scoring less than 11 points accumulated a total losses of 9,322 tons. Thus, the total loss of companies scoring less than 11 is about 16,000 tons, or 7.4% of total quotas allocated – a significant but not exactly revolutionary change, especially given the low score on transformation accrued by these companies. On the other hand, high transformation scores *per se* did not necessarily lead to substantial gains. Large winners (by over 1,000 tons) are not top performers on transformation (they do not score over 30, with one exception). Several large winners are found in a group of companies scoring between 27 and 30. This is to some extent expected, as the weight of the transformation score was only 50% of the total.

TABLE 3 HERE

In addition to analysing the official allocation of rights, a proper understanding of ‘transformation’ in the HDST industry needs to reflect on how vessel transfers, financing, operations and marketing are operated ‘in practice’. These supposedly individual and independent companies are often linked with each other through a

⁶⁶ In terms of gains and losses of individual quota holders, the net loss of the ‘Big 2’ is significant, but not revolutionary (-7,443 tons).

variety of agreements, formal and informal.⁶⁷ Thus, it is more useful to look at the industry in terms of 23 operating groups, rather than 46 individual quota holders (see Table 4). Below the Big 2, we find seven medium groups holding 28% of the quota; some are constructed around ‘pioneer companies’, but others are ‘new players’. These are followed by only three medium-small groups holding 3% of the TAC. Finally, there are 11 small groups holding 4% of the TAC. In the case of two of the ‘pioneer’ groups among the ‘medium seven’, once joint ventures and other agreements are taken into consideration, the stated losses in the LTR allocation actually end up being gains. In total, the losses sustained by ‘pioneer’ groups amount to 4,468 tons. Calculated as individual allocations, ‘pioneer’ companies sustained a loss of 6,281 tons. This means that through joint ventures and marketing agreements, the quota losses by ‘pioneer’ companies are almost one-third lower than it appears. ‘Pioneer’ groups still control almost 84% of the quota, directly or indirectly.

TABLE 4 HERE

Given that the current pursuit of equity in the fisheries industry has been ‘subject to the constraints that it should imperil neither the sustainability of resources nor the economic stability of the existing industry’,⁶⁸ it is unsurprising that the 2006 LTR allocation did not yield revolutionary results. Yet, the amount re-allocated to smaller rights holders that scored sufficiently well suggests that this round of allocation did not simply maintain the status quo. But transformation was far from revolutionary and came at the

⁶⁷ J.R. Nielsen and M. Hara, ‘Transformation of South African industrial fisheries’, *Marine Policy* **30**, 1 (2006), pp. 43-50.

⁶⁸ Van Sittert et al., ‘Benchmarking the first decade’, pp. 96-7.

cost of the possibility of opening up a secondary market for rights, as legislation does not explicitly prohibit transferability and divisibility of quotas.

There is no guarantee that the ‘spirit’ of transformation will be held out and monitored during the 15 years of validity of long-term rights. Insiders at MCM made it clear that with the current rate of loss of scientists and managers in the regulatory agency, there will be no capacity to properly monitor the use and possible abuse of quotas.⁶⁹ In case the profitability of the industry went back to the levels of the early 2000s, this could lead to further consolidation of quotas and fishing operations. A more likely short-term scenario, however, is that profitability of hake trawling will remain poor. While still holding on to fishing rights, large companies are increasingly likely to outsource fishing operations to concentrate on branding, marketing, value-addition and logistics. We therefore envisage a more fluid future capital configuration in the HDST sector along a consolidation/unbundling continuum geared by shifting resource, market and policy signals.

⁶⁹ Thirty-five scientists have left MCM between 1996 and 2005 (*Fishing Industry News Southern Africa*, December 2005, p. 12). In January 2005, two of the key officers in charge of the allocation process resigned in response to being accused of racism and lack of transformation at MCM during a formal briefing to the portfolio committee on environment and tourism. This is particularly interesting as one has impeccable struggle credentials, and the other is an HDI. After the resignation, the Minister brought them back under a consultancy contract to carry out the same functions (at a much higher cost). After the LTR allocation, a review should follow every 2-3 years to assess compliance with the terms of the allocation policy, but according to an insider, there is no capacity at MCM at present to undertake that. He stated that ‘many quota holders are privately admitting that there will be a free ride for the next 15 years’.

Conclusion

Despite the assumed novelty of BEE, the policies of the post-apartheid South African state have historical precedents nationally and internationally. In South Africa, the assistance given under apartheid to poor whites in the interwar years, and to Afrikaner capital in particular, furnished the ANC government with a homegrown model of state manipulation of the economy to benefit a particular social group. Indeed, the ANC itself had espoused a similar strategy of black *volkskapitalisme* from at least the mid-1950s. Internationally, BEE has much in common with a similar economic project, the New Economic Policy (NEP) implemented in Malaysia between 1971 and 1991.⁷⁰ The rapid growth achieved by Malaysia also fits well with the South African government's claim that BEE is not simply about an equitable restructuring of the economy, but also about releasing South Africa's economic potential so as to increase growth and economic development. South Africa's Reconstruction and Development Programme (RDP) of the mid-1990s appeared on paper to place BEE at the centre of a redistributive strategy. However, the actual focus on a market-friendly, non-interventionist and neo-liberal set of economic policies in practice left little space for manoeuvre in terms of redistribution.

As in other sectors of South Africa's economy, BEE deals and 'transformation' in the allocation of fishery access rights is but the latest attempt by the South African state to redistribute resources to historically-changing 'previously-disadvantaged' groups. In the case of industrial fisheries in general, this happened on another two occasions in the last century: in 1944-76 with the 'empowerment' of Afrikaners in the context of Afrikaner nationalism and the corporatist age of fisheries in South Africa; and in 1976-94 with the

⁷⁰ See Ponte et al. 'To BEE or not to BEE', for a comparative analysis.

gradual opening of the industry to ‘coloured’ players in the attempt at partly-reforming the apartheid system.

The post-apartheid democratic context has formalized and generalized rather than terminated the previously informal practices of state ethnic engineering of capital. Furthermore, these are now given an unassailable legitimacy by being pressed into the purported service of redressing the economic effects of historical racial discrimination under apartheid, segregation and colonialism. In the neo-liberal era (from around 1987), the gradual redistribution of quotas to a new group of ‘legitimate’ fishers has been more limited in the hake deep sea trawl sector than in other fisheries. Also, the attempted ‘external transformation’ of the industry (via the entrance of new players) basically stopped in its tracks in the late 1990s as a result of the failed populist redistribution movement of 1998-99. With the start of the medium- and long-term right allocation processes of the 2000s, the rhetorical principle of ‘external transformation’ was finally dropped in favour of ‘internal transformation’ (‘blackening’ of established players; larger quotas to well-performing black players) under the umbrella of the so-called ‘tripod’ of equity, sustainability and economic stability.

The balance of the tripod was challenged during two ‘populist flaring moments’ in the last decade: in the late 1990s, until MCM lost some key court cases and the ANC lost the Western Cape elections of 1999; and in 2005, when ‘SME populism’ was attempted in the first version of the hake allocation policy. Both ‘black populism’ and ‘size populism’ failed. What emerged instead is a new brand of empowered captains of industry – the holders of the entrepreneurial spirit of a ‘proper’ black capitalist class (instead of the assumed rent-seeking spirit of ‘paper-quota’ holders of the 1990s).

These, together with the ‘empowered’ BEE partners of major fishing companies, are the new faces of ‘legitimate’ fishers in South Africa.

We chose the fishing industry to reflect upon the state of BEE in South Africa because it is one of the sectors where the state, at least in theory, is more likely to be able to exert pressure for change. Yet, the state’s capacity to shape capital is more limited than it appears to be – given the extreme concentration of ownership in the South African economy.⁷¹ Incumbent players in the fishing industry, far from constituting discrete ethnic (white) ‘fishing capital’ unique to the sector, can be more accurately conceived of as local manifestations of large capital groups – Tiger Brands, Anglo Vaal Industries and Foodcorp – whose interests are multisectoral and operations multinational in scope. Tiger Brands and Anglo Vaal Industries are respectively the first and second biggest consumer product makers by market value nationally.⁷² Monopoly capital in South Africa, in keeping with international trends over the past few decades, has migrated up the value chain away from direct to indirect control over primary production through brand ownership. Under these circumstances, it is ultimately less important who catches the hake, so long as they do so according to monopoly capital’s specifications.

BEE-driven reform of the hake sector can thus be read as doubly conducive to the interests of incumbent capital. First and most obviously it has largely confirmed their historical share of access rights and, by effectively privatizing all access rights as long-term rights in 2006, allowed for their more flexible and efficient allocation via the

⁷¹ N. Chabane, A. Goldstein and S. Roberts, ‘The changing face and strategies of big business in South Africa: more than a decade of political democracy’, *Industrial and Corporate Change* **15**, 3 (2006), pp. 549-578.

⁷² *Cape Times Business Report*, 14 March 2006.

market in response to changing environmental, economic and social conditions over the next fifteen years. Secondly, and far less apparently, by treating the hake industry as a discrete sector and prioritizing primary production (access rights) over other forms of control over the resource, BEE-driven reform has obscured and so left untouched monopoly capital and even assisted it in its migration up the value chain by providing a convenient cover for the spreading of risk and outsourcing of primary production to nascent black capital. That monopoly capital's hake trawl interests have been major loss leaders for the past few years underlines the extent to which BEE reform can be seen to have produced a double pyrrhic victory: the betrayal of the masses, as widely denounced and decried by the populists and socialists; and the much less obvious but no less detrimental saddling of black capital with the volatile, high risk, loss-leading primary production sector, which was outsourced by incumbent monopoly capital under the banner of redistribution, but is still effectively controlled by it through downstream control over logistics, distribution, marketing and branding.

Despite repeated public declarations of long-term commitment to the hake sector, the continued involvement of monopoly capital and its top-end BEE partners is governed by the short-to-medium term profit horizon and this currently does not look good. Thus, Tiger Brands is reviewing its fishing investments and is widely rumoured to be intending to divest itself of the loss-leading Sea Harvest and Oceana.⁷³ Some BEE partners have already done so, and others have reserved themselves the right to divest in the near future. The prognosis for the less mobile middle-level BEE players in the current scenario is bleak, judging by the repeated failure of Afrikaner capital, even with the generous assistance of a corporatist state, to establish a viable presence offshore in

⁷³ *Cape Times Business Report*, 7 April 2006.

the 1960s and again in the 1980s. George Irvin is reputed to have said that the secret of success in the HDST fishery was not catching, but distributing the fish.⁷⁴ The longevity of I&J and Sea Harvest (in alliance with Imperial Cold Storage) superficially seems to confirm the wisdom of this observation. Yet, we would add that large capital resources and diversification are essential ingredients for success in the hake sector. This is needed to spread risk and buffer profits against its endemic resource, market and political volatilities. By these criteria, the ‘new black middle’ is quite simply out of its depth for the time being.

⁷⁴ Lees, *Fishing for fortunes*, p. 268.

Table 1: BEE transactions in the hake deep-sea trawl (HDST) sector

BEE Partner	Corporate	Shareholding	Joint Venture
BRIMSTONE	Sea Harvest	10.76% (1998) + 10.76% (2003) = 21.52%	-
DYAMBU HOLDINGS	Irvin & Johnson	5% (1998-2004)	-
MAST FISHING INVESTMENT HOLDINGS → Mast Fishing	Irvin & Johnson	10% (2005) in consortium with Ntshona Investment Enterprises	Umsobomvu Fishing (1999, squid)
NTSHONA INVESTMENT ENTERPRISES → Ntshonalanga Fishing	Irvin & Johnson	5% (1998-2004); 10% (2005) in consortium with Mast Fishing	Igagasi Fishing (2001, hake)
SIPHUMELE INVESTMENTS	Irvin & Johnson	10% (1998-2003)	-
VUNA FISHING	Sea Harvest	-	SeaVuna Fishing (2000, hake & sole)

Sources: *Cape Times Business Report*; Irvin & Johnson, *Group Corporate Overview, Black Economic Empowerment and Corporate Citizenship Report* (2005); see <www.avi.co.za>; <www.brimstone.co.za>; <www.cipro.co.za>; and <www.tigerbrands.co.za>;

Table 2: 2006 hake deep-sea trawling rights before and after redistribution due to LTR allocation

Classification	Allocation (tons)	% of total allocation
2006 allocation before adjustment		
Big 2	82,944	66
Medium 3 (2,000-10,000 tons)	11,634	9
Medium-small 8 (1,000-2,000 tons)	9,431	8
Small 39 (up to 1,000 tons)	21,312	17
Total	125,321	100
Final 2006 LTR allocation (after adjustment)		
Big 2	75,501	60
Medium 7 (2,000-10,000 tons)	23,735	19
Medium-small 8 (1,000-2,000 tons)	12,103	10
Small 28 (up to 1,000 tons)	13,983	11
Total	125,321	100
Source: elaboration from MCM data		

Full company by company analysis is available from the authors

Table 3: 2006 LTR allocation: gains/losses by transformation scores

Transformation score	Total gain/loss by classification group	Classification
38.2 to 44.1	282	moderate winners with high transformation scores
38.0	946	large winner with high transformation score
34.2 to 37.9	-674	losers/moderate winners with high transformation score
33.7	1,433	large winner with high transformation score
30.4 to 32.25	-358	losers/moderate winners with high transformation score
28.4 to 29.65	7,649	large winners with medium transformation score
26.5	-1,213	large loser with medium transformation score
11.9 to 25	-295	mix batch with low transformation score
10.3 to	-6,757	large losers with very low transformation score
0.9 to 9.75	-9,322	losers with extremely low transformation score

Source: elaboration from MCM data

Full company by company analysis is available from the authors

	Group type	Final 2006 LTR allocation (tons)	% of total	% of total	Classification
1	pioneer	41,799	33.4	64	Big 2
2	pioneer	38,459	30.7		
3	pioneer	8,102	6.5	28	medium 7
4	pioneer	8,012	6.4		
5	new player	6,344	5.1		
6	pioneer	4,787	3.8		
7	pioneer	3,609	2.9		
8	new player	2,573	2.1		
9	new player	2,092	1.7		
10	new player	1,723	1.4	3	med-small 3
11	new player	1,397	1.1		
12	new player	1,159	0.9		
13	new player	982	0.8	4	small 11
14	new player	771	0.6		
15	new player	759	0.6		
16	new player	748	0.6		
17	new player	706	0.6		
18	new player	287	0.2		
19	new player	273	0.2		
20	new player	254	0.2		
21	new player	216	0.2		
22	new player	150	0.1		
23	new player	118	0.1		
	Total pioneer	104,767	83.6		
	Total new players	20,553	16.4		
	Total	125,321			

Pioneer group = relying on pioneer company (with quotas in fisheries before 1987)

New player group = relying on any company allocated quotas after 1987

Source: elaboration from MCM data and field interviews