



At the Interface: Marine compliance inspectors at work in the Western Cape

Marieke Norton

Supervised by:

Associate Professor Lesley Green

Associate Professor Astrid Jarre

Thesis Presented for the Degree of

DOCTOR OF PHILOSOPHY

School of African and Gender Studies, Anthropology and Linguistics

Faculty of Humanities

UNIVERSITY OF CAPE TOWN

June 2014

The financial assistance of the National Research Foundation (NRF) towards this research is hereby acknowledged. Opinions expressed and conclusions arrived at, are those of the author and are not necessarily to be attributed to the NRF.

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Financial support was provided by the South African Research Chairs Initiative of the Department of Science and Technology and the National Research Foundation, through the Research Chair in Marine Ecology and Fisheries, and the National Research Foundation's SeaChange Fund, via the School of African and Gender Studies, Anthropology and Linguistics.

Acknowledgements

First and foremost, I would like to heartfully and humbly thank the many inspectors who spent hours with me: the men and women stationed with the units of Kalk Bay, Hout Bay, Kommetjie, Foretrust, Gansbaai, Arniston, Stilbaai, St Helena Bay, Lamberts Bay and Doringbaai. My presence could not have made your job any easier. Many, many thanks for your patience and openness. Special thanks to S'Thembiso, Anel, Tracy and Pat, and all the others who went out of their way, so often.

Lesley Green has been my supervisor for close to 8 years now, including my MA and this project. It has been an important journey for me, in so many ways. While I owe much of my thinking to her and her careful, scholarly mentoring, I also owe her thanks for always pushing me to find my own voice and 'line of flight' – and then patiently indicating where I might want to return to earth.

Astrid Jarre's expertise in fisheries management and marine ecology – and patience – was vital in my lay-woman's navigation of the complex field of marine science. This project was made possible through her support and valuing of the contribution anthropology has to make as a partner to the sciences.

Andrew 'Mugsy' Spiegel is due my eternal gratitude for admitting me into the Social Anthropology MA programme in 2005 at the last minute, without much to go on except my enthusiasm and insistence. He has always been a supportive, if eternally teasing, presence in my anthropology career. *Baie dankie*, Mugsy.

Thank you to Team Fish – Tatti, Kelsey, Greg, Jen, Sven – whose collective work helped shape this project, and who have made several valuable contributions to the scholarship in this vital field. Thank you, my fellow Contested Ecologies seminar attendees and C.E. PhD's (Chris, Artwell, Josh, Munya), for an informing journey, and for always being ready with insightful, thoughtful comments. Congratulations on your own journeys.

Rosemary Ommer and Barbara Paterson are both owed thanks for the many conversations we've had, via Skype and in person, on the subject of this wicked problem of fisheries management. Many thanks to Phil Snijman, whose input on environmental law and jurisprudence was vital. Thank you also to Jan Glazewski for a read-through of material.

The indomitable Colleen Petersen could run countries in her spare time: I owe her so many thanks for all the times she made my life easier, and for the chats that always left me smiling. Amber Abrams gave her ear, and more than one good idea, during our teas and forest rambles with the beasts. Crystal Wilson reminded me to take care of myself in the field, and brought me a hot-water bottle when my back gave out from sitting at the desk.

To Hannes and Marie. I am so grateful, all the time, for all the million things you do, big and small. To Moija and Miezán, for the friendship (and related perks, like dog-sitting and procrastination emails). To Kola Bear, whose park needs resulted in some very productive think-walks. And all the gratitude that remains (which is plenty but never enough) goes to Bob, who has been much-tried but is always beloved.

Like Rachel Carson and the many others who have followed in her footsteps, we are motivated by “a sense of wonder” at the miracle we call Earth and seek to protect it and all those who inhabit it as inclusively as possible.

Burns Weston and David Bollier, *Green Governance*, 2013:261

If we had a more inclusive idea of what our home is, of what constitutes inside and outside, and accepted that our home does not end at the coastline, but only barely begins there, we wouldn't be facing the possible collapse of our marine ecosystem.

David Attenborough, *Life: “Fish”*, 2009.

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Abstract

The Western Cape fisheries are heavily contested. Primary concerns in the contestations are over access to marine resources, which have been regulated through the Marine Living Resources Act of 1998. At the centre of these conflicts, is the figure of the marine compliance inspector, whose task is to enforce the state's version of nature onto the collective of resource users.

This thesis, based on 18 months of ethnographic fieldwork alongside inspectors of the Department of Agriculture, Forestry and Fisheries: Fisheries Branch in the Western Cape, explores the everyday human interactions on which the implementation of marine resource law depends. Exploring interactions between inspectors and resource users, the dissertation seeks to contribute to the task of reimagining fisheries governance. Drawing on ethnographic material deriving from participation in inspection duties; observations of fishing behaviour; conversations with inspectors, resource user and marine resource management officials; and analysis of texts such as relevant legislation and job descriptions, I argue that the issue of non-compliance in marine fisheries in the Western Cape can only be partially understood by the framework offered in extant South African compliance scholarship, which has focused largely on the motivations of resource extractors, or the formulation of law and policy. Given that compliance functions are part of the wider social spectrum of contestation and that the compliance inspectors are the interface between the government of South Africa and its fishing citizens, the study explores the real effects of state-citizen-nature contestations on environmental governance, and presents evidence in support of an argument that the design of the job of marine compliance inspector itself needs to be re-conceived. While compliance is a central feature of fisheries management, the performance of its personnel is taken for granted as the simple implementation of institutional policy, in a number of ways. Efforts to address conflicts will fall short of the goal of providing solutions if the assumptions about nature and humanity that current marine resource legislation embodies are not questioned, and this will exacerbate existing suffering in the ecology of relations between state, science, public and marine species.

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Glossary of terms and abbreviations

- ANC** African National Congress
- CPA** Criminal Procedure Act, 1977
- DA** Democratic Alliance
- DAFF** Department of Agriculture, Forestry and Fisheries
- DDG** Deputy Director General
- DG** Director General
- DEA** Department of Environmental Affairs
- EAF** Ecosystems Approach to Fisheries
- EEZ** Exclusive Economic Zone
- FCO** Fisheries Control Officer
- FPE** Fish Processing Establishment
- FPV** Fisheries Patrol Vessel
- FRAP** Fisheries Rights Allocation Process
- ICMA** Integrated Coastal Management Act, 2008
- IR** Interim Relief
- MCM** Marine and Coastal Management
- MCS** Monitoring, Compliance and Surveillance
- MLRA** Marine Living Resources Act, 1998
- MPA** Marine Protected Area
- NEMA** National Environmental Management Act, 1998
- OB** Occurrence Book
- PLAAS** Programme for Land and Agrarian Studies
- POCA** Prevention of Organised Crime Act, 1998
- SASSI** South African Sustainable Seafood Initiative
- SANParks** South African National Parks
- SAPS** South African Police Service
- SMCI** Senior Marine Compliance Inspector
- SSFP** Small-Scale Fisheries Policy

TAC Total Allowable Catch. The catch limit set for a particular fishery, generally for a year or a fishing season.

TAE Total Allowable Effort. The effort limit set for a particular fishery, generally for a year or fishing season, measured in units of crew, vessels, and times at sea.

UN FAO United Nations Food and Agriculture Organisation

WCRL West Coast Rock Lobster, *Jasus lalandii*.

WWF-SA World Wildlife Fund South Africa

Introduction

South Africa's Fisheries Rights Allocation Process of 2013 awarded new long-term rights in eight fisheries that expired on the 31st December 2013¹. The process of allocating rights to fishers along just over 3000 km of coastline, was heavily contested through protest, public statements and legal means, by the opposition party, the Democratic Alliance, as well as fishers' associations, private legal consultants and members of the public. The outcry over the allocations announcements was published and broadcast in a range of media.² Early in January 2014, the Public Protector³ Thuli Madonsela announced that her office would investigate the process for evidence of maladministration⁴. The complaints she would be investigating, she said, included those that questioned the logic behind the decisions, the legality of the process, and the consequences of the decisions taken⁵.

In the months following the Public Protector's announcement that her office had launched an investigation, Minister Tina Joemat-Pettersson removed Desmond Stevens, who had overseen the Fisheries Rights Allocation Process (FRAP2013), from the post of Acting Deputy Director General, on the 28 February 2014; and authorised an investigation

¹ The affected fisheries are KwaZulu/Natal (KZN) prawn, demersal shark, squid, tuna pole, hake hand line, white mussels, oysters and traditional line fish.

² For a selection of online news articles see: <http://www.timeslive.co.za/local/2014/01/09/fisheries-department-welcomes-fishing-rights-probe>; <http://www.iol.co.za/news/politics/daff-has-stolen-our-jobs-1.1627919#.UuD19xD8KUk>; <http://www.bdlive.co.za/business/agriculture/2014/01/06/fishing-licences-tainted-with-illegality>; <http://www.sabc.co.za/news/a/f1fa53804272b37f8ebbf56d5ffbd92/W-Cape-fishermen-protest-20140501>. See also:

https://www.youtube.com/watch?v=9m6YiY9O9IU&feature=youtube_gdata_player for the segment on the fishing rights allocations produced and broadcast on satellite channel MNet's Carte Blanche investigative programme on the 19 January 2014; <http://www.youtube.com/watch?v=-BqE9oaoD7A> for the segment broadcast by the South African Broadcasting Corporation's Morning Live programme; <http://www.youtube.com/watch?v=xi55AdaWC0g&list=TLWe6QqTN7GvzR2LnmVe-8-ELE34CeUsr1> for the segment by the South African Broadcasting Corporation's Fokus investigative programme. See <http://www.rsg.co.za/op-die-lug.asp> for a podcast of Radio Sonder Grense's "Praat Saam" segment, hosted by Lynette Francis, 14 January 2014. In the segment, Lynette hosts a telephonic panel, consisting of Shaheen Moolla, Acting DDG Desmond Stevens, and chairman of the South African United Fishing Front Pedro Garcia.

³ The mission statement of the Public protector's office reads: "To strengthen constitutional democracy in pursuit of our constitutional mandate by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public sector decision-making and service delivery." The office is granted its powers by the Public Protector Act (#23of 1994). www.pprotect.org

⁴ For DAFF's response to the Public Protector's announcement see <http://www.nda.agric.za/docs/media/140109%20Media%20Statement%20Fisheries%20welcomes%20investigation%20of%20public%20proctor%20into%20FRAP.pdf>

⁵ The Public Protector's investigation into the rights allocation process was still ongoing in June 2014.

into FRAP2013, outsourced to the law firm Harris, Nupen and Molebatsi. The findings of this report led the Minister, on the 15th May 2014, to announce the cancellation of the allocations decisions. The cancellation of the newly granted rights meant the rights allocation process would have to be started anew, and it would have to run concurrently with the next rights allocations process that would need to be completed before the long-term hake inshore trawl, lobster, seaweed, tuna long-line and Patagonian toothfish rights expire in 2015. In the interim, both fishers who were appealing the decisions as well as new rights-holder will continue to fish the already pressurised inshore resources.

On the 23rd May 2014, in an interview with the Afrikaans newspaper *Die Burger*, Minister Tina Joemat-Pettersson⁶ stated that communities should prepare themselves for the possibility that commercial abalone rights will soon be cancelled and the valuable fishery closed due to resource strain, despite the rights being up for review and renewal when they expire at the end of July 2014.

The cancellation of FRAP2013 and the announcement of the possible closure of the abalone fishery occurred after the National General Elections of 2014, which saw Jacob Zuma return to office as President. The abalone announcement came only two days before President Zuma named his new Cabinet on the 25th May 2014. Tina Joemat-Pettersson was then no longer the Head of the Department of Agriculture, Forestry and Fisheries⁷. She left at a time of great uncertainty and instability in the Fisheries Branch and fishing sectors.

In mid-2014, after four years of mounting crises, the Fisheries Branch of the Department of Agriculture Forestry and Fisheries was publicly questioned⁸ about the competency and integrity of previous Acting Deputy Director General of the Fisheries

⁶ <http://www.dieburger.com/nuus/2014-05-23-perlemoenskok-kom>

⁷ In the reshuffle, Tina Joemat-Pettersson was made Minister of Energy. The new Minister of Agriculture, Forestry and Fisheries is Mr Senzeni Zokwana, President of the National Union of Mineworkers and the Chairperson of the SA Communist Party. The post of Deputy Minister was given to Bheki Cele. Bheki Cele had previously been the National Commissioner of the South African Police Service, until President Jacob Zuma suspended him from office in October 2011 due to allegations of corruption. He is currently still under investigation.

⁸ With reference to allegations about Desmond Stevens' competency see, for example, the piece by Glynnis Underhill in the *Mail and Guardian*, 10 January 2014, available online at <http://mg.co.za/article/2014-01-09-mk-vet-cuts-fishermens-lifelines/>. With reference to the allegations about the Minister's competency, see the editorial piece by Adriaan Basson in the *Beeld*, 19 January 2014, available online at <http://www.beeld.com/ opinie/2014-01-19-adriaan-basson-waarom-zuma-soek-na-sy-tina>, and also the article by Sue Blaine on the online version of *Business Day*, accessible at <http://www.bdlive.co.za/business/agriculture/2014/01/13/da-urges-zuma-to-get-rid-of-joemat-pettersson>. The relationship between the Minister and Mr Iqbal Survé is featured on the front page of *Noseweek* #156 (1 October 2012), "Terrible Twins".

Branch, Desmond Stevens, and Tina Joemat-Pettersson. Reports blamed the previous Minister directly for the mismanagement of the country's marine resources. This controversy had followed the publication of the Public Protector's report on the management of the country's fishery patrol vessels, which had found gross negligence on the part of the Minister, in December 2013.⁹ Responsibility for the current levels of crisis in the South African fisheries is frequently attributed to Tina Joemat-Pettersson. However, state fisheries management has long been the target of heavy criticism and many issues were not resolved by the transformation of the sector post-1994 (Crosoer et al., 2006; Van Sittert et al., 2006), with regular protests and court actions dogging the effort to institute post-apartheid fisheries management strategies. The principles and actions of South Africa's fisheries management have been questioned and resisted by resource users for decades.

Protests over rights allocations and illegal fishing have been features of the industry, particularly the small-scale inshore sectors, since the implementation of the Marine Living Resources Act in 1998. It was the product of the newly elected democratic government's effort to transform South African society by addressing the social engineering of Apartheid. This piece of legislation was the government's attempt to redistribute the economic opportunities of the fishing industry in a stable manner, while protecting the marine resources. It sought sustainable extraction of the resources and increased economic security for previously disadvantaged individuals; natural science and economics were mobilised by government to aid a new political project.

However, the model of fish and fishers that the natural science in question portrayed in the legislation did not map neatly onto the realities that the fishers experienced, since it did not take into account the more qualitative aspects of their knowledge and experience (Crosoer et al., 2006; Van Sittert et al., 2006; see also Anderson et al., 2013). Furthermore, the macro-economics of South Africa at the time, together with the need to maintain

⁹ *"Docked Vessels": An investigation into allegations of irregular awarding of a tender to Sekunjalo Marine Services Consortium by the Department of Agriculture, Forestry and Fisheries.* Report 21 of 2013/14 of the Office of the Public Prosecutor. A copy of the report is available at http://www.pprotect.org/library/investigation_report/Docked%20Vessels.pdf. Tina Joemat-Pettersson's response to this report was to sue the Public Protector for alleged inaccuracies in the report which Joemat-Pettersson considered to be harmful to her personal and professional reputation. Her official statement can be found at <http://www.nda.agric.za/docs/media/Public%20Protector%20Report%20Requests%20court%20review%20of%20the%20Report.pdf>. The case had not gone to court by June 2014.

stability in the industry, meant that the larger commercial companies fared better than the small-scale sector in terms of access to rights (Crosoer et al., 2006; Van Sittert et al., 2006). Both of these resulted in unhappy resource users, who had either lost their rights or had them curtailed when they expected increased access, creating conflict between fisheries management and resource users.

The conflict that resulted had two important consequences. Firstly, groups of affected resource users took the department to court in 2004, to sue for access rights based on human rights law with the help of NGO Masifundise and the Artisanal Fishers' Association (Isaacs, 2011a). The judgement in *Kenneth George and Others versus the Minister* saw the Equality Court task the government with developing the Small Scale Fisheries Policy,¹⁰ in order to address the lack of attention given to what was referred to as artisanal or subsistence fisheries. Secondly, illegal fishing increased, as other fishers took a different approach and protested their curtailed access to resources by defying the regulations. The first consequence asked for a re-evaluation of the economic and natural sciences model of fisheries management that was adopted by the MLRA, taking human rights and traditional livelihoods into account. The second was met with increased efforts to control or police the resource users, particularly the small-scale users, by fisheries management.

In 2009, another significant shift in the management of South Africa's fishing industry came when President Jacob Zuma reshuffled his cabinet, and removed fisheries management from the Department of Environmental Affairs and Tourism (DEAT), placing it in the portfolio of the new Department of Agriculture, Forestry and Fisheries (DAFF).¹¹ This move firmly shifted the focus on fisheries as an issue of conservation back to one of commercial production.

The brief account offered here serves to demonstrate that the model of environmental governance that the government currently relies on to manage the Western Cape fisheries is unravelling. This thesis argues that efforts to address its failings will fall short of solutions if the assumptions about nature and humanity that it embodies are not questioned. The contestations in the fishing industry in the Western Cape can be read as articulations of alternate models of the relatedness between the social and the ecological.

¹⁰ Adopted in June 2013.

¹¹ Proclamation 44 of 1 July 2009.

At the centre of this conflict is the figure of the marine compliance inspector, in its current form the result of marine governance as embodied by the Marine Living Resources Act. These are the people who must enforce the state's version of nature onto resource users.

Based on 18 months of fieldwork alongside inspectors of the Department of Agriculture, Forestry and Fisheries: Fisheries Branch, this thesis focusses on the everyday human interactions on which the implementation of marine resource law depends. Research on compliance inspectors gave me insight into how dependent the compliance functions are on the wider social spectrum of contestation. It is a central feature of fisheries management (Hauck, 2008). Yet, there are a number of ways in which the performance of fisheries management personnel is taken for granted as the simple implementation of institutional policy. I illustrate and analyse the perspectives and experiences of the men and women who enforce the Marine Living Resources Act, as well as the working environment that is created for and by them.

This thesis focusses on the everyday practicalities of fisheries governance, through ethnographic observation of the interactions between resource users and the compliance inspectors working in the Western Cape. The premise of my ethnographic research was that marine inspectors have a significant presence in the everyday life of resource users and coastal communities. It was the intention of my research to investigate the characteristics of this presence. My observations led me to conclude that this presence influences both compliant and non-compliant marine resource use in these settings. This thesis is an investigation of whether understanding these impacts can help us re-imagine fisheries governance, as it is currently practised or legislated in South Africa, and environmental governance in a context of economic strain and managerial instability, more generally.

The crises, 2009-2014

Accounting for the current instability in the fisheries

The primary motivation for this work is the desire to address the global fisheries crisis and explore ways of reducing pressure on vital marine ecosystems.¹² In *Extinctions in Ancient*

¹² United Nations Fact Sheet: The Future We Want, June 2012 (available on http://www.un.org/en/sustainablefuture/pdf/Rio+20_FS_Oceans.pdf). United Nations Food and Agriculture Organisation Report: The State of the World's Fisheries and Aquaculture, 2012 (available on <http://www.fao.org/docrep/016/i2727e/i2727e.pdf>). Also, "Ocean Under Threat" by the Global Ocean Commission (<http://www.globaloceancommission.org/the-global-ocean/environmental-threats/>).

and Modern Seas, Harnik, Lotze, Anderson and Finkel (2012) warn that the current recorded pressures on the ocean were all drivers for major extinction events in the past. These include acidification, anoxia, warming, cooling, habitat loss, over-exploitation and pollution. In South Africa, studies have shown that human-mediated ecosystem changes are evident in all marine ecosystems (Howard et al., 2007; Blamey et al., 2010; Hutchings et al., 2012; Jarre et al., 2013; Moloney et al., 2013; Mead et al., 2013). The United Nations Food and Agriculture Organisation estimated in 2010 that global fish stocks were 28% overfished, 53% fully fished and 3% depleted.¹³ The report by DAFF, “Status of the South African Marine Fishery Resources 2012”, details the country’s fishery resources (DAFF, 2012). It notes that many of South Africa’s resources are both heavily depleted and under heavy fishing pressure, especially inshore resources (such as abalone and West Coast Rock Lobster) and linefish (a small-scale sector in which fish for human consumption is usually caught with hook and line).

I began writing the proposal for my PhD in 2010 a few months after President Jacob Zuma had transferred the powers of the Fisheries Branch to DAFF, under Minister Tina Joemat-Pettersson. Between 2011 and early 2013, I spent 18 months¹⁴ doing field research with the Fisheries Branch, and specifically with Senior Marine Compliance Inspectors working in the major nodes of fishing in the Western Cape. During this time, several crises – administrative, political and ecological – arose in the fishing industry and in the Fisheries Branch, and escalated throughout the time of writing (early 2013 to early 2014). The process of re-allocating new fishing rights in eight of the sectors has been problematic throughout. The biomass of West Coast Rock Lobster, for example, is currently estimated at 3.5% of pristine levels, and South Africa’s research and patrol vessels had, until recently, all been dock-bound for over a year.¹⁵

Much of the controversy in the fisheries sector in the years 2010 to 2013 has been attributed by critics to the actions of the new Minister who was appointed in 2009 and

¹³ United Nations Food and Agriculture Organisation, 2010 Yearbook, Fisher and Aquaculture Statistics. <http://www.fao.org/docrep/015/ba0058t/ba0058t.pdf>

¹⁴ This includes twelve months of active field research, and six months during which I interacted with then-Chief Inspector Pat Stacey and Fisheries Branch management in order to negotiate consent, which contributed significantly to my understanding of the operations of the marine resource management structures.

¹⁵ Reports on an inspection of foreign fishing vessels by the *Victoria Mxenge* on the 29th December 2013 indicates that this vessel is no longer dock-bound (<http://www.bdlive.co.za/opinion/columnists/2014/01/29/the-insider-seized-foreign-ships-give-fisheries-officials-the-slip>).

removed from this post in May 2014. Minister Joemat-Pettersson's previous experience was in education and development; she was heavily involved with a number of student and teachers' unions during the 1980s. She was a member of the United Democratic Front from 1984 to 1986, after which she joined the African National Congress in the late 1980s or early 1990s. Her appointment was not a surprise in the sense that she had been an active member in the new ANC government from 1994 and has been a member of the National Executive Committee since 2007 – and a particular supporter of President Jacob Zuma, during some trying times for the ANC leader.¹⁶ However, what was surprising to many in the Fisheries Branch and fishing industry was that someone with very limited knowledge of agriculture and almost none in fisheries management now held the helm during a period of intensive transition: dismantling the structures that the former Marine and Coastal Management occupied under the Department of Environmental Affairs and Tourism (DEAT) and reassembling a Fisheries Branch under DAFF, as discussed below.

Both the Fisheries Branch and Department of Environmental Affairs receive their mandates from Section 24 of the Bill of Rights, as contained in the South African Constitution. It reads:

Everyone has the right

- a. to an environment that is not harmful to their health or well-being;
- b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
 - (i) prevent pollution and ecological degradation;
 - (ii) promote conservation; and
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

South Africa now had two state departments whose concerns overlapped. The DEA's mandate is broad, and encompasses both the terrestrial and marine environments, including the atmosphere in terms of air pollution:

¹⁶ <http://mg.co.za/article/2012-10-11-joemat-pettersson-says-zuma-is-the-best-available>

The Department of Environmental Affairs is mandated to ensure the protection of the environment and conservation of natural resources, balanced with sustainable development and the equitable distribution of the benefits derived from natural resources.¹⁷

The mandate of the Fisheries Branch, which was formed on the 7th July 2009, is very similar and also extends to include some terrestrial activities:

The aim of the branch will be to contribute to maintaining and restoring the productive capacity and biodiversity of the marine environment, ensuring the protection of human health, as well as promoting the conservation and sustainable use of marine living resources. The branch further aims to ensure that the degradation of the marine environment from land-based activities is prevented by facilitating the realization of the duty of DAFF to preserve and protect the marine environment through the application of the respective policies, priorities and resources.¹⁸

Marine and Coastal Management (MCM) was dissolved during the move following the 2009 cabinet reshuffle. The 1990's had seen an exodus of professionals from MCM: after 1994 and again after 1998, noted in the World Wildlife Fund South Africa *Ecological Risk Assessment Report* (Nel et al., 2007; See also Hauck and Kroese, 2006:75). For example: "There is an urgent need to reduce the staff turnover and vacancy rate (currently some 30%) to an immediate target of 10%" (Nel et al., 2007:18). It was noted again in *Tracking the Implementation of an Ecosystem Approach to Fisheries in Southern Africa*, another WWF SA report, in 2010: "the large number of vacant key posts and the loss of experienced researchers in both the South African and Namibian fisheries departments is a major concern" (Petersen et al., 2010:63). In September 2010, the then-Deputy Director General (DDG), Langa Zita, stated that only 620 of the 737 staff posts transferred to DAFF had been

¹⁷ <https://www.environment.gov.za/aboutus/department>

¹⁸ <http://www.daff.gov.za/>

filled.¹⁹ The section was, and is, plagued by a high attrition rate and prolonged vacancies, as well as moving staff from one position or department to another in order to make personnel ends meet. This was done by placing officials in acting positions or moving experienced officials to different sections.

The reports by Nel et al. (2007) and Petersen et al. (2010) are both concerned with the assessment of South Africa's implementation of an Ecosystem Approach to Fisheries (EAF). The EAF is an important feature of current global marine resource management design. It is a management paradigm that specifically seeks to address problems in traditional models of fisheries management. It advocates a more holistic approach that takes systems processes and social factors into account when designing and implementing fisheries regulations.²⁰ Traditional fisheries management paradigms, such as that of single stock assessment, evaluated and regulated fisheries in isolation of each other, wider systems fluctuations or changes and the impact of social factors. EAF is included in the United Nations Law of the Sea Convention of 1982 (Article 61). In 2001 it was part of the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem and an international plan of implementation was signed at the World Summit on Sustainable Development in Johannesburg the following year (2002). As a signatory to the agreement, South Africa committed to implementing the EAF by 2010. In 2003, MCM established an EAF Working Group, and South Africa joined Angola and Namibia in forming a Regional Fisheries Management Organisation, the Benguela Current Commission (for a discussion on the research conducted by these groups, see Shannon et al., 2006).

However, Petersen et al. noted that Marine and Coastal Management (then in the process of changing over to the Fisheries Branch) did not have the capacity to address social and socio-economic issues – a vital requirement of the EAF (Cochrane et al., 2009; Petersen et al., 2010). The report noted that one of the most significant challenges to establishing a transparent and participatory management structure was the “poor participation of compliance officials in MCM meetings” (Petersen et al., 2010:59). Their conclusion was that, in terms of research and collaboration, significant progress had been made towards implementing the EAF. However, the 2010 deadline had been missed, as they found that “although some draft management plans for species exist, no fishery in the [Southern

¹⁹ www.pmg.org.za/report/20100907-minister-regarding-process-transferincorporation-fisheries-component

²⁰ For an overview of the technical features of EAF see FAO (2003).

Africa] region has a management plan that fully incorporates an EAF” (Petersen et al., 2010:61).

On the 6th September 2010, six months after the transfer of function had taken effect, a presentation was made to the Portfolio Committee about the effects of the process of transference.²¹ The Power Point document that was presented had the Minister’s name on it, but was presented by then DDG, Langa Zita. At that stage, DAFF had been given the mandate over the Sea Fisheries Act (#12 of 1988) and the MLRA (#18 of 1998), while the DEA retained the mandates of the majority of laws²² that had previously been with MCM – including the National Environmental Management Act (NEMA, #107 of 1998) and National Environmental Management Integrated Coastal Management Act (ICMA, #24 of 2008). In the presentation, it was noted that the process of transfer had split many of the functions of the Fisheries Branch, and that they, as such, were “currently unable” to implement an Ecosystems Approach to Fisheries. The reasons for Mr Zita’s opinion are not given, as recorded in the minutes.²³

The inference is that the fragmented functions of the fisheries branch prevented the department from taking the holistic approach that the EAF calls for, forcing problems to be addressed in isolation from one another.

One of the main points of contestation between the mandates of the DEA and DAFF was the question of who had control of the country’s twenty-one Marine Protected Areas (MPAs) – under Section 43 of the MLRA. MPAs are areas of marine resource conservation, in which the use and harvest of resources are controlled with the intent to protect marine life and habitats; facilitate fisheries management and research; and reduce user conflict (MLRA 1998, Chapter 4, Section 43). While low-impact fishing is allowed in most of these

²¹For the Power Point document presented see http://d2zmx6mlqh7g3a.cloudfront.net/cdn/farfuture/d33b7jtQdtM_yiaibkFrp1PChEE2as5PrECw5F0JgIc/mti:me:1284017307/files/docs/100907daff-edit.pdf, and for the minutes of the briefing see <http://www.pmg.org.za/report/20100907-minister-regarding-progress-transferincorporation-fisheries-component>.

²² Section 38 of Sea Fishery Act, 1998 (Act No. 2 of 1998); Dumping at Sea Control Act, 1980 (Act No. 73 of 1980); National Environmental Management Integrated Coastal Management Act, 2008 (Act No. 24 of 2008); National Environmental Management Act, 1998 (Act No. 107 of 1998); Regulations for the Management of the Boat-Based Whale Watching and Protection of Turtles; Regulations for the Management of White Shark Cage Diving; Section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998) and Regulations published in terms of Section 43 [i.e. Marine Protected Areas]; Sea Shore Act, 1935 (Act No. 21 of 1935); Prince Edward Islands Act, 1948 (Act No. 43 of 1948); Sea Birds and Seals Protection Act, 1973 (Act No. 46 of 1973); Antarctic Treaties Act, 1996 (Act No. 60 of 1996)

²³ <http://www.pmg.org.za/report/20100907-minister-regarding-progress-transferincorporation-fisheries-component>

areas, there are eight “no take” MPAs in South Africa. The split meant that MPAs, described as a fisheries management tool in Section 43 of the MLRA, now solely were a conservation tool under the DEA.

With this transfer, the artificial division between commercial and ecological aspects of the marine fisheries was emphasised. After three years of confusion over who has responsibility for MPAs, President Zuma issued a proclamation on the 31st May 2013 that finally settled the issue – DAFF was to retain powers over fisheries management functions in those MPAs in which fishing was allowed, but had no jurisdiction over “no-take” MPAs. In this instance, Environmental Affairs were to deal with nature, and the Fisheries Branch had the responsibility of dealing with the social.

This officially settled the matter. Then, on the 9th August 2013, the bulk carrier *Kiani Satu* ran aground between Buffels Bay and Sedgefield in the Goukamma MPA on the South Coast. The Goukamma MPA allows fishing, so, in terms of to the Proclamation of 31st May 2013, it fell under the mandate of DAFF. Reports state no DAFF officials visited the scene.²⁴ If DAFF had responded, it would have been unable to effectively do so without the use of its patrol vessels, which are equipped with environmental clean-up gear for situations like this.

With the transfer of the Fisheries’ functions, DAFF took charge of a fleet of four fisheries patrol vessels (FPVs) – the *Sarah Baartman*, *Ruth First*, *Victoria Mxenge* and *Lillian Ngoyi*. There were issues regarding funding from the beginning. In the presentation of the 6th September 2010, then DDG Lang Zita was recorded as saying:

DAFF said that a R141 million Government Grant for Vessels [intended for both research and patrol vessels] should be transferred, but DEA had indicated that it would transfer R100 million. National Treasury had cut the vessel operating grant, from R150 million in 2009/10, to R64 million in 2010/11, which meant that there would be a serious shortfall for vessels. Ongoing discussions were taking place between DAFF, DEA and National Treasury to resolve the issue.²⁵

²⁴<http://www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=398357&sn=Marketingweb+detail>

²⁵ <http://www.pmg.org.za/report/20100907-minister-regarding-progress-transferincorporation-fisheries-component>

In 2000, the contract to maintain and crew these vessels had been awarded to marine services company²⁶ Smit Pentow Marine, after a tender process. In 2005, Smit Pentow Marine became Smit Amandla Marine (SAM) during the process of certifying itself as a Broad-Based Black Economic Empowerment (B-BBEE) company²⁷ under the Broad-Based Black Economic Empowerment Act (#53 of 2003).²⁸ The tender process was not repeated, but the original contract was extended to the newly reformed SAM.

In November 2011, Minister Joemat-Pettersson suspended the SAM contract and awarded an R800 million tender for technical maintenance and infrastructure and personnel support to consortium led by Sekunjalo Holdings, also a B-BBEE certified company.²⁹ One of Sekunjalo Holdings³⁰ subsidiaries, Premier Fishing, is an important B-BBEE player in the fishing industry,³¹ which led to allegations of corruption against the management of the Fisheries Branch. The tender was subsequently withdrawn and the National Prosecuting Authority chose to investigate, amid court action against DAFF by SAM. This was followed by court action against SAM by then DDG Langa Zita on behalf of DAFF.

Without an approved service provider and without the necessary skills and resources amongst its own personnel, the Fisheries Branch signed over the maintenance and crewing of the vessels to the South African Navy on 1 April 2012. The agreement between the Department of Defence and Military Veterans and DAFF was that the latter would repay the costs of maintenance to the Navy, who did not have space in their budget for the extra

²⁶ Services that include maintenance, crewing, towing, salvage, emergency response.

²⁷ Smit Amandla Marine's B-BBEE certificate is available for viewing on http://www.smit.com/uploads/media/BBBEE_Certificate_of_SMIT_Amandla_Marine_2012.pdf

²⁸ According to the Preamble, the Act aims to "promote the achievement of the constitutional right to equality, increase broad-based and effective participation of black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution; and establish a national policy on Broad-Based Black Economic Empowerment so as to promote the economic unity of the nation, protect the common market, and promote equal opportunity and equal access to government services". It has been a major tool of the ANC government in redistributing assets and profits to the previously disadvantaged through the implementation of affirmative action, which evaluates companies on how they have "transformed" in line with new social and economic policies. It articulates the same notion of transformation that the MLRA contains, but without any considerations beyond the social.

²⁹ Sekunjalo Holdings' B-BBEE certificate is available for viewing on http://www.sekunjalo.com/images/stories/docs/bee_sekunjalo_investments_pty_ltd_2012-2013.pdf

³⁰ Sekunjalo Holdings, controlled by businessman Iqbal Survé, also owns the daily newspaper the Cape Times. The Cape Times published a leaked account of the Public Prosecutor's report, "Docked Vessels", naming Sekunjalo in the controversy on 6 December 2013. The then editor of the newspaper was dismissed days later, allegedly due to publishing details from the report. For an account of the story, see the Mail and Guardian article, "Cape Times editor fired after Joemat-Pettersson report" (available online at <http://mg.co.za/article/2013-12-08-alide-dasnois-removed-as-cape-times-editor>).

³¹ Currently the largest lobster exporter in the southern hemisphere: <http://www.sekunjalo.com/marine/marine-overview>

vessels. What happened next is contested. The Fisheries Branch claimed that it was ineptness on behalf of the Navy that saw the patrol vessels fall into such disrepair as to be unable to put to sea and lose their Lloyds of London class certification. The Navy claims that the Fisheries Branch only repaid them a fraction of the operating costs for the first six months, and so they could not afford to keep the ships in good repair as they had their own significant fleet to maintain under a pressured budget.³²

For over 18 months, South Africa's Exclusive Economic Zone³³ was unpatrolled.³⁴ The logistics to get survey vessels to sea during this time fell on private industrial commercial companies, so that data needed to set the following seasons' limits could be collected. This was problematic as the commercial vessels have different properties to the research vessels, and data collected in this way may therefore present a breach with previous datasets from research vessel surveys. Additionally, there is the potential for conflict of interest in using private companies to support government functions on an *ad hoc* basis.

On 1 April 2013, the term of the Memorandum of Understanding between DAFF and the SA Navy expired. In early 2014, two of the vessels were still docked in Simonstown. The Fisheries Branch had given several deadlines for when they would be put to sea – which had come and gone with regularity since 2012. This meant that the high seas were effectively unpoliced, and there could have been a number of illegal fishing activities that took place – there is no way of knowing.

³² See the minutes of the Navy, DAFF and DEA's presentation to the Portfolio committee (6 November 2012) on the status of the vessels at: <http://www.pmg.org.za/report/20121106-agriculture-forestry-and-fisheries-following-plans-allocation-long-te>. For exact amounts owed and paid between DAFF and the navy, see slide ten of the joint presentation by Rear Admiral B.H. Teuteberg and Rear Admiral B. Mhlana (Briefing to the Portfolio Committee on Agriculture, Forestry and Fisheries on the Status of DAFF/SA Navy Partnership), available alongside the minutes.

³³ According to the United Nations Convention on the Law of the Sea 1982 (UNCLOS), Exclusive Economic Zones extend 200 nautical miles from base-line from which the territorial sea is measured. The territorial sea, extending 12 nautical miles, falls under the full sovereignty of the relevant coastal state. The EEZ establishes a territory within which the state in question has a sovereign right to the resources below the surface of the sea. See UNCLOS Part V, Articles 55-75.

http://www.un.org/depts/los/convention_agreements/texts/unclos/part5.htm.

³⁴ Towards the end of writing, early 2014, reports came in that the Victoria Mxenge and Ruth First were patrolling again, and had in fact apprehended 10 illegal, unregulated or unreported fishing vessels in South African national waters between August 2013 and January 2014. The Lilian Ngoyi and Sarah Baartman were still under repair. Operations and maintenance were being run by Nautic Africa (part of the Paramount Group), awarded the temporary contract in April 2013 after the tender with Sekunjalo was suspended. In November 2013, then-Chief Director of Fishery Patrol Vessels, Mr Keith Govender, left DAFF and joined Nautic as the company's Chief Services and Support Officer.

This posed a threat to the South African offshore and inshore hake trawl fishery Marine Stewardship Council³⁵ certification. The Marine Stewardship Council is a UK-based agency that certifies fisheries as sustainable, and provides a valuable commendation that opens up profitable international markets in a context of increasing global consumer awareness about the consequences of unsustainable fishing. Being awarded this certification gave the South African hake trawl industry an image boost and international recognition for its efforts towards sustainability. The certification allows for a wider market, and for premium prices on the product. Losing the certification would mean losing access to these new avenues of increased revenue, and possible long-term effects on its reputation amongst local and global consumers (over and above the ecological damage that may occur if the industry is not monitored).³⁶

The West Coast Rock Lobster fishery is another fishery that has had problems with its sustainability classification, in this case on the South African Sustainable Seafood Initiative (SASSI) register.³⁷ The West Coast Rock Lobster fishery is one of the most lucrative, and employs a range of small and large-scale operators, fishers and processors – with an annual profit of more than R260 million and employing over 4000 people (DAFF, 2012:60). However, ecological and fishery-related pressures have caused the biomass of this resource to plummet over time, despite precautionary recovery plans set in place in 1997 and 2011. In 2012, the estimate was that the resource was heavily depleted, sitting at 3.5% of pristine biomass (ibid: 63). In March that year, there had been a closure of the small-scale fishery based on the Interim Relief permits ordered by the Equality Court, due to alleged overfishing and corruption in the sector and the increasingly poor state of the stocks on the West Coast. In November 2012 the Minister announced that the season was re-opened. Furthermore, contrary to the agreed upon 9.6% reduction of the TAC designed to

³⁵ <http://www.msc.org>

³⁶ In December 2013, the Public Protector published the long awaited report on the SAM/Sekunjalo tender case, “Docked Vessels: An investigation into allegations of the irregular awarding of a tender to Sekunjalo Marine Services Consortium by the Department of Agriculture, Forestry and Fisheries” (Report 21 of 2013/2014). The findings of the report are damning. The Public Protector recommends that President Jacob Zuma considers “taking disciplinary action against the Minister for her reckless dealing with state money and services resulting in fruitless and wasteful expenditure, loss of confidence in the fisheries industry in South Africa and alleged decimation of fisheries resources in South Africa and delayed quota allocations due to lack of appropriate research” (Madonsela, 2013:110). A copy of the report is available at http://www.pprotect.org/library/investigation_report/Docked%20Vessels.pdf.

³⁷ SASSI is the sustainability register of seafood that is run as a project by the World Wildlife Fund South Africa. <http://www.wwfsassi.co.za/?m=1>

recover the stocks, as set out by the Operational Management Procedure (OMP), the annual TAC for the following season would not be reduced³⁸. There was public outcry over this decision, and allegations of inappropriate relationships between the Minister and members of the rock lobster industry.³⁹

On the 15th April 2013, the Fisheries Branch announced that, in a meeting with WWF South Africa, they had recommitted to setting the 2013/2014 season limits according to the recovery plan.⁴⁰ However, the South African Sustainable Seafood Initiative nonetheless relisted West Coast Rock Lobster as an orange species in March 2013. The Sustainable Seafood Initiative grading runs from green, to orange, to red, representing sustainable, under-pressure and “do not buy” respectively. This downgrading prompted one prominent retailer to remove it from its stores in April 2013.⁴¹ On the 25th August 2013, the acting Deputy Director General Desmond Stevens harshly criticised WWF-SA’s decision to downgrade West Coast Rock Lobster, and said that allegations that the Department was not fully committed to the recovery plan – as discussed in the DAFF/WWF meeting in March – were “mischievous”.⁴² WWF-SA, in response, maintained that the pressure on the resource warranted a downgrading, despite promised action.⁴³

The lobster TAC and research and patrol vessel debacles were aired in a television segment titled “Tina and the Disappearing Lobster”, produced by popular investigative journalism programme *Carte Blanche* in February 2013.⁴⁴ In it, the then recently-appointed acting Director-General (DG), Greta Apelgren-Narkedien, admitted that she not only did not have any expertise in Fisheries Management, but that she had also been appointed without due process. The relaxed manner in which she stated these on national television was alarming, as it spoke to the fact that she was unaware that a *laissez-faire* attitude towards legal protocol was at all problematic, and that the new DG did not realise the highly

³⁸ For the minutes on the Portfolio Committee meeting on the WCRL TAC, see <http://www.pmg.org.za/report/20121113-continuation-briefing-department-agriculture-forestry-and-fisheries-d>.

³⁹ See “The minister of denuded fisheries” (<http://www.bdlive.co.za/opinion/columnists/2013/02/26/the-minister-of-denuded-fisheries>); Also the Minister’s interview with Tracee Harvard in *Leadership* magazine, Issue 336, April 2013, pp 20-23.

⁴⁰ <http://www.daff.gov.za/docs/media/DAFF%20meets%20WWF%20to%20discuss%20West%20Coast%20Rock%20Lobster%20fishery.pdf>

⁴¹ <http://www.fruitandvegcity.co.za/food-lovers-market-will-no-longer-stock-west-coast-rock-lobster-as-of-april/>

⁴² <http://www.gov.za/speeches/view.php?sid=39136>

⁴³ http://www.wwf.org.za/what_we_do/marine/?uNewsID=7860

⁴⁴ Broadcast on the subscription network MNet.

specialised nature of fisheries management. Following the broadcast of these statements, Mrs Apelgren-Narkedien was removed from office – quietly transferred to a different department in KwaZulu-Natal – and the post was given to Desmond Stevens (who was previously acting Chief Director of Fisheries Resource Management)⁴⁵.

For 2014, the Department had re-issued long-term rights in eight fisheries whose long-term rights expired on the 31st December 2013 (Fisheries Rights Allocation Process, 2013). This had proven to be a particularly long and drawn-out process. The process of re-allocating rights in the fisheries affected by the 2013 expiration should have been started in 2010, to allow for the various processes to be followed timeously – such as the tendering for external service providers; amending the Marine Living Resources Act (MLRA, # 18 of 1998) and gazetting the new General Fisheries Policy, along with the proposed application process and forms; receiving, collating, verifying and judging applications; setting allocations; awarding rights; implementing; and dealing with appeals.

The delay in dealing with this meant that several processes instituted as protocol in previous rights' allocations processes had been done away with; legal procedures for amending acts and introducing new policy were not followed; and changes in staff meant that new issues were introduced into the process at a very late stage. The appeals process should have been given time to run its course before the expiration of rights, so as to prevent disruption to the industry – and the livelihoods of affected fishers. The affected fisheries are KwaZulu-Natal (KZN) prawn, demersal shark, squid, tuna pole, hake hand line, white mussels, oysters and traditional line fish. The corresponding 2013/2014 Total Allowable Catch/Total Allowable Effort limits (which determine the rate of exploitation in the fisheries) had already been published⁴⁶ and the potential for impact on people's lives and inshore resources is significant, especially for these smaller sectors. The number of crew in total for five of the fisheries (excluding prawn, demersal shark and hake handline) is 6 817, and is determined as seven vessels for the KZN prawn fishery, and as six vessels for the demersal shark fishery⁴⁷. A few thousand crew may lose their jobs, without counting

⁴⁵ On 28 February 2014, DAFF announced that Desmond Stevens had been fired from his post. Mortimer Manya, a soil scientist, was announced as the new acting DDG the following week.

⁴⁶ http://www.nda.agric.za/doaDev/sideMenu/fisheries/21_HotIssues/April2010/FishingPermitsConditions2012/2013-2014%20TACs%20and%20TAEs.pdf

⁴⁷ As stated in "Total Allowable Catches (TACs) and Total Allowable Efforts (TAEs) for 2013/2014 Fishing Season", issued by the Department of Agriculture, Forestry and Fisheries in April 2013. I accessed the

the rights holders and secondary staff like processors or transporters, and with consequences for their families.

The announcement of the rights allocations on New Year's Eve 2013 was a shock to many. For example, out of over 450 existing linefishers in the Western Cape, only 115 were re-allocated rights. One hundred new entrants were given access, infuriating those long-term, invested fishers who depend on fishing rights for their livelihoods. Fishers from all eight affected sectors have announced the intention to appeal the decisions via the courts. On the 28th February 2014, DAFF announced that the 13th (since 2011) acting Deputy Director General of Fisheries, Desmond Stevens, had been removed from office. On the same day, DAFF granted a two-month exemption to those fishers preparing to appeal the non-renewal of their previous licenses. This meant that old quota-holders were continuing to fish alongside new entrants, effectively undermining efforts to limit access to under-pressure inshore resources. The implementation of the Small-Scale Fisher's Policy (SSFP⁴⁸) is due after almost seven years in the making, and has required the curtailment of allocations given to commercial inshore fisheries in order to "make room" for the new rights holders under the SSFP. A major legal obstacle to the implementation of new rights and the re-allocation of new rights has been the passing of the Marine Living Resources Act Amendment Bill, which would allow for the granting of rights to collectives or cooperatives. This is not allowed under the MLRA as it currently stands, and so the proposed allocations to such collectives will be illegal if implemented before the due process that requires the passing of the Amendment Bill by Cabinet.

Literature

While grounded firmly in social anthropology, this thesis also attempts to be accessible to other disciplines, particularly the natural sciences. Its goal is to support the conversation and collaboration that, in turn, could support the emergence of a more inclusive view of humanity's interaction with our environments. This is a theoretical as well as a practical concern – as I argue throughout this thesis, the consideration of social, biological, political and economic issues in isolation from one another, results in a fragmented approach to

document on www.daff.gov.za in 2013, but the website was upgraded in 2014 and the link is no longer available, or has been renamed.

⁴⁸ Government Gazette #35455, 20 June 2012. Available online at <http://www.nda.agric.za/docs/Policy/PolicySmallScaleFishe.pdf>

environmental governance that insufficiently addresses the entangled nature of environmental problems. This calls for close collaboration between various disciplines, but also for a rethinking of the categories by which we identify individuals and collectives. By investigating the world through the interactions that humans and non-humans have with each other and their environments, anthropology can be the study of this intersection or assemblage of relations (Latour, 2004, 2005).

My primary research methods and interpretive approaches draw on those of social anthropology. In terms of methodology, data was collected through extensive ethnographic and participant observation, discussed at length in the following chapter. My interpretive approaches to understanding the nature of law enforcement on the small-scale relied heavily on the work of anthropologists of the state and governmental technologies of control in the context of resource use and/or social instability, particularly Arun Agrawal, Akhil Gupta, James Ferguson, Talal Asad, Amita Baviskar, Deborah Poole and Veena Das. These authors all strive to complicate the idea of a behemoth state imposing rule onto a submissive, homogenous collective of citizens, and instead stress the importance of paying attention to the everyday, interpersonal negotiations of power and agency that characterise the small-scale. Their collective body of research took place in sites that share similarities with the social landscape of my own fieldsites – insufficient economic opportunity in a context of capitalism; mistrust between citizen and government; a prevalence of both violence and bureaucracy; a lack of infrastructure or resources that often exacerbates local communities' position as one removed from political power (in terms of determining governmental intervention).

Furthermore, the authors noted above complicate the idea of a centre of order and a margin of chaos, that can be simply spatially articulated through geography, and show alternative ways of understanding state power and territoriality. My discussion on space and territoriality is expanded on through the insights and concepts offered by Henri Lefebvre's work on the production of space (1970, 1978, 1979), as well as the works by Ferguson and Gupta (2002), Gupta (1995, 2012) and Whitehead, Jones and Jones (2006) which deal with how the state attempts to control space through the delineation or definition of spatial objects and the imposition of boundaries.

Understanding what the state is and how it becomes to be articulated was only one part of the puzzle. Understanding the form of environmental governance that is present in

the Western Cape fisheries required a multifaceted approach that drew on the wide range of literature that deals with the social and ecological histories of the South African fisheries and marine environment (see discussion on the following pages), global fisheries management, commons theory and environmental law and jurisprudence. Two common themes in the literature presented throughout this thesis is the commodification of nature and the significance of relationality in understanding the complexity of human interaction with nature. These are two of my own personal theoretical preoccupations, and therefore the reasons why these works were chosen above other works that are also relevant to this particular field of study of marine resource law enforcement.

For my discussion on commons theory and common pool resources, the work of Elinor Ostrom (1990; also Dietz et al, 2002), Jean-Phillipe Platteau (Baland and Platteau 1996; also Bardhan and Ray, 2008), Garret Hardin (1968, 1998) and Bonnie McCay and James Acheson (1987) were my starting point. While the body of work represented by these authors did much to inform my understanding of the nature of marine commons and their regulation, it was the work of Arun Agrawal (2002, 2008), and Amita Baviskar (2008) on this same topic that I found most useful in articulating what these commons look like and are perceived as in the particular socioeconomic and political context of South Africa. A particular point, that is brought up by Ostrom and others but expanded on and updated by Agrawal (2002, 2008) and Vijayendra Rao and Arjun Appadurai in their volume (2008), is the problem of definition in relations to determining the commons. This was particularly relevant to my discussion, as Chapter Two makes explicit.

Compliance functions in South Africa are discussed in the light of general underlying theories of law and jurisprudence as applicable to South African environmental law (Beirne, 1995; Marmor, 2011; Rawls, 1971; Tebbit, 2000), and with specific reference to the manner in which these are employed and interpreted by South African environmental law (Craigie, Snijman & Kotzé, 2009; Glazewski, 2000; Paterson & Kotzé, 2009). By stressing the specificity of the South African context I do not wish to represent it as entirely unique, but it is noteworthy how the historical genesis of our current legal system has been both a reaction to and the legacy of Apartheid legislation. For this reason, as well as other important contextual factors such as state legitimacy, macro and micro-economics, social divisions and a tradition of civil protest, many of the international works on fisheries compliance and management - such as those from North America and Western Europe - are

not entirely accurate in describing the nature of marine resource law enforcement in South Africa due to the stability of government and industry and history of embedded human rights that most of these states enjoy (Hauck & Gezelius, 2011; Isaacs, 2012).

The international works on fisheries management that specifically reference in this thesis were Ommer and Team's 2007 *Coasts under Stress* from which I drew inspiration for a regional, multi-sited and interdisciplinary scale (though I could never hope to replicate their scope within the limitations of a single PhD project) and the work of Gísli Pálsson, who investigates the consequences of modernist regimes of marine resource regulation and the commodification of marine resources. An important feature of the *Coasts Under Stress* work is the conceptualisation of multiple scales and levels of marine resource management and exploitation. This is an important acknowledgement, as it forces one to consider not only what knowledge or practice is being made use of, but where that knowledge can be located, how it is produced in that context and how it can be traced as it is mobilised and co-opted. Furthermore, it acknowledges that there exists variant positions of power and authority, and that these various positions act like a filter through which regulation passes from state to the citizen.

One of the things I found noteworthy in my research, was how marine resource law enforcement in the Western Cape is removed from marine resource regulation or conservation. It is part of fisheries management, and yet fisheries management itself has little presence in the manner in which the Compliance Section regards their work. For example, there is little or no presence of the Ecosystems Approach to Fisheries in their articulation of the job or official protocol. This is despite the work being done by South Africa fisheries management scientists and Fisheries Branch personnel in researching and implementing the paradigm in the national fisheries, and the presence of EAF principles in the long-awaited Small-Scale Fisheries Policy. The Ecosystems Approach to Fisheries is the significant feature of international fisheries management currently (Augustyn et al, 2014; Christensen & Maclean, 2011; Fulton et al 2014; Link & Browman, 2014). While compliance functions in South Africa are formulated in a broader context of an Ecosystems Approach to Fisheries, marine resource law enforcement in the Western Cape consistently has been noted to fall short of realising the governance goals that this approach advocates (Nel et al, 2007; Cochrane et al, 2009; Hauck, 2009) and continues to do so.

An important feature of many studies of environmental governance and the human-ecological interface, which forms an important feature of my argument, is the understanding that the issue at hand is not an object under scrutiny - i.e. there is no universal nor eternal Nature to which one can refer or appeal (Latour, 2004; see also the volumes Castree and Braun, 2001; Descola & Pálsson, 1996). To agree with Noel Castree when he says that “Nature” is a social construction, is not to claim that the natural world is unreal, but that articulations of what the term includes and excludes, and assumptions of how it acts or how humanity must act towards it, are socially mediated (Castree, 1995). This theoretical assumption formed the basis of my MA work, on research conducted in Arniston during 2007 (van Zyl, 2008). I use this understanding and additional scholarship that addresses the influence of neoliberal policies on environmental governance, to argue that the current form of marine resource law enforcement in the Western Cape operates under is primarily concerned with regulating the production of commodities, and not the maintenance of ecological or human well-being (Baviskar, 2003; Hanna, 2001; Pálsson, 1998; Verran, 2013; Whitehead, Jones & Jones, 2006; Weston & Bollier, 2013).

The wide range of scholarship on the Western Cape fisheries encompasses the work of many researchers from a range of disciplines. Sowman et al. (2013) give an overview of social science research in South Africa’s marine environment. They identify nine thematic focusses across the broad range of research within this field, and conclude that these studies were “largely driven by socio-political events, knowledge gaps or the desire to apply new ideas...emerging on the international arena to the South African context” (Sowman et al., 2013:396). As such, this body of research has often focussed on or discussed various aspects of the transformation of South African fisheries that was undertaken by the newly entrenched democratic government post-1994, and the effects these changes have had on small-scale fishers’ lives. It has been shown that there were several shortfalls in the government’s approach that disadvantaged social and ecological aspects of the fisheries complex, either exacerbating existing problems or creating new ones (Hauck & Sowman, 2003; Jarre et al., 2013; Sowman et al., 2013; see also Raemaekers, 2009 for examples from the Eastern Cape). A thorough overview of this literature is given in Chapter Two of this thesis, in the discussion of the characteristics of the Western Cape fisheries.

Environmental historian Lance van Sittert (University of Cape Town) has contributed significantly to the development of a body of scholarship on South Africa’s past and current

fishing industries. He has dealt largely with communities on the West Coast and in Cape Town, showing historical links and legacies that impact on current activities and processes (Van Sittert, 1993a, 1993b, 2002, 2003; Van Sittert et al., 2006).

Moenieba Isaacs and Mafaniso Hara, who are based at the Programme for Land and Agrarian Studies (PLAAS) at the University of the Western Cape, have produced several studies that speak to the effects of social issues on the lives of fishers, especially regarding health and poverty. Isaacs and Hara, along with the various co-authors with which they have worked, have shown that South Africa's fisheries are significantly affected by ongoing political and economic struggles that continue to disenfranchise those in the small-scale sectors, and small rights-holders in the highly capitalised sectors.

Merle Sowman and Maria Hauck (both based at the University of Cape Town) have both focussed on the small-scale fishing sector, particularly that which could be termed artisanal (using low-impact gear and less technology, compared to the commercial industrial sector). Their work has focussed on the manner in which livelihoods are disrupted by top-down, control-oriented conservation and management measures, taking a social justice approach in linking social and ecological concerns as they are contested in the fisheries sector (Hauck, 2008; Sowman, 2006 and 2011; Hauck & Sowman, 2001 & 2003).

Maria Hauck's work has dealt specifically with issues of compliance in South Africa, starting with her MA in Criminology, which focussed on the illegal activities of abalone poachers in the Overberg, and including her PhD dissertation which focussed on the formulation of South African compliance law and how it has been interpreted, received and implemented in the small-scale sector (with case studies on abalone and West Coast Rock Lobster fisheries). Her work has been important to my understanding of the legal and policy parameters of marine resource law enforcement and compliance theory in South Africa. Based on in-depth case studies of small-scale fisheries and con-compliant behaviour, Maria Hauck's work illustrates a wealth of insights into resource-user behaviour and negotiations of legality.

Maria Hauck's PhD thesis, *Rethinking Small-Scale Fisheries Compliance: From criminal justice to social justice*, gives an overview of the rise of compliance-based approaches in South African fisheries management, and researchers in the fields' increasing realisation that "policing and punishment usually leads to further conflict with authorities" (2009:2). She approaches the issue from the perspective of social justice, questioning the

rationale behind the relevant laws and querying how they were formulated. Her argument proceeds by discussing the framing of illegality, both conceptually and as a practice in a context in which criminality has been created by the exclusion of certain informal fishers from the formal rights processes (ibid.). Hauck links social and environmental justice in order to understand “how ‘harm’ is defined” (2009:44). It establishes that harm is not universal – neither in terms of understanding or experience (see Chapter Five). It also expands the concept of harm, by including the environmental harm alongside considerations of harm by and against humans. For her, and myself, this is the issue that is the driving force behind issues of fisheries management in the Western Cape – suffering is present.⁴⁹

Hauck argues that, in order to challenge traditional compliance theories, one must critically analyse the history of power dynamics inherent in a law’s evolution, especially in situations of social and economic inequity (2009:47). She argues that “environmental crimes are socially constructed, shaped by relations of power, which support capitalist interests and marginalise the powerless” (2009:48). This formulation needs amending as it suggests that there may not be such a thing as an environmental crime; that non-compliant small-scale fishers are seen as harmful due to the interests of the prevailing hegemony, not the effects of their actions. As observed in my fieldwork, there are many reasons for non-compliance that are neither political - in terms of protesting against the identities or policies of those in power - nor primarily economic - in terms of making a profit or securing access to capital. In Stilbaai, a recreational fisher had no reason for why he exceeded his bait catch limits, other than it would save him time the next day. At Miller’s Point, recreational linefishers mentioned that selling the fish was better than keeping it in their freezers – even though selling recreationally-caught fish is illegal; they had simply caught too much to eat. In Arniston, a local fisher told me he often took more mussels than he was allowed because he had a lot of children who liked shellfish.

Why people oblige, or why the state has authority to govern collective and individual conduct, according to Tebbit, is “one of the most complex and paradox-ridden areas in contemporary jurisprudence”, and he, like Hauck, argues that the best way to answer this question is to attend closely to the embeddedness of the meaning and intentions of a law in

⁴⁹ In Chapter Five, I unpack what this suffering looks like, by illustrating the ways that harm is manifested within the fisheries complex.

specifics of when and where, in order to understand the compliant or non-compliant behaviour it elicits (2000:78). In this thesis, I attend to this embeddedness by understanding it as an immersion in the everyday, in the space of environmental governance that is simultaneously social and ecological. The claim that environmental crimes are socially constructed in a manner that forces small-scale users to be non-compliant does not allow for the question of what justice for the pressurised marine resources or ecosystem may look like.

Throughout Hauck's career, her work has focussed on the important small-scale sector and how the process of implementing the MLRA negatively affected their ability to earn a living using their skills. Hauck argues: "It is unrealistic to expect law enforcement to address fisheries non-compliance if it is implicated in isolation of broader strategies that address the social, political, economic and cultural factors that are driving fishers to behave the way they do." In a context such as the Western Cape where the behaviour of fishers is situated in a complex intersection of various forces and pressures beyond that of their relevant fishing industry, this is an important intervention that re-situates the fishing industry within the wider social sphere.

In this project, I have scaled up to focus on a range of activities from the small-scale to the large commercial scale, and "followed the fish" to see the enforcement of compliance at various stages in the processes of catching and selling it. This thesis will go on to show that not only the behaviour of the extractor, but the inspector and the mutual space of interaction that these groups share, are similarly affected by pressures external to the fishing industry.

Like Hauck, I am interested in injustices and how these are perpetrated or perpetuated by certain processes and policies that police persons' livelihoods. However, while her approach of seeking social justice is appropriate for her project of questioning the social legitimacy of certain laws, it does not, for my purposes, adequately address what justice may mean if not bound to the needs of the small-scale fisher, or even the realm of the social. Some inspectors and management officials have grounds for seeking redress of injustice (past and present) themselves. Working for the state does not necessarily make one immune to unjust action. Furthermore, being unjustly treated in the past has not prevented many small-scale fishers from perpetrating injustice themselves – against the environment, against inspectors, against kin. The idea of justice is bound up with the idea of

wrongdoing, and one needs to understand the texture of social relations in full in order to approach such judgement. Marine resource law enforcement is a process of constituting nature and citizenship through communicative interaction, which complicates the distinctions between legal and illegal, right and wrong, nature and society.

Hauck's work provides a revealing view of compliance in South Africa, particularly the Western Cape. However, there is a starkness to her rendering of the situation that fits too easily with a binary view that sees the contestation as between fishers and the state, with the former burdened by the laws of the latter. Her discussion proceeds to ask questions about legal legitimacy and institutional efficiency without attending sufficiently to what the state consists of and how it operates. In her text, the state appears monolithic; an entity that is largely taken for granted and, as such, remains largely unexamined. It is necessary to problematise such a reading as it does not account for the processes that cannot be formulated as "*x versus y*", for example the inspectors themselves, who are both state officials and citizens. Many of the relations that make up the terrain of the fisheries complex are not causal, and so the field requires an understanding of how assemblages are created, how interconnectedness is fostered. To take a binary view of the situation – such as fishers versus the state, or compliant versus non-compliant – does illustrate important features, but fails to fully account for the nuances and non-fisheries-related motivations that complicate the decisions of how to enforce or fish.

A thoughtful definition of the state is needed to understand how it articulates and imposes its authority on everyday life through the person of the inspector. Furthermore, Hauck's efforts to find linkages between the socio-economic and natural systems presupposes what nature is and fails to fully account for the importantly relational character of these 'linkages'.⁵⁰ Philippe Descola and Gísli Pálsson describe the move beyond dualism as such:

Going beyond dualism opens up an entirely different intellectual landscape, one in which states and substances are replaced by processes and relations; the main question is not any more how to objectify closed systems, but how to account for the very processes of objectification. (Descola & Pálsson, 1996:12)

⁵⁰ As discussed in Chapters Four and Five

This is where an anthropology of environmental governance offers its strengths – to investigate the ways in which every day human interaction is as much an influence on the decision to comply or not as are greater social processes, such as law or macro-economics. The art of ethnography allows one to find themes that run through many lives, and so illustrate the intimate relations that are fostered, maintained or disrupted by action and speech.

Thesis Structure by Chapters

How the argument proceeds

Summary of the argument for guidance The first step of the investigation is embarked on in Chapter Two, *The Job Description*, which opens the discussion by asking: How has the job of a compliance inspector come to take the form it has, and what does this say about how the problem of non-compliance is formulated in current marine resource legislation?

The process of designing the position of compliance inspector is given attention by contextualising it within changes to fisheries compliance functions in the last two decades. The central ideas of the MLRA, as contained in the job description for a compliance inspector, are teased out to show the inherent assumptions this form of marine governance makes about the ecology, the resource users and the inspectors. This historical perspective is drawn from the extensive work of Maria Hauck, as well as South African environmental law experts such as Jan Glazewski, who has extensive research background in marine governance. The central ideas of “compliance” and “commons” are unpacked with the aid of compliance theory, commons theory, environmental governance and the philosophy of law, as they pertain to the specific context of the situation in the Western Cape. The argument is made that the design of the job, and subsequent histories thereof, have largely failed to take into account the tension within the job between design on paper and performance in practice. This means that there are certain tasks that inspectors are prevented from doing by either a conflict with legal or operational protocol, or by the practicalities of the job that are not given due consideration in the development of policy and the parameters of the job description.

The inspectors can be read as the interface between the state and the public, a site of much tension, an image that I draw from Susan Hanna (2001). The conflictual nature of

the relations between resource users and the South African state is often framed by discourses or analytics that foreground politics of state dominance or economics of competition, efficiency and profit. Social, ecological or historical features of the fisheries have often been taken for granted, and so continue disrupt or complicate such specific histories. In this way, a very particular articulation of what the fisheries “are” has gained prominence.

Chapter Three, *Assembling the Fisheries*, unpacks what is understood by the term “the Western Cape fisheries”, by investigating what role ideas about space and processes of spatialisation played in the formulation of marine resource law and governance during the transformation of the fishing industry post-1994. The Western Cape fisheries represent an assemblage that is maintained by an array of governance technologies that legitimate certain sets of associations while neglecting others. One of the ways in which these associations were judged was the application of spatial planning in the process of formulating legal relationships between the resource user, the state and the resources. The MLRA utilises particular ideas of space to regulate fisheries and resource user behaviour, but these spatial tools do not always correlate with the spaces that are occupied or created in everyday life. The codified spatial associations within the MLRA have a history of being heavily contested, both over access to natural resources and economic opportunities.

The discussion then returns to the local scale, to the person of the inspector and the role inspectors play in the everyday interactions between the state, citizens and the marine environment. Chapter Four, *Terms of Engagement*, asks what relationships are present, and possible, in an environment dominated by state sanctioned protocols of control, bureaucracy and violence. Important here is the texture of relations between inspectors and resource users, as they influence the success of compliance enforcement in the everyday.

As has been discussed, the process of political transformation of the fishing industry and access to marine resources created contestation over space on a national and local level. As evidenced by the ethnography presented, a central feature of the inspector’s job of asserting state control in such contested spaces is surveillance. The state keeps an eye on both the resource users and the inspectors, while the inspectors and resource users watch each other. This is evidence of a pervasive lack of trust, which is unsurprising given the historical and current presence of structural violence and threat of physical violence in

relations between the South African state and its citizens. This violence responds to and creates a heavily contested physical and social terrain. The levels of violence that are present means that fisheries management is increasingly relying on technologies of control to manage fisheries – particularly on the small scale – and to police poaching. This formulation assumes the worst of both resource users and inspectors. This means that the potential for constructive relationships is at least partially constrained by these technologies of control before either the inspector or the resource user enter the regulated space. It is this dynamic that garners so much criticism from both inspectors and resource users, although they often articulate this frustration differently. The current form of environmental governance-as-control in fact creates a space where control is not a given, and wherein legal formulations of authority and citizenship are routinely contested.

The everyday texture of relationships between citizens, the state and the environment is rendered tense by the reliance on control over modes of cooperation. The figure of the inspector is placed in the realm of the social, with little consideration of the greater web of relations that is influential on their decisions and interactions. Chapter Five, *Body of Evidence*, investigates the implicit and explicit ways that the inspectors bodies are articulated by law, policy and protocol, and the assumptions that these articulations make about how these bodies will operate in the field. It is shown that there are moments in which inspectors are considered to be ‘people’ and moments in which they are considered to be merely ‘bodies’. By presenting ethnographic details on the everyday physical demands placed on the inspectors’ bodies, I show how the task of law enforcement relies not only on perceptions of legitimacy and authority as discussed in previous chapters, but ultimately also on the eyes, feet, bodily integrity and mindfulness of the inspectors. This is not only crucial to how inspections are conducted or arrests made, but to the development of expertise and the formation of a body of evidence with which the state can prosecute offenders.

It is not only the assumptions made about the performance of marine resource law enforcement and the appropriate form of environmental governance that impacts current levels, and will continue to impact future levels, of non-compliance. Implicit in these assumptions of performance is the manner in which success and failure are judged. Chapter Six, *Judging Success*, investigates the possibilities for reconsidering the manner in which we judge the successes of marine law enforcement. The ethnography presented, throughout

the thesis and in this chapter, shows that assessments of harm and the manner in which such harm is penalised, overshadows possible alternative judgements of success. This chapter argues that the maintenance of well-being is important to the success of environmental governance, and needs to be considered *along with* the identification and penalisation of harmful behaviour.

On various scales – national and local, long-term and everyday – the success of marine resource law enforcement is determined by the texture of relations between individuals and collectives; between these and various forms of resources (both material and intangible). The importance of human health and well-being is directly addressed by both the Bill of Rights and the Fisheries Branch mandate, as is the need to protect the marine resources and environment. While both of these statements deal with the issue of health, they nonetheless emphasise assumed distinctions between the ecological and the social. These assumptions complicate attempts at applying holistic approaches to the wicked problem of fisheries management.

In conclusion, the anthropological approach is discussed for its benefits to the study of the human-ecological interface, and shown to be an important part of broader projects that study complexly contested and interrelated processes, such as is present in the Western Cape fisheries. The idea of relationality features, overall, as a tool with which to understand and manage some of the processes within marine resource law enforcement that are currently not functioning efficiently. Practical and material problems in the Compliance section can be highlighted for the potential to correct in the short-term, but overall the more intangible problems discussed will require a longer-term, more collaborative approach that explicitly considers the system as a whole.

Chapter 1: Fieldsites

Overview of Western Cape fisheries and the fieldsites of my research

Pressures on various systems and stocks, political wrangling, management crises, corruption and high levels of poaching and noncompliance are pervasive in the South African fisheries, currently. With the Western Cape being the focus of most inshore and offshore commercial fishing in the country, it is a region that offers many potential fieldsites to study these processes, across a wide geographic area and spanning many types of fishing activity.

There are four general fisheries clusters in South Africa. Firstly, there is the open-water, offshore sector that targets inaccessible but highly lucrative stock and, as such, is capital intensive and requires specialised technology. Closer inshore are the fisheries that are still industrial but with a more limited scope of mobility. Inshore fisheries target resources that are more accessible, and are characterised by small commercial enterprises with limited capital. Lastly, there is the shore-based fisheries, the most accessible, with fishers exploiting intertidal or shallow water resources that are cheap to harvest and can therefore be fished by almost anyone, anywhere – making them both “important and difficult to control” (Branch & Clark, 2006:5). Along with target species, capital, gear, infrastructure and location are important determinants of how a fishery is classified.

The types of commercial fishing between the West and South coasts vary, with the west and southwest coast being predominated by pelagics, West and South Coast Rock Lobster, abalone and hake. Fishing on the south-east coast is dominated by pelagics, linefish and chokka squid. South Africa’s fishing industry is centred in the Western Cape, with relatively small-scale fisheries (in terms of economics) operating in the Eastern Cape and KwaZulu-Natal. It is not entirely accurate to think of the fishing industry as a national endeavour, when its daily spatialisation clearly centres it, geographically and administratively, in the Western Cape. With industrial fishing largely based on or off the West Coast (Hutching et al., 2012), the South and East Coasts are dominated by recreational and subsistence fishing (Branch & Clark, 2006:4). The beaches of the South Coast offer great

shore angling, while many towns on the West Coast have recreational fisheries that require a boat (West Coast Rock Lobster or linefish⁵¹ like snoek).⁵²

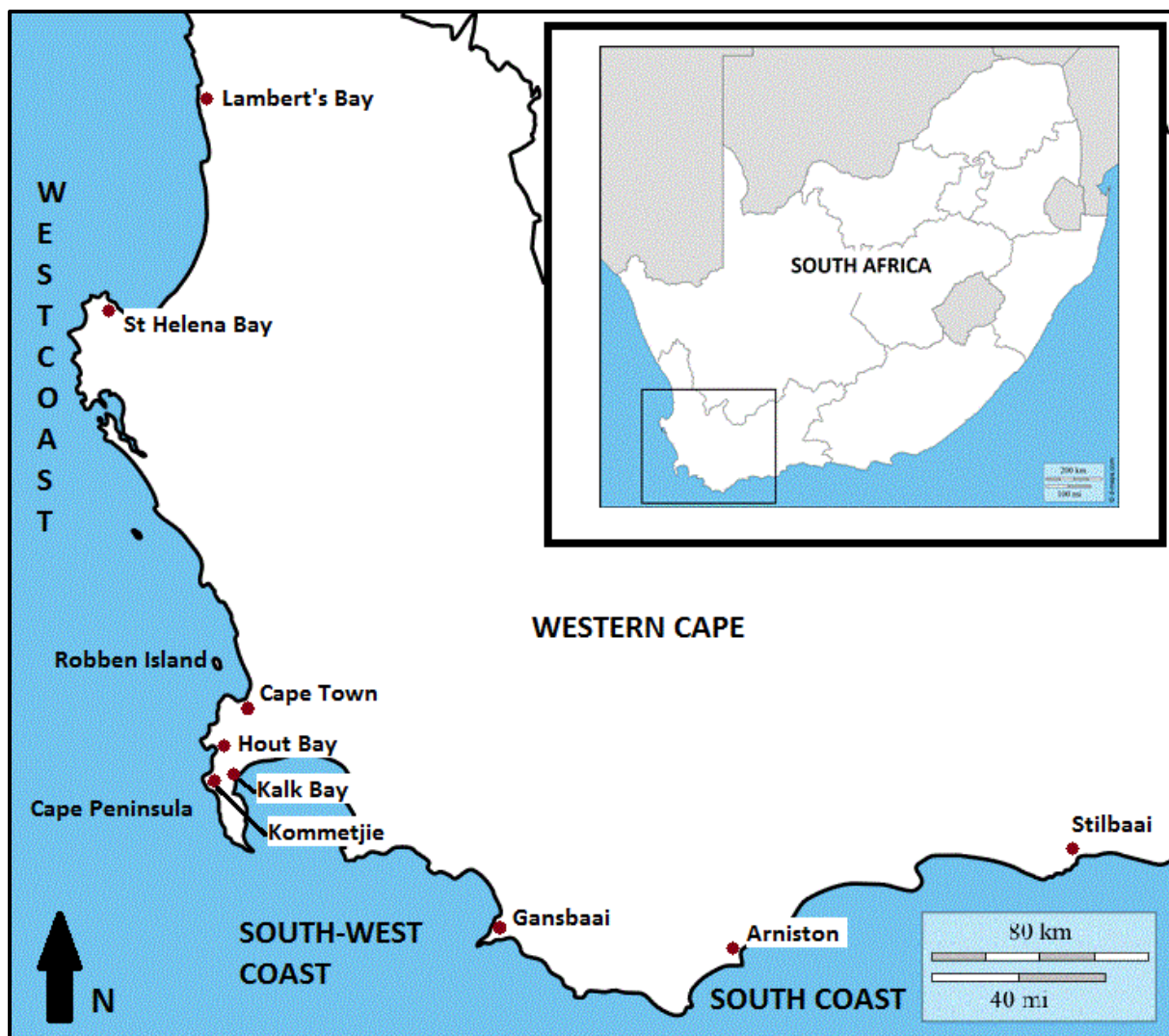


Figure 1 Map of Western Cape fieldsites, adapted from www.d-maps.com

The Benguela Current Ecosystem (on the West and South Coasts) is characterised as rich, but with less species diversity than the Agulhas Current (on the East Coast). The boundary between the two currents is not as stable as the heritage plaque at the monument in Cape Agulhas would have one believe. Where these currents interact on the Agulhas Bank about 250 km south of Cape Agulhas, the mixing and upwelling on the broad, tapering shelf

⁵¹ The term “linefish” is fairly unique to South Africa, and refers to any fish that you can catch with rods or handlines.

⁵² Of the 17 fisheries given attention in the DAFF report, *Status of the South African Marine Fishery Resources 2012*, 12 were present in my range of field sites, from Lambert’s Bay on the West Coast to Stilbaai on the South Coast (van der Lingen et al., 2012).

provides rich spawning grounds for pelagics and feeding grounds for linefish. This, along with the offshore trawl ground of the West Coast, is South Africa's premier fishing ground.

Despite this knowledge, it was nevertheless surprising to see this fact mapped on large screens in the Vessel Monitoring Operations Room, in the DAFF Head Office at the Foreshore in Cape Town.⁵³ Of the few hundred boats that were out on any given day, the vast majority were clustered off the Cape near or on the Agulhas Bank, as well as in a coast-hugging strip up the West Coast. On one particular day, there were only four boats out of East London, and only two in the whole KwaZulu-Natal, visible on the screen. The concentration of effort in the area south of the Cape was staggering to behold, and had a strong influence on how I came to visually perceive the conceptual entity of the "South African fisheries", as clustered off the very tip of Africa.

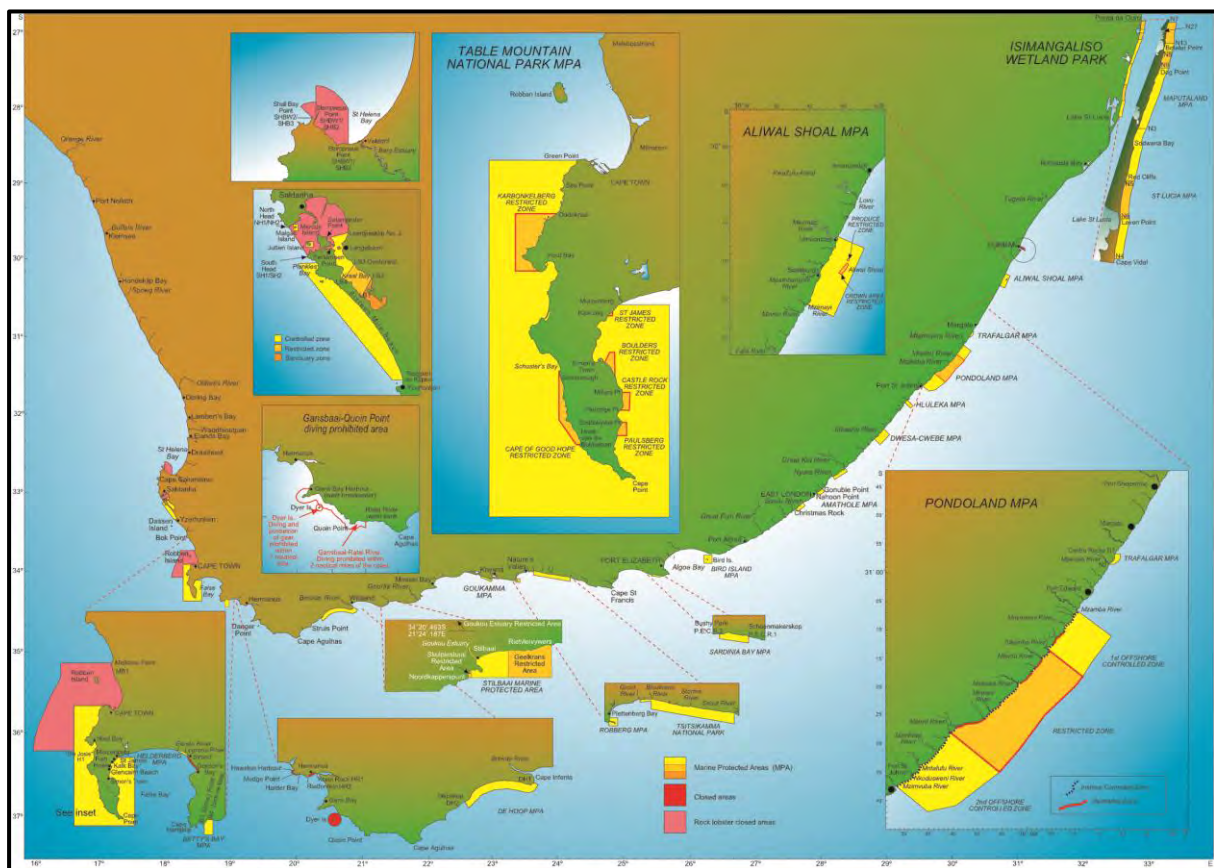


Figure 2 South Africa's Marine Protected Areas, published by the Department of Agriculture, Forestry and Fisheries in their Marine Recreational Activity Map. Available at http://www.nda.agric.za/doaDev/sideMenu/fisheries/21_HotIssues/April2010/MarineRecreationalA

⁵³ Observations during fieldwork, November 2012. Unfortunately, I was not permitted to photograph the monitoring screens.

The decision to work in the six particular sites within the range of choices offered by the Western Cape was based on the work done by graduate researchers in Anthropology at the University of Cape Town, in part via collaboration between the Contested Ecologies project and the South African Research Chair in Marine Ecology and Fisheries, led by Lesley Green and Astrid Jarre, respectively. The Honours and Masters projects that resulted from this collaboration were all researched in coastal towns in the Western Cape, in which fishing was a significant livelihood for part of the community, and in which a Fishery Compliance Office was based.

These sites, and the colleagues who researched fishing activities in some of them, are: Lambert's Bay (Jen Rogerson, 2011), St Helena Bay (Oliver Schultz, 2010), Cape Town (including Cape Town Harbour, Hout Bay, Kommetjie and Kalk Bay), Kalk Bay (Tarryn-Anne Anderson, 2010 & 2011), Gansbaai (Sven Ragaller, 2012), Arniston (van Zyl, 2008⁵⁴) and Stilbaai (Greg Duggan, 2012). These sites were chosen for two reasons: to present a study of Western Cape fisheries compliance functions by working in several sites at which fishing is a significant activity, and to build on the work done by my colleagues from the Social Anthropology Section at the University of Cape Town, who focussed on these sites in their investigations of the fishing industries of the Western Cape.

Read together, these dissertations and studies reveal that each site's fisheries and fishers are a product of history and place, and that long-term fishers' decisions are influenced by accumulated biological, meteorological, geographic, practical and social knowledge. What these studies have shown is that careful engagement with the site specifics of the small scale clarifies the differences between the sites, into terms that are useful in addressing the larger scale, specifically because they resist universalisation.

Each of the respective field sites has intimate historical relations with fishing, both as towns and as communities. Many resource users in these "fishing communities" refer to themselves as fishers, even if many do not have formal rights – it is their history, even if not their present. These towns have also undergone significant changes in appearance or socio-economics since South Africa's transition to democracy in 1994, with the busy fisheries industry and trade of earlier years dramatically slowing down, sometimes even stopping indefinitely. The fishing of communities of the West Coast, in particular, have been hard-hit,

⁵⁴ Van Zyl 2008 and van Zyl 2009 refer to work under my maiden name.

due to the lack of alternative industries in these small towns (besides seasonal tourism and limited agricultural work) and their distance from cities.

By the 1990s, Lambert's Bay had for long been known as a bustling fishing harbour where pelagics and rock lobster were abundant, with the town reliant on the employment opportunities of the fleet and factories. Then pelagics (specifically sardine) catches in the area declined significantly in the early 2000s, due to a change in spatial distribution of the population, and the Oceana processing factory was closed (and converted for processing potato chips) (Jarre et al., 2013). After the pelagic fleet left Lambert's Bay, the harbour is largely deserted except for the small boats targeting linefish and West Coast Rock Lobster, and a few diamond boats bring a little income to the town through the business of diamond diving. Lambert's Bay is just off the southern fringe of the diamond-diving areas that are concentrated in the Northern Cape. Now, rock lobster and linefish have again become the main targeted species, though fishing is nowhere near its previous levels. Many fishers have access to both rock lobster and linefish under the exemption permits known as Interim Relief⁵⁵. It is a town of approximately 7000 residents, the majority of which are coloured and Afrikaans speaking⁵⁶. Most work in the town is in the potato processing factory, or as domestic labour in the more affluent homes or holiday accommodation. The lack of opportunities often means that men move away in order to seek work, leaving the women to head the household as, essentially, single parents. There is no secondary school in Lambert's Bay, and so there is a high dropout rate for teenagers as families with only one regular income often lack the funds for daily transport.



Figure 3 Lambert's Bay harbour, empty except for two fishing boats. West Coast, South Africa

⁵⁵ Exemption permits allocated to small-scale inshore fishers as an interim measure while the Small-Scale Fisheries Policy was being formulated.

⁵⁶ Statistics South Africa 2011 Census

While the small pelagic fleet has long since departed from Lambert's Bay harbour, the fleet and the fish processing work they create are the mainstay of the town of St Helena Bay. The factories here process fish and rock lobster, and there are a number of aquaculture initiatives in town. The pelagics canneries and fishmeal processing plants have a significant physical presence in the town, taking up a large part of the waterfront in St Helena Bay proper. However, as Schultz (2010) discusses in his thesis, there is a high rate of under-employment in the town, as a result of both too little work for the size of the resident workforce, and the seasonal nature of the industry. A number of fishers have been granted Interim Relief permits, but the restrictions on where, what and when to fish has meant that it is largely a supplementary economic activity (Schultz, 2010: 71). There is active poaching in the town, though many end of eating or trading the fish as part of an attempt to food security (Schultz, 2010, and comments made to me by the inspectors of St Helena Bay).

St Helena Bay is right next door to the famous *and* infamous Paternoster (to the south): a picture-perfect fishing town that is the regional centre of rock lobster poaching, on the West Coast. There are definite syndicate connections between Paternoster and St Helena Bay, but, as reported to me by St Helena Bay inspectors and residents, competition for resources has largely prevented the Paternoster poachers from dominating St Helena Bay. Most of the permanent residents in both Paternoster and St Helena Bay are coloured and Afrikaans-speaking. Of the resident white population, a large number are retired or owners of holiday accommodation, or both. St Helena Bay is the site of a successful housing and golf course development called Shelley Point, which several other developers tried to emulate. Land was bought and landscaped, in many cases roads were laid out and fences erected – but then the global financial crisis of 2008, and possibly the proximity of some of these planned developments to the smells of fish processing, resulted in many of these developments being abandoned. Despite its long tradition as centre of the small pelagic fishing industry, St Helena Bay currently appears eerily half-built, with the numerous “for sale” signs on empty plots outnumbering the finished houses, and signalling economic difficulties.



Figure 4 Small pelagic vessels docked at their companies' commercial jetties. St Helena Bay, West Coast, South Africa.

Cape Town is the operations and commercial centre for a number of fisheries and Cape Town Harbour in Table Bay, along with Saldanha Bay 133 km to the north, is where the demersal fleets land their catch and foreign vessels dock. Cape Town harbour is in the centre of the city, at the foot of Table Mountain. Besides the demersal fleets and foreign fishing vessels that dock there, it is also a container port and an iconic stopping place for cruise ships



Figure 5 Fieldsites (in black) and other sites of interest (in blue) on the Cape Peninsula. Adapted from Google Earth.

Among Cape Town's suburbs, Hout Bay has an important harbour where small pelagics such as sardines and anchovy, demersal fish such as hake, coastal species such as West Coast Rock Lobster, linefish and offshore species such as tuna are landed and processed. Many consider it the most important fishing harbour in the Western Cape because of the many different fisheries that use it simultaneously. Hout Bay and Kommetjie, just to the south, have high rates of both abalone and rock lobster poaching, as do the areas in and around the Table Mountain National Park at Cape, despite most of this area being declared a Marine Protected Area (see Figure 2), and around Robben Island in Table Bay. Hout Bay has three distinct residential areas, broadly determined by both race and economics. There is the white, largely middle- and upper-income area; the black (South African and other African) informal townships; and the coloured community of Hangberg, perched above the harbour complex, which is made up of both formal and informal housing.

Part of the Cape Town Metropolitan Municipality, yet at quite a distance from the city itself, Kommetjie is a small town with a well-worn slipway. The boats that launch here are mainly interested in West Coast Rock Lobster and linefish. It is also a favourite launching site (along with Miller's point just south of Simonstown) for recreational fishers. It is a rather quiet small town, which is largely white as the non-white residents of the area live in Ocean View just outside of Kommetjie itself, a settlement established under auspices of the notorious Group Areas Act of 1957 (which established racial segregation of residential areas).

On the False Bay side of the mountain sits Kalk Bay, a fishing harbour where mostly linefish and West Coast Rock Lobster are landed. Its historic community of resident coloured fishers were moved out of the town itself under the Group Areas Act, mostly to Ocean View. Most of the current residents are white, and English-speaking⁵⁷. It is a tiny town in and of itself, that is very busy with day visitors and tourists due to its picturesque setting between mountain and ocean. Most of the houses are from the early or mid-1900's, and the glass-fronted shops along the main road vary from expensive antiques and jewellery, to second-hand bric-n-brac and bohemian clothing. The harbour itself is a significant attraction with its colourful boats and daily fresh fish market (with women cleaning the fish on the harbour wall and *langaners*, or middlemen, shouting the catch

⁵⁷Statistics South Africa 2011 Census

prices), as well as several seafood eateries of varying price-ranges. While the numbers of boats operating out of Kalk Bay and the size of the catches that these boats land, have dropped over the years, its reputation as a working harbour populated with colourful characters is a resource for the local community by attracting foreign and domestic tourists.

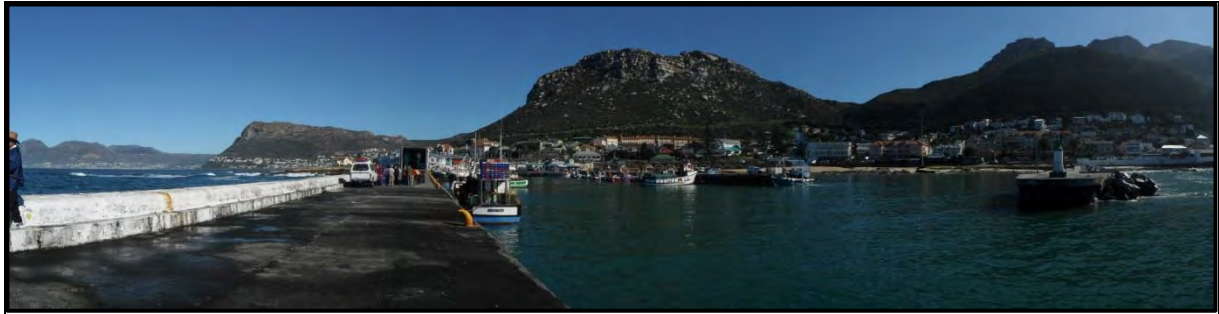


Figure 6 Kalk Bay harbour, Cape Town, South Africa.



Figure 7 The Overstrand region, east of Cape Point, South Africa.

To the east across False Bay, the Overstrand region begins past Cape Hangklip. It is the notorious centre of abalone poaching, focussed on Betty's Bay, Hawston and Gansbaai. This stretch of coast – Hangklip to Quoin Point – is historically the area with greatest abalone abundance, with an easily accessible shoreline and the cover of dense kelp forests as camouflage for illegal diving (Raemaekers et al., 2011; Blamey & Branch, 2012). The inshore region of Betty's Bay is designated a Marine Protected Area (see Figure 2). It is an area popular with eco-tourists, for the beaches and mountains, particularly the Stony Point African Penguin colony and Harold Porter National Botanical Gardens.

Gansbaai is situated to the east of this region, with the world famous Dyer Island and its local abundance of Great White Sharks, the basis for a substantial cage diving tourist industry. In contrast to the Stony Point penguin colony in Betty's Bay, the seabird breeding colony on Dyer Island and the seal colony on Geyser Rock are not publicly accessible. Gansbaai is the south west coast's regional fishing centre, with a fleet of small purse-seine vessels that target sardine and anchovy locally. The fishers in Gansbaai have historically targeted a number of resources, a practice that has been curtailed by recent legislation that takes the sectoral approach to rights, as discussed by Ragaller (2012). In addition to abalone aquaculture, at the time of my research, 2012, Gansbaai also had 28 operational legal abalone diving operators. The crew of these operations were the only people allowed to dive in the restricted area (see Figure 2), besides those with specially applied for permits – such as researchers or recreational spear fishers. Diving and the possession of diving gear is prohibited within one nautical mile of Dyer Island, and in the area from Gansbaai harbour to the Ratel River to the east, up to 2 nautical miles off the coast. When the inspectors are on patrol, they often pay close attention to backyards and washing lines – if they see a wetsuit or diving gear left to dry in the sun, they know that there will be shucking or transportation of abalone happening in the area.

Gansbaai has a fairly high crime rate for its size⁵⁸, and the majority of its resident population is much worse off than the holiday-makers who frequent it and the nearby beach suburbs of De Kelders, Pearly Beach, Franskraal and Kleinbaai. It has three distinct demographic areas: Blompark (coloured); Masakhane (black); Gansbaai proper (white). The distinctions between these areas is perpetuated by rivalry for the limited work in the area and the local municipal policy of building government housing for residents in each area, according to race. This is the same tactic used by the old Nationalist government when implementing the Group Areas Act.

⁵⁸ The 2011 Statistics South Africa Census puts the population at roughly 11 598 people. The official South African Police Service annual crime statistics for 2012-2014 (roughly the time of fieldwork and writing), indicates 12 murders, 74 reported sexual crimes and 893 drug-related crimes.



Figure 8 Legally harvested abalone landed at Kleinbaai, outside of Gansbaai. Western Cape, South Africa.

Not far beyond Gansbaai, the roads branch out across the flat Strandveld into a hundred or more dirt roads that criss-cross the area's large farms and nature reserves. It is this network of roads that facilitates the mobility of poachers and shipments between Gansbaai and the nearby fishing towns of Struisbaai and Arniston. The beautiful sandy beaches of this area are accessible from a number of well-concealed or isolated points, and the network of roads provides easy getaway routes for those familiar with them. In my MA (van Zyl, 2008) and PhD field work, I have seen evidence of livelihoods and community structures that have come under the control of poaching over the years. This is evidenced by the unexplained influx of cash into the otherwise poverty-stricken community that has resulted in a visible rise of expensive items such as quad-bikes and satellite dishes, as well as anecdotal evidence on the rise of the use of methamphetamine (locally known as *tik*), which was introduced by gang-allied poachers. Men known to be prominent in local poaching networks sit on local community councils or committees, and one even preaches in one of the lay churches.

Arniston does have a number of wooden and fibreglass skiffs (referred to in the region as *chukkies*) that launch from its slipway, operating under linefish Interim Relief permits, but these only employ a fraction of the men in the town who regard themselves as fishermen. The majority of permanent residents in Arniston live in what is known as

Kassiesbaai, the coloured fishing village that is a declared living historic monument, due to its preserved vernacular architecture and traditional fishing activities. It is a special case, as the community has twice in their history resisted forced removals, once by private landowners and once by Apartheid-era policy. Other than fishing, the only 'industry' in town is aimed at women – as domestic workers. There has in recent years been an increase in non-white South African holiday-makers, as people who moved away from Kassiesbaai in their youth to make money in Cape Town, return for holidays with families, and even purchase holiday homes in or adjacent to Kassiesbaai. Though this is a sign of upward mobility more generally, these visitors are only seasonal and their choice of accommodation still perpetuates the divide between the white and non-white areas of the town.



Figure 9 The slipway at Arniston and wooden *chukkies*. Western Cape, South Africa.

After Arniston, and east of the De Hoop Nature Reserve (Figure 2), the next Fisheries Compliance Office is in Stilbaai, about 350 km east of Cape Town. A commercial handline fishery operates from the slipway there, and used to target a number of species. Duggan (2012), however, notes that among the main economic species caught in the area are the two kob species in the area, 'silver' and 'dusky'. He references the nickname "Kob Kingdom" in his title, a nickname given to Stilbaai due to abundance in the recent past. As is common in so many fisheries, significant fluctuations in catch have seen the prodigious catches of the three or four years pre-2010 fall to such a degree that between 2012 and 2013 the number of boats going out had halved. It is known as a holiday and retirement

town. It has a growing population of younger families, as the town grows and commercial opportunities are made available, and necessary, thanks to the number of permanent residents who are no longer active in the job market themselves. In particular, the building industry has taken off, to cater for the building and renovation of holiday homes. During off-season, it is fairly sleepy, but sees a massive influx of holiday-makers over the summer and Easter vacation times. Both the river and beach are used by visitors for watersports. Most of the retired residents and holiday-makers are white, and only a small portion of the Stilbaai-proper's residents are non-white. Most non-white residents of the area live in Melkhoutfontein and so, intended or not, there is racial segregation of the two groups.



Figure 10 The view from the Stilbaai harbour, looking towards the Goukou River mouth and the Stilbaai MPA. Western Cape, South Africa.

Fieldwork

Methodology and the practicalities of being in the field

I had intended my fieldwork to consist of a series of live interviews with long-term compliance inspectors, both qualitative and quantitative, in between doing participant observation with them at work. I was initially intent on gaining as much knowledge as possible about their work, but also about their lives beyond the job. This intention was based on the traditionally described anthropological fieldwork experience, in which anthropologists immerse themselves in the lives of their research participants to trace flows of meaning between the various spheres and spaces of their lives. However, this was not to be. I had assumed that their jobs would be connected to the personal spheres of their lives, and that they would acknowledge and share this with me. As I quickly learnt once in the field, the act of separating private and professional spaces is a necessary task for most inspectors in terms of doing their job and in terms of representing themselves to an

outsider. Many inspectors actively avoided talking about their families or personal lives with me, and sometimes it was only on the last day – when they knew I was leaving – that they opened up about personal details, on their own terms.

This reticence, along with the nature of doing fieldwork with a state department, influenced my day-to-day methodological decisions. My pre-planned methodologies – formal interviews, compiling professional and personal life-histories - largely went out the window. Due to the complex and, initially, opaque nature of the Compliance section, I did not enter the field with a specific aim: I wanted to understand what was going on in the quotidian, the sites and moments of marine resource law enforcement, of which I had very little knowledge that was not based on hearsay from others. I had an overall research question, as discussed in the Introduction, but no hard and fast expectation of how the field would answer it. I absorbed as much as possible, and only on writing up did I judge the data gathered according to the usefulness it held in answering the central question I had based my proposal on: How does the presence of marine compliance inspectors influence the behaviour of resource users? This was both practically and methodologically important, as the conditions of fieldwork in each site and according to each activity determined the nature of my ethnography. This required a flexibility that forced me to adapt to each inspector, to each site. The differences, as much as the observed similarities, between sites and individuals proved valuable in building up the regional view I present in this work.

After receiving permission to conduct fieldwork by then Assistant Director of Compliance Tots Dzulane in November 2011, I immediately made contact with the team at Kalk Bay Station. I started out by explaining my project, and the kinds of questions I would be asking them. In line with the official ethical guidelines of Anthropology Southern Africa,⁵⁹ I took some pains in order to gain consent from each inspector. However, they thought this was excessive and dismissed my attempts to co-sign written consent forms with them outright. They simply did not want to sign “documents” with me, and were worried that this would somehow bind them to me legally. They explained that the department had said they must do this, and that was good enough for them. I henceforth proceeded by regularly confirming their consent, verbally, for both my questions and my intent to write about shared information.

⁵⁹ “Ethical guidelines and principles of conduct for anthropologists”. *Anthropology Southern Africa*. 2005, 28(3). Pp142-143.

In March and April 2012 I took leave to attend to personal matters. When I returned to the Head Office in June 2012, an investigation into alleged irregularities within the Branch had been launched by the Hawks,⁶⁰ ranks had closed and I was asked to apply for permission all over again. I was introduced to a new process of doing this, apparently the 'official process', which I had not been told of at all during the months-long process of gaining permission in 2011. This went on for some time, as people I had been dealing with were no longer in their previous posts, or were on extended leave.

Through the intervention of one of my supervisors, Astrid Jarre, a meeting was arranged with the then Deputy Director General (DDG) of Compliance, Ceba Mtoba. We had a series of meetings with him, all of which were constructive in developing a detailed work plan for continuing my research. When I failed to hear from him after our last meeting, I phoned his office and was told that he was no longer in the post and that I then had to deal with the new acting DDG. I did not hear from the new DDG, and was instead put back in contact with Mr Dlulane, who at this stage was back in the post of Assistant Director of Compliance (he had occupied a different acting post in the interim). In a series of meetings with him and the Chief of the Foretrust station, I was again given permission in September 2012. I again asked for a letter to state that I had permission to conduct fieldwork with compliance inspectors or units along the coast, but again did not receive this, only a short email stating that I had permission and that they would let everyone know. Impatient to make full use of the coming summer for fieldwork, I did not pursue the matter further and headed back into the field. At the Kalk Bay and Foretrust stations, the inspectors were aware of the arrangement when I joined them in October and November, so I assumed that the West Coast stations had been or would be notified also.

This did not happen, and I had to negotiate permission with individual stations in both St Helena Bay and Lambert's Bay, as the persons I was asked to keep informed about my movements had changed positions, without informing me. My path to permission clearly illustrated the dead-ends that existed in several of the departments' communications channels. It was ethically challenging as there were many opportunities for doing fieldwork without proper consent from DAFF, as inspectors said we could carry on while we wait for Head Office to get back to us. I resisted these, not wanting to appear disrespectful of the

⁶⁰ The Hawks comprise a specialised investigations unit based within the South African Police Service's Directorate for Priority Crime Investigation formed in 2008.

protocol of the department and, in doing so, risk being denied permission altogether. The experience gave me insight into some of the administrative frustrations that inspectors would go on to list during my fieldwork.

Working with a state department focussed on law enforcement calls for tricky negotiation of issues that are usually confidential to members of the public. I at first was asked, and later teased, about being a spy for the National Prosecuting Authority or “the industry”, to which I found the best response was laughter. Where the teasing or questioning seemed to be rather earnest, I pointed out what a poor spy “a young white girl” who did not speak isiXhosa would make. This practical rebuttal would stop the teasing much sooner than simple denials did. This kind of intrigue, and the administrative frustration noted previously, made me very aware of the hierarchy within the branch.

The issue of language is not a superficial one in any form of research, and is closely related to issues of race in South Africa. Previously, in my field work with fishers, I was largely engaging with research participants who shared my mother tongue and my first language (Afrikaans and English, respectively). In my new field, however, I was often engaging with inspectors in their second or third languages. This was rarely a major problem, as all the inspectors working in the Western Cape speak English well. However, there were certainly times when I felt that something was being lost in translation and that a grasp of isiXhosa would have prevented this. Furthermore, my not being able to understand isiXhosa often isolated me in situations in which I was the only non-speaker, and effectively associated me with the white inspectors who were also left out of either work or personal conversations for this reason.

Many inspectors shared personal information with me, but it was always on their terms and my questions often went unanswered if the inspector thought them irrelevant or inappropriate. Furthermore, the question of spending time with them after hours was never brought up (occasionally even avoided); as such, my representations of the persons in the ethnographic anecdotes throughout this thesis are partial. I do not wish to represent the men and women I worked with as defined by their jobs. My intention is to illustrate how the job is defined by them within the framework of marine environmental governance.

Ethnographic research requires the researcher to investigate observations of social action in the context of the research participants’ own perspectives, as told to the researcher. The information that an ethnographer gathers can only be used to offer insight

into how the relevant individual or collective articulates their relationship to the actions or issues in question, in response to the ethnographer's questioning. It is not an exact method. The value of ethnography is illustrating a relation to the world that is specific to a person or group, context and activity. It is weakened by a reliance on generalisation, and it is the responsibility of the ethnographer to ensure that his or her own relative perspective is not the conduit for such extrapolation.

My ethical responsibility here is not to offer my answers to questions about the job of compliance inspectors, but to illustrate theirs, in context. I am not claiming to be representing whole persons and frames of mind in this thesis, but I hope to represent aspects of persons as they were explained or revealed to me with reference to the job of marine compliance inspector through observation, conversation and thoughtful translation.

Most of the inspectors I worked with were very open about their feelings towards the job, and often had long, well-thought out responses to the questions I was asking – these concerned things that they, as I found out, often discussed amongst themselves.

I had many conversations with inspectors that can be coldly thought of as 'unusable', in the sense that they were either so personal or contentious that either the inspectors or I judged them to be off the record. Inspectors that opened up were very trusting with me with regard to confidentiality – they would mention something as off the record and then continue to speak about it candidly. At these times I generally chose not to record or note the conversation. Where I had kept notes that, upon consideration, could be used against informants, I destroyed them as soon as possible. I was rarely able to use voice recording, largely due to the unease of the inspectors, but also due to the practicality of recording in noisy environments. The inspectors were more comfortable with me writing things down, as they could glance at my pages and see for themselves what I was writing. This was both an advantage and a disadvantage. It made them comfortable with my noting things down, but at times I would censor myself in cases where I may have caused unintentional offence (as the issues were often so sensitive), and only noted them down after work. In writing this thesis, I have evaluated such notes in light of all the data collected. I have referred to such potentially sensitive observations where follow-up data support or call for it, *and* allow for a contextualisation that does not limit the observation to an individual inspector or unit.

The process of opening up conversations with the inspectors was one that would become a set piece for me, making the inspectors comfortable with my anachronistic

presence.⁶¹ This involved speaking about myself a lot, about why I was doing this project and then asking a lot of questions about obvious things. My openness to questions about myself was to show that this was a two-way street and that I, while asking them questions about life and work, was prepared to share the same information. Asking questions that fishers or inspectors at times considered simple, was a tactic to show them that I was aware of my status as a novice in the field in which they were expert, that my interest was wide-ranging and that I was not coming in with a body of pre-conceived ideas about them and their jobs (a constant reflexive process). Additionally, it introduced an informal register to our conversations that worked to build rapport faster than a sit-down, recorded interview would have. It was a strategy I had used effectively with research participants in the fishing industry before.

As we all became more comfortable with one another, I realised that only by voicing *my* opinions about the department was the space opened for outright criticism of their employers. This was a mutual engagement – I could not just ask about things, I had to speak about them if I expected others to do the same (see Green, 2005, for a discussion on the ethics of objectivity and engagement in ethnographic research). This mutual engagement often took the form of questions; I was asked very diverse and seemingly unrelated questions, such as “why do white people love dogs so much?”.

Race was a topic often spoken about, both as a general topic (as in the questions above) and as an issue of contention. There were definite racial tensions amongst the inspectors and in the Branch, from both what I saw and what I was told. I was placed in some uncomfortable situations, as inspectors denigrated another race group in conversation with me. It was a fine line between changing the topic, or risk alienating them entirely by invalidating their opinion, a task which often left me fuming. This did not happen every day, but it did happen more than once at each station, with inspectors across the spectrum of South Africa’s particular range of race classifications: black, white, and coloured.

Another issue that made for some uncomfortable moments for me was that of gender. Some of the inspectors openly flirted with me, and though it never got out of hand, it left a residue of irritation that was hard to shake off in future conversations with that

⁶¹ My presence was strange in terms of age, gender, race and profession, combined.

person. On two respective occasions, after long days spent in each other's company, the inspector I was with made some comments I felt were brutally misogynist. On both occasions I forgot the need to engage as an anthropologist and not as Marieke, and the drives home were spent in stony silence. Spending so much time with people, building up camaraderie, at times made me forget that they had the power to end the conversation, that they owed me nothing beyond tolerating my presence, despite their superiors' agreement to allow my research.

The issue of not wanting to cause or take offence was a tricky one – the inspectors often teased or tried to shock me, but I could not get too upset with them. I was the one being tolerated, and I knew from experience that they could easily send me home for the day if they wanted privacy. I learnt to read those I knew well, and soon began removing myself from their space when I saw that the effort of keeping me busy with things to observe caused strain. I do not think it was always personal, though undoubtedly it must have been at times. Sometimes, as with many professions, there simply are moments in time when there is nothing pressing to attend to. At such times, the requirement to appear busy or engaged to create the opposite impression for my benefit left them seemingly irked at having their space colonised by an outsider.

I had repeatedly told the inspectors that they need not do anything out of the ordinary on my behalf, that I was happy to observe the job as is and, indeed, that I did not want them to do things for the sole reason of my presence. Due to the weather, there often are days when no fishing activity occurs in a station's jurisdiction. On such days, patrolling or keeping a lookout is fruitless. If the weather remains bad for several days, the inspectors use that time to catch up with paperwork. Whether it was a firm suggestion from Head Office or wariness on their side with regard to what I relayed to Head Office, inspectors would rarely admit to having little to do and I was often asked what I wanted to do next at such moments. This was methodologically uncomfortable for me, as I did not want to unduly influence their performance of their job by suggesting activities. At such times, I would either simply carry on the conversation until it had run its course and then leave, or, as I got to know the job better, suggest something to do that did not mean policing people.

As with the mentality often attributed to the police, the inspectors, as a unit, understand what it means to be part of an "Us" in an "Us-and-Them" situation. They told me numerous times about how they have to trust each other in the field (not necessarily the

office) and how they do what they do so often, that those with experience can mostly predict how something is going to play out.

There are several groups to whom the inspectors attribute either “Us” or “Them”. The Department is an “Us”, the fishers a “Them”; the inspectors are an “Us”, and Fisheries Branch and/or Compliance Directorate management comprises a “Them”. They feel like they are in contest with the resource users, but also with their superiors in the Fisheries branch. Given the nature of their job, for me to find a comfortable place with them made it necessary for me to be considered part of the unit. This was slippery ground, as I felt the need to retain a professional distance in order to think as objectively as I could about their job and how they conducted it. However, it was necessary for them that I was part of their unit, not only because they were wary of having someone privy to the inner workings of law enforcement who may have other allegiances, but also for my own safety. The fishers were wary of my presence and this wariness could potentially have developed into aggression or a refusal to cooperate. By explaining my presence as “part of their unit”, researching “the nature of our job”, I was made less contentious. I could be explained more satisfactorily and protected from outsiders’ questioning or protesting my presence in a site of law enforcement.

However, the camaraderie was beguiling, and I soon realised that I had uncritically begun to think of the division called Compliance as “my” section and the inspectors as my friends. The experience of friendship while doing ethnographic research is common in anthropology, especially when the anthropologist embeds himself or herself within a community or collective. Maria Garcia addresses it by explaining that “whatever our roles and/or responsibilities as anthropologists, these are inextricably tied to those individuals with whom we develop professional, academic, friendship...ties” (Garcia, 2000:98). Owton and Allen-Collinson argue that friendships in ethnographic research challenge traditional positivist ethnographic methodologies by using involvement and reflexivity as a resource for the researcher (2013:2). This approach, they argue, is more naturally about getting to know someone, by acknowledging the relationality that is present in the ethnographic engagement between researcher and participant (in contrast to the positivist methodologies that *assume* a high level of detachment and objectivity).

Given that it is mostly impossible to know what you do not know, I decided to let my feelings of friendship go unchecked until I came across information that would change my

mind. This was partly due to keep my working relationships friendly, and because I very much wanted to believe that the level of corruption was not as high as I had been warned it was.

Corruption and poaching were the elephants in the room. I had a number of conversations about it with individual inspectors, but these were off the record, and never occurred in groups larger than three (including myself). As the off-the-record conversations accumulated, throughout the course of fieldwork, I became less and less naïve about the levels of corruption within the department. At the same time, I came to understand the different levels, or scales, of corruption. As interesting as the topics of poaching and corruption are from an anthropological standpoint, and as central as they are to marine resource law enforcement in the Western Cape, my visibility as an outside researcher made me too big a target to investigate these issues directly. When explaining my project anew to collaborators, I always took pains to explain that corruption and poaching were not part of my questioning. For this project, I was interested in how poaching or corruption is reacted to, *not* how it occurs. This was important for my own personal safety and that of the people who spoke to me.

Personal safety and liability came up often during fieldwork. Before starting with any unit, the first thing I had to do in each case was sign a “Trip Authority”, a form that gave me permission to travel in a government vehicle. I had signed a personally drafted indemnity form (which had been asked for by Assistant Director Dlulane). In Gansbaai, I spoke to the Chief Inspector at length about safety concerns, and though he made it clear that I would have a *de facto* “bodyguard” of navy men, he nonetheless offered me the use of a bullet-proof jacket for those times when we would be doing “serious” operations (particularly at night). When I told this to Lesley Green, she understandably became concerned about my safety, and approached the Humanities Ethics Committee for advice on how to proceed. They asked me to consider my fieldwork and how I was to keep myself safe carefully. While this was being sorted out, with me writing assurances to UCT about how I was to protect myself and ensure that I do not come under any fire from poachers,⁶² I

⁶² I would be part of carefully planned operations, that would have been designed by a combined team of soldiers and inspectors. They go in two groups – first the navy with the heavy firepower, to overwhelm and subdue suspects. The inspectors only go in once control has been gained. I would be placed with a specified member of the second group, and kept in a vehicle in an easy-to-get-out-of spot. I would go in with my dedicated inspector/s only when it was entirely safe to do so. Chief Mereki later explained that he only

was placed with inspectors who were on regular day patrol shifts, as all the special operations (day and night) were considered high risk under the parameters set by the Ethics Committee. The Gansbaai Chief Inspector and Senior Inspectors I spoke to were understanding, but also a little put out that anyone would think they did not know how to protect one person in their midst.

Later, when planning to return for some carefully considered, safe activities, a flare-up of hostilities between poachers and law enforcement in nearby Hawston occurred on the 3rd November 2012. In the course of attempting to arrest divers allegedly poaching abalone, there was a physical confrontation and one of the young men died – it was unclear at the time whether from drowning in the attempt to flee or as the result of an inflicted head injury. At his funeral, the large crowd that attended quickly began protesting his death when they learnt that DAFF had arrested more poachers that morning. The confrontation resulted in the closure of the road between Hawston and Hermanus, with the inspectors and a group of police surrounded by “about 200” poachers and community members throwing petrol bombs and rocks at them (as told to me by an inspector who was present). The community directed their ire not only at members of DAFF, but also at those of the SAPS – setting fire to the canine unit, burning vehicles and beating up persons who tried to calm them.⁶³ One of the inspectors of the Overberg FPV unit involved in the arrests during which the diver died, told me that “it had been suggested” that he send his wife and child to family in Worcester until things calmed down. This episode finally convinced me that I had no control over the situation and my own safety could not be guaranteed, despite precautions. I elected to not return to Gansbaai, which was upsetting but the safest course of action.

My freedom to withdraw myself from the dangerous sites is in stark contrast to the inspectors who cannot, and who fear retribution from poachers in their jobs and homes and on the persons of their family.

My typical day was spent driving day patrol, either in a pickup truck with one inspector or a sedan with two or three. We would chat while they finished paperwork in the morning, then we would head out to patrol or do inspections, usually for the full eight hours

offered the bullet-proof vest because some people were (understandably) skittish, even with the extra precautions.

⁶³ See <http://ewn.co.za/2012/11/05/Police-deny-killing-Hawston-poacher>, and <http://www.iol.co.za/news/crime-courts/hawston-rioters-battle-police-1.1417180#.UjAVVcYSbzY>.

of the shift. On days when the weather did not permit fishing, we would do indoor inspections at restaurants or fish processing facilities. I went along on several planned operations: boat inspections; observations and reaction set-ups; customs inspections at the airport at 3 am; vehicle check points. My method was very much that of participant observation, given that the inspectors I worked with presented me to the fishing public we encountered as part of the unit. This was emphasised by the occasions when I was asked to fill in an inspection form or take a photo of a particular fish. I was actively encouraged to clamber up boats at Miller's Point and told to help with tasks such as counting hundreds of dried abalone on the floor in a Customs hangar. This was not to replace them at their job, but to have me experience it. It could even be called work observation, a form of training, as I was being taught how to do the job, not just about it. The inspectors showed me that learning the job is a form of apprenticeship, that it cannot be learnt from paper but only by actively doing something. I have discussed some of my ethical negotiations concerning working with a government department and identifying too closely with my fieldwork collaborators above, but overall this practical aspect of the fieldwork gave me a much better grasp of the job than had I worked to maintain an observer-only perspective.

I conducted several formal interviews, but this was not always possible. When I was engaging with an individual inspector in the office or vehicle, it was possible to steer the conversation along a set of particular questions in which I was interested. In larger groups or on foot, it was much more difficult to steer the direction of topics; as such, a large amount of my research was conducted as informal group conversations.

Though many of the ethnographic anecdotes I tell in this thesis do not contain obviously contentious statements, I have erred on the side of caution and left out many anecdotes, as well as names or obvious identifying markers. Sometimes my writing may make the relevant inspector identifiable to the Branch or communities they work in, but not to the general audience of my thesis. This is not because they may have contravened policy or protocol, but that my narrative may cast them in a negative light to outsiders as I highlight problems in fisheries management. I have extended the same consideration to my interactions with resource users. Where I have used names, it is because I was told, or felt strongly, that the anecdote does not offer any potential threat to their professional or personal reputation, and that it may indeed highlight a particularly positive aspect of their job, context or personality. There are nicknames I have used in some cases, which are in use

amongst the inspectors themselves. Several inspectors formed my core group of collaborators, and I have thanked them in the acknowledgements.

In order to provide some biographical detail, without making the identity of the individual inspectors explicit, presented on the following pages is background on *some* of the inspectors I worked with. I have erred on the side of caution and have not included the inspectors' real names or noted where they were stationed, though these details were all shared freely. I do not want to single out inspectors as examples, which may somehow garner them unwanted attention or be misconstrued by them or readers of this thesis. The intention is to provide more biographical details, as is traditional with in-depth ethnographic studies, but also to showcase the diversity of inspectors' profiles (though this is only a small sample of the total number of inspectors worked with or interviewed). In the rest of the thesis, I give biographical details where it adds to the context of the ethnographic anecdote *and* where permission was explicitly given for me to share it.

Amanda is the mother of two boys, both by the same father, with who she is in a long-term relationship. Her previous job was in nature conservation on the Cape Peninsula, and she claims that working as a compliance inspector was a natural progression for her as it incorporates interaction with nature and people, and the opportunity to spend a large part of the day outside. She claims that both aspects are important to her, as she loves the outdoors and is very passionate about conservation – her social media posts are regularly about the busts of international smuggling syndicates or the seizure of illegal goods. The job of compliance inspector held further appeal for her as it has more regular hours than the work she was doing previously, where she was often called to work at night or over weekends, which conflicted with her duties as a mother. She is from an area on the peninsula that is generally low-income, and knows many fishers and poachers personally – she says this is what influenced her decisions to join nature conservation and the compliance section, as she “understands where these people are coming from” and through this knowledge, could help change mind sets. She once expressed her

frustration at the reactive nature of the job to me, articulating that she would like to do more, to be involved with anti-smuggling operations on a grander scale. However, she noted that promotion out of compliance was a rarity, and that her lack of formal qualification was probably a hindrance.

Karien is a married mother of two, whose husband works in nature conservation. She is a passionate animal rights proponent, and is known to be a relentless “workhorse”. She and her family live in an area which is often frequented by poachers, and she has personally told me of a number of threats made against both her and her husband as it is often obvious that it was them who alerted their colleagues and so initiated an arrest or bust. This has not stopped either of them from pursuing those charged with poaching. Karien’s history with marine resource law enforcement started at a young age, as her father would work as an honorary inspector for part of the year. She did not grow up in Cape Town, but next to the coast. Many of the men in the compliance section have praised both Karien and Amanda to me, describing them as tough and determined. She said to me that she couldn’t imagine doing anything else, though she would like to be promoted to chief at a particular station in the future (as this station was closer to her home than the one she was currently based at).

Denise is a single mother of one, whose son lives with her mother in a Boland town. She does not have the means to take care of him herself, as she works full-time and does not have support structures in Cape Town that can provide childcare when she is at work. Paying for a nanny or day-care is too expensive on her salary, and her mother was eager to take her son in. Denise sends money to her mother to help cover her son’s living expenses. She only sees him once or twice a month, and must travel over an hour by train to see him as she does not have a car. Her previous work experience was in the South African

Police Service, and she applied for the job of compliance inspector as being a policewoman proved to be too violent. By her own admission, she is too “*rof*” (rough) for most jobs outside of the law enforcement spectrum – which I understood to refer to her language and treatment of criminals more than anything else. None of my conversations with her nor observations of her behaviour suggested any particular passion for the job, beyond it being her job. She did say that in the future she would like to be closer to her son, or earn enough to have him live with her, neither of which would be possible with the job currently so possibly implies her desire to change jobs.

Mandla is a single man in his early thirties, who is known amongst inspectors as a “gentle giant”. He is physically imposing, but unfailingly polite and soft-spoken (as I observed). He is from a stable but low-income household in the interior of South Africa – from a landlocked province, he had very little experience of the ocean. He does not, for example, eat seafood at all and does not enjoy swimming in the sea. However, he is a keen conservationist and applied for the job as part of a general job search in the field of nature conservation. He was happier in the previous incarnation of the job, when the inspectors were also required to enforce the National Environmental Management Act, which deals with environmental crimes and misdemeanours beyond simply that of extraction. He values the outdoors nature of his job above other features thereof. Though he misses his family and his mother worries about “what kind of women” he will end up meeting and marrying down in the Cape, he prefers living in Cape Town as opposed to his very rural and “dusty” hometown.

Osmond is a very busy man. He has been a teacher and a nature conservation official previously, and is currently practicing as a lay-preacher and a weekend merchant of clothes which he buys wholesale from factory shops. He is fervently Christian, and often cites Biblical

lessons as his guidelines for dealing with others. He does not like being a policeman, but does enjoy protecting “God’s creatures” and interacting with resource users – when that interaction is civil. He is married but his wife lives back in his home province. Both he and his wife are from middle income families. She is still deciding whether to move down to Cape Town, and Osmond spends much of his extra cash travelling back for visits to her and his mother. He applied for the job down in Cape Town as it offered slightly better pay than his previous job, and he believed that Cape Town would also offer alternative opportunities for making better money. He says that his side business is taking off, so that assumption would appear to have been proven correct. He is content with his job, and many times specifically told me he would hate a promotion, as he does not want to have to manage people. However, he would like to be better qualified by being trained up by the department in necessary skills.

Xolise and Themba are perhaps not very similar in personality, but share many similar biographical details and opinions about the job. They are both from “broken” homes – with either divorced or unmarried single mothers and largely absent fathers – and spent parts of their childhood in informal housing. They both previously worked in the police, but left for vague reasons that they implied had to do with violence and corruption. However, both retain a love for the actively policing part of law enforcement, and are known to be two of the fittest inspectors. They often volunteer for joint operations with the military or police, and tasks such as being on the reaction teams for night raids. They have no particular love for conservation or the ocean, but regard their work as important because they see uncompliant resource users as criminals. This is in contrast to other inspectors, who often take a more sympathetic view on uncompliant resource users and reserve the distinction of criminal for abalone or rock lobster poachers.



Figure 11: Looking towards Cape Point. Table Mountain National Park, Cape Town, South Africa.

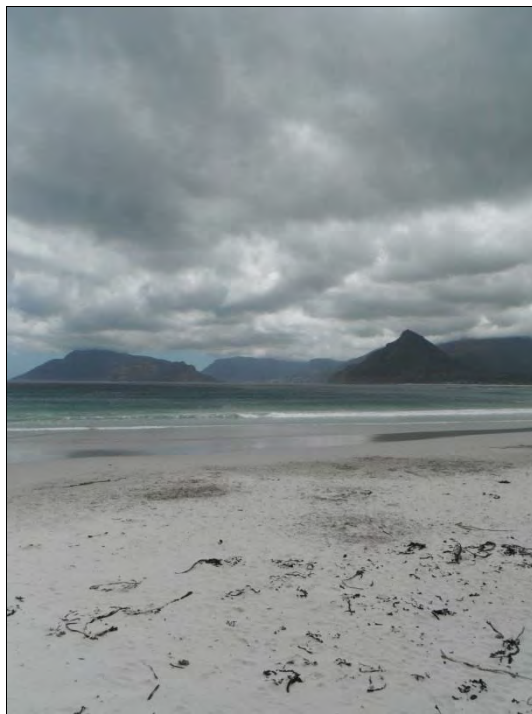


Figure 12 Looking towards Hout Bay. Kommetjie, Cape Town, South Africa.

Chapter 2: The Job Description

How has the job of a compliance inspector come to take the form it has, and what does this say about how the problem of non-compliance is formulated in current marine resource legislation?

The job description for a Senior Marine Compliance Inspector lists as a requirement “knowledge of the Marine Living Resources Act, 1998 (Act 18 of 1998) (MLRA) and the Criminal Procedure Act, 1977 (Act 51 of 1977)”. Read together, the histories of these two pieces of legislation encapsulate a troubled arc of South African life from an era of oppression - the year after the 1976 Soweto riots - to one of enfranchisement, four years into democracy under the late President Nelson Mandela. The Criminal Procedure Act (CPA) was passed in 1977, a time of politicised social unrest. This was following the nation-wide riots that were catalysed by the shooting of schoolchild Hector Petersen during a protest against the Apartheid government’s racialised education policies (in Soweto, 16 June 1976⁶⁴). This was a time when the state’s definition of criminality was at odds with basic human rights. Subsequent to 1994, the CPA had to be drastically amended to fit the democratic constitution of the new South Africa which took human rights into consideration, and rendered the previous iteration of the CPA illegal under its terms.

Since 1977, during the upheavals of the 1980s and up until 2010, the CPA has been amended over 60 times, in order to dovetail with other changing or emergent legislation (such as the Child Justice Act, 2008). This regime-weathered piece of legislation stands in contrast to the MLRA – a relatively recent Act, the latter was born out of the transition to democracy and the process of nation-building. The MLRA was the new government’s attempt to set in process and to regulate the transformation of South Africa’s fisheries and protection of marine resources in accordance with the national task of redressing Apartheid’s legacy of racialised social, political and economic inequality. Efforts to meet these objectives have not been entirely successful.

This study takes as its focus the role of marine compliance inspectors in the ecology of relations that constitute the South African fisheries. As a primary text, the official job advertisement for this post serves as a useful entry-point into a discussion of what

⁶⁴ 16 June is now commemorated as Youth Day, an annual public holiday.

expectations the job places on both inspectors and resources users. It contains revealing perspectives on the problem of non-compliance, and proposes a very specific framework for problem-solving in line with these views. These perspectives, and the responses to non-compliance that they allow, assume a universal set of relationships between fishers, the state and the resources, which often fails to materialise in the everyday.

SENIOR MARINE CONSERVATION INSPECTOR⁶⁵ -

Department of Agriculture / Forestry / Fisheries - Cape Town

2-12-2011

Categorized in: Cape Town, Government, Management And Administration

2 POSTS REF NO: 43/2011

SALARY : RXXX XXX per annum

CENTRE : Cape Town

REQUIREMENTS : Applicants must be in possession of a Grade 12 Certificate, applicable experience in both Law enforcement and investigation. Experience in receiving, dealing and investigating public complaints. Knowledge of the Marine Living Resources Act (Act No. 18 of 1998) or Criminal Procedure Act (Act No. 51 of 1977). Must have good skills in communication (both verbal and written) and conflict resolution and computer literacy. Candidates must be willing to work shifts, weekends, overtime, work at sea, travel when required and be in possession of a valid driver's licence.

DUTIES : The incumbent's responsibility will be to participate in Special Operation/investigations to prevent the illegal harvest and trade of marine products and to safeguard endangered species. Conduct sea, coastal, aerial and land patrols to prevent illegal harvesting of marine resources. Implementation and enforcement of the Marine Living Resources Act (Act No. 18 of 1998), Regulations and other relevant legislations. Institute criminal proceedings against offenders including issuing of written notices to appear in court, and give evidence. Conduct investigations of case and transgressions under MLRA 18/1998, Conduct investigations pertaining commercial rights holders, react on the information/complaints received. Conduct inspection in the fishing industries, restaurants, fishshops, etc. Assist with and initiate investigations by utilizing surveillance techniques. Complete documents pertaining to criminal cases (such as dockets, charge sheets, evidence collection and handling evidence). Working in high risk areas at times, and in harsh environment conditions. Monitor the landing of commercial and recreational fish and fishing vessels, Travel to other centre when required and frequently work outside normal office hours.

ENQUIRIES : Mr X, Tel. 021 XXX XXXX.

NOTE : Short-listed candidates will be subjected to screening and security vetting to determine the suitability of a person for employment.

The current social contract between state and the citizen who is a marine resource user is premised on the threat of criminal penalties, as the presence of the CPA alongside the MLRA in the job description indicates. The social contract is a long-standing term in the

⁶⁵ Copy of the job advertisement shown to me by an inspector in Kalk Bay in December 2011. The original hard copy I was given had been damaged during fieldwork. This text, an advertisement for the same post, was retrieved from <http://southafrica.jobs-career-listing.com/vacancy/senior-marine-conservation-inspector---department-of-agriculture--forestry--fisheries---cape-town.html> in June 2014. While the job description states conservation inspector instead of compliance inspector, the inspectors ensured me that they "were compliance now, not conservation."

philosophies of society, law and politics. It describes the processes by which humanity collectivises under the rule of law. It was a central feature of the political philosophy of John Rawls, who conceptualises the rule of law as the contract into which individuals enter in order to derive the benefits of collectivity (Rawls, 1971). This understanding of the social contract informs the idea that the democratic state and its legal institutions exist to ensure the good of the many, and it is this formulation to which I refer, as the social contract represented by the current South African government as its intention.

The form of this contract between the South African and the fishing public is the result of both the attempts by government to control a complex and contested industry, and the reactions or responses by resource users to such attempts at control. The South African state, in such a framing, represents itself as the legitimate regulator of social life. It stakes its legitimacy on claims that it will do so in an equitable manner, if citizens adhere to its rules. A formulation of this kind takes for granted the fact that relations of trust and social equity characterise the field to be regulated. Trust and social equity are, in fact, the two features largely lacking in the South African fishing industry, thereby allowing for high levels of non-compliance and conflict in the four coastal provinces, particularly in the politically contested Western Cape. It is not easy to control the large, dispersed population of resource users. Furthermore, human features of fishing are intertwined with ecological processes that also cannot be directly controlled, further complicating the approach taken by resource management.

A frequent critique of the MLRA has been that more favour was shown to the ideas of economic stability and growth than to those of redistribution or sustainability (Van Sittert, Branch, Hauck & Sowman, 2006). In particular, the introduction of Individual Transferrable Quotas (ITQs) has been criticised as insufficiently taking account of the needs of artisanal or small-scale fishers in terms of species, access and infrastructure (Isaacs, 2011a; see also Isaacs, 2011b and Chapter Three). A lack of capital, business skills and infrastructure meant that many could not effectively manage their rights or new businesses (Isaacs, 2011a). In 2004, with support from the Legal Resources Centre, the fishers' advocacy groups Masifundise and the Artisanal Fishers' Association launched a class action suit against the government, known as *Kenneth George and Others versus The Minister [of Environmental Affairs and Tourism]*. The tension between human rights and property rights

is one of the central issues that has fuelled fisheries-related contestations between small-scale fishers, the government and industry.

Compliance theory and practice has its origins in the democratic states of North America and Western Europe, and assumes a different model of state and citizen relationship, or social contract, to that in South Africa (Hauck & Gezelius, 2011). Due to the presence in those countries of histories of governance engaged with human rights, compliance theory for a long time assumed that human rights considerations were automatically included in all national legislation – and therefore inherently in specific sectors such as the fisheries. This was not the case in South Africa (Hauck & Gezelius, 2011; Isaacs, 2012). The Equality Court found that small-scale fishers, as a group, had been largely excluded from the long-term rights allocation process and that, where included, many of their specific activities and requirements were not considered. The Order of the Court in 2006 was that 1000 Interim Relief permits were to be granted in the affected small-scale inshore sector, and that a national task team was to be formed subsequently to investigate and recommend a new small-scale fisheries policy.⁶⁶

Unhappiness with the MLRA, or, more broadly, with the state, was not always channelled into legal appeals. The rise of the phenomenon of “protest fishing” was a result of that unhappiness with the state being channelled into immediate action. Fishers took to the sea and beaches in numbers to fish in solidarity as an act of defiance. This happened at a time when a loss of staff and budget in the mid-1990s had “severely depleted” capacity and left the functions of the new Marine and Coastal Management to quota monitoring and harbour management, with little visible policing (Hauck & Gezelius, 2011). However, by 1999 the abalone wars and the increasing levels of ‘protest fishing’ had made clear the necessity of shifting the focus of compliance.

The abalone wars have been described as a “poaching frenzy that became highly organised” (Hauck & Kroese, 2006:76-77; Steinberg, 2005; see also Raemaekers et al., 2011). The dispersed and easily accessible inshore abalone resources meant that proactive policing was unsuccessful as there were too few officers to patrol the coastline effectively. Increased access to international markets, both legal and not, and the highly lucrative

⁶⁶ The Small-Scale Fisheries Policy (SSFP) was adopted in June 2012, five years after the national task team was convened in 2007. Though its adoption has been applauded, its implementation still requires the MLRA Amendment Bill to be passed, specifically in terms of allowing the allocation of rights to collectives or cooperatives (as of January 2013).

nature of the resource meant that it was not long before organised crime syndicates took hold of the informal industry (Hauck & Sowman, 2001; Hauck, 2009; Steinberg, 2005). In 1999, the Compliance Directorate was upgraded to a Chief Directorate, and the Special Investigations Unit (SIU) was established to deal with illegal fishing syndicates and corruption. The number of field stations and officers along the coast was also increased. The Department now saw “law enforcement as a primary objective of compliance”, rather than conservation⁶⁷ (Hauck & Kroese, 2006:77). The job description clearly echoes this shift, emphasising law enforcement experience and duties.

Voluntary compliance became an objective after 2000 when, in response to increased illegal fishing, Marine and Coastal Management (MCM) were increasing their focus on enforcement. Voluntary compliance was approached in three ways: the transformation of access rights in a manner that fostered stewardship amongst inshore resource users; co-management; and the delegation of authority⁶⁸ (Hauck & Kroese, 2006:79-80). However, poaching remained a seductive option due to the complicated access rights application process and the subsequent fragmentation of the catch allowance into economically unviable quotas (Hauck & Kroese, 2006; Isaacs, 2011a).

During the process of transferring functions between the Department of Environmental Affairs and the Department of Agriculture, Forestry and Fisheries after President Zuma’s cabinet reshuffle in 2009, the DEA was reluctant to transfer all the MCM functions to DAFF. It was clear from the beginning that the separation of Marine and Coastal Management into ‘fisheries’ and ‘marine conservation’ had changed the nature of the job of Fishery Control Officer. Officers were no longer required to enforce the National Environmental Management Act (NEMA) or the National Environmental Integrated Coastal

⁶⁷ This shift was also influenced by the seizure of fish illegally harvested by the company Hout Bay Fishing Industries, after extensive investigation by MCM and the then active forensic investigations unit of the SAPS, the Scorpions. This bust led to uncovering an extensive network of lobster poaching, also implicating government officials, with the illegal catches being smuggled into the United States. The investigation ultimately led to the owners of Hout Bay fishing Industries being tried in the US under the Lacey Act (The United States of America versus Arnold Maurice Bengis and Others). On 14 June 2013, the Court ordered that Arnold Bengis and company must pay the South African government over \$22 million in restitution for the poached lobster. The uncovering of the syndicate, suspected to have been in operation since 1987, was a severe blow to the reputation of fisheries compliance in the Western Cape, and so it spurred them to further develop their enforcement capacity and anti-corruption functions.

⁶⁸ This has occurred in two ways: firstly, the devolvement of compliance duties to certain local institutions, such as Ezemvelo/KZN Wildlife, SANParks and Cape Nature; secondly, many of the peripheral functions of the FCOs were outsourced to private companies – such as catch data monitors (e.g. Vital Connections and SB&T), and the crewing of the Fisheries Patrol Vessels (previously, Smit Amandla Marine) (Hauck, 2009; Hauck & Kroese, 2006).

Management Act (ICMA), except for enforcing NEMA's beach driving ban (as it is a tactic often used by illegal fishers or poachers). As discussed in the Introduction to this thesis, after three years of confusion over who has responsibility for marine protected areas (MPAs), President Zuma issued a proclamation on May 31st 2013 that finally settled the issue – DAFF was to retain powers over fisheries management functions in those MPAs in which fishing was allowed, but had no jurisdiction over “no-take” MPAs.

The case of the MPAs illustrates the tensions within marine resource management between fisheries and conservation. With regard to the job requirements and description of the duties of inspector, it is a tension between conservation and law enforcement. As stated in the job description: “Applicants must be in possession of a three-year qualification in Natural Science or Policing OR a Grade 12 (Matric) Certificate with extensive experience in law enforcement and investigations”. The use of capitals in the “or” makes the division stark. These two fields have different methods of engagement with resource users. They are two different sets of skills, and so will attract two sets of applicants that expect to perform their jobs differently.

The way that the job description of a compliance inspector maps onto the fisheries complex illustrates fisheries management as a site of both economic and ecological consideration, but is also representative of DAFF's failure to consolidate these two concerns efficiently into their operational procedures. Conservation is equated with law enforcement, and the idea of “Nature” as something to be policed or controlled gains prominence – as does the idea of the irresponsible resource user who must be policed and punished.

Penalties and incentives

How compliance functions are formulated

The assumption that the problem of non-compliance is a function of a general irresponsibility among resource users, means that the solution to the problem of non-compliance is assumed to be increased control. Standard models of control operate through the threat of penalties and the offering of incentives. Such models usually either incentivise good behaviour with rewards such as increased access, or sanction bad behaviour through penalties such as imprisonment, fines or denial of future access (Kotzé,

2009). The law is unquestioned in such a normative formulation – there is good, and there is bad, and the law decides which is which.

Central to the control approach is the idea of governmentality, originally developed by Michel Foucault in a series of lectures between the late 1970s and early 1980s at the Collège de France (Foucault, 2008). It refers to the methods with which states make their subjects governable. Arun Agrawal develops his own understanding of governmentality, which relates to compliance, describing how the process by which technologies of control achieve their full effects is not only about force, but about establishing complicity amongst those to be governed (Agrawal, 2005).

The command and control approach seeks, ultimately, to force resource users to voluntarily comply. The working assumption is that when people are incentivised to ‘be good’, the rewards will inspire them to extend their positive behaviour into future space and time. However, with regards to fishing in the Western Cape, there is no immediate benefit to them personally to extend compliant or precautionary behaviour beyond the letter of the law. The reward offered is a lack of penalties. Without thoughtful balance, threat and coercion are often counter-productive as incentivising tactics. Murphy expresses doubt about the effectiveness of deterrence-based models of enforcement: “Regulatory agencies risk discouraging civic virtue if they engage in aggressive prosecution for relatively minor offences, because those being regulated are less likely to feel that their past good faith efforts at compliance have been acknowledged” (2004:202).

Economist Tom Tietenberg, who has a focus on sustainable development, elaborates on this:

A successful enforcement program requires a carefully constructed set of sanctions for non-compliance. Penalties should be commensurate with the danger posed by non-compliance. Penalties that are unrealistically high may be counter-productive if authorities are reluctant to impose them and fishermen are aware of this reluctance. Unrealistically high penalties are also likely to consume excessive enforcement resources as those served with penalties seek redress through the appeals process. (Tietenberg, 2002:215)

The balancing of penalties and incentives is the crux of the 'problem of compliance' (Craigie et al. 2009; Marmor, 2011; Tebbit, 2000; Tietenberg, 2002). "Cooperative' equilibria based on power asymmetries are inherently unstable and costly to maintain" (Platteau, 2008:44). The control approach, which requires well-resourced and capacitated enforcement authorities, is expensive in terms of both time and resources (Craigie, Snijman & Kotzé, 2009:51-2). In a context of historical and ongoing social, economic and political inequity such as in South Africa, this becomes more pronounced. The design of compliance and programmes of access to resource commons must acknowledge the discrepancies between collectives of resource users in order to progress towards voluntary compliance (Platteau, 2008). What is needed is careful examination of the where, when and how of the law and legal institutions, in order to understand the nature of compliance and non-compliance in a particular setting or context (Tebbit, 2000; Marmor, 2011; Hauck, 2008). Furthermore it is important to separate out, but yet hold in relation, the investigation of institutions and of situations on the ground:

If existing institutions are the expression of past political alignments, attention to current political relationships within communities can help produce a better understanding of how existing institutions are contested, and what future institutions may look like. Institutional arrangements for allocating resources are best viewed as an expression of an idealised *status quo*. Actual human behaviour, even in the context of well-enforced institutional rules, is unlikely to conform to institutional contours. Perfect enforcement is far too costly to ever be achieved in the context of resources that are valuable, and over which different users and social groups compete. When resources devoted to enforcement... are limited, resource use patterns are far more likely to diverge from what the rules specify. (Agrawal, 2008:59)

Platteau explains that "previous conflicts may persistently obstruct collective social behaviour when they are kept lively in the collective memory through tales and rituals" (2008:43). Resource users will actively resist enforcement procedures as long as memories or understandings of events they regard as unjust are mobilised to establish modes of relation. In the South African context, the existence of a legacy of engineered social

inequality and ongoing economic deprivation is often central to decisions by resource users about whether to respect the law or not. This requires that one thinks carefully about the differences between poaching and non-compliance.

Deciding to comply

How non-compliance is viewed

Based on my observations of the practice of illegal inshore fishing, as well as conversations with inspectors and both legal and illegal fishers, I argue that there are useful distinctions to make between poaching and non-compliance, if one regards them as versions of the same thing and not mutually exclusive categories. The inspectors, based on my observations of and discussion with them, differentiate between poaching and non-compliance in a number of ways, depending on the site and local behaviours. Generally, the distinction is that poaching refers to the illegal exploitation of abalone and rock lobster, while non-compliance is attributed to recreational and larger commercial companies. The distinction has to do with the tactics of the resource user and the possibility of violence.

Drawing from these discussions, poaching, in my use of the term, refers to the illegal fishing of lucrative, often protected, species (such as abalone). Poachers tend to not possess any formal paperwork such as permits, and so operate clandestinely – when spotted at work, they are rarely mistaken for legal fishers, as their activities are clearly illegal (i.e. diving in Gansbaai). This term, in my use, also includes also the illegal fishing that is carried out on the high seas. Examples of this are fishing in protected areas, using illegal gear, operating unlicensed vessels, or intentional overcatching.

Non-compliance, on the other hand, I distinguish from poaching in that it often takes the form of documented resource users who are bending or breaking individual permit conditions, in both the recreational and commercial sectors. An example of this is someone taking more than their bait harvesting permit would allow, or recreationals selling their catch (which is not allowed). Their actions are *covertly* clandestine, in that they often obscure the illegal behaviour behind publicly legal behaviour. This refers to documented resource users. By non-compliant, I also refer to those individuals who harvest illegally without documentation in order to gather food for the plate. This I refer to as subsistence non-compliance, for lack of a better term (see Chapter Four for an example of this).

The distinction is useful, not in setting categories up against each other, but as a means to understand that, in the Western Cape, the poaching networks are usually based on a market structure that relies on non-fisheries crime to operate, and is driven by profit. Non-compliance, recreational or subsistence, usually occurs on a much smaller scale, and involves smaller networks, often kin-based, to distribute what is gathered – either by eating together, trading, selling or giving the catch as gifts if luxury allows. The intent to profit financially in this sector, and the involvement of crime, is a fraction compared to that of organised poaching.

Compliance and non-compliance are not necessarily mutually exclusive, in terms of a resource user's decisions on a daily or long term basis. The other side to understanding why resource users choose not to comply, the problem of *non*-compliance, is understanding what compliance understood to be.

The legal definition of “compliance” describes the goal of 100% compliance as an “ideal”:

In legal and regulatory policy, the state of ‘compliance’ describes an ideal situation in which all members of the legal community adhere to the legal standards and requirements applicable to that community's activities (Craigie et al., 2009:41).

This definition is found in a text written for the specific purpose of being a resource for practitioners of environmental law duties and functions in South Africa: *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (edited by Alexander Paterson and Louis J. Kotzé, 2009). It offers the above definition of compliance as it applies to the implementation of environmental law in South Africa. It describes compliance as an ideal state that is sought after, but seldom achieved in the long-term. This idea has an important influence on how the effectiveness of law enforcement is assessed, by creating an unrealistic goal. Even one act of non-compliance can mar an otherwise fully compliant record of resource user behaviour, and if measured over the long term, even a week of compliance cannot stand up to a year's worth of statistics that feature non-compliant behaviour. It would be regarded as an anomaly and can even be considered evidence of corruption, as I have seen in cases of assessments by Compliance Head Office. Nonetheless, it remains the goal.

Speaking of ‘a legal community’ invokes members of a collective who owe a duty to each other. Environmental law expert Jan Glazewski notes that the environmental ethic underlying environmental law is anthropocentric, as contrasted to ecocentric (2000:6-8). The latter sees all beings as having inherent worth and, together with humankind, constituting a community of life on Earth. The anthropocentric clearly is concerned with the actions of humans towards each other or as they affect each other (ibid.). Harm to other beings is traditionally seen through that lens. Even when the degradation is to the environment or animals, the intergenerational clause in environmental law⁶⁹ and sustainability philosophies again links the value of maintaining a healthy environment to the idea of the posterity of human wellbeing (Wilson and Bryant, 1997; Weston and Bollier, 2013).⁷⁰ Fauna and flora are to be protected, not for their own sake, but for the sake of them as possessions of future humans.

Implicit is the idea of legitimacy – the perceived moral or legal right for an institution to govern collective and individual lives. As Hauck (2009:210) states, “legitimacy is increasingly being recognised as an important variable influencing fisheries compliance”. It has been the perceived illegitimacy of state decisions and processes on behalf of fishing collectives whom I encountered, that has fuelled illegal fishing. While both fishers and inspectors whom I interviewed during my MA and PhD research often referenced morals in their discussion about their relations with the sea and resources, questions of morality and obligation are subsumed at the management level into a discourse that does not allow the questioning of authority, and which views the decision to comply or not as one of simply balancing certain forms of incentives and penalties.

Given the complex and unequal landscape of social and political resources and desires in the Western Cape, what may be an incentive worthy of behaviour change for one resource user, may not be one for another. In Stilbaai in 2012, I observed two fishers receiving fines. The one fisher (poor, coloured and clearly hungry) was visibly crushed by his R750 fine, while the second (wealthy, white and fishing for recreation) laughed off his fine of R350. As can be seen from the amounts, there were clear discrepancies in the ‘level’ of non-compliance of which they were found guilty. However, what needs to be addressed is that

⁶⁹ Glazewski, 2000:77. Bill of Rights, Section 24 (b): “to have the environment protected, for the benefit of present and future generations”.

⁷⁰ The idea of ‘wellbeing’ is discussed in relation to ideas of harm in Chapter Five.

the unequal social, political and economic landscape of South Africa means that financial penalties are experienced with more distress by some than others. Therefore, the penalties are not weighted equally, not by virtue of a design flaw in the penalties themselves necessarily, but through the homogenisation of the citizen collective that occurs during legal codification according to universals.

Writing in their book *Green Governance: Ecological Survival, Human Rights and the Law of the Commons*, Burns Weston and David Bollier describe environmental governance as a “systemic whole [that is] not a clockwork machine of modular, interchangeable parts, as legislation and regulation often seem to assume” (2013:15). Approaches that fail to sufficiently account for the systemic whole tend to view non-compliance in fisheries from either the perspective of the resource user, or in terms of compliance laws and institutions. These approaches offer only a partial view of the problem, which neglects careful consideration of the central role that inspectors – as people in space and time, not parts of a structure – play in determining the success of marine resource law enforcement.

By understanding what is considered universal in the design of compliance, it can be shown that expectations that are placed on both resource users and inspectors are detached from practical, everyday understandings of resource users and inspectors’ actions. In fisheries management, a frequent basis for assumptions about resource users’ and enforcers’ behaviour is the model of resource user behaviour described in the 1968 paper by Garrett Hardin, in his famous paper titled *The Tragedy of the Commons*.

Commons

The idea that is being regulated

An invocation of “The Commons” in the context of the Western Cape fisheries can obscure more than it illuminates. One of the ways in which this occurs, is through the neglect of issues of definition. The body of Commons Theory is vast, and encompasses a range of sub-fields that are broad. The same can be said for the field of environmental management studies. What concerns this thesis, is the manner in which the problem or object is defined within the South African context and specifically the MLRA. The definition of the problem, or the terms used to state it, informs how the problem will be reacted to, and so presents a useful avenue into the investigation of the social life of the concepts. It is not the entirety of Commons Theory or environmental management that is being addressed, but how the

concepts that are central to those fields are being defined and employed in the system of marine governance in the Western Cape.

The exclusion of many small-scale fishers from the formal commercial sector was partly the result of the government's macro-economic policy that favoured the stability of big business, and the assumptions made about small-scale fishers under a management paradigm that echoed the sentiments of Garrett Hardin's 1968 *Tragedy of the Commons* (Isaacs, 2011a, 2011b). The objectives of the MLRA emphasise exploitation and control (Hauck & Kroese, 2006). A focus on control indicates an instrumental approach to compliance, which regards non-compliance as a result of external influences, prompting the fisher to act in his own self-interest (Hauck & Kroese, 2006). Fishers make decisions, according to this logic, by weighing up economic gains against the likelihood of detection, and the perceived effectiveness of law enforcement assists in establishing the legitimacy of the management systems and its enforcers (Hauck & Kroese, 2006:77). Small-scale fishers, in particular, are characterised as relentlessly competitive, and fishing as a solely capitalist activity.⁷¹ They are collectively categorised as problematic, with the consequent argument that state measures treating them as such are justified. Fisheries anthropologist Gísli Pálsson describes Hardin's theory as "an important means for making history an authoritative claim with a social force of its own, and not simply an attempt to understand the world" (1991:154). When Hardin's narrative of tragedy is attributed to fishers, it comes to replace other stories as their history and their future. By taking such a representation of fishers for granted, fisheries management and law enforcement neglect to take into account a range of motivations and practices that are not accounted for by this description.

The Tragedy of the Commons is about the increasing pressure that uncontrolled population growth exerts on the earth's resources. In it, Hardin posits that humans are too selfish to be allowed open access to communal resources, as they are most likely to exploit resources to the maximum for individual gain in situations of scarcity. He calls "the population problem" a "no technical solution problem" – in other words, it cannot be solved by any quantitative means, but must seek qualitative solutions (Hardin, 1968:1243). Though he does suggest several "reasonable" solutions for limiting access to the commons, he nonetheless calls all of them "objectionable" (Ibid:1244-5). He understood that his theory

⁷¹ See Chapter Two for more detailed discussion on the implications of this.

would be unpopular, not only because it speaks of limiting access to resources which are imagined in the collective as free and infinite, but because he advocates decreasing the rate of population growth as the only practical means to achieve equitable distribution.

In his view, humans are primarily rational animals with a view to their own survival only, not to that of the species. His suggestion to curb this instinct is normative: “The social arrangements that produce responsibility are arrangements that create coercion, of some sort” and “The only kind of coercion I recommend is mutual coercion, mutually agreed upon by the majority of people affected” (Hardin, 1968:1247 and p. 1248, respectively). Hardin himself ties his work to, amongst other things, the act of fishing. He laments that “maritime nations still respond automatically to the shibboleth of the ‘freedom of the seas’” (Hardin, 1968:1244), and speaks of the ocean as a particularly problematic commons due to its size and variously unknowable aspects, as well as its *de facto* status as open access⁷². Hardin later softened his view that the commons will always meet a tragic end by amending his phrasing to “an unmanaged commons” (1998). The tragedy here refers to not a kind of grief or sadness, but a futility of escape, an inevitability.

Importantly, Hardin makes the case that commons must be managed – which means that the people using the commons must be managed. As the broad field of research into environmental management strategies has shown, it is almost as difficult to manage people as it is to manage natural resources. Wilson and Bryant make the case in *Environmental Management: New Directions for the Twenty-First Century* (1997) that “traditional” environmental management is “little more than ‘technical’ manuals designed to provide policy-relevant advice to environmental managers linked to the state” (1997:161). The coercive nature of ensuring compliance results in the process being dominated by efforts to regulate human behaviour in the process of specifically extracting from nature.

In South Africa, the commons has a presence in the statement from the MLRA that “all our natural living marine resources and our marine environment belong to all the people of South Africa”. An ecosystem is a complex system of mutual and symbiotic relationships that is simultaneously a habitat, the creatures alive in it, and the processes that keep collective life productive. By making a distinction between resources and

⁷² The *de facto* open access that Hardin laments was legally curtailed by the United Nations Convention on the Law of the Sea 1982, which established regimes of governance in the form of territorial seas and Exclusive Economic Zones. The high seas, however, still remain without direct governance, though institutions such as the Global Ocean Commission are working to change that.

environment, two important moves are made. Firstly, the ecosystem ceases to exist in such a formulation. The whole is lost, because relations and processes are not considered. Secondly, by identifying “resources” as the primary concern, a particular group of creatures is privileged: those that are extracted or present some form of value that can be represented as an economic value.

The Minister, the political head of Fisheries, is tasked with safeguarding these valuable resources, this commons, against degradation for the beneficial *use* of present and future generations. In my own experience during fieldwork, fishers would routinely invoke the state’s words (often against it) to claim rights of access based on the fact that the sea “belongs to the people”, often specifically referring to themselves as the most deserving group. In conversations with Amos Barkai, a private fisheries researcher and consultant⁷³ with the firm OLRAC,⁷⁴ who had advised on the White Paper that would become the MLRA, he constantly invoked the Tragedy of the Commons by name and in metaphor in order to justify the consideration given to the large commercial companies over the interests of small-scale fishers (van Zyl, 2008).

Anthropologists Vijayendra Rao and Arjun Appadurai make the claim that many who write on commons theory take for granted that the definition of the commons is self-evident (2008:59). According to them, definitions often view the commons as in generalised terms that fail to take into account “the conditions under which these commons appear *as commons*” to the local resource users and community (ibid., my emphasis). Baviskar agrees, stating that by looking at how we come to define the problem “brings to light crucial unexamined assumptions and analytical moves” (2008:108-109). By acknowledging that different definitions and modes of engagement coexist, it is possible to recognise “ways out of singularity” (Mol & Law, 2002:10).

Difficulty of definition is not a recent realisation in commons theory, as the important works in this field have all responded in some critical way to the definitive assumptions that Hardin makes about resources and resource-user behaviour (see McCay & Acheson, 1987; Wade, 1994; Ostrom, 1990; Baland & Platteau, 1996). Prolific commons theorist Elinor Ostrom argues that,

⁷³ During field work for my Master’s degree in 2007.

⁷⁴ Ocean and Land Resource Assessment Consultants, based in Steenberg, Cape Town.

by referring to natural settings as ‘tragedies of the commons’, ‘collective action problems’, ‘prisoners’ dilemmas’, ‘open access resources’ or even ‘common property resources’, the observer frequently wishes to invoke an image of helpless individuals caught in the inexorable process of destroying their own resources (1990:8).

Ostrom asserts that small-scale fishing communities are able to manage their communal or shared resources in a sustainable manner; that the tragedy is not inevitable (Dietz, Dolšak, Ostrom & Stern, 2002:5). This was an important intervention, coming at a time during which popular views of irresponsible fishers still held sway. However, the manner in which particularly Ostrom (1990), Wade (1994) and Baland and Platteau (1996) address this issue still does not go far enough for the purposes of illustrating the heterogeneous constitution of the complex processes and issues, as argued by Arun Agrawal (2002, 2005, 2008).

Agrawal’s overviews of these important studies of commons theory conclude that they all reach similar conclusions but together contain such a proliferation of necessary conditions for successful commons management as to be unwieldy and highly generalised (2002:53). Furthermore he says, “[w]e have to contend with the possibility that attempts to create lists of critical enabling conditions that apply universally founder at an epistemological level” (ibid.). He elaborates further on the shortcomings of these “landmark studies” by calling for a more critical engagement with the idea that small-scale commons systems are somehow inherently noble (2002:53). Importantly he emphasises intra-group politics and issues of power and resistance, as well as the ways in which communal resource use can exacerbate inequalities, especially as humankind’s relationship with the environment is changing (2008:59-60). This is vital in the South African context, where social life is still tethered to a history built on control and resistance, and inequality is rife.

Various collectives in South Africa are in conflict over their preconceptions regarding the commons, and often have conversations that result in seemingly intractable conflict due to the unacknowledged differences in definitions. Small-scale fishers who are long-term residents of a particular fishing town, particularly those who are limited to harvesting inshore resources, tend to regard the local ecology as their commons. This puts them in conflict with the state’s premise that the seas belong to all its citizens. However, this premise is then also contradicted by the actions of the state itself. Through the delineation

of fishing zones, MPAs, inshore and high seas sectors, all within the EEZ, the state has divided the marine commons into a series of spatial and scalar hierarchies that are regulated on a principle of exclusion (such as the nested and overlapping fishing sectors). Neither the premise nor the contradictory management system are incidental. Both are central to the functioning of the state on a political and pragmatic level, and are designed to facilitate control (Ferguson & Gupta, 2002:995).

The state's definition of the problem of non-compliance is currently framed by normative views of resources and resource users that form the premise of the MLRA. My ethnographic fieldwork revealed that these perceptions were often at odds with the processes that occur on the ground.

Slippage

Differences between the job on paper and the job as performed

During the 18 months over which my fieldwork stretched, I accompanied inspectors on over 50 shifts that lasted between three and eight hours each: during 'normal hours' and in the middle of the night; in small fisheries offices; on tiny slipways and on the deck of docked foreign line-fishing boats in the comparatively enormous Cape Town harbour; in *bakkies* (pickups) with faulty suspensions on dirt roads and in sedans along the glorious coastal drives of the Cape Peninsula. From the very first few days, it became obvious that the job on paper was vastly different from the job in real life.

The function of the Compliance Directorate of the Fisheries Branch is to enforce the laws of the Republic of South Africa as relevant to the use or exploitation of the marine resources over which the state has sovereignty, as according to the Bill of Rights and the Marine Living Resources Act. This is a difficult job, as the activities which inspectors are required to police are diverse in scale, method of operation and location. Both the fish and the people that are active in the fishing industry are mobile, in both space and performance. Fish stocks move, and fishers may follow them or change gear and activity to target another species. Many types of fishing do not require a boat, and so their points of access change and, in effect, stretch along relatively large distances of coast. The enforcement of fisheries regulations is slippery.

The conditions that the Compliance section enforce are promulgated in departments or sections separate to Compliance, and do not take into account the variables of

performing the job in particular social contexts. The nature of each fishery and jurisdiction determines the nature of enforcement in that area. The average day for the inspectors starts at 07:30 at their respective stations. This is to ensure that they are on duty when the fishing for the day starts at 08:00 (certain permits only allow 08:00 to 16:00 fishing, despite the fact that neither the weather nor fish keep office hours). The primary emphasis of the job of inspector varies according to the location of the station, and the inspectors work together with the Chief Inspector to develop station-specific work plans (sometimes a month or two in advance) to target local problems and to meet the 'targets' as set by management in terms of how many cases, dockets, inspections or fines management expects to see in stations' reports for that month (based on previous years' activities). While forward planning in and of itself is not an issue, there is a sense in the department that deviating from work plans shows negligence (possibly even signs of corruption). This is to prevent inspectors simply doing what they feel like, and to ensure that targets are met. However, it is difficult to predict with certainty what, for example, the weather will be like on a specific day in the future. If inspections at Miller's Point have been planned, but no boats have gone out, it renders the work plan void and can reflect negatively in the station's statistics or reports.

Not all management targets are relevant to all stations. In Kalk Bay, the emphasis was on landing inspections at the harbour or Miller's Point (often involving waiting for the boats to land, which can span hours), with vehicle patrols along the coastal road on the lookout for poaching. They also deal with a lot of recreational fishermen, who launch their ski-boats from Miller's Point. In Gansbaai, the emphasis is almost entirely on violent abalone poaching; as such the daily duties emphasise constant patrolling and will often include duties that are usually considered as 'special operations' – concealed observations, road-blocks and SAPS-supported raids. Prolonged joint operations are conducted with the SA Navy, as well as units of uMkhonto weSizwe and Azanian People's Liberation Army veterans.⁷⁵ The anti-poaching efforts here use more military tactics and equipment than other stations. Betty's Bay, Hawston and Gansbaai together are the nodes of some of the most violent, ongoing struggles between citizen collectives and law enforcement. Over the years, a number of divers, lookouts, drivers and inspectors have died in confrontations over

⁷⁵ Known as MK and APLA, respectively, these were the armed wings of the African National Congress and Pan Africanist Congress during the struggle against Apartheid.

abalone. As the state reacts with increased measures, such as bringing in armed units from the Navy, the poachers increase theirs. It is an acknowledged feature of this drawn-out conflict that either side watches the other and changes tactics in accordance with changes in the other side, with surveillance being a central feature of life for both camps. This is a war of attrition, with enough resources on either side currently to keep it going.

In the smaller, much quieter towns such as Arniston and Stilbaai, where there is much less fishing activity, the job requires that they not necessarily patrol, but remain visible to the community during the day - a subtle but important difference. Remaining visible means being seen at the harbour or around town, and engaging in conversations not necessarily focussed on fishing. It is about being a presence in collective life. On the other side of the coin is surveillance. Surveillance is about keeping something hidden from the community. It is necessary, during a surveillance operation, to hide yourself as you keep watch, such as when sitting observation post on a perch above Misty Cliffs, St Helena Bay or Gansbaai. You need to hide your movements through the town, unless your intention is guessed.

In the busy Cape Town Harbour, the inspectors based at Head Office – also known as ‘Foretrust’ after the building from which it operates – deal with the much larger industrial fisheries and foreign fishing vessels. Much of their work involves inspecting paperwork, perhaps more so than actively inspecting catch. In Hout Bay, there are a number of large commercial fisheries, as well as lobster and abalone poaching – ‘the best of both worlds’, as it were. Here inspectors are called to respond to a lot of complaints in amongst their daily duties of inspecting catch, factory and processing facilities. Kommetjie must deal with significant amounts of lobster poaching also, as well as with high numbers of recreational fishers. On the West Coast, in towns like Lambert’s Bay and St Helena Bay, the tasks are primarily based on the regulation of lobster fishing, though in St Helena Bay they also deal with small pelagics. There is linefishing in these two towns, but it is largely focussed on the snoek runs.

Each fishing harbour or significant slipway in the Western Cape has a Fishery Compliance Office with a unit of Senior Marine Compliance Inspectors, under the leadership of a resident Chief Marine Compliance Inspector (unless only two inspectors are permanently stationed). The stations each have a jurisdiction that stretches along the coastline. The limits of the respective jurisdictions either extend to the next station’s area

of operation or to the borders of access-controlled land such as private property, nature reserves or state land (such as the Denel⁷⁶ weapons testing range to the east of Arniston). These jurisdictions also extend inland in order to cover the fish restaurants and factories that lie close to the stations, in the potential operating areas of illegal fishers and illegal fish distributors. Some of these establishments are situated at several hours' drive from the nearest station, so an inspection of one facility can take up most of a shift. Two such establishments are in the towns of Worcester and Ladismith – both at least a three- to four-hour round trip from the stations of Gansbaai and Stilbaai respectively. The actual inspection may only take 30 minutes, depending on the degree of cooperation and the size of the establishment.

The monitoring of catch landings of the commercial fisheries, both large- and small-scale, is outsourced to companies such as Vital Connections⁷⁷ but the inspectors are still required to oversee a portion of the landings and work of the monitors. While the monitors inspect the catches (and the inspector technically keeps an eye on them), the inspectors are required to check the paperwork of the boats (such as required by the South African Maritime Safety Authority (SAMSA)) a certain number of times a month. In the larger fishing harbours such as Cape Town, the boat lists are divided up between the inspectors, who are then responsible for checking the boats on their list. This makes the large number of boats more manageable; it allows the inspectors to establish rapport with the skippers over time; and prevents the 'over checking' of permits – something which irks the skippers a great deal and can falsely inflate station statistics.

The monitors are usually not directly trained by DAFF, though one day when I was with two inspectors in Cape Town, they were informed by the Chief they were to train a new group of monitors for foreign vessel inspections that same morning. The inspectors simply read the lengthy, complicated permit conditions to the group of monitors-in-training, and that was that from the DAFF side. In smaller towns like Paternoster and St Helena Bay, the inspectors intimated that, while they were often under scrutiny for possible corruption, no one seemed to be checking the monitors. The monitors often reside in the communities

⁷⁶ The South African state owned aerospace and defence technology conglomerate.

⁷⁷ From Vital Connections' homepage: "The Catch Data Monitors programme was launched on 01 February 2011 to advance the sustainable use of natural resources. We have empowered local communities through employment opportunities of 71 individuals and provided training, deployment and management in the Northern and Western Cape". <http://www.vital-connection.org/index.php/programs/agriculture-fisheries/catch-data-monitors>

whose fleet they monitor, often with either family or friendship connections to the fishers with whom they work. Certain fisheries are difficult to monitor, either due to an industrial setup or the location of the landings. More than once the landing and transportation of catch was delayed in Miller's Point, as the monitor was not there and his/her phone was switched off. Once, he/she was in Kalk Bay, without transportation, and the inspector had to accompany the technically illegal transportation of catch to the monitor.

In Gansbaai, the monitors who log the catches of the pelagic boats must operate in an industrial setting that sees the catch siphoned up from the boat's hold via a conveyor belt into the factory where it is processed. The catch is sent up out of the hold to the top of a structure next to the factory, so that the catch enters the factory on the top floor. This is because the factory operates by using water and gravity to move the fish along the production line. As the fish leave the hold, they are electronically weighed by a scale located at some early point of the conveyor system. A staff member sits in an office checking the process and weights, while the two monitors sit in a small adjacent room on a single bed, reading the weights off a small television set bolted to the wall. They are physically removed from policing the catch. Why they were in a different room, looking at a different screen to the fishing company employee next door, was not clearly explained.

In some stations, such as at Kalk Bay, there are permits that require the fisher to let the inspectors know when they are fishing, so that they can be present when the catch is landed (for instance for beach seine or *treknetting*). In practice, the fishers will often let the inspectors know once the boats are on the way back in, or the net is already being hauled in. With traffic, road works and the distance from Miller's point to the *treknet* beach of Strandfontein, the fishers know that they are often able to land illegal catch before the inspectors arrive by complying with the letter and not the spirit of the permit condition.

Vehicle patrols are conducted routinely, incorporating as many sites as possible. In the more rural stations this is easy, with dirt roads and a lack of land development giving access to a large part of the shoreline, but also making the inspectors vulnerable to ambush and forcing them into dangerous driving situations should a chase ensue. On the more urban Cape Peninsula, the driving involved a lot of non-coastal driving just to get from one spot to another. The need to negotiate often heavy traffic means that a large part of their patrols are not within sight of the shoreline. This renders a large part of their journey ineffective in terms of policing – both in terms of visibility and of surveillance.

The instances of slippages or mismatches between the design of the job and the performance of the job discussed above, indicate that the parameters of marine resource law enforcement set by the MLRA and fishing regulations does not sufficiently take into account the experience of doing the work day to day. The slippages reveal an incomplete view of the problem of non-compliance in the formulation of the job of marine compliance inspector.

Partial descriptions

That which is lost in the moments of slippage

On paper, the inspector is a powerful official tasked with ensuring the security of the country's marine resources from illegal fishing: someone who is part conservationist, and part law enforcer, who is expected to have a clear knowledge of fish, fisheries and the MLRA and the principles it is based on. They are presented as committed to public service and operating as a cohesive network that spans the coast and presents a force for order in the face of relentless poaching syndicates. Senior Marine Compliance Inspectors are considered peace officers under the Criminal Procedure Act (CPA). Loosely, peace officers are those personnel employed by government agencies and tasked with enforcing certain laws, imbued with certain rights pertaining to the implementation of the respective laws and departmental mandates. Importantly, "preventing them from carrying out their duties is a criminal offence" (Glazewski, 2000:495). Under the MLRA (Chapter 6, Sections 51-57), Senior Marine Compliance Inspectors (SMCIs) are granted a number of powers aligned with the CPA and akin to those of the police, that allows them, under specific with conditions, to search persons and property; to seize illegal substances or property used to conduct illegal fishing; to arrest; to issue fines; and to open dockets. Their designation as inspectors and peace officers makes their conduct as contingent on law and policy as that of the fishers – the inspectors themselves are policed by their management. It removes them from the category of 'ordinary' citizen, in that they are part of the machinery of state control, while yet being controlled.

Successful applicants with enough experience are given a position directly, while those without enough experience to apply for the job directly can apply to be taken up by the department's internship programme. Those who start the job directly are, according to the inspectors themselves, given a copy of the MLRA and then told to enforce it. Very few

of the inspectors (of those who did not go through an internship) received any kind of specific training for the job – some were given special driving classes several years ago, but the only course that the majority of the inspectors with whom I worked had been on, as part of their training, was in fish identification at the Department of Ichthyology at Rhodes University in Grahamstown, Eastern Cape. The interns, on the other hand, are given a certain amount of hands-on training. While they are interns for the year, they are based at certain stations, but are also called away for group training in spots like the Overstrand. They are placed with units from other stations, and sent on special operations as a kind of work shadowing, in which they learn by doing.

As listed in the job requirements, the skills needed for being an ideal inspector are fairly specialised, especially as a combination. It is taken for granted that the person who is hired to fulfil these job requirements will match this ideal inspector image; little training is offered as a routine. This is a partial view of the person of the inspector, who is expected to act as the job states they will and so will fit seamlessly into the enforcement interface. This codification is a process of objectification – making the inspectors a *category* of thing or person, and a partial one at that. The texture of everyday relations between the inspectors and resource users is not taken into account, and it assumes inspectors and resource users will follow the duties each owes the other in terms of the social contract (as discussed). By meeting the requirements of the job description, this formulation then becomes a definition of them in the eyes of the state and the resource users.

The articulation of resource users in this codification is latent, implicit in the list of tasks and duties of the inspectors. The fishers are considered largely non-compliant, if one reads the tasks of the inspectors – they are the reasons that law enforcement, night operations and possible violence are part of the job. One Peninsula-based Chief calls the poachers their “regular clients”. Fishers are here regarded, collectively, as prone to non-compliance and as such comprise the reason for the job while yet being a threat to the job. They, too, are partial – only being relevant as far as their fishing behaviour is concerned, neglecting the range of other collectives they may be part of or identify with, and which may also feed into their resource use decisions.

The State in all this is illustrated as capacitated, efficient and fair – assuming of course that the citizens whose behaviour it is policing consider it legitimate. The State is represented as a respected entity that does what it says it will do. In practice, however, this

is not the case. What is said to be effectively policed, is often under-policed. For example, Branch and Clark praise the establishment of Marine Protected Areas as the “only effective way of protecting entire ecosystems and allowing base-line research against which human effects can be assessed” (2006:7). However, Raemaekers et al. (2010) lament the lack of effective policing and visible deterrents, which has meant that MPAs, especially the no-take zones, are often *de facto* open access areas. The ease of designing Compliance on paper and creating work plans obscures very real governance problems.

The fisheries, too, are regarded as fairly stable entities in terms of location and method of operation, though they are reliant on highly mobile and often unpredictable fauna and processes. The different fisheries are regarded as separate from each other, and subject to policy practicalities such as only fishing at certain times. The primary value of the relevant fauna is their economic importance, revealing an economic view of the ecology that allows for ease of enforcement as it does not have to consider non-monetary values – this is the job of the Department of Environmental Affairs. The idea of nature that underlies such objectification of persons, processes and institutions is that which is apprehended through man – the nature that exists outside the sphere of fishing does not have a significant presence in these codifications.

Inspectors patrol the fringe where marine-based fishing meets with terra firma⁷⁸ – their jurisdiction covers wherever fish ‘touch’ land or where they are turned into product. In this way the job of inspector is removed from conservation – they encounter the fish or fauna once they are already dead. An organism alive in the sea only becomes relevant to marine resource law enforcement once it has been hooked, netted or trapped. Inspectors do not police fish, but the commodities that fish become. In this way, the inspectors are prevented from ‘protecting’ the marine resources as required by the MLRA, much less the marine environment. They control commodities. This partial view of what nature is focusses on that which is extractable. Compliance is little bothered by what is put in, or left behind, despite the Departmental mandate that makes note of “pollution” (as noted in the Introduction).

The job description, embodying a set of understandings about the lived world of fisheries-related livelihoods, expects relevant individuals and collectives to conform to these

⁷⁸ While the job requirements do mention the possibility of working on the sea, this has rarely happened since the sea patrol duties and equipment were transferred to the Fishery Patrol Vessel section.

assumptions under the rule of law. The process by which the job of compliance inspector has come to be what it is, illustrates how relevant social and political histories conflict with certain ideas inherent in a command and control approach to regulating marine resources. The job description of a compliance inspector is a product of certain ideas written in law, the prominent of which can be described as: the representation of fishers as likely criminals (such as posited by models following the *Tragedy of the Commons*); the approach of control as the best method for managing people's relations with the state and environmental resources; the tensions between law enforcement and conservation; and the idea of nature as commodity.

The job description with which this chapter opens reads as only a partial description of non-compliance in marine resource use in the Western Cape. This partiality allows for discrepancies between how the job is imagined and how it is performed; between the job on paper and the job in the field. Such discrepancies ultimately work against the environmental law that it seeks to implement. By oversimplifying the categories by which citizens are judged and the environment is valued, the state presents a view of the fisheries that treats processes and actors like objects, and so does not fully apprehend the complex nature of the assemblage, as will be further discussed.



Figure 13 Sorting through a beach seine catch, Strandfontein Beach, Cape Town, South Africa. December 2011



Figure 14 Checking recreational angling permits, Strandfontein Beach, Cape Town, South Africa. November 2011

Chapter 3: Assembling the fisheries

What role did ideas about space and processes of spatialisation play in the formulation of marine resource law and governance during the transformation of the fishing industry post-1994?

The 'Western Cape fisheries' is a term that under its banner assembles a range of spatial, social, political, economic, historical and ecological interests and processes. As represented by marine resource legislation and governance, it is a spatial assemblage that is maintained by an array of governance technologies that legitimate certain sets of associations while neglecting others. A very particular articulation of what the fisheries are, based on surveillance approach, has gained prominence, which is blind to relational processes that are not accounted for in the MLRA (see Agrawal, 2005, and Katzschner, 2013). One of the ways in which these relations or associations were categorised was the application of spatial technologies or planning in the process of formulating legal relationships between the resource user, the state and the resources. These codified associations have a history of being heavily contested, both over access to natural resources and to economic opportunities.

Together the rise of Geographical Information Systems technologies and the changes in the South African state's approach to marine governance, the spatialisation of the Western Cape fisheries constitutes it as a technological-political assemblage. In the MLRA's formulation of the state as the legal authority with power of regulation over the resource and resource users, the compliance inspector can be considered to operate at the interface where functions of the state meet the everyday of individuals; where the spaces of the state, the resource users and nature meet. Susan Hanna uses this image when she says that, "in part, fisheries have frequently been cited as examples of the failure to effectively manage the human-ecological⁷⁹ interface" (2001:736).

In such a formulation, the idea of space is implicit in the idea of between-ness that is recognised in the term 'interface'. While space has rarely been the primary analytic used in works dealing with the history of environmental governance in South Africa, it is a concept

⁷⁹ This term is not a reference to the field of human ecology, but refers to the socio-ecological interface, or the interactions between humans and the ecology.

that has been important in the formulation of policy in the South African fisheries sector. It has been used descriptively, not always with due consideration of *what* is being described. This thesis investigates processes of spatialisation that have had a hand in assembling the networks that constitute the fisheries, in order to carefully build up to an understanding of what the “state” and the “fisheries” are in relation to each other; how they have come to be and be imagined (Gupta, 2012:99).

Previous to 1994, spatial management was explicitly applied in the establishment of exclusive fishing zones, nature reserves and marine protected areas, in line with the Apartheid government’s racially segregated land and resource policies (Sowman, van Sittert and Sunde, 2011). Post-1994, spatial management has been a central feature of the Marine Living Resources Act and the Small Scale Fisheries Policy, but has largely been an unacknowledged frame that has remained un-investigated due to its assumed universality.

Theorist of space and spatialisation Henri Lefebvre has argued, in his extensive body of work on the subject, that articulations of space are neither universal nor neutral:

Space is not a scientific object removed from ideology or politics; it has always been political and strategic. If space has an air of neutrality and indifference with regard to its contents and thus seems to be “purely” formal, the essence of rational abstraction, it is precisely because this space has already been occupied and planned, already the focus of past strategies, of which we cannot always find traces. Space has been fashioned and moulded from historical and natural elements, but in a political way. (Lefebvre, 1970:170-171)

Space has been articulated and experienced differently, and to different ends, in the Western Cape fisheries. This can be explored by examining the role that ideas about space have played in the formulation of marine resource law and governance during the transformation of the fishing industry post-1994 until the adoption of the Small Scale Fisheries Policy by Cabinet in 2012.

By problematising the ideas of space as articulated by the MLRA, ‘space’ can be re-utilised as an analytic that does not limit itself to either political, economic or environmental discussions, nor to the descriptions of only physical or geographically-defined spaces. It is a tool with which a history of the fisheries can be illustrated in a manner that does not treat

the traditional categories of inquiry as separate fields or influences. Instead, by asking through which processes the fisheries has come to be known, it can be shown that the relations that hold it together traverse the legislated categories, such as those of the ecological and the social. Such a formulation allows us to ask how the fisheries and its features have come to be known as ‘things’, without seeking to represent the assemblage as disentangled (Latour, 2004).

Transformation

Political and legislative changes in the Western Cape fisheries

Environmental historian Lance van Sittert points out that, while it is necessary to understand current features of South African collective life through the lens of Apartheid, it is also a “blunt analytical tool” if it becomes a “hold-all” category (2002:295). He argues that Apartheid exacerbated, but did not create, existing conditions of capitalist exploitation in the fisheries. While it is necessary to attend to the legacy of Apartheid, van Sittert warns doing so can skew the narrative of fisheries in two ways: by privileging race over other identities, and by assuming the goodwill of the current state (ibid, 302). As will be shown, actors in the contested fisheries may draw on several identities and current fisheries management is not a “passive instrument in the hands of the ruling party” (ibid.).

The redistribution of South Africa’s fishing rights post-1994 has been discussed largely through a critique of the loaded political term ‘transformation’, the curative to ‘Apartheid’. It was the catchphrase for the new democratically elected government working from a platform of reconciliation, and articulated a vision of ‘the New South Africa’ that was inclusive. However, it has the potential to relegate relationships to the kind of ‘hold-all’ category that Van Sittert warns against – transformation is articulated as a foil to Apartheid; they define each other. Like ‘Apartheid’, it can also privilege race and assume the goodwill of the current government.

During Apartheid, commercial or industrial fishing was largely the privilege of white South Africans. Many coloured fishers would work for white boat owners or skippers, but most operated on the small scale with low-technology gear and no formal rights to market their product. Apartheid law did not grant full citizen rights to coloured or black South Africans. As such, their movement into the space of fisheries was severely restricted by the racialised definition of citizenship, not simply by the restriction of fishing activity. The racial

categorisation of the population determined who was granted access to nature – both as a commercial resource and as an arena for recreational activities. As land was divided up, unequally, and nature reserves established, the enjoyment, governance and conservation of nature was made the privilege of the white minority, resulting in a racialisation of nature (see Katzschner, 2013). Nature was there for the elites to utilise and enjoy. The dispossession of many non-white communities from their settled land, through segregation laws such as the Group Areas Act (1950), saw many removed from the natural resources, in many cases permanently.

The social engineering of the human and physical landscape saw the state's control over the fisheries fragmented by homeland⁸⁰ 'independence' and devolution of authority (Van Sittert, 2002:301). The new democratic government reversed the trend of devolution with the Maritime Zones Act (1994) and the Sea Fisheries Amendment Act (1995), which reunified the national marine commons (Van Sittert, 2002:301). The unification placed central government in control of the marine commons and allowed for the wholesale reform of the industry according to a national agenda. The multiplicity of natures often defies the political need for unity, which I will show was true in the case of the Western Cape fisheries (Latour, 2004).

The changes to government brought about by the end of Apartheid were a negotiated settlement, and not a revolution (see Hersoug & Isaacs, 2001). An important issue in the negotiations was economic stability, sought in order to prevent money leaving the country, and to entice foreign investment. According to Van Sittert,

Apartheid further exacerbated questions of state legitimacy and economic equity on the marine commons and bequeathed the post-1994 government the daunting challenge of re-legitimising the state and appeasing the popular demand for redistribution within a market framework. (2003:200)

In another publication, Van Sittert elaborates: "...the national context gave the fisheries reform an explicitly social welfare cast... [but] the state's ability to fulfil this task was in turn

⁸⁰ The homeland system was essentially the creation of 'reserves' for specific cultural or ethnic groups, but on insufficient amounts of land and under-resourced, nominally with independent governments but still under the control and oppression of the white central government.

shaped by broader international ideologies about the appropriate role of the state in the economy” (2002:296). The level of government intervention required to transform the industry according to political and socio-economic criteria was incompatible with neoliberal ideals of deregulation and free trade that call for the increased removal of government from the mechanics of the economy (van Zyl, 2009).

Isaacs, Hara & Raakjær Nielsen (2007:311-312) speak explicitly about the pressure global financial institutions exerted on the South African government post-1994. They discuss this pressure as a major reason why the State abandoned its platform of Reconstruction and Development (RDP) in favour of the GEAR (Growth, Employment and Redistribution) policy, which had a “neo-liberal and market driven approach [that] influenced the formulation of the Marine Living Resources Act” and promoted the development of Small, Medium and Micro-sized Enterprises (SMMEs) in fishing communities that previously operated under informal economic models. Many of these SMMEs would go on to fail due to lack of business experience or training and access to capital.

Van Sittert, Branch, Hauck and Sowman describe the post-1994 reform of South Africa’s fisheries as socio-political rather than economic or environmental reform (2006:96). Beginning from the base of significantly skewed levels of access to the marine commons,⁸¹ the government undertook the task of rebalancing the industry along socio-economic lines. Glazewski describes the process of transformation to democracy leading to: “unrealistic expectations in the fisheries sector, which as a result has been beset by political wrangling, poor administration and unprecedented litigation on access to fisheries” (2000:505). After 1992, the number of rights-holders increased dramatically (Van Sittert et al., 2006:104). The increase in numbers of rights holders, with particular strain on the in- or nearshore resources, resulted in intensified levels and frequency of poaching and increased levels of conflict within communities as rights were either unevenly distributed or curtailed to make space for new entrants (ibid., pp. 104-5). Van Sittert et al. go on to state:

In particular, the kinds of resources allocated to subsistence users, the sometimes unviable quantities of fish allocated to the limited commercial

⁸¹ At that time only “0.75 percent of the sum of the commercial TAC (Total Allowable Catch) of all species was allocated to ‘black’ ethnic groups” (Hauck & Sowman, 2003:41).

sector, the inadequate procedures used to notify fishers of the opportunities to apply for fishing rights, the criteria used to screen applicants, as well as the lack of access to financial and technical support during the medium-term rights-allocation process, have resulted in criticism for the government's fisheries-reform process, and mass action and litigation. (Van Sittert et al., 2006:104)

The larger, already established commercial companies held their positions within industry, and largely continued to operate as before. The reason that environmental historians such as Van Sittert argue that the process of transformation was more socio-political, rather than socio-economic, is that many of the new black entrants into the commercial sector were already economically established and secure in other fields (Van Sittert, 2002 & 2003; Van Sittert et al., 2006). Many with a greater need for a marine resource-based income and with a history in the industry were not granted rights (see Introduction and Chapter Two for discussion on the court case *Kenneth George and Others versus the Minister*). Transformation often followed the contours of race, not the contours of economic need.

By 2006, Van Sittert et al. (2006:109) were able to offer five findings in their ten-year review of the changes in the South African fishing sector (part of a special edition of the journal *Marine Policy* on South Africa). Their good news was that, due to the implementation of precautionary management, most resources were in a stable, even if not optimal, condition. Also, the 'face' of the industry had changed significantly, with significant strides made towards Black Economic Empowerment (BEE). However, these changes had often come at the cost of 'bona fide' historical fishers. They also cited the industry's vulnerability to the vagaries of resource recruitment and fluctuations, and the glaring failures of the abalone and linefish sectors.

Whereas quotas previously had been allocated by the Quota Board, the MLRA transferred that function to the office of the Minister – signalling the acknowledgement of the government that this was a political as well as economic process of allocating access. The new long-term rights that the Minister announced in 2005⁸² were explained thus in Section 6.1 of that document: "The 'rights' allocated under the Marine Living Resources Act

⁸² General Policy on the Allocation and Management of Long-term Fishing Rights: 2005, Department of Environmental Affairs and Tourism

are not property rights and should be understood as statutory permission to harvest a marine resource for a specified period of time.”

These rights may not be transferred without the express approval of the Minister, under stipulated special circumstances. Therefore, the holders are not the owners of the right for an indefinite time, but in essence lease the right from the legal owner, the State. Furthermore, they are not transferable in the manner of most ITQs. This difference has meant that the ‘commons’ of the marine environment has been re-appropriated by the state – meaning that, though it might “belong to all the people of South Africa” as the Marine Living Resources Act states, ultimately the State considers “the marine commons” its property.

Branch and Clark describe the initial attempts to transform the fisheries sector as unsuccessful, citing the introduction of annually allocated permits in 1999 as a major problem. As they put it, there was chaos when the number of applicants ballooned from “fewer than 300 prior to 1990” to 12 000 in 1999 (2006:8-10). This deluge caused severe delays and multiple legal challenges and, as a result, had the consequence of destabilising the industry. This chaos further divided those who were in favour of opening access and those in favour of more control (mostly resource managers and the large commercial companies).

The transformation agenda mobilised very particular ideas of nature, which were often in conflict with one another. During the early stages of the process post-1994, marine resources were seen by both the state and by small-scale fishers as an asset to which the previously disadvantaged could and should be given access, due to the exclusive manner in which access had been granted previously. These resources were heralded as belonging to all the people in South Africa by the MLRA, invoking classic conceptualisations of the commons as a space of open access, as a means to redress the injustices of over 300 years of social engineering that claimed national resources as accessible to a very select few. On top of this, many small-scale fishers invoked a more-than-economic relation to the ocean that formed a significant part of their self-identification (Anderson et al., 2013; van Zyl, 2009).

In my previous work based on research conducted in the fishing village of Kassiesbaai, I highlighted the conflict that the mobilisation of variant, unacknowledged ideas of nature (specifically the ocean) can lead to, when used as means to articulate rights (van

Zyl, 2009). The ideas I presented were later confirmed and amplified by research conducted in other, small fishing sites in the Western Cape (Anderson et al., 2013). When a government official speaks of the sea as a national economic asset, it can easily conflict with the general opinion of many small-scale fishers that the ocean is a bountiful gift from God that will provide for the faithful. In contrast to both of these views of nature is the often hard-line approach taken by some government marine scientists, for whom engaging with a conception of nature as anything other than a complex biological system is potentially problematic (van Zyl, 2008).

Once negotiations on this transformation started, the large industrial companies were among the first to point out to the state that the resources were a source of much income for the state itself, not directly its citizens, through the industry's annual contribution to the Gross Domestic Product and payments into the Marine Living Resources Fund. As the state began to move its notion of nature away from nature as a tool of social reform towards a notion of nature as a national economic asset, it came into conflict with the small-scale fishers and previously disadvantaged individuals who had bought into the agenda of transformation and were subsequently disappointed.

Small-Scale Fisheries Policy

Attempting to introduce human rights into fisheries management

The MLRA had for the first time recognised the category of subsistence fisher in South African law – previously only commercial and recreational fishers had been legally recognised. In 1999, in recognition of the lack of access available to the 'subsistence' fishers, the Subsistence Fishers Task Group was established and tasked with generating recommendations on how to incorporate this sector more fully into the industry, alongside the recognised commercial and recreational categories. However, the MLRA definition of subsistence did not recognise that such inshore fishing activities are rarely purely subsistent, and necessarily require interaction with the market. As discussed in the Introduction, groups of affected small-scale resource users took the department to court, to sue for access rights based on human rights law in 2004 (Isaacs, 2011a). The judgement in the court case, *Kenneth George and Others versus the Minister*, saw the Constitutional court task the

government with developing the Small Scale Fisheries Policy,⁸³ in order to address the lack of attention given to the development of the small-scale inshore sector, which also includes subsistent activities.

The Small-Scale Fisheries Policy was adopted in June 2012,⁸⁴ but has yet to be implemented. The SSFP importantly expands the concept of being active in the fisheries to also include ancillary activities such as processing and marketing in fisheries management. It emphasises the importance of fisheries to food and livelihood security, while employing a human rights approach. It aims to provide redress and recognise the rights of small-scale fishing communities, who had “previously been marginalised in terms of race, individual permit based system of resource allocation [ITQs] and insensitive imposition of conservation-driven legislation” (SSFP, section 1).

While it refers to Apartheid, it clearly also implicates post-Apartheid reforms in the perpetuation of discrimination. It challenges the conservation and economic principles of the MLRA by calling for a community-based co-management approach that relies on local participation and the identification of human need as the moral imperative of fisheries management. The SSFP explicitly represents small-scale fishing communities as intimately interactive with and reliant on their local marine environments for their wellbeing and livelihoods. It obliges the state to “recognise the interdependency of the social, cultural, economic and ecological dimensions of small-scale fishery systems” (SSFP, Section 3.1 (g)).

This is important: it recognises that fishers’ livelihoods are embedded in a network of activities and processes that cannot be sufficiently addressed by a focus on fishing only. It speaks of systems, and recognises the collective nature of life in many small-scale fishing communities. The policy describes the shift in government’s approach as incorporating four important features:

- A developmental approach
- Implementing an integrated, rights-based system which recognises the need to ensure ecological sustainability
- A community orientation

⁸³ Available online at <http://www.daff.gov.za/docs/Policy/PolicySmallScaleFishe.pdf>

⁸⁴ Government Gazette #35455, 20 June 2012.

- Identification and acknowledgement of the importance of small-scale fishers⁸⁵

It is a hopeful document that advances the cause of taking a human rights approach to fisheries management. However, it seems to present the view that the problems in fishing communities and in the fishing sectors are the result of policy – it does not acknowledge the problem of protest fishing in the small-scale sector, nor the previous failures in co-management and cooperative structures. It assumes a homogeneity of small-scale fishing communities that does not exist on the ground, and assumes that there are no power relations within these collectives that may advantage some over others (Isaacs, 2011a).

This assumption is contradicted in the same text, by the acknowledgement that the rights of fish processors and merchants dependent on the small-scale inshore sector should be more protected, and more legislative and economic support and opportunities granted to these stakeholders. This is important not only for establishing profitable value chains in the local community, but also for empowering the women in these often-impooverished coastal communities (Isaacs 2011a). As discussed in my MA thesis (van Zyl, 2008), there is a strong gender bias in the fishing industry, particularly in the small-scale industry, in the Western Cape.

Women traditionally are not allowed on boats – I have myself never been invited to sea, despite frequent requests⁸⁶. Fishing on a *chukkie*, especially at night, is a rough job. There is no shelter from the elements, and fishers must relieve themselves over the edge of the boat. This creates a very intimate space that both women and men are embarrassed to share with the other. Furthermore, the strong patriarchal and Christian worldview in Arniston, for example, means that a woman's place is seen to be the home and men are regarded as the rightful breadwinners. This means that the men bring the fish home, but the women prepare it. This dynamic is played out on a larger scale in the industrial fisheries. Throughout the Western Cape but particularly on the West Coast, women have traditionally been employed as processing staff in the fish factories that receive their

⁸⁵ Small Scale Fisheries Policy 2012, Section 3.2.

⁸⁶ This refers to both small-scale fishing boats and DAFF vessels. My request to accompany the inshore Fisheries Patrol Vessels on routine patrols and/or operations was granted in 2012 by then then-Chief Director of Fisheries Patrol Vessels, Mr Keith Govender, after we were introduced at an Illegal, Unreported and regulated (IUU) Fishing workshop hosted by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), in Cape Town, July 2012. However, due to his frequent travelling for work and training, my own busy fieldwork schedule and the problems with the patrol vessels docked in Simonstown, this never occurred.

catches from the Western Cape Fleets. As such, they and their households are also affected by decreasing catches – especially if their spouses also work in the industry. Certain management policies exacerbate the gender bias by not taking into account the gendered nature of fishing in the first place. For example, there is a permit condition in the traditional linefish sector that states that the rights-holder must be on board when fishing is taking place. However, as noted in my MA thesis, in Arniston two fishers had passed away and left their rights and businesses to their wives, but these women were prevented from exercising those rights because they, as women, did not go out on the boats (van Zyl, 2008). One of the women was forced to transfer her right to her son so that the right could be used, and she then had to rely on him for her livelihood.

By expanding the scope of the policy beyond those who actively fish or who own the means to do so, the idea of resource users is importantly amended to instead refer those who are dependent on the resource, not just those who harvest it. These resource dependents are stakeholders also. This is a much broader definition. Even if it tends to gloss over other relations such as competition and animosity, is it a definition that acknowledges the extended networks of kinship, reciprocity and reliance that make settlements “communities”, and the fisheries such a complex industry.

Isaacs discusses the challenges of the SSFP from a unique position – she is a long-term researcher in fisheries and was involved in the formulation of the policy (2011a:77-80; See also Isaacs, 2011b). She cites the collective rights function as potentially problematic, in that legal entities will need to be created that are representative of those fishers who were left out of the formal rights process in 2005. This will require legal consultations, start-up capital and consensus among members with regard to leadership and organisation structure. Furthermore, it does not identify differences between more urban and more rural fishing communities, and the differences in need and capacity that result from these geographic locations. She notes that SSFP rights holders will be in conflict with other inshore rights holders: the resources that both groups will rely on are acknowledged to be under threat, specifically abalone, rock lobster, linefish.

The policy explicitly casts collective life as spatialised, linking the idea of the right to nature to the proximity of the community to the resource. The policy defines community as “a group or part of a group that share common interests or regard themselves as such”, but then, through the policy, determines that such a group must live in the same geographic

area to be called so – negating other potential forms of community, and offering no solution for migratory stocks.

In a forthcoming work,⁸⁷ Lesley Green discusses the SSFP in the light of the public hearings that were held on the subject of the draft Marine Living Resources Act Amendment Bill in Parliament in October 2013. Presentations were made by a variety of individuals, either in their personal capacities or as representatives of an organisation. A significant aspect that Green notes is the lack of consideration of the rights of nature in the policy. Almost all applicants addressed the idea of rights to nature, and variously argued why they should, or someone else should not, gain access to marine resources.

While the SSFP does make progress in understanding the links that fisheries-dependent communities have with the ocean, it does not understand these relations as mutual, and does not go further than addressing nature as a spatialised economic resource. While the health of the ecology is paid attention to in this policy and the MLRA, this health is not considered outside of the framework of extraction. What is of primary concern, is the status of target resources and the economics that rely on them.

Resources

The commodification of the marine ecology

What we regard as resources and the manner in which we articulate this perspective can reveal both deliberate and unconscious decisions about the type of nature that is to be managed. In the words of Amita Baviskar,

'Natural' suggests an existence outside culture, something that is not an artefact of human making: an endowment of minerals, forest wealth or the bounty of rivers. 'Resources' invoke utility, culturally produced use and exchange values, something to be efficiently managed. Linking these antinomies are notions of property and possession, stewardship and responsibility, the right to use and appropriate. In turn, these notions rest upon assumptions about space and territory, and how they relate to collectivities in the past, present and future. These cultural formations have

⁸⁷ Green, L. Under review. *Parliament, Democracy and Struggles over Nature: On the Total Allowable Catch, the Treatment Action Campaign and Environmental Activism in South Africa.*

emerged over time and across spaces that are trans-local; they are always contentious and changing. (Amita Baviskar, 2003, p. 5053)

This quote from Baviskar appears in a work that questions how the exploitation of natural resources is part of larger social processes that treats attempts to control the natural world as a political privilege. Baviskar refers to these as technologies of rule (Baviskar, 2003). Like Baviskar, I am interested in how investigating assumptions about space and territory can reveal the different ways in which the 'natural' is framed, and primed for extraction – turned into a resource, and the role that inspectors play in performing this relationship. Her method of analysis emphasises the “contentious and changing” character of relations within the processes outlined in the quote, a pair of adjectives applicable to both the marine environment and the Western Cape fisheries.

The Western Cape fisheries are a profitable industry (about 0.5% of GDP⁸⁸), and employs thousands of fishers, processors and marketers in the province's coastal towns, facts frequently rolled out to signify, or stand in for, its actual value. Helen Verran speaks of the financialising of nature, wherein the presenting of numbers as the sole signifiers of value, process and effort create a nature that is apprehendable only through the logic of economics (Verran, 2013). In the context of fisheries management, using numbers to perform the function of arguing for a perspective on the natural world articulates the marine environment as infrastructure. An economic articulation removes ecological considerations and valuations from the characterisation of the fisheries. Weston and Bollier argue that global politics currently are dominated by neoliberal economics driven by the “private capture of commodified value” which delegates non-market values to the shadows and regards small-scale operators as potentially destructive to the optimal utilisation of the resource (2013: 6-7). This, again, echoes the *Tragedy of the Commons* (see Chapter Two).

James C. Scott offers a history of European state forest science as an avenue to explore the manner in which the modernist state relies on a narrowing of vision that excludes that which is not easily quantifiable, i.e. manageable:

⁸⁸ As noted in the World Wildlife Fund's 2011 report *Fishery Facts and Trends: South Africa* (McCord and Zweig, 2011) as well as on the Fisheries Branch website (<http://www.info.gov.za/aboutsa/fisheries.htm>, (updated 21 September 2012).

If the natural world, however shaped by human use, is too unwieldy in its “raw” form for administrative manipulation, so too are the actual social patterns of human interaction with nature bureaucratically indigestible in their raw form. No administrative system is capable of representing any existing social community except through a heroic and greatly schematised process of abstraction and simplification. (Scott, 1998:22)

Abstraction and simplification are necessary in representations of the complexity of the world – else a map of the world would need to be the size of the world - but need to be done responsibly, for a discrete purpose and through a careful process of transparent translation. Unacknowledged and/or unexplained abstraction and simplification will obscure more than it illuminates. Not only the fauna, but the resource users and even inspectors are also subjected to such oversimplification. Populations of resource users and personnel are logged according to number and distribution, their behaviour used for statistics and judged according to assessments that are often articulated numerically. In this quantitative way, people, too, are included as objects to be managed in the map of the fisheries. This is a necessity of modern statecraft that is expected to regulate the lives of its citizens (Scott, 1998; see also Chapter One). Such abstraction, and assumption of the neutrality of these abstractions, allows for their potential co-option into politics.

The Western Cape, as mentioned in the Introduction, is the only province not led by the African National Congress, the veteran struggle party which has been in power with a significant majority since 1994. It is under the leadership of the Democratic Alliance, the strongest opposition party. As a strong supporter of President Jacob Zuma and his policies, as discussed in the Introduction, DAFF Minister Tina Joemat-Pettersson is positioned as politically opposed to the DA leadership of the province. The Western Cape is a space that is fought over, and everyday issues – such as public transportation, sanitation and schooling – feature significantly in political campaigns to win hearts and minds on the ground. On the 13 March 2012, DAFF made a presentation to the Parliamentary Portfolio Committee. The following is recorded in the minutes:

Mr van Dalen also raised a question about the budget of the Marine Coastal Management (MCM), and the likely impact of moving this division to Pretoria.

The Minister said that certain functions of the MCM would move to Pretoria, and said that this was done to try to stop certain duplication of functions. National Government was based in Pretoria, so it made sense for all departments of national interest to be centralised also.⁸⁹

The scale of commercial fishing in the Western Cape far outstrips the scale of that in any of the other provinces combined. This is due to the high productivity of the Benguela ecosystem as compared to the Southern Indian Ocean. Fisheries management requires a constant engagement with the players in the industry, for both management of current activities and development of opportunities. By advocating that certain “MCM” (then the title of the Fisheries Branch) functions move to the landlocked executive capital city of Pretoria, the Minister could be seen as attempting to territorialise the fishing industry under the leadership of the ANC government. The idea to move the management of the Fisheries Branch to Pretoria would have required certain sectors of the industry to establish offices or agents almost 1500 km from the fishing industry in Cape Town. The idea did not go further than being suggested and, barring one or two comments by the Minister,⁹⁰ slipped from the agenda. This suggested move, and the reactions to it, indicates that the economic value of the fisheries is seen as a political resource. The value of this resource to local communities in terms of economics and food security, as well as the mobilisation of support these values could catalyse, was made an issue of territory by the Democratic Alliance and the Minister. Both parties clearly saw the value in controlling the geographic and political space of the fisheries through their administrations.

The geographic space of the fisheries is contested on the small-scale also, with communities vying against neighbouring settlements for rights to resources that straddle their localities. The declaration of MPAs has also, at times, led to confrontation as communities and collectives contest the spatial choices made in the establishment of these

⁸⁹ <http://www.pmg.org.za/report/20120313-strategic-plan-201213-201617-department-agriculture-forestry-and-fish>. Accessed September 2013.

⁹⁰ “When I said we should move fisheries inland people were not supportive. However, there are many opportunities for inland fishing in our country. The industry is virtually non-existent yet in the rest of the continent communities have established inland fishing opportunities and a source of protein.” From Minister Tina Joemat-Petterson’s speech on the occasion of the first African Farmers Association of South Africa annual general meeting, Pretoria, 22/10/2012. Accessed from: <http://www.polity.org.za/article/sa-tina-joemat-petterson-address-by-the-minister-of-agriculture-forestry-and-fisheries-on-the-occasion-of-the-first-african-farmers-association-of-south-africa-annual-general-meeting-pretoria-22102012-2012-10-23>.

conservation areas (see Ragaller, 2012). MPAs do not constitute a new fisheries management tool in South Africa. Historically, they were used to protect “local vested interests in alliance with the state” in accordance with racist segregated land and conservation policies (Sowman, Van Sittert & Sunde, 2011:573). Sowman et al. point out that the “falling catches and rampant corruption” of the 1970s was the catalyst for the government to de-politicise the fisheries by shifting the discourse from development to science (2011:574). The new African National Congress government represented its agenda as one of development, without changing the scientific rationale determining what is considered appropriate measures in the fisheries.

The problematic use of ideas of space and the implementation of top-down spatialisation strategies in marine resource governance in the Western Cape has come into conflict with spatial perspectives of the resources users. Where this is most evident, is in the expressions of territoriality wherein resource users seek to resist the state’s demarcation of space.

Territory

Contestations over the control of space

Paternoster beach, the Arniston slipway, the beaches of the Overberg, and Hangberg community in Hout Bay are all spaces that are contested turf – fishers and poachers consider it theirs and speak of the DAFF presence there as an encroachment. In Paternoster, the inspectors were reluctant to let me get out of the car at the beach or even at the shop opposite the site where the illegal lobster merchants sell their goods. Encapsulated in the official government vehicle I was safe, but outside, in the space of the local fishers and poachers, I would not have the same security. The inspectors rarely venture onto the beach, unless it is empty, as it is considered the turf of the fishers – who will use force to defend it.

Once, before I began researching fisheries, I was witness to the majority of the community of Kassiesbaai in Arniston defending poachers from law enforcement, by forming a barrier against the officials’ entry to the harbour complex and slipway where the poachers had landed, and from which they were making a getaway in their rubberduck boats. The community knew that by defending the slipway as their turf (by throwing rocks,

shooting and placing children in their midst), they were cutting the law enforcement officials off from not only the slipway, but also from 'their' sea.

In the Overberg, when patrolling along the mainly deserted beaches, the inspector who was driving would approach the tops of dunes slowly, wary of what might be on the other side. By amassing forces of 200 men or more, the local poaching syndicates have asserted their control of the space by making it dangerous for the inspectors to chance upon them during such organised illegal operations.

Inspectors from the Hout Bay stations have all told me of the problems of working in the area, as the members of the Hangberg community regard the mountain on which the settlement is built – which extends down to the sea and harbour – as their property. It is dangerous for inspectors to enter Hangberg, and the community's control of the space is extended through the use of telecommunications such as cell-phones. Inspectors claim that on arriving in Hangberg, all the poachers active in the area will know their path through the community within two minutes.

The control of these spaces is equated with legitimacy, and movement through these spaces is considered as the right of a legitimated user. The means by which legitimacy is judged is clearly not universal, and certainly not mutual between the state and the resource users. Lefebvre (1978) makes the connection between political protest and the representations of these protests as "movements". He explicitly links the notion of being politically active to the idea of the freedom of movement between and through state-delineated spaces. That freedom is either given, as in the case of fishing rights, or taken, as seen in the actions of poachers.

In terms of national territory, the surface of the oceans has been mapped as extensions of the terrestrial territory of coastal states, determining control of extraction and movement. The act of mapping territorial waters has allowed for the creation of territorial seas and Exclusive Economic Zones (EEZ) in the United Nations Convention on the Law of the Sea 1982. Territorial seas are extend up to 12 nautical miles offshore and are under the full sovereignty of the coastal nation in questions. The EEZ clause places the resources below the surface of the sea under the sovereign right of individual coastal states. As a coastal state, South Africa commands an EEZ extending 200 nautical miles out from its approximately 3000 km coastline (between the terrestrial political borders that South Africa shares with Namibia and Mozambique, respectively). Marine fauna stocks that are resident

within this zone, or seasonally pass through, are considered the property of the Republic of South Africa or of the government of the Republic of South Africa. Highly mobile species or populations of fish may be managed regionally and not just by individual states in question. The coordinates that govern this EEZ are relatively stable, both a real (in that it is possible to map it, and it governs human action) and imagined delineation of fluid space (there are no natural boundaries or features that make it visible). This EEZ encompasses a range of ecosystems and hosts a range of fishing activities – from the shoreline to the deep-sea boundary.

Fishing activities are categorised according to industry and/or species, with variations in terms of scale and method.⁹¹ Glazewski notes that the sectors are important as “legal controls may differ between sectors, and sectors may have different allocation procedures” (2000: 462). While the physical space of the greater EEZ can be mapped according to geographic coordinates, and on the smaller scale according to fish stocks and oceanographic and geographic features (in terms of fishing zones and protected areas), the space that fisheries occupies has been mapped by fisheries management in South Africa according to the economics of the operations. The description of the fishing sectors represents the translation of highly dynamic and diverse sectors into terms which are manageable in the literal sense of establishing a regulatory framework which can be managed, i.e. enforced.

Fisheries management, not only in South Africa but globally, operates through a process which requires the collation of huge amounts of biological, meteorological, geographical, economic and operative data in order to gauge the current functioning of the system and industry, predict future scenarios and set the Total Allowable Catches and Total Allowable Effort (Branch & Clark, 2006). This allows for the state to gauge its natural marine resources in terms of biomass and potential economic output. It is these data which allow the state to govern the fishery sectors in terms of setting limits, creating sectors, allowing

⁹¹ South Africa has a total of 21 commercial fisheries, managed according to five sub-directorates:

- Demersal (hake, sole, horse mackerel, demersal shark)
- Pelagics and High Seas (small pelagics, tuna pole, large pelagics, Patagonian toothfish)
- Large Crustaceans (West Coast Rock Lobster, South Coast Rock Lobster, KwaZulu/Natal prawn trawl)
- Small Invertebrates and Seaweed (abalone, oysters, white mussel, seaweed)
- Line and Net Fisheries (traditional linefish, netfish, squid)

access and penalising those who do not adhere to regulations. It is also these data that construct the nature that the public is expected to engage with.

Making Nature

Determining what the fisheries look like

Social space has thus always been a social product, but this was not recognised. Societies thought that they received and transmitted natural space. (Lefebvre, 1979:187)

The Western Cape can be thought of as a 'space' within South Africa's landscape, a nexus of social, political and ecological processes and relations. However, it is a space of contestation, and should not be viewed as a given entity. It did not exist *a priori*, only to be encountered and described in order for it to be present. Indeed, as the ethnography has shown, what is often at the heart of contestations is the differences of definition, description and evaluation of the issues and processes at play. By addressing the fisheries as a space, constantly assembled by an expanded notion of politics that collapses the categories of human and natural, it is no longer represented as a thing, a risk-free object with clear boundaries and invisible creators (Latour, 2004:22-5). It can be addressed, not as fact already stated, but as a new set of questions (ibid.).

In their investigation of the spatialising strategies of states with regard to natural resources, Whitehead, Jones and Jones (2006:54) note that

...the state plays a crucial role in developing political and ecological strategies which ensure that prevailing capitalist ideologies of nature as an exploitable and abundant resource are made compatible with the role of nature as both a context for social reproduction and a broader arena for cultural existence.

Even while the state was acknowledging the historical importance and rights of access of small-scale and subsistence fishers, and using that acknowledgement as a political tool to gain support in the Western Cape, it was concurrently forming an industrial sector that required the curtailment of access rights to the small-scale sector, as discussed in Chapter

Three. Access for the historically disadvantaged may have been the political agenda or platform as presented in the MLRA, but in reality the nature of fisheries management and governance in South Africa, during and after the process of “transformation”, narrowed the access points into the industry. The South African state could be said to have failed to play its ‘crucial’ role and, as such, fostered the rise of the phenomenon of protest fishing and, ultimately, the prevalence of poaching.

The state has thus far unsuccessfully tried to balance the twin goals of economic stability and redistribution with that of conservation and sustainable exploitation (Crosoer et al., 2006; Hara & Raakjær Nielsen, 2009; Hersoug & Isaacs, 2001; Paterson et al., 2010; Van Sittert, 2003). The state’s inability to do so has led to a number of conflicts between itself and the various fishing publics. It has effectively lost or, in some cases, ceded control of many spaces within the various fisheries and fishing communities in the Western Cape to resource users, as will be further illustrated and discussed in the following chapter.

Whitehead et al., work closely with ideas of process and relationality. The authors use their analysis to illustrate that *how* the state frames social interactions with nature, is vital to their realisation of different forms of material and social power (2006:49). The authors argue that “in order to be effective, state power is always negotiated through the socio-ecological vagaries of space, and that related territorial strategies to control and order space always rely on the ordering and production of social and natural spatial arenas” (2006:50). Their account is of “the strategic production of nature which is told in the context of the state’s spatial construction and intervention in the natural world” (ibid). The spaces in question are used to collate information about the state’s natural assets, and are applied to the transformation of those spaces through planning and legislation (ibid.). They make the case that the state’s characterisation of what is to be considered ‘Nature’ cannot simply be seen as the “instrumental output of state intervention, but as the contested outcome of a series of struggles to represent and transform nature as both an ideological category and a material resource” (ibid:62).

These struggles are played out in the daily performance of environmentalities. They are held together by politics, in the expanded sense of the word as the processes by which persons and beings constitute the common world (Latour, 2004). This lived space is an assemblage. It cannot be fully apprehended by quantitative generalisations, though this is a common feature of both its representation and functioning. Nor can it be described in

terms that rely on making a choice between the social or ecological, the political or natural, economics or human rights.

The articulation of Nature as something 'out there' is particularly prominent in fisheries discussions as the marine environment is characterised by being alien to terrestrial life - not only 'out there' but entirely different to what most people encounter in their daily lives. Many people working in the fisheries sector rarely, if ever, go to sea – such as the fish processors and laboratory- or office-based researchers and statistics analysts and compliance inspectors. Despite the fact that so much of our oceans and the life that inhabits them remains unseen to human eyes, its surface and prominent resources have been extensively mapped according to a variety of needs.

Ocean anthropologist Stefan Helmreich discusses how modernist nature-culture constructs depend on the faulty assumption that one sphere is open to control by the other, aided by the rational application of quantitative descriptors. He refers to Pálsson (1998) when he critiques modernist marine management regimes that, as a result of the separation between humanity and nature, terrestrial and marine, continue to treat the ocean as a "mammoth aquarium" (2011:135). Pálsson (1998) uses the image of an aquarium to illustrate how modernist and market-driven assumptions about the nature of the marine environment created an at-a-distance view of the ocean that relied on control of single species to promote efficient production. Importantly, it also neglected to attend to pressing social issues, regarding them as distracting from the objective (Pálsson, 1998:280). Such a view is essential in maintaining a discourse of resource economics in the fisheries, in which human interaction with the ocean is read in terms of extraction of marine resources. Such a relationship is one in which exchange is considered as the spatial movement of things, and not as a relation of reciprocity (Pálsson, 1991).

Speaking about new modern technologies that allow 'whole earth' mapping and the overlay of many different fields on one map, critical geographer John Pickles talks about the cartographic gaze that holds the world at a distance:

It has come to see itself as a technical-scientific practice of representing (mirroring) nature... It is, above all, a controlling gaze rendering the broad swathes of worldly complexity and enormity in miniature form for a discrete purpose. (Pickles, 2004:80)

Mapping and its numbers can be made to work together to implicate cartographic reasoning in the state and economy, historical production of commodities, private property and judicial power (Pickles, 2004). The rendering of space as one thing or another – through the delineation and representation of geographic space as imbued with certain values, activities and demographics – is not a neutral practice. For example, this can be seen in the frequent contestations around the declaration of MPAs or the closure of certain areas to fishing activity – as is documented by Sven Ragaller (2012) in his discussion of the closure of the waters around Dyer Island to pelagic fishing.

Anthropologist Tim Ingold gives a series of accounts in which he argues how the straight line can be seen as a modernist icon, imposing boundaries on fluidity (2007). There is a close connection between the national state consciousness and the “establishment, defence and maintenance of national territory and administration of economy” (Pickles, 2004:97; Scott, 1998). Casting this lens on South African fisheries, it is shown that the map does follow geographic and biological features closely, but is also the result of agendas and decisions that make it a plan “for delimiting the environment and the practices that take place in it”, an “explicit tool for the transformation of the social, economic and political spaces of the state” (Pickles, 2004:111).

Understandings about what the Western Cape fisheries look like and how they operate, have been based on implicit ideas about the character of fishing and those who fish. The entity known as the Western Cape fisheries was created not through contestation over resources and access only, but also over control of various spaces deemed important by legislation or collectives. The spatialisation processes and practices that have been the focus of this chapter, have been shown to significantly influence the design of marine resource law enforcement.

Ideas of space and spatialisation contained in the MLRA are articulations of what its authors regarded marine resources to be and of who has the right of access to them, presented as discrete categories or objects. It is vital, instead, to understand that webs of relations, and not discrete objects, make up the fisheries. To illustrate how these webs of relations are constituted, it is necessary to observe that manner in which everyday interactions within relationships are negotiated, in light of the state’s attempts to control the spaces through bureaucracy and surveillance. How does this web of relations prevent or aid individuals and groups in performing the roles assigned to them?



Figure 15 A West Coast Rock Lobster tail washed up on a West Coast beach, Elands Bay, South Africa.



Figure 16 A fresh, legally harvested abalone landed in Kleinbaai in the Overstrand, South Africa. January 2012.

Chapter 4: Terms of Engagement

What relationships are present, and possible, in an environment dominated by state sanctioned protocols of control, bureaucracy and violence?

As stated in the Introduction, it is the intention, in this dissertation, to move away from a framing of non-compliance as a problem of simply “the State versus the fisher”, represented in shorthand as *x versus y*. If fishers are represented by *y*, then the state is *x*, and the processes of power and resistance that characterise their interaction are contained in the term “versus”. Chapters Two and Three have complicated the assumed universality of motivation and experience amongst fishers, and has shown that the assumption of universality in law and practice conflicts with the specificity of everyday experiences. In what follows, the discussion attends to how the state is experienced in the everyday, and how these experiences complicate the idea of a centralised, monolithic state (*x*) that has the power to enact its version of the world on the public (*versus*). Ethnographic examples from the everyday illustrate how the “state” is not a given, but is constituted through negotiation of space and control between governance institutions, inspectors and coastal publics. Understanding these everyday interactions reveals that the “state” does not always have the power to control, and how such resistance occurs.

Representing the authority of the state as monolithic illustrates a dynamic of control that does not do full justice to networks of relations on the ground that resist or substitute that authority. The discussion of everyday compliances functions cannot be confined to a discussion in terms of political state power only. It is dangerous to take such a formulation for granted when trying to understand how the state functions. However, reading the South African state’s attempts to regulate the fisheries, it can be argued that the state *is trying* to establish control as the primary term of engagement between itself and the resource users. The state appears to be taking for granted its own authority, even when resource users question its legitimacy. It is the processes of by which the state is *attempting* this control that is the focus. In Agrawal’s words, the task is to investigate “how power is generated by and located in different strategies of government” – or not (Agrawal, 2005).

The inspectors play a prominent role in such processes. However, the space in which they operate and the texture of relations within that space, resist these attempts by the

state. Inspectors are the expressions of centralised power, not the power itself. The inspectors do not simply transmit the power of the state onto the resource using public, but negotiate its implementation through interactions with others, in accordance with their positioning in the local and wider web of relations. As “employees at the bottom of the bureaucratic pyramid”, inspectors “pose a challenge to the distinction between state and society” due to their embeddedness in the local and the outside spaces of practice (Gupta, 1995:384).

Inspectors who are considered “powerful” in terms of being well-connected do not necessarily draw their advantage from physical proximity to political leadership, but possibly also from local ties or ‘horizontal’ alliances within their jurisdiction. Furthermore, the authority of an inspector is not necessarily based on their rank or their political affiliations or networks, but can be drawn from their work or life experience. In Gansbaai, two inspectors were pointed out to me who, according to their colleagues, wielded a lot of authority within the unit and the community-at-large, for different reasons. One had been on the job, and specifically in Gansbaai, since the 1980’s and despite never being appointed in the position, was considered unofficially to hold the same rank as the Chief Inspector. The other inspector in question had previously been in SAPS, and regularly made significant arrests, despite also being prone to getting warnings from Head Office about his lackadaisical attitude to paperwork. This habit, it was hinted by his colleagues, could prevent him from getting promoted despite his proven value as an inspector.

Through the use of “technologies of power” that attempt to regulate the everyday life of citizens, the various processes and institutions that comprise “the state” are geared to articulate a façade of coherence (Das & Poole, 2004:9). “Technologies of power” are akin to what Amita Baviskar refers to as “technologies of rule” (2003:5051; see Chapter Three), and which I will refer to as technologies of control – that is, tactics used by the state to exert, maintain or establish its authority in the everyday, often in the face of resistance. It is the state’s *attempts at control* that are referred to; the success of these technologies cannot be assumed. In *Red Tape: Bureaucracy, Structural Violence and Poverty in India*, Akhil Gupta warns that “the real danger lies less in the fact that one’s understanding of the state is located and partial than in the illegitimate claims often made...as to the completeness and holism of the state” (2012:51).

A central feature of these attempts to control the contested spaces of the fisheries is surveillance. The state keeps an eye on both the resource users and the inspectors, while the inspectors and resource users watch each other; unsurprising, given the historical and current presence of violence in relations between the South African state and its citizens (past and present). Compliance inspectors are state-sanctioned peace officers, who are required to enforce certain forms of violence in order to maintain peace. Legal behaviour may not be met with violence, but it is the expected response to illegal behaviour. Violence is not always physical, though in extreme hostile situations such as those that occur in the poaching hotspots, it can be (see Gupta, 2012). Violence responds to and creates a heavily contested physical and social terrain. By equating control with cooperation, the environmental governance prevalent in the fisheries sector has contributed to these contestations.

Violence

The physical dangers of policing marine resources

The non-physical violence that I have witnessed enforced on fishers deemed illegal has largely been in the form of fines or other legal actions, and often such penalties can be shrugged off as just a tap on the wrist. For others, however, the tap on the wrist is felt much more strongly and will have profound effects on their short-term livelihoods – as in the case below.

One day in Stilbaai, February 2012, I went out on river patrol with two of the Cape Nature officials. The first stop was at a middle-aged but weathered coloured man angling from between some reeds, half-hidden amongst them. He was clearly poor, and rather thin. They checked him for his permit, and he admitted to not having one. The CapeNature official went through his things and found one undersized white steenbras, which is on the no-catch list. It was a tiny fish, and the fish was supposed to be his lunch – he had one or two pieces of bread and some rudimentary *braai*⁹² supplies with him. This was subsistence non-compliance, vastly different from the usual profit-based non-compliance I had observed (such as amongst small-scale commercial fishers who exceed catch limits or recreational fishers who sell their catch). He was very submissive, and clearly frightened. The fine that

⁹² barbecue

was eventually written out and carefully explained to him in Afrikaans amounted to R750. The look on the fisher's face when the amount was named was not despair: it was fear. That amount was more than what he was paid a month as a casual farm labourer in the Riversdale area (as he explained). It was explained to him he had to pay the fine, or present himself on the appointed day at the Stilbaai magistrate's court to have the fine reduced. If he did neither, an arrest warrant would be issued. Given his circumstances, he was told, the fine would most likely be reduced significantly if he showed up in court to answer the charges, as he would be given a chance to ask for leniency. Though this was good news under the circumstances, it was clear that he was shaken.

We left him, as he left the riverbank to make his way home, hitch-hiking the 40 kilometre road back to Riversdale. When compared to the violence done to and by inspectors in Overberg, then this interaction may seem non-violent in comparison. However, the possible effect it had on the man in question's present and future food security meant that he felt it physically.

Metaphors of war are often used to describe the relationship between the state and illegal harvesters. The term war features regularly in Parliament discussions and media articles on poaching.⁹³ Philosopher Nelson Maldonado-Torres discusses how modernist attempts at control naturalise the paradigm of war (2008). The media-connected denizen of the 21st century cannot help but be aware of the War on Terror, the War on Drugs, the War on Obesity, the War on Poaching. Susan Sontag wrote one of her best known works on the narrative of war in the practice of biomedicine, and how this paradigm determines one's relationship to health and one's own body (*Illness as Metaphor*, 1978). This work argues that the war or colonisation metaphor only allows certain kinds of relations between the threat and the enforcer, and between the sufferer and the observer. The same can be said

⁹³ "Mr Abram said that the war against poaching was far from being won." Marine fisheries resources & vessel management: Departmental briefing, 11 June 2013. Report available on: <http://www.pmg.org.za/report/20130611-marine-fisheries-resources-vessel-management-departmental-briefing>.

"The Committee agreed that DAFF needed to draft a comprehensive "war plan". <http://www.pmg.org.za/report/agric>. Agriculture, Forestry and Fisheries Portfolio Committee 19 February 2013. Fisheries patrol and research vessels, re-allocation of fishing rights: Department progress reports.

Article by Yolandi Groenewald, "SA 'losing abalone war'", 4 February 2009. <http://mg.co.za/article/2009-02-04-sa-losing-abalone-war>.

Article by Melanie Gosling and Craig McKune, "Poachers winning war", 21 May 2009.

<http://www.iol.co.za/news/south-africa/poachers-winning-war-1.443988#.UvyrGPna5cY>

for other metaphors of war, such as the “abalone wars” (discussed). Maldonado-Torres explains that the paradigm or dominant metaphor of war allows space to be mapped as a battlefield, in which relations with objects take “primacy over the relation between human beings” (2008:237). By being mapped as a battlefield, the relations within that space are predetermined, and will further shape that space according to those assumptions. As Lefebvre states, the processes that produce space and the processes that space produce are part of the same iterative process (1979). It is given shape by what happens within, by what passes through.

The very real threat of violence against the inspectors is invoked to justify their access to weapons and restraints, or collaboration with the police or navy. Poaching is a central concern to those inspectors based in the Overberg, the Peninsula and parts of the West Coast (specifically Paternoster).⁹⁴ In these stations, the job of compliance inspector is one that almost daily brings one face to face with violence. The jurisdictions of the Gansbaai and St Helena Bay units were the two areas in which I worked that were significantly more dangerous than any of the other sites. Gansbaai, Hawston and Betty’s Bay are the three main nodes of the epicentre of abalone poaching in the Western Cape (Hauck, 1997; Steinberg, 2005; Hauck & Gallardo-Fernandez, 2013). I had not been allowed to even consider working in Hawston due to the levels of violence there, and in the end I was only able to complete just over one week in Gansbaai before concerns for my safety over-rode the practicalities of research, as discussed in the Introduction.

Long before working in Gansbaai, I was made aware of how violent the situation can get there. Colleague Sven Ragaller told stories from his own fieldwork about how intense the poaching conflict can get (Ragaller, 2012), and for months I had been hearing stories from inspectors I had been working with about life-threatening situations involving blatant and confident poachers: Gansbaai was represented as the ultimate challenge for DAFF. While Hawston may be home to some of the most significant abalone cartels, the presence of DAFF and SAPS in Hawston and Hermanus, as well as the by now depleted stocks at that part of the coastline, means that much of the poaching actually occurs in Gansbaai or the

⁹⁴ Stilbaai is the only site at which I worked where there really is little poaching. The poaching that does occur usually either involves the catching of undersize fish or fishing in the MPA, as well as the poaching of *alikeukel* for their beautiful shells (the meat is worth less than the shell, so is often left to rot on the beach). The inspectors here do not have the strain of competing with organised poaching syndicates as the units elsewhere on the coast do.

adjacent beaches of Pearly Beach, Franskraal, De Kelders and further into the Strandveld as far as De Damme (*en route* to Struisbaai).

I arrived in Gansbaai in January 2012 to meet with Chief Mereki at the DAFF offices in the harbour. At that time, 22 inspectors and a permanent anti-poaching squad made up of ex-uMkhonto weSizwe and Azanian People's Liberation Army veterans⁹⁵ (who operated more or less independently of the DAFF inspectors) were based at that station. The Marine squad of SAPS was also operational there at the time, and armed naval soldiers who were stationed in Gansbaai over January and February in order to assist the anti-poaching efforts were present. Thanks to the naval presence, poaching was suppressed during these months: the military navy units are more intimidating than the usual forces, as their weaponry and training were far superior to those of either the inspectors or the poachers. This was temporary, however and the inspectors were all quick to point out to me that the poachers would be back in force within hours of the navy's scheduled end to this operation (which did indeed happen, according to reports).

At the time of research there were approximately 28 legal abalone licenses in Gansbaai, the only operations allowed to dive in the area. As a preventative to poaching, the area from De Kelders to Franskraal and Ou Kraalsmond had been closed to diving, recreational or otherwise. Besides the legal abalone divers, it was necessary for anyone to apply for a special permit to go diving there. Such permits are usually only given out by the Department of Environmental Affairs for research purposes (such as for those working with Great White Sharks in the Kleinbaai area). Poaching takes up about 90% of the inspectors' time, with the inspectors outnumbered by around 40 to 60, according to Chief Mereki.

Examples of such outnumbering were related to me by a group of inspectors at the offices in the Gansbaai harbour. Sometimes the cartels from Hawston, in a rare alliance with each other, will come into Gansbaai in convoys of 4x4 vehicles that carry up to 180 poachers. According to the inspectors, they will then, in broad daylight, take over a beach and poach in the open. If a patrol were to find them, there may only be two cars with four inspectors. Even if all 22 inspectors were to be there at the right time and place, the vast numbers of the poachers and the threat of violence means that the inspectors are effectively incapacitated. These are considered by the inspectors to be the most dangerous

⁹⁵ The armed wings of the African National Congress and Pan Africanist Congress, respectively, which were active during the struggle against Apartheid.

poachers, as those who poach at night are risking injury trying to not get caught. Those who poach during the day, however, appear to be confident about not getting caught. The inspectors explain that this attitude is either because of their network of lookouts, contacts in the police or DAFF, or because they are armed heavily enough to be confident about winning any potential battles.

Many is the story I was told by inspectors about fire fights in Gansbaai involving running on the beach, using the terrain to outsmart the poachers, or to flee from them. These battles tend to be coordinated, on both sides, with tactics and strategies that are similar to guerrilla warfare. This includes targeting of specific individuals in their homes or cars, from both sides. Willem, with whom I worked in Arniston, told me that he had lost two cars during his time in Gansbaai – one government vehicle had been totally wrecked in a car chase, and his own private car had been torched by poachers in his driveway (prior to his transfer to Arniston some years later).

The ties between poaching and gangsterism (particularly the Numbers gangs) run deep, and organised poaching therefore is directly related to violence and drugs (Hauck, 2001; Steinberg, 2005). This changes the terrain of the job – as law enforcement officials they are often involved in cases or situations in which abalone may not be the primary concern. Often, they know this and team up with the SAPS in the area, such as in the case of the regular roadblocks that look for the drugs (usually the methamphetamine concoction known as *tik*) that are often transported with abalone or used in payment between the ‘exporters’ and the poachers. Sometimes, they chance upon crimes unrelated to fishing during the course of routine tasks. At such times, the inspectors, as the only authority present to legally deal with violence and crime, are often forced into a confrontation by either circumstance or conscience.

I arrived at the station one morning as one of the most hardened inspectors came off the night shift (after having been on duty for more than 12 hours already), to tell the story of why he was still on shift in the common room. As a show of presence, he and another inspector had been driving through the neighbourhood of Blompark late at night, together with another car of Naval officers. A woman accosted them on the street, hysterical and beaten. She pointed to a house nearby and told them that her drunken husband was in there, raping their young daughters. The inspectors and soldiers had to break down the door. When the man came at them with what the inspector described as a

“huge” knife, he was subdued by a blow to the face with a rifle. The little girls rushed out and, crying, grabbed the inspectors around the legs in hugs of traumatised gratitude. The man was taken to the police cells.

Alongside the everyday aggression encountered in their job, the emotional weight of inspectors’ unofficial responsibilities as peace officers in a space wherein violence is common (as in the case above) must be significant. However, I was only told of one occasion in Gansbaai when counselling was offered and accepted for trauma encountered on the job. Two inspectors on patrol had been out on an isolated beach when they came upon two poachers. Rocks were thrown. One of the inspectors was hit on the head, and in the chase and confusion that followed, one poacher was shot in the leg. The other ran away, and the officers immediately loaded the injured poacher into the vehicle and rushed, as fast as they could on the sand, to the tar road where an ambulance was being sent to meet them. Due to the poacher’s thick wetsuit, they said, the inspectors did not realise how much blood he was losing, but checking on him, the one inspector realised he had died. The inspector who had fired the shot was driving, and his partner had to lie to him about the poacher’s condition in order to keep his focus on the dangerous road.

Paternoster, too, can be violent space. The first time I entered Paternoster with one of the inspectors, we drove along the 15 kilometre dirt road that runs from Britannia Bay to the north, through a nature reserve and private land, to the border of the first holiday homes in Paternoster. We stopped the car and the inspector started pointing out “running routes” to me. These are the paths that the poachers or their runners follow through the nooks and crannies among the houses built in the local vernacular – low walls, curves, gateways and secret inner courtyards. Many of the houses down by the beach seem to have irregular shapes, making for small passages between and sometimes through the properties – escape routes that can only be followed on foot and which require some acrobatic jumping to clear obstacles. We drove further amongst the houses, maintaining a slow speed. As he took the first turn on the road between the beach and first houses, the inspector laughed and told me we had already been seen, and everyone would now know that there is “a new person in the car with him” before we even make it to the beach. When we did reach the main beach (and parking lot, with basic fish processing facilities), the few local fishers present barely acknowledged our presence, only looking at me when I

pretended my attention was elsewhere. They were not surprised to see us, and tried to hide their interest.

The beach is accessible by car, and on this day was packed with several *bakkies* (pickups) that were parked amongst some of the wooden skiffs still on the beach. It was clear that several skiffs had gone out (there were numerous spaces between the otherwise densely packed boats and drag marks in the sand leading to the water's edge). This was despite the fact the Interim Relief permits for Paternoster had been cancelled for the year. It had been cancelled due to the uncovering of irregularities in the records of catches for the West Coast Region, which was being investigated by the Special Investigations Units for proof that quotas had been exceeded and that an advanced poaching network was involved. This, according to the letter of the law, meant that every boat that went to sea was automatically regarded as a poacher, even if innocent of the alleged crime. However, when I asked if we were going to get out to ask any questions or take down license plates, the inspector laughed again and said no, he couldn't risk it with me – there was a strong possibility that we could get mobbed or have rocks thrown at us.

The fishers of Paternoster regard the local resources as their commons, which belongs to them *a priori* of the state's attempts to territorialise the space. The example from Paternoster shows that the state's control over the lobster fishers lives through the issuing of fishing permits – determining their and their families' quality of life – can be invoked by the resource users to justify their control of the inspectors' behaviour through the threat of physical violence. The inspector is seen to invade their space for the purpose of limiting what they regard as rights and freedoms.

As we drove off the beach and up to the 'lookout' (the small hill in front of the hotel that is used by the fishers to keep an eye on the sea and movements in the town), we spotted several young men hanging out under the trees and offering lobster for sale. As we approached, they left, somewhat languidly. Those who stayed waved and laughed, indicating that they considered themselves in control of the space. The presence of law enforcement did not seem to be regarded as a real threat to their activities.

The inspector explained that the town used mobbing action to prevent the inspectors, or indeed any law enforcement, from interfering with the poachers. From their various vantage points, the lookouts and fishers are able to see what is happening on the roads coming into Paternoster and on the beach. If it appears that the inspectors are

“making trouble”, they send out the call and several hundred people (men, women and children) can be surrounding the inspectors within minutes, harassing and threatening them. The beach therefore essentially is a no-go area for the inspectors, unless they have sufficient back up. Even if the other four or five inspectors from St Helena Bay were to make it to Paternoster in time, six will still be inadequate against a hundred or more.

The poachers are often so close to shore that one can see who is on the boat, but the tactics of the crowd is to mob the inspectors till the person tasked with running the lobster away has gone. If they do not catch the person with the lobster in hand, there is nothing to charge them with. The inspector explained that “their hands were tied”. There had been a lot of pressure from government about how law enforcement behaves in public, specifically after the Marikana massacre in Rustenburg in 2012.⁹⁶ The directive from Compliance management, communicated through their Chief, had been that they had to be mindful that the beach was a public site, often with a lot of tourists on the beach, even amongst the poachers, taking photos of the colourful boats and lobster.

The presence of deprivation and threats of physical violence in the field sites in which poaching or illegal fishing is common, has created a heavily contested physical and social terrain of which the inspectors, as state-sanctioned peace officers, are expected to maintain control. The levels of violence in the contested terrain mean that current fisheries management increasingly relies on military tactics as a means of controlling coastal resource users. The sanctioning of violence is one of the ways in which the idea of “the State” as both custodian of the law *and* as above the law is enacted. While violence is prohibited by law, the same body of law says that the state may be violent when necessary, which can be problematic when the definition of ‘necessary’ is itself being contested.

Ferguson and Gupta discuss this tension inherent in the functioning of the state as resulting from its tactics of spatialisation (2002). They introduce two ideas that feature prominently in discourses about how the state is constituted: verticality and encompassment. Verticality refers to the idea of the state as somehow above civil society, community and family. Encompassment refers to the state as the nation, located within an ever widening series of scales that begins with family and ends at the national terrestrial

⁹⁶ The Marikana massacre occurred after a standoff between striking mineworkers and the SAPS turned deadly, with the police opening fire and killing 34 miners.

and marine boundaries. Verticality and encompassment work together to secure legitimacy and secure authority (Ferguson & Gupta, 2002:982).

In this way, the state is both everywhere and nowhere, at once. Gupta discusses this tension as that between the translocality of the state and its localised presence (1995:375-376). The state's localised presence is given form in the person of the inspector, and so also in the intimacy of potential friendship and violence they share with resource users. The more abstract translocality of the state, however, is articulated and granted authority through the reliance on bureaucracy (Gupta, 2012). Gupta and Sharma discuss the difference between anthropology and approaches to studies of the state by other disciplines as the former's emphasis on the "meanings of the everyday practices of bureaucracies and their relation to representations of the state" (2006:277). In the movement of documents, the presence of the state is articulated and felt.

Documents

How bureaucracy operates to objectify inspectors and resource users

While much of the inspector's work is done by actively policing practice through surveillance and inspection, a large percentage is dedicated to producing and policing paperwork, also a form of surveillance. A range of different reports and documentation is required by daily, weekly and monthly schedules. At every station, at least the first hour or so of every morning (from about 07:30 to 08:30) would be spent in dealing with some sort of paperwork. All the inspectors complained about this, and some told me right out that they did not apply for this job to sit behind a desk, though it is currently the only way of creating records and administrating the system and personnel. Since the job of inspector is so weather-dependent, the inspectors I worked with (in all sites), often left the non-urgent paperwork for the days when the wind was howling or the sea heaving. However, there are times when the paperwork piles up and whole days must be spent at the computer to get things in on time – Head Office is known to castigate Chiefs whose stations submit late.

The Arniston, Stilbaai and St Helena Bay Stations all had telecommunications problems during my times in the respective sites – in all three, the internet was not working, and neither was the fax machine in two of the sites. When telecommunications difficulty is experienced at a station like Kalk Bay or Kommetjie there is not much of a crisis as they are close enough to the other stations and Head Office to deliver the reports physically. In

Stilbaai, the situation is more complicated – their internet was not working during both of my field visits, and the fax machine could not be used during my second visit (February 2012 and January 2013). As Stilbaai is a three-hour drive from Cape Town, at least, it was not feasible to drive down the reports and the inspectors did not want to courier the documents down as they would have to pay out of their own pockets and wait to be reimbursed from Head Office – a process that has been known to take months.

The reports that inspectors write are for Head Office to monitor performance and progress, write up departmental reports and compile statistics for use in the management and monitoring of fisheries. However, there was a definite sense amongst the inspectors that the paperwork they generate is very much also about management keeping tabs on them – surveillance through the paper trail. One of the main pieces of daily paperwork is the Occurrence Book (OB), introduced around July 2011. It is meant to be a record of what happens in the office, with a specific formula to filling it in. For example, if the record of an inspector coming on duty is given the occurrence number five, then the note that records him or her going off duty must cross-reference that number along with its own occurrence number. It was considered by the inspectors I worked with to be more of a method of tracking them than having any particular advantage for doing their job, and so they resented the time they had to spend on it.

They also have pocket books, small books that fit in their pockets, in which they record their daily activities and observations. These are used by the inspectors themselves to keep track of their activities for reports, and can be called in by management during station inspections, but are also very important in terms of law enforcement. They are admissible in court and so can be a valuable resource. If they are filled in incorrectly, they can lose a court case. The OB, their pocket books and the vehicle trackers on the government vehicles allow management to triangulate the data to keep an eye on their officers – referred to by Chief Stacey as “control measures”. Before vehicle tracking, Chief Stacey said that it was too easy for officers to slip away anywhere without anybody knowing, creating suspicion and/or opportunities for corruption. Another measure of “surveillance” is by means of the vehicle logbooks, filled in with information from the trip authority forms that must be generated for the government motor transport division (which regulates who may drive and travel in official transport). It was mentioned by the Kalk Bay, Hout Bay, Foretrust and Stilbaai units that the job is being stifled increasingly by red tape,

the “many checks and balances” used by Head Office to monitor stations’ and individual inspectors’ activities.

Weekly Status Reports about all the cases from the past week are submitted to Head Office and used to compile the monthly reports. It is to give Head Office an indication of operations at the various stations, and to update the status of case dockets. These reports are faxed to Head Office, but the faxes can be viewed by unauthorised persons walking through the office if they are not picked up from the machine immediately.

One day Chief Stacey had some queries about the status of some of the dockets on file, so I headed with Pastor and another inspector to Simonstown to check up on the dockets on the SAPS system. Pastor explained that it is imperative that the inspectors follow up on the cases they are involved with personally. A personal approach in attempts to engage with the police can build the vital relations needed to ensure that their cases are properly handled because cases of poaching are not always actively investigated, either due to more pressing cases such as rape or murder, or because of some vaguely hinted at forms of corruption. One of the Peninsula inspectors, for example, had in the past booked in suspects at Muizenberg, where the suspects and police officers greeted each other by name in Afrikaans, and ignored the inspector during their conversation while he filled in the necessary documentation. Later, he heard that the fine had been dropped, and no reason was given to him when he enquired at the same police station. If the case is remanded and the inspectors are not informed, they may miss the court date, and judges are likely to throw out cases in which the Prosecution's witness (the inspector) does not appear.

As can be seen from these examples, the movement of documents creates “conflicting spatiotemporalities of bureaucracy and lived life”, a mismatch between the bureaucratic record and daily experience (Das & Poole, 2004:16; Gupta, 2012; Katzschner 2013). This was a point I made in my previous research – the experience of time and space is not set or universal, and is subject to both epistemological and ontological considerations of individuals and collectives (van Zyl, 2008). The considerations of space and time as experienced by fishers, or inspectors, are often at odds with the parameters of space and time with which bureaucratic processes or policies work. This is echoed by Ferme, “[t]he state’s control over territory and populations is often experienced over control over space-time – the durations of passports, visas, scholarships, residence and work permits”

(2004:110). This is seen in the job of inspector in the manner in which paperwork establishes a logbook of their behaviour and constraints on the performance of their job.

As an entity which gains its authority from the imagination of it being everywhere and nowhere at once, the state's position is often in contrast to that of its employees who are only ever in one place at a time. It is their physical presence that is the greatest tool in their law enforcement. The physical "state" is a set of buildings filled with people tasked with governing the lives of citizens. Yet, it is also a concept that transcends the physical; a characterisation or articulation of power that resists being confined to the physical reality of buildings and people (Gupta, 2012). However abstract, it has real power to affect the behaviour and content of people's lives.

As an "entity with particular spatial characteristics" (Ferguson & Gupta, 2002:981), the state is "constituted in modernity through its inclusion of [human] life into mechanisms and calculations of power [control]" (Das & Poole, 2004:25). Gupta and Sharma argue that "perceptions of the state are critical in mediating the relationship of citizens and officials to the state as an institution" (2006:291). Furthermore, the "routine, everyday practices of state bureaucracies perform a critical cultural function in helping to represent the state as coherent and unitary" – even when that representation may be far from the truth (ibid.).

As shown in the previous chapter, the state relies on strategies of spatialisation to control the fisheries complex by creating and enforcing territorial control over spaces relevant to marine resources and resource users. This task is aided when the state is considered legitimate. However, as discussed, inspectors cannot take for granted that their presence is seen as legitimate by resource users, and so the representation of the state as 'in control' and the fisheries as 'controlled', fails.

In the margins

The space in which the inspectors operate

During both my MA and PhD research, both fishers and inspectors referred to Head Office (i.e. the management of the Fisheries Branch) in a manner that made it clear it was a powerful, but distant, entity. The geographical distance of the respective field stations from Head Office in Cape Town influenced the feeling of separation, particularly when the station did not have working telecommunications or had not recently received a site visit in person from management. Conversely, in the stations on the Peninsula, their proximity to Head

Office meant that they experienced the intrusion of managers and managerial opinions into their spaces more regularly and so felt less disconnected from the management structure.

The freedom of movement between spaces is used by state officials in attempts to assert their spatialised authority over citizens and juniors in their departments. The public may not enter the Fisheries Branch head office without an appointment or invitation, yet the Fisheries Branch has the right to enter a home, vehicle, vessel or business with no warning (given that they have sufficient reason, which their mandate to do inspections grants them). As Ferguson and Gupta argue, officials “must have freedom of movement in order to inspect, discipline, reward and encourage”, and this movement is state-sanctioned (2002:983). By allowing movement by some and not by others, the performance of acts such as “surprise inspections [illustrates] the inequality of spaces” (2002:987).

Gupta and Sharma elaborate on this idea that the state can impose its authority by implementing spatial controls on movements, in their discussion of the movement of NGO managers and state officials in the course of their work (2006). They make the point that the government vehicles supplied to managers and officials can also be read as extensions of what I have been referring to as technologies of control. The supply of state vehicles not only allows a freedom of physical movement, but importantly acts as a signifier of the official’s place in the state hierarchy – and therefore of his or her authority (2006:287). This is true for the inspectors who move through the spaces mainly in their official vehicles, which are identifiable from a distance.

The intrusion on space may not always be in the form of an inspection. While I was in St Helena Bay, one of DAFF’s *research* vessels was anchored just offshore, and had been there for over a week. The inspectors commented to me that there had been less poaching in the last while as the fishers *assumed* it was the *patrol* vessel *Sarah Baartman*, whose personnel the fishers were wary of engaging. The inspectors took up the rear by patrolling the shore, the periphery of their terrestrial jurisdiction, thereby creating a space of control between themselves and the state power of movement, as represented by the assumed patrol vessel.

Refusing to stay in your place, transgressing restrictions placed on movement through certain spaces, is a form of protest – a radical re-territorialisation (Lefebvre, 1978; Butler & Athanasiou, 2013). Gaining access transforms the textures of relations within a that space, whether viewed as a right or transgression under the rule of law. The state

seeks to control boundaries and bodies in order to prevent such transgressions, which have the potential to be destructive or disruptive as well as creative, depending on the objectives such movements are judged by.

A tactic often used by poachers around the coast is to negate the element of surprise and claim the right of movement, by not only the illegal character of their acts but by their method also. The poachers use cell-phones to transcend the limits on space that the law has codified and the inspectors enforce. From the lookout to the diver to the runners, drivers, shuckers, processors and sellers, the whole poaching network is connected through cell-phones. Two key members of this chain are the lookouts and the divers. The latter waterproof their phones with transparent condoms and so can still read and type messages while submerged out of view. The lookouts alert the divers, runners and drivers when and where they see inspectors, and so can often successfully compete for control of the space through the use of their extensive surveillance network.

According to post-colonial theorist and anthropologist Talal Asad, “the sovereign force of the law is expressed in the state’s continual attempts to overcome the margin” (2004:287). The state establishes multi-scale, overlapping territories in order to extend itself into the far reaches of its citizens’ lives. In *State and its Margins: Comparative Ethnographies*, Veena Das and Deborah Poole describe the margins as “the space between bodies, law and discipline” (Das & Poole, 2004:10). There are spaces beyond the state’s territories, gaps into which categories of citizen and action may fall, be inserted or insert themselves.

These margins may correspond to activities taking place in particular geographic sites, but, as Poole (2004:38) notes,

what happens if, instead of locating the margin of the state somewhere between the urban and the rural space in which [some citizens] live, we look for it in that odd – and highly mobile – space between threat and guarantee that surfaces every time and every place a [citizen] hands either legal papers or documents to an agent of the state?

It is important to note here that this space also surfaces when the citizen *refuses* to hand over their papers, or a discussion of not-present documentation takes place.

If the state's role is represented as that of "order maker", then it is far too easy to conceptualise the margins as sites of disorder (Das & Poole, 2004:8). This formulation is premised on the idea of control, even colonisation, that Helmreich (2011) and Pálsson (1998) present as characteristic of modernist fisheries management. However, with the various management crises in the Fisheries Branch (as discussed in the Introduction), the centre can be read as the site of chaos, with those on the margins – fishers and inspectors – attempting to make sense of it through their everyday interactions related to the act of fishing. This is expressed through the manner in which they chat, argue and even fight to make sense or convince the other of what they consider the right course of action to be, in the face of ambiguous or contradicting statements or actions by the Fisheries Branch.

The inspectors are required to have an in-depth understanding of the Marine Living Resources Act and its interpretations. It is the norm that the inspectors are simply handed a copy of the MLRA when they take the job. However, language difficulties arising from English legal jargon and clauses that relate to other laws (such as the Criminal Procedures Act) mean that they must not only know the law, but how to argue its case.

This was noted by Okes, Petersen, McDaid and Basson (2012), in relation to the implementation of the EAF in South Africa:

Knowledge of the rationale behind regulations helps FCO's [Fishery Control Officers] understand the severity of crimes and therefore helps them make educated decisions when implementing fines. Empowering those who are at the coal face of fisheries management with the knowledge and understanding of fisheries management decisions, will further equip them to be part of those decisions, and can only strengthen the implementation of fisheries management in South Africa ... Compliance officers, monitors and fisheries observers were receiving limited training on some permit conditions from observer agencies or other non-government organisations such as BirdLife (e.g. seabird bycatch), but this did not include an understanding of the rationale behind management decisions or an EAF [Ecosystems Approach to Fisheries].⁹⁷ (Okes et al., 2012:287)

⁹⁷ It is interesting that Okes et al. noted that, between 2007 and 2010, they conducted training workshops with 600 individuals – 24% of whom they noted as being "FCO's" or inspectors. That is close to 150 – but none of the inspectors referenced it to me when questioned about extra training (2012:286).

Beyond knowing the law and related policies and permit conditions, inspectors are often expected to answer fishers' questions about why the law states x or y, why those conditions were chosen over others, why they have changed, and other questions of this nature. On occasions when the inspectors were unable to answer these questions, I observed resource users question their authority in enforcing laws they "don't understand" themselves. This is a questioning of the inspectors' legitimacy, which is destructive as "those who enforce must be seen as 'effective and legitimate' or resistance is inevitable" (Hauck, 2008:635). As noted previously, the protest fishing that came to characterise small-scale fishing communities in parts of the Western Cape was fuelled by a sense of the laws being unjust and therefore illegitimate. Here this sense of injustice transfers from the law and institution of the government to persons of the inspectors.

One such example was explained to me by Pastor, who was filling me in on what they had done over the weekend during their overtime, late in November 2011. The main issue that we discussed that day was the new recreational West Coast Rock Lobster permit conditions – the new wording of the permit conditions created some confusion. Before, it stated that so many lobsters may be caught; now it stated "may be caught or collected". A group of lobster fishers from Oceanview, operating out of Kommetjie, managed to interpret this new wording in their favour. On the Saturday before, the inspectors had observed that there were some people waiting on the rocks, on the approach to the slipway, who took bags of lobster off the boats before they landed. When confronted by the inspectors, they argued that they were "collecting" their four as stipulated in the permit conditions. When the inspectors pointed out that lobster may not be bartered, sold or traded, they pointed out that nothing had been exchanged – they had merely retrieved their lobster. Since they had permits, and the boats officially landed their legal catch of 20 per boat, and there was no way for the inspectors to prove that money or goods had or would exchange hands in payment for the lobster, they had to let them go with verbal warnings.

Pastor told me that, in the end, a number of inspectors were arguing with a number of fishers (or "collectors"). This kind of collective arguing is commonly encountered by the inspectors. They see it as a nuisance, but – depending on the attitudes of the fishers and inspectors on any given day – it is also a manner of reaching consensus. The fishers and inspectors largely know each other – both groups have their jurisdictions or areas where they work and these areas overlap by design or ease of access to resources. A group of

fishers from an area will be familiar with the group of inspectors from the local station. As such, these collective arguments over permit conditions establish precedents in the relationship between the inspectors and the fishers. Both groups know that the outcome of the argument will be broadcast beyond the moment of the event and, as such, will be referred to should the issue come up again. If the inspectors are too lenient on one condition one day, it is usually not long before they are asked by other fishers why they allowed so-and-so to get away with it, or other fishers simply try their luck via the same route. The fishers also know that, if they try something that may be testing the limits of the permit conditions and are caught, that the inspector will focus on cracking down on that same offence during future inspections.

Another situation that illustrates this dynamic occurred during planned December 2011 operations on the Peninsula. The relevant unit of two cars and six people was tasked with setting up a vehicle checkpoint at the entrance to the Soetwater resort, just south of Kommetjie. They had searched a few cars, and checked the permits of the few that were carrying marine fauna. All were in order. We had been sitting there for close to three hours already, mostly just waiting for cars to come by. Everyone was getting a little edgy and restless. Then the inspectors searched a sedan driven by a single man, with no fishing equipment. In his boot he had two large hake, but got impatient when asked for either a fishing permit or a fish transport permit. He had neither, but was indignant that the inspectors should be asking him – he claimed the fish was a gift from his sister, who had received it from the fish factory where she worked as her weekly ‘fry’.⁹⁸ As he could not provide proof of this, he then started to argue with the inspectors. The person who had ‘taken’ this inspection was a woman, and the man was clearly trying to bypass her and speak to one of the male inspectors instead. However, she would not let him ignore her, and before long she had the dictionary-thick copy of the Marine Living Resources Act and relevant permit conditions out in order to read the conditions to him word for word. He had by this stage taken out his phone and called his sister to come explain to the inspectors where these fish had come from. By the time his sister and brother-in-law had arrived (they had been in nearby Ocean View), the original man was much agitated and had started

⁹⁸ ‘Fry-fish’ is the term used to describe the fish that a boat or factory owner will give to employees either as a type of bonus or as part of their weekly pay, to cook for a family meal.

responding to the inspectors very belligerently (especially the female inspector who had led the search of his car).

While his general belligerence was noteworthy as an example of the attitude often displayed towards inspectors by fishers, many of his comments directly questioned their authority – based on their consulting of the MLRA and permit condition texts. His opinion was that if they did not know the law well enough to enforce it without having to look it up, they did not know it well enough to enforce it at all. His sister, who did turn out to work in a fish factory in Hout Bay, was familiar with one or two of the inspectors and repeatedly told her brother to calm down and even apologised for his conduct. In the end, the sister and her husband got her brother to accept that he was getting fined.

There are several things to note in these examples. Firstly, there is the expectation of the fishers/inspected that the inspector must know every clause and permit condition off by heart – as if being able to recite a law from memory is what gives them the authority to enforce it. Often inspectors have their own specialities, dependent on the terms of their employment and the station in which they gained most of their experience. As such, some inspectors know the West Coast Rock Lobster permit conditions backwards, but will need to look up the specifics when doing a pelagic boat inspection. Inspectors ask each other for advice and clarity, often in front of the fishers. I have seen this elicit comments from fishers, along the lines of “Why don’t you know this if you’re trying to fine me?”

Secondly, there is the resource the fishers have in their collective identity – due to the animosity the small-scale fishing community largely has towards the Fisheries Branch, it is relatively easy for a fisher to mobilise others in his interest. The inspectors themselves arguably have a collective identity, but in the spaces in which they operate – for example, slipways, harbours and beaches – they are the outsiders to the fishers, who are usually in greater numbers.

Thirdly, past interactions always play a part in new ones; as such it must always be borne in mind that the act of ensuring compliance is in fact a process that builds on itself – something that Wilson and Bryant stress (1997:6). Despite never receiving training in this regard, the inspectors are the *de facto* community liaisons of the department and do more than their fair share of conflict resolution during the course of a day.⁹⁹ These three noted

⁹⁹ For further discussion on this point, see Chapter Four.

features illustrate how contingent marine resource enforcement is on collectivity and relations, and how it falls to the inspectors to ensure that these interactions are civil. In order to assert the state's right to control, the inspectors must cooperate with the resource users in attempts to reach consensus, a process which ironically casts light on the state's lack of control.

The representation of fishers as argumentative is one that pervades the conversations I had with a number of inspectors, in all the field sites. This almost-daily interaction is compounded by the threats to personal safety they and the fishers experience regularly. The questioning of legitimacy stems directly from the manner in which the state has attempted to control the contested territories in the Western Cape's fisheries, through the sanctioning of state violence and the reliance on bureaucratic processes. These management choices have at times shown a lack of transparency and resulted in contradicting statements and actions.

It is the experience of the inspectors that fishers, in general, will argue till they are "blue in the face" if they think there is a loophole they can rationalise themselves out of. "*Hulle like baklei*" ("They like to fight"), as one inspector in St Helena Bay phrased it. What he was saying was that he saw fishers as confrontational and therefore argumentation is a central aspect of the inspectors' jobs. As the ethnographic examples from Gansbaai and Paternoster illustrate, this confrontation can also easily become physically threatening. What makes statements such as the one quoted above noteworthy, is that they illustrate that inspectors are asked to legitimate their presence and authority to those that they 'police' – which is a task over and above that of exercising their authority.

This brings us closer to understanding the boundary space in which the inspectors are expected to operate. Lefebvre describes spatialisation strategies as attempts at homogeneity, allowing the State to "introduce its presence, control and surveillance into the most isolated corners (which thus cease to be 'corners')" (1978:227). Where there is respect for the taken-for-granted legitimacy of the inspectors' state-sanctioned actions, the space has been territorialised effectively by the state and the margins made yet more distant from the centre by pushing back the boundary. However, when there is a questioning of that legitimacy, the state has lost control of that space and it can be thought of as a margin (or a Lefebvre "corner"). Legitimacy, or perceived legitimacy, demarcates the

boundaries of the state, determining what is considered inside or outside the state's regimes of control or care (Das & Poole, 2004:7).

Inside and out

How the inspectors are positioned within and outside collectives

There is both structural violence and the threat of physical violence present in the fieldsites. Structural violence refers to forms of deprivation in which it is impossible to identify an individual person as the perpetrator. Such deprivation includes that of work, food, shelter, security, documentation, representation or recognition, that occurs due to the treatment of certain spaces or categories of citizen as outside the legal parameters of care (Gupta 2012; see also Agamben, 1995). The combination of these two forms of violence, that are separately defined but are often complicit in creating and perpetuating suffering, have created a heavily contested physical and social terrain in the coastal settlements researched. This is the terrain that the inspectors, as members of the state's sanctioned law enforcement, must try to maintain control of. The levels of violence that are present mean that fisheries management increasingly relies on technologies of control to manage fisheries – particularly the small-scale – and to police poaching.

Despite (and sometimes due to) these technologies of control, the space that the inspectors occupy is marginal, irrespective of their 'authority' as state officials. This space is caught between different versions of the social contract: what the resource users expect from the state may not be what the state is willing or able to do, and vice versa. It is the inspectors' daily interactions with resource users over issues of legitimacy that is at the centre of the functions of the Compliance directorate. Das and Poole make this point when they state that margins are not inert and though they "can act as the designators of inside/outside", they at other times "run through the political body of the state" (2004:19). The inspectors' embeddedness in both the machinery of the state *and* in the web of local relations means that, although they are a central feature of the government's attempts to control the fishing industry, they transcend the imagined boundary between governance and citizenship; between an understanding of themselves as apart from *and* part of a broader social collective.

This is important, as it conventionally is only small-scale fishers and historically disadvantaged individuals who are spoken of as marginalised, with the Fisheries Branch as

the main culprit. Consequently, non-compliance is usually addressed as a reaction of the fishers to this institution. The resource-user collective most vocally reactive to this institution so far has been the small-scale fishers, processors and merchants. Subsequently, the Small-Scale Fisheries Policy places much emphasis on resolving problems in this sector by changing the nature of the institution through proposing the implementation of co-management structures on a community basis.

With the problem articulated in this way, current fisheries compliance management does not fully acknowledge that the institution is more than its management paradigm as articulated through TAC/TAE regulations, permit conditions, the MLRA or the SSFP. The inspectors operate on situation-specific levels of human interaction. Responses that take the form of the institution and not the texture of relations into account, may not address some of the basic governance problems within or related to the fisheries complex.

It is the inspectors who are often blamed for the poor implementation of programmes and regulations, by both their managers and by members of the public, as Chapter Five discusses in more detail. Gupta offers a reading of such accounts of blame that picks on the sentiment of marginalisation, and the position between the state and the resource user that the inspectors find themselves in:

If the problem is poor implementation, the blame falls inevitably on lower-level officials who, for reasons ranging from corruption to poor training and education, are deemed incapable of implementing the wonderful programmes thought up by metropolitan experts. (Gupta 2012:24)

The focus should not only be on how the new model will be implemented, but how it was conceived and designed. Focussing on the efficiency of the inspectors does not equate to justice for either the resource user, the inspector or the resource. The SSFP presents a much different version of the contract between resource user and state than the MLRA, as noted in Chapter Two, and so has shown a return to the problem of design and not only implementation.

The SSFP casts collective life as spatialised, with proximity to the resource and each other being an important determinant. This people-centred and community-oriented policy requires a participatory approach to the “collective governance of marine resources”. The

intention of the SSFP is to grant multi-species rights to small-scale fishing collectives that are resident in or representative of self-declared fishing communities, in a co-management system that is presented as the panacea for all problems in the small-scale sector. It states that co-management *will* improve social and environmental responsibility and compliance; empower individuals and collectives; strengthen democracy and ensure sustainable utilisation (Section 4.3.1). There is no acknowledgement of the fact that co-management was investigated as a potential model for resource management in the 1990s and early 2000s. Little political will to implement such measures manifested itself outside of a few number of select projects (mostly in the Eastern Cape and KwaZulu-Natal), despite the favourable rhetoric (Hauck & Kroese, 2006).

By neglecting to mention the problems with previous co-management projects, and the difficulty with which such projects are faced in both the short and long term, it seems to assume that participatory structures or processes do not currently exist between fisheries compliance and local communities because it has not been tried, or legislated. Everyday interactions between resource users and the inspectors clearly indicate that there currently are huge obstacles to collaboration that will persist in complicating relations. The SSFP states that the local community will be in control of the local resource in order to harvest them sustainably and to make sure that outsiders do the same. This rhetoric assumes that control automatically leads to stewardship, and that collectivity means cooperation.

What is assumed is that being granted greater access to the resources will mean that the local community will cease to be competitive internally, and that they will police the area stringently and fairly. It is naïve to assume that illegal fishing in the small-scale sector will stop because more legal access has been granted. Not all who apply for a permit or who regard themselves as fishers will be able to get a permit. As history has shown, this may drive a fisher to start or sustain a poaching career. Furthermore, poaching is lucrative, and the gangs that are involved are not likely to forego this revenue stream voluntarily. Competition between resource users or groups within the community may continue if local co-management structures are contested or unstable (Hara & Raakjær Nielsen, 2002). This is particularly likely in the competition between single-rights holders and community rights-holders that will operate in a shared (social and ecological) system such as the inshore rock lobster sector.

The framing of the inspectors as marginalised illustrates that they are in a potentially constructive position with regard to the communities that they live in and police, where basic levels of civility already exist. It is clear from my ethnography that much work will still need to be done before such relations can be attempted in Paternoster or in Blompark, given the levels of animosity and violence. However, the inspectors' channels of communication with both the community and the Fisheries Branch management means that they can be positioned to support co-management in a way that allows the state to be present but personal, in other places such as Kalk Bay, Arniston, Doringbaai or Stilbaai. This will not necessarily require the reworking of the position of compliance inspector, but a reworking of how they are positioned in relation to the communities they police. The difference is that the job of compliance inspector is vital, and needs to be maintained if not strengthened, but the manner in which they relate to the public needs to be supported in a formalised arrangement of collaboration. By positioning the inspectors as a conduit of communication and collaboration between the public and Fisheries Branch, the controlling mechanisms of the state can be decentralised in terms of stakeholder engagement, making them more relevant to the specific requirements of local ecologies.

For such management regimes to be attempted, the webs of relations between inspectors and resource users must be acknowledged by resource users, management officials and inspectors. The constructive aspects of these relationships must be allowed to influence the design of co-management processes and structures, in the process of deciding what form of co-management will work best in a particular site. Furthermore, it is not only the webs of relations between humans that are significant in the fisheries. The act of fishing is dependent on the physical environment, non-humans and broader ecological processes. A necessary next step is the acknowledgement that the job of compliance inspector is *also* dependent on the immediate physical environment, non-humans and broader ecological processes, albeit in different ways to those experienced by resource users. These aspects are vital to understanding how the job is performed in specific times and places, by specific people. If these issues, quotidian and structural, are neglected, then the terms of engagement between resource users and inspectors will not progress beyond those dependent on the subjectivity of violence or the objectivity of bureaucracy.



Figure 17 Bags of confiscated marine fauna, mainly abalone. DAFF stores, Cape Town, South Africa



Figure 18 Confiscated shark fins. Fisheries Branch Offices, Cape Town, South Africa.

Chapter 5: Body of Evidence

How is the body of an inspector thought of, and how are they expected to operate?

In the conclusion of the previous chapter, it was noted that the job of compliance inspector is influenced by its immediate physical surroundings, in ways that can be likened to resource users' skill sets. These skill sets take into account previous and current experiences of the physical environment, non-humans and broader ecological processes (Anderson *et al.*, 2013). This aspect of the inspectors' job – their physical experience of it and the knowledge that can be gained from these experiences – is vital to understanding how the job is performed by individuals in the everyday. In what follows, ethnographic anecdotes are used to illustrate the importance of these physical skills and expertise to the inspectors' daily tasks. The discussed skills and expertise are shown to be important in the moment of interaction between the inspector and resource user, and influential on long-term marine governance and jurisprudence.

The rule of law

How legislation and jurisprudence articulates the inspectors' bodies

In 2003, a dedicated Environmental Court was established in Hermanus. This was an attempt to clear the severe backlog of abalone poaching cases, which were a "low priority in the justice system" (Hauck & Kroese, 2006:78). It had a high success rate, clearing the backlog and keeping it on schedule. In the first 18 months, the court established a 75% conviction rate (*ibid.*). The court prosecuted all forms of marine poaching, as well as terrestrial environmental crimes (though these were much fewer).

The court was fairly abruptly disbanded in 2005. Phil Snijman, who was part of the court's setting up and afterwards was the appointed state prosecutor for most of its operation, feels that the reasons for the disbandment were circumstantial, but that a lack of political will also played a part. Since there no longer is a dedicated environmental court or team of state prosecutors in the Western Cape, environmental crimes such as poaching abalone or rock lobster are again being investigated and prosecuted in the same space as South Africa's host of more traumatic social crimes – rape, domestic abuse, violent assault

and murder. With the court systems' stretched resources, necessity often places the prosecution of such crimes above that of environmental harm. In no way do I wish to equate the harms of abalone poaching with that of rape or murder, but to say one is a priority is not to say the other is unimportant. In very material ways, in terms of health and economics, human life depends on a functioning ecology. In areas where the ecology is being degraded, however fast or slowly, the quality of human life dependent on that ecology will inevitably degrade with time. Like other specialisations within the field of practising law, environmental law is a specialised area and, as the court in Hermanus showed, is most effectively prosecuted in a dedicated space.

Given that there are a number of laws and clauses under which illegal fishing and related activities can be prosecuted, Snijman made the point¹⁰⁰ that the high rate of successful prosecution of environmental crimes was in part due to the continuous engagement between inspectors and prosecutors, from the moment of observation, through to arrest and prosecution. Only by working closely with one another did inspectors, investigators and prosecutors achieve such a high success rate. This was fostered by the dedicated environmental court that was positioned in the midst of the contested Overberg hotspots – “there was a focus, a purpose” as Snijman describes it, claiming that the high rate of success in that court (75% convictions) was largely due to constant communication between inspectors and prosecutors.

With the disbandment of the court in 2005 this process of engagement was interrupted as there was no dedicated team of prosecutors to communicate with any longer. The inspectors may know the contents of the MLRA, but that is very different from knowing the ins and outs of jurisprudence. Snijman had in the past made himself available to the inspectors at all times – they would phone him even before an arrest was made to check protocol, what kinds of charges were possible and how to best proceed on their part to ensure prosecution. There was a continuum of enforcement expertise that produced solid chains of evidence. This kind of relationship between inspectors and prosecutors is now largely absent in the Western Cape. The state's attempts to penalise illegal behaviour have been fragmented, with the enforcement functions having little input into investigation and prosecution.

¹⁰⁰ At his home, in 2013.

Inspectors in Cape Town, the West Coast and Gansbaai complained to me about having to prove their integrity before proving another's guilt. The inspectors make seizures and arrests but are then required to hand over the case to the SAPS or the SIU, depending on the details. They do not investigate further themselves. Additionally, the cases are often heard by judges or argued by lawyers who have little knowledge about marine resources. Many inspectors have testified in court that, for example, they saw the accused with abalone before he tossed the contraband back into the sea. I was told that the standard response by the court (judges and counsel for the defendant) to such testimony would be to question the inspector on how they knew it was abalone, and not something else. One of the inspectors in Gansbaai told me he "couldn't believe" the judge thought he didn't know the difference between abalone and alikreukel. The judge was not only questioning the inspector's judgement at that moment, but also his knowledge and personal and professional integrity.

Even if they have the bag that the abalone had been in (as it was in this case), the department does not always make funds available for the basic forensic testing needed to verify that the contents had been abalone. In this way the inspectors are silenced, and not given the space to speak. Access to the appropriate technology – that of forensic testing – is denied due to lack of capital, and the expertise of the inspector as such is rendered illegible. Whereas large confiscations are often forensically tested, there is not enough capacity to test all confiscated fauna or fishing gear, and so these smaller cases of offences are under-prosecuted.

The inspector's oral testimony does not count as expert witness. For this, they must be considered to be better informed and qualified to give opinion on issues relevant to the case than the presiding judge (which can include the identification of marine species). They present oral evidence as testifying witnesses but these accounts are often disputed by the defendant, and can be construed as circumstantial if there is not material evidence to back it up. If the inspector saw the poacher flee with a bag, but did not see him harvest the abalone, and the same bag is then found with abalone but the poacher has run away, the evidence is usually weighed in favour of a presumption of innocence. The inspectors must present more than an eyewitness account in court; they cannot simply say that they saw them do it. Physical or documentary evidence is required.

Sitting up on the observation post in Gansbaai, inspectors may see illegal activity clearly with their eyes (at times through binoculars). However, their word must be supported by physical evidence for it to be the basis of a successful prosecution in a court of law. Photographic evidence needs to show the offender's face and the contraband, preferably in the same shot. Where the two are shown in separate photographs, the producer of the evidence can be cross-examined to determine whether the series of events were as alleged by the prosecution. Without a witness to attest to the events in question, documentary evidence can be considered hearsay, as the photographs are incapable of being cross-examined.

It takes skill with a camera to obtain photographs of the required quality, especially at a distance and/or at an elevation. The inspectors have not been given photographic training, and in any event rarely have access to the equipment to do so. A camera would not replace the inspector's skills, but augment it and offer him or her the means to document observations in a way that would create an evidentiary on which prosecution could proceed. For inspectors, two factors are emphasised by the design of the job and by the law of evidence – presence and sight. Inspections are only inspections if the inspector is physically present and sees the relevant objects or actions. However, the importance of sight and presence in the task of arresting and/or prosecuting illegal behaviour is not given due consideration when translated into the physicality of eyes and feet.

The human body represents both sides of the artificial divide between nature and society, between the human and the ecological. It is at once explicitly biological and explicitly social (Butler, 1993; Haraway, 1991; see also Lock & Farquhar, 2007). As argued in this thesis, the everyday texture of relationships among citizens, the state and the environment is rendered tense by the reliance on control over modes of cooperation. The figure of the inspector is firmly placed in the realm of the social, with little consideration of biological processes or forms of alive-ness. This emphasis on the figure of the inspector as a partial social being importantly neglects to attend to how he or she may operate as a whole being in a particular physical environment.

Beyond the problem of physical discomfort, or even threats, the treatment of the inspector's bodies as objects somehow separate from their legal personhood, has repercussions on a wide range of processes – including the use of technology, the valuing of skill and the prosecution of crimes. This is intimately related to the body of the person, but

in a number of ways the body is not considered, even rejected, when the inspectors' performance is judged. By neglecting the biological, or physical, aspects of inspectors' bodies, the social aspect is also diminished. By disembodimenting the inspectors, the evidence is removed from its context of expertise and so is rendered questionable. This has real effects on the physical body of the inspector and on whether their version of events are regarded as legitimate. These effects may ultimately influence proceedings in the nation's courts, but begin, literally, on the ground.

Eyes and feet

The importance of physical integrity and skill to the job

One of the enduring images of my fieldwork with the inspectors will be of shoes. There are moments in the fight against poaching when success comes down to what shoes those involved in the chase are wearing – regardless of the sophisticated technology they may have access to otherwise. I was told numerous stories of how nimble the poachers are – most divers and lookouts are young men, and so have youth and fitness over the inspectors who are, on average, older and less fit. Poachers are often barefoot, or in soft old running shoes, so are more sure-footed as they flee over uneven ground. It is not for nothing that the officers on the ground are referred to as the 'foot soldiers', and as such the most basic material support one could give them would be appropriate footwear.

Sitting in a meeting at Head Office in December 2011, with a large number of inspectors from several different stations, I looked around the room and noticed that although almost everyone was dressed in official uniform (then still the standard olive-brown, military-looking cargo pants and jersey with epaulettes), a range of shoes were worn. Many had the standard issue heavy canvas boots, some had leather boots, some leather office shoes and there was one notable pair that of light-coloured men's leather dress-shoes that would not have out of place on a dance floor.

After first observing the range of shoes at the Head Office meeting, I asked some of the inspector why there were some leather and some canvas boots. The leather boots were older, and the canvas boots a more recent issue. I was told that not everyone was around when the leather or the canvas boots had been issued, and so had missed out, or they had broken and had yet to be replaced. I had at first expressed surprise that such sturdy looking boots could break, but several faults with the standard issue boot were pointed out to me.

Firstly, they were of canvas, and therefore not waterproof, which was necessary in the largely wet or damp environments in which the inspectors work daily. Secondly, the soles were of a rigid plastic, which the inspectors explained to me did not do well on uneven, slippery surfaces. A rubber sole with traction and some give would be much better, an observation repeated to me by one of the inspectors I would later work with in Gansbaai, in January 2012.

The inspectors work on wet slipways, harbours and boats. They need to be able to run if necessary, over seaweed and rocks, through sand, giving chase after poachers. They need to be able to climb on to and off boats, sometimes quickly. If their shoes are not waterproof, with slippery soles, it not only makes their job more difficult, but also more precarious in terms of personal safety. One inspector up the West Coast told me that he had waited months for his standard issue shoes to be delivered from Cape Town. When they failed to come, he used his own money to buy a pair of shoes that were neat and appropriate, and within his price range. This is indicative of a miscommunication or moment of maladministration in and of itself. However, when a senior official from Head Office came for a station visit, or inspection, the inspector was criticised in front of his peers for not having the right footwear, and for looking unprofessional. The inspector in question told me he did not argue for fear of making the situation more awkward. This speaks to a lack of self-awareness, at least, and a serious instance of maladministration on the part of the Department with regard to how they equip their staff and treat them.

Whether doing boat inspections, foot patrols or vehicle patrols, the inspectors spend a large amount of time exposed to the sun and elements. The first time I got badly sunburnt was in November 2011, while doing boat inspections at Miller's Point. We were sent out to inspect the landings at Miller's Point slipway, past Simonstown on the way to Cape Point. It is a slipway that is easily accessible, with a large gravel parking lot to accommodate the many fishers (both recreational and commercial) who use it. There is little else there, besides a booth for the levy-collector, and the clubhouse of the Cape Boat and Ski-boat Club on the adjacent land. Doing inspections at Miller's Point means either sitting in the car in the sun, or finding some shade on the gravel slope that separates the parking lot from the thick bush on the slope above – often for hours at a time. The shade offers little comfort, as one must perch on rocky ground. If one needs to use the toilet, then it means either the bushes, or asking at the clubhouse, but the clubhouse is not always open, and is 'reserved for

members only'. By counting the number of trailers in the parking lot, one can tell how many boats are out, as well as what kind of fishing they're doing according to the codes painted on the trailers. The inspectors will wait until every boat is in before leaving, but there can often be up to an hour between boats landing, while waiting in the heat. Getting sunburnt and thirsty are not the only discomforts of Miller's Point – the inspectors that regularly work Miller's Point all keep an eye out for the notorious local baboons that boldly seek food from humans, and have been known to be aggressive. Miller's Point is a regular place of work for Fisheries inspectors but, at the time of writing, was not at all equipped to provide even basic shelter from the sun (though an upgrade of the jetty was under way in 2013).

The sun is a significant feature in the work of inspectors. The first few times I did more than a few hours on vehicle patrol in a *bakkie* (pick-up)¹⁰¹, in Arniston (January 2012), I would come home and not understand how I had managed to burn. This was despite not being directly in the sun for most of the time and having used sunscreen lotion throughout. I finally realised that I was getting my sunburn from the glare from the patrol *bakkie's* dashboard, much like how sailors are burnt by the water's reflective glare. I began to notice how many of the inspectors have these "underneath" tans. Many inspectors bear lines around the eyes from squinting for too long, the sun clearly causing strain on them. Like shoes, appropriate head and eye-gear should be a standard health and safety issue, as it is with marine law enforcement agencies in countries such as the United States and Australia.

Inspectors who have been on the job for several years are as weather-beaten as some fishers. They must also bear with uncomfortable working conditions caused by wind, rain or heat, especially during night operations or while sitting on an observation post for hours on end. If the fishers are out, despite the weather, the inspectors are required to head out there, too.

Many times during research I was struck by how easily inspectors can see details on the ocean, at distance. Standing on the slipway in Arniston, Willem and Zodwa would point out boats coming in long before I saw them – on one quiet day I even heard them long before I saw them. In Stilbaai, I had the same experience with Coenie and one of the local Cape Nature officials. We drove out to a cliff area overlooking the Stilbaai Marine Protected Area (MPA), while the Cape Nature official had a look around to see if there was evidence of

¹⁰¹ Most vehicle patrols in Cape Town or on the Peninsula are done in sedans.

movement through the area. The view from the high cliff was breath-taking, and even from so far up one could see flashes of fish on the reef below (they were pointed out to me). With their ocean-attuned eyesight, the official and Coenie were quickly able to spot two boats far out on the water, and to identify them. One was moving back towards Stilbaai, and one was sitting on the edges of the MPA – almost in but just not, according to both Coenie and the official, who could “see” the MPA boundaries. The official lamented that they sat there, but conceded the boundary has to be somewhere, and someone will always fish right on top of it. Through the binoculars they were able to positively identify the boats, and so felt more at ease because they could identify the fishers and so predict their behaviour.

Sitting up on Gansbaai Mountain, in the always-windy observation post, the inspectors tried to show me what to look for. I immediately took my eyes to the beaches and water, searching the ever-moving and textured surfaces for evidence of divers or lookouts. After letting me do this for a while, the inspectors reminded me that the poachers know they are being looked for, so they make sure that they are camouflaged from above. They use tracks that provide them with the cover of the bushes that stretch between the beaches and main roads (largely thickets of exotic Port Jackson and Blackwattle). The inspectors have learnt to look for the subtle differences between the way foliage moves when poachers are walking through it and when the wind is simply blowing. These observations are done from more than two kilometres away, at an elevation, through binoculars that give you a blinkered view of the area under observation. Inspectors must learn to read the sea and weather conditions like a fisher, and like a poacher. Poachers look for flat clear conditions at night, change tactics according to the brightness of the moon and prefer to be out when the fishing is not great, as they will be less likely to be spotted by legal fishers (who do not necessarily intimidate them but whose presence can result in confrontation). For those who poach by moonlight when they actually are legal fishers, they will poach when they cannot fish, such as after office hours or when the fish are difficult to find. The inspectors spend a lot of time in the *veld* (bush), tracking the poachers as you would track game. They look for fresh tracks, bent twigs, and markers. They develop a good sense of knowing where abalone has been stashed, awaiting pickup. Sometimes this is easy enough, given that shucking abalone produces a noxious waste that quickly spoils in the sun.

Other skills are not dependent on the environment, but on reading people and situations: knowing when it is safe to go on patrol; when things are about to get ugly; who is guilty. For example, the inspectors on the whole claim to be able to spot a car that is smuggling, and some claim to be able to tell which car is carrying the goods in a decoy-laden convoy.

Often it is networks that are tracked, not individuals. In an area like the Cape of Good Hope Peninsula, the weather may tell an experienced inspector what type of fishing will be good on the day. The inspectors will then potentially be able to deduce who the fishers are whom they are most likely to encounter that day. Then, by keeping a lookout for things such as what car is parked where, which boats are out, what the weather is likely to be the next day, he or she knows which legal movements to expect, and then any activities that deviate from his or her expectations are immediately flagged as possibly suspicious. It is not the person of the poacher that is tracked, necessarily, but the mobilisation of the support network. This differs from station to station, and from inspector to inspector.

In places like Gansbaai, Arniston, Stilbaai, St Helena Bay and Lambert's Bay, many of the roads regularly travelled on are dirt roads of varying quality. Driving on such roads requires skill when going at reasonable speeds, but when chasing another car or speeding to investigate an urgent complaint, it becomes downright dangerous. Shortly before I started working in Gansbaai, in February 2012, one of the members of the Veterans unit was killed when their car had rolled during a high-speed chase. Driving at high speeds on dirt roads is a skill. Adding vehicles to the mix without considering the persons who need to drive them, assuming that all inspectors are interchangeable with regard to specialised driving, has cost lives.

The inspectors keep an eye on fishers and follow the fish, given that their jurisdiction also covers the places where it is stored, prepared and eaten. During fieldwork with the inspectors in Cape Town, I accompanied units of inspectors on inspections of small factories, fish-and-chip shops, seafood restaurants, large industrial warehouses and the export/import warehouses at Cape Town International Airport. These inspections of facilities involved physically inspecting the fridges and packaged goods to identify the types of seafood on the property, as well as the quantity. In storage facilities such as small factories or large industrial warehouses, there usually are walk-in fridges or freezers of various sizes. In the large warehouses, there are blast freezers where temperatures are well below zero. The

inspectors are required to enter the freezers and write down, on their inspection forms, the species in their boxes with quantity and state. This isn't always easy when the labels have been iced over, or the freezer is large enough to hold several shipping containers – or your fingers are too cold to hold the pen.

The health and safety codes of these facilities state that only persons with the correct protective clothing may enter these areas and freezers. However, not one of the inspectors I have ever worked with has ever been issued with even the minimum appropriate gear required by these facilities – freezer-suits to wear over their clothing and protective boots or shoe-covers (the cold seeps through the soles and cloth of normal shoes). I could personally never handle more than five minutes in the blast freezers. While the employees of the facility walk around in coats, beanies, wellington boots and gloves, the inspectors would usually just be in their normal uniforms with the required hairnet. This was often a shock to the staff who took us around. On one occasion, at the largest facility I visited during my fieldwork (about the size of two or three airplane hangars), we had to wait while coats and boots were found for us. The manager would not let us do the inspection without it, saying he would get into serious trouble for letting anyone in without the right gear.

Dress or appearance is important to DAFF management in other ways. Inspections at spots like Miller's Point or in Cape Town harbour are 'private' in the sense that there usually is not a significant audience present to watch the inspection. In smaller towns like Arniston, Stilbaai and Paternoster, inspections tend to occur in more populated public settings, as the fishers, members of the community, inspectors, monitors, merchants and tourists crowd to see the boats offload their bounty. In these sites, the inspectors all express an awareness of being in the public eye, and so tailor their conduct accordingly. Perhaps because of their awareness of the animosity or distrust many members of the public feel towards them, they are cautious to follow protocol and remain civil towards the fishers. This type of self-aware behaviour was brought up in Head Office more than once, with repeated calls for the inspectors to conduct themselves professionally. This was not only related to their treatment of fishers and members of the public, but their appearance too. During the December special operations planning meeting in November 2011, the then acting Assistant Director gave the following verbal instructions to the gathered inspectors, which I noted down as he spoke:

He also emphasises that the inspectors must at all times be polite, use the word “please”, properly identify themselves and ask permission before boarding a boat or searching property – though of course they have the law enforcement officer's right to proceed with such inspections even if permission is not given. Being civil is part of their public image. He stresses that the officers must remember that fishers support the economy, and that they must only be treated as non-compliers if proven by evidence at hand to be so. He wants everyone to be in proper uniform, or wear their reflector jackets when dealing with the public, with their identity cards clearly visible. “No smoking or swearing” in view of the public.

Appearance is important, as the inspectors need to be identified *as inspectors* in order to maintain a level of visibility that itself acts as a deterrent. They have a specialised enforcement job, and so they have a particular uniform, denoting their law enforcement status through the adoption of military details in the styling and colour (boots, cargo pants and jerseys with epaulettes in khaki tones). In August 2012, when I was doing follow-up research in Kalk Bay, I noted that new uniforms had been issued. The new uniforms were markedly different from the previous, consisting of khaki pants, with blue shirts and jerseys. Dressed in the new uniform, the inspectors I was used to seeing as law enforcement officials suddenly looked like office managers. I questioned the inspectors as to how practical the new uniform would be during boat inspections or anti-poaching activities. They told me that the department had not replaced the old uniforms, just brought in a new one. I asked if there were rules about when to wear which one, but apparently there were none – as far as they knew it was up to them to decide which was most appropriate for the day.

During a time in which the department was under scrutiny for corruption and under-capacity in the fight against illegal fishing, the issuing of new uniforms seemed like an unnecessary expenditure – especially considering the lack of vital equipment in many stations. The new uniforms may have been part of an attempt to alter the public face of the Compliance Directorate, softening the military look by which they had previously been recognised, making them more ‘customer friendly’. However, the lack of guidelines as to when to wear them and their deviance from the previous design meant that it was another managerial gesture that appeared badly planned. I have already discussed how there is

tension between conservation and law enforcement regarding the manner in which the job of inspector has been designed. The inspectors now had two uniforms, the styling of which further indicated that there is tension between the desk and the field.

One day while doing a vehicle checkpoint at Soetwater resort near Kommetjie,¹⁰² we searched some recreational divers who had caught some lobsters. Everything was in order, but while they were checking the lengths of the lobsters, I noticed that one of the lobsters was a female with some small nodules on the underside of her tail. I knew that it was illegal to take lobsters “in berry” (carrying eggs), and so pointed this out to the inspectors and fishers. The fishers said no, that’s not what berry looks like, the eggs are bigger and darker. The inspectors were unsure, and we tried to find an official DAFF image of “young eggs” to compare it to, but could not do so in the annual Marine Recreational Activity Information Brochure produced by DAFF. All the photos in the brochure were of eggs in the late stages of development, so we could not conclude the question in the affirmative or negative. The resort was out of Internet data service range, and so we could not compare it to pictures on the web using our phones.

Unless shown images or examples of a lobster in the various stages of reproduction, I would warrant that few people would know what a lobster in berry, especially in the early stages, looks like. Considering that many recreational fishers’ sole knowledge of the permit conditions of recreational fishing comes from the Marine Recreational Activity Information Brochure, it is inadequate in providing a guide to identify all variations of legal or illegal catch. One of the inspectors later said to me that he thought it may have been eggs – “What else?”. It was too late by then.

Given that recreational fishing permits are so easily obtained from any South African Post Office and staff are not required to impart any information to those buying the permits, there is a real danger of a large number of recreational fishers being under-informed and therefore possibly non-compliant. When buying a fishing permit, one has to sign an agreement to conform to the permit conditions. However, signing a piece of paper in a Post Office does not guarantee that users will be compliant on the harbour wall, and it is possible to sign without reading the conditions.

¹⁰² On the same day as the argument with the man with the two hake, discussed in Chapter Three

It was something that the Kalk Bay inspectors complained of during the busy November/December I spent with them in 2011. In their words, “people from Jo’burg [Johannesburg]” come down to the Cape for the summer holidays and “see everyone fishing”. The inspectors assert that such seasonal tourists will often fish without permits. The inspectors claim that the most common excuse of these fishers, when approached for violating the law, is ignorance of the law (which is not an accepted legal defence). While I am sceptical of such claims, and have seen clearly knowledgeable fishers claim ignorance in order to try get out of penalties, there have also been occasions where the inspectors and I have all felt that the person had simply been misinformed or not informed at all. Before something can be enforced effectively, it must be communicated successfully and that is not currently being done effectively or consistently by Compliance or the Post Office.

Some inspectors with whom I worked had been on an official fish identification course organised by DAFF and hosted by the Ichthyology Department at Rhodes University. For most, this was claimed to be the only formal skills training they had been offered by DAFF while an inspector. The inspectors described it as a week-long course in a laboratory, during which they learned, they said, “to count scales and measure fish”. Fish identification is something that can be done with a reference guide, and most inspectors know what the common fish species in their area of jurisdiction are and look like through seeing them almost every day. Most of the inspectors thought that this was a waste of time – not because the course itself was of no use to them, but because it alone, as the only formal training they had received over the few years, was not nearly enough to make them *feel* trained for all that the job entails. The inspectors’ view of what their job entails, describes an understanding that is far more complex than that being presented and mobilised by Compliance management.

Whole persons

Re-evaluating the skills and experience of inspectors

The inspectors may wear the shoes of a bureaucrat, the uniform of a soldier and represent the eyes of the state, but they are always also localised through their presence in the everyday and physical use of their bodies. Despite this, the design of the job of inspector lacks consideration of the inspectors’ bodies. By neglecting the body, the individual is lost: the person becomes its labels and assumed characteristics. Assessments of job

performance according to bureaucratic measures becomes detached from the actual performance of the job.

Experience, in assessments of this kind, is illustrated through a list of operations taken part in, or types of arrests made, or to the length of time that the inspector has been working. These assessments do not do justice to a full embodied meaning of the word 'experience'. In the same manner in which fish are commodified – rendered abstract by a partial representation via the logic of economics and mathematical modelling – so the inspector is quantified as a resource for the state through an indifference to them as whole persons¹⁰³. In this way they can be moved around and mobilised as interchangeable without considering what effects these movements have on their lives or on those they police (beyond the codified forms of inspection and surveillance).

Like fishing, the nuances of the job of inspector are learnt through doing and observing – most inspectors get the job and then learn how to do it. They are rarely 'taught' as one would be trained to be a traffic officer or similar. ("Unless you are in the intern programme during a well-organised year", I was told). Hauck quotes her respondents as saying "they had to learn things like 'laws and regulations and species identification on the job'" (2009:173). Most inspectors have received little or no formal training for the job, and the skills they do have are self-taught, or were taught to them by a fellow inspector.

I refer to this as *enskilment*, which is an area of expertise for environmental anthropologist Gísli Pálsson, who has specialised in ethnography relating to fisheries, particularly Icelandic fisheries. Pálsson (1994:901) explicitly differentiates the process of learning a skill from any kind of "mechanistic internalisation and application of a mental script", which is what the inspectors are asked to do when they are handed their copy of the MLRA and told to go out and enforce it. By explaining *enskilment* as the "immersion in the practical" and being "caught up in the incessant flow of everyday life", Pálsson encourages us to attend, in our scholarship, to whole persons and their wider community (1994:91-92). This is echoed by Michel Taussig, when he argues that the process of learning "lies as much in the objects and spaces of observation as in the body and mind of the observer" (2007:259).

¹⁰³ See Duggan et al., forthcoming, for a discussion on multiple ways of knowing in the South African fisheries, and how these different logics can be brought into constructive dialogue.

An experienced inspector from Gansbaai may be adept at sitting at the observation post overlooking his familiar Pearly Beach, but would most likely take some time to attune his eyes to landscape and movements of a different setting – such as St Helena Bay. As discussed throughout this thesis, the various stations and jurisdictions are characterised by differing fisheries, social structures, political alliances and geographies, which all affect the nature of law enforcement in that setting. Taussig, like Pálsson, reminds us not to detach the expertise of the inspectors from their environmental and social contexts, as these serve to help formulate what is considered necessary and skilful.

When asking about what kind of skills training they think would make them better at their job, I was given a range of answers by inspectors in the various field sites. The most common were: hand-to-hand combat; tracking; weapons training; advanced driving classes; community relations; conflict resolution; more in-depth training in reading and applying relevant laws; swimming; scuba diving; first aid; language courses (especially to learn isiXhosa). This range of suggestions shows that the inspectors realise that they are under-skilled in some areas, and that their job encompasses a range of issues and activities. Only rarely would an inspector give only one answer, like “weapons training”. It would usually be two suggestions given in conjunction, like “weapons training and tracking” or “community relations and language courses”.

These suggestions usually followed the interests of the inspectors, clearly marking those with more enforcement tendencies and those more interested in stakeholder relations and/or conservation. In Gansbaai, for example, tracking and advanced driving are important to the successful execution of their duties, while these two skills are rarely needed in the quieter Stilbaai (where training in environmental education and community relations may be more appropriate). It would be in the interest of the Fisheries Branch to capitalise on these interests, and incorporate them in designing responses to the specific working environments. The inspectors who have been on the job for a long time – some for 15 years or longer – are all highly experienced individuals. This experience has been their training, and as such they are a valuable resource in terms of knowledge and skill. However, this value is not always acknowledged in the manner they are treated and the opportunities they are given.

Evidence of such neglect illustrates how the person of the inspector is thought of and expected to operate, as well as how their everyday tasks are influenced by the aid or

lack of expertise and equipment, skills and technology; the relations between knowledge, experience and environment. The inspectors' bodies are central to effective law enforcement and jurisprudence, and therefore neglecting their physical experience and performance of the job puts the inspectors' physical comfort and integrity at risk, and undermines their capacity to gather evidence and execute their duties. The examples discussed indicate that a modernist distinction between mind and body informs the models of marine governance implemented by the South African state. There is a fatal flaw in the conceptualisation of the figure of the inspector, which complicates the production of the evidentiary for the state: the inspectors are both rendered powerful in terms of localised performance *and* rendered powerless when removed from the ecology.

This has clear effects on the manner in which marine resource law enforcement is performed and prosecuted. As argued in the previous chapters, it is more useful to think in terms of webs of relations when considering processes within the fisheries, than to try apprehend the complexity through a focus on objects, or formulations that disregard relational processes. This is important for understanding, and reimagining, the design and performance of the marine resource law enforcement in the Western Cape.

Tania Katzschner makes the case for such a focus on relationship in her analysis of a now defunct conservation project in the Greater Cape Town Metropolitan Area, in an area referred to as the Cape Flats (Katzschner, 2013). This is a flat, largely sandy area that stretches between the peninsula, the beaches of Muizenberg and Strandfontein, and the foothills of the Boland. It is where the Apartheid government moved coloured and black residents in attempts to keep the urban spaces of Cape Town white. It is generalised as being characterised by low-cost or informal housing, poor service delivery, unemployment and a high crime rate. The terrain includes dunes, scrubland and wetlands. The Cape Flats Nature Project sought to partner local communities with conservation initiatives in order to create conservation areas within the communities that could be managed collaboratively, and be used as means for social development: aiming to "reconnect people with history, place and knowledge" (Katzschner, 2013:202). In the process of working with the communities, the members of the project worked to reintegrate the social and the natural through a focus on relationships. In terms of engaging the community, of developing relationships and skills with and amongst their volunteers, the Cape Flats Nature Project team had huge successes. However, these qualitative successes could not be properly

measured according the criteria for success that the City of Cape Town employed in their results-based management model. According to Katzschner,

The project was vulnerable as it fell between 'mandates' and institutions – some that focussed on social issues and saw nature as an add-on; and some whose focus and core business was biodiversity, and saw the social as an add-on. (2013:211)

Like the emphasis on prediction and control that Katzschner discusses as the focus of the City of Cape Town's Biodiversity Management Branch, the current design of compliance duties is based on a model of governance as control, and a separation of the social from the natural. The terms of engagement in this model of marine governance are reactively geared more towards penalising harm than preventing it. With the current problems in marine resource management, outlined at length, it is clear that these formulations need to be reassessed. However, assessments of success will perpetuate the disconnects between policy and practicality if they employ the same problematic tools as those used by the paradigm being assessed. In addition to attending to the design and performance of the job of compliance inspector, it is also necessary to problematise, and rethink, how we *evaluate* the perceived successes or failures of marine governance.



Figure 19 Networks of ancient, but recently maintained, fish traps or *visvywers* in Skulpiesbaai Nature Reserve, Stilbaai, South Africa.



Figure 20 Illegal fishing of rock lobster, West Coast, South Africa.

Chapter 6: Judging Success

What are the possibilities for reconsidering the manner in which we judge the successes and failures of marine resource law enforcement?

The preceding discussions of the design and performance of the job of compliance inspector followed on the assertion I made in the Introduction: that Marine inspectors have a significant presence in the everyday life of resource users and coastal communities, which influences the nature of compliance and non-compliance in these settings. The ethnographic evidence presented shows that the inspectors *do* have a significant presence in the everyday life of resource users, forming a significant feature of the web of relations that constitutes the fisheries. However, the effects of the inspector on such everyday activities, and the effects of such everyday activities on the inspector, are currently not sufficiently taken account of by the paradigm of marine governance applied by the South African state. This means that the Fisheries Branch and inspectors are not always able to achieve what is needed, or what is required by policy. The next step, as noted in the Introduction, is to ask whether understanding these impacts could help us contribute to a rethinking of the role of inspector and the implementation of environmental governance.

As a term, “impact” connotes a strike, a heavy-handed effect caused by accident or intention. However, considering the complicated web of relations and terms of engagement, and the processes that sustain them, a focus on causes and events that are the result of other discrete causes or events is insufficient. It is insufficient in terms of understanding the “impacts” that are indirect – the aftershocks or ripple effects that are felt beyond the moment and space, communicated through relationships¹⁰⁴. The success of marine governance will remain ambiguous if focussed on penalising harm rather than preventing it. Prevention asks for the potential for harm to be identified before it occurs. This calls for a different engagement with the idea of success. The necessary task is to rethink how we evaluate what we consider to be impacts and how we judge their effects.

¹⁰⁴ Often termed “knock-on effects” in natural science studying ecosystems.

The web of relations

The complexity of relationships in the Western Cape Fisheries

During the last seven years that I have spent doing ethnographic work in the fisheries complex, I have heard a number of judgements about compliance inspectors from a range of fishers and non-fishers:

“The whole Fisheries Branch is corrupt to the core.”

“The inspectors are too lazy to do their jobs properly.”

“The Fisheries Branch only focusses on the small-scale fishers and ignores the non-compliance of the big commercial companies.”

“The inspectors do not do anything about poaching but harass recreational fishers.”

“Inspectors do not know anything about the fisheries.”

These complaints were repeated to me by small-scale fishers, large-scale fishers, recreational fishers, random South Africans and not a few scientists, some working for DAFF itself. Given the increasing controversies around the Fisheries Branch (especially those concerning the Fishing Rights Allocation Process 2013 and Minister Tina Joemat-Pettersson) during the time of my research and writing, family, friends, colleagues, fishers and strangers would offer me their opinions when they heard what my work was. More than once, these opinions were said to me in front of the inspectors themselves. The inspectors know how little they are thought of by many members and sections of the public. They are often judged as an undesirable category of person before even entering the field. This reputation, undeserved or not, can pre-empt what the inspectors’ relations with the resource users will be like when they enter the space.

The resource users themselves are pre-judged as a category themselves, by the legislation, law enforcement protocol, the public and inspectors. They are seen as prone to bending, if not breaking, the rules. This in particular applies to the small-scale fisher in terms of fisheries management, as discussed in the thesis. Small-scale fishers in turn articulate a frustration with the large-scale commercial companies. In Chapter Three it was noted that the process of transformation has disillusioned many small-scale fishers in terms of access rights, and that they blame the intervention of the large commercial companies for that (along with the state). Additionally, there is a sense amongst small-scale

commercial fishers that the level of policing they undergo is much higher than that of the large-scale commercials. Bycatch allowances that are 10 or 15 percent of the total catch, the ease of discarding at sea and the (then) poor state of our patrol fleet were cited to me by small-scale fishers (inshore commercial and Interim Relief) as evidence of the imbalance in regulating or policing of the sectors. In Stilbaai in particular, one fisher, upon hearing what I was doing in the town, made sure he told me twice about the dead fish he had found floating on the fishing grounds earlier that week. He was adamant that it was the discard of a boat out of Mossel Bay, either because they had exceeded their bycatch, or because they needed the space for a more lucrative catch. When I asked why he did not report it, he said there was “no point, what was anyone going to do about it?” While the small-scale sector is generalised as being resistant to the figure of the inspector, they would like to see the Compliance section more active in the offshore sector.

In the formulations of society and nature in the MLRA, the marine ecosystem is made partial by the objectification of life as a valuable commodity while “society” is also made partial by the lack of consideration to the network of relations that constitute it. Prominent features of the relationship between DAFF and the various fishing collectives include miscommunication, mistrust, harassment and non-inclusion in participatory processes.¹⁰⁵ Though these are prominent features across the board in the fisheries complex, each site, each town, has its own particular brand of non-compliance and its own set of politics that has the potential to harm the health of relations between the fishers, inspectors and the marine ecology.

In Kalk Bay, the inspectors deal with a wide range of fishers, and have varying relationships with these sectors and with individuals within these sectors. There is almost always a sense of intrusion in the encounters. Illegal fishers are seen as “coming in” to the area, and inspectors are seen as entering the spaces discussed in Chapter Two. While there is an underlying sense of animosity, both fishers and inspectors speak of the need to keep it civil – to encounter animosity on a daily basis is not something either group relishes. There is a fine line between a joke and an insult, and the inspectors are careful not to cross this line as complaints can be laid against them by the fishers and the public.

¹⁰⁵ For relevant examples of discussions on this issue see: Anderson et al., 2013; Crosoer et al., 2006; Hara and Raakjær, 2009; Hauck and Sowman, 2003; Hauck, 2009; Hersoug and Isaacs, 2008; Van Sittert et al., 2006; van Zyl, 2008.

In mid-November 2011, the Kalk Bay inspectors and I stopped in Fish Hoek to see if anything was happening there. Present were a group of *treknetters* (beach seine fishers), waiting on the beach for the call to come from their spotters on the mountain, telling them the fish were approaching. The permit condition states that the permit holder must notify the local station when they are fishing, but they had not done so that day because they did not think the fish would be coming. There was a brittle joviality between the inspectors and the fishers, who exchanged some light-hearted quips. One of the inspectors asked to see their permit, so that I could be shown it. The fisher gladly handed it over and there was clearly good rapport at that moment. However, as we walked away, Pastor told me that while they were friendly in this instance, they can be “*skelm*” (underhanded), and would not be as polite if the inspectors were to come back to confiscate some undersized kob. The relations between the fishers and the inspectors are not static. As in any site of contestation, they are actively negotiated daily. With regards to fishing, this is done in consideration of a range of related factors such as catch, weather, race and strange presences such as myself.

Two days later, I was on Strandfontein beach with Pastor while he checked another group of *treknetters* who had just landed their catch. One of the fishers spoke rudely and crudely to me because he considered me to be ‘open game’ as I was with the inspectors, “*mos een van hulle*” (clearly one of them). Knowing that if it carried on much longer, the inspectors would feel obliged to step in and try defend me against the verbal abuse, I felt I had to stand my own ground before this exchange set the tone for the inspection. It could escalate, or influence future interactions. I responded in the same register as the fisher was using, having learnt from similar responses to my presence in previous fieldwork settings. Within a few minutes, the previously-abusive fisher was offering me fish to take home to my mother. It reminded me of what Pastor told me before: the fishers do not like an iron rule but they do not respect a “softie”. Watching him and the *treknetters* that day, I saw what he meant – they clearly mistrusted each other, but there was a respect for the other's role that meant they could at least joke and get along superficially. They were resigned to the other's presence, but not indifferent.

In the large towns or settlements, such as those on the Peninsula that make up part of the Cape Town Metropolitan area, the inspectors' relationships with the fishing public are usually confined to the moments of interaction during inspections or other official tasks. In

smaller towns, such as those on the West and South Coasts, the inspectors often find themselves in relationships with the local community and fishing publics that transcend working hours.

In the smallest site I worked in, Arniston, this was an awkward situation for both inspectors, for slightly different reasons. I asked Willem if it was difficult to police in a town from which his wife was and in which they lived. He answered that no, “it’s fine”. At that stage “they” all knew him and that he was not going to back off from his job. When based in Gansbaai, he had been shot at several times when in “dodgy” situations. After those experiences, he considered the situation in Arniston as manageable. However, he did mention later that his son went to school in Bredasdorp, otherwise he would have been in a class with children whose parents his dad had caught or fined. He said that it was a difficult place to work in, in other respects. There was so much poverty and people were just trying to put food on the table. I asked if they ever have meetings with the community, and he laughed, saying, “This community doesn’t like meetings”. They would come if there was a plate of food afterwards, he claimed, but the last meeting he and Zodwa had called (concerning the Vessel Monitoring Systems¹⁰⁶) was only attended by two. Subsequently, five boats were found to have non-working VMSs and so were fined.

The inspectors in Arniston occupy a similar position to inspectors in other towns, having to find a balance between having a cordial relationship with the community of fishers and non-fishers, and enforcing laws against which many have a grievance. For Willem and Zodwa, however, this is exacerbated by the smallness of the town. For Willem, being part of and yet separate from the community means that, as in the case of fining his brother-in-law, he was expected to meet the requirements of both the job and his familial connections. He chose the requirements of the job, in this case, so that his brother-in-law wouldn’t take advantage in the future. For Zodwa, the fact that she is a black woman living in a blatantly racist and patriarchal community¹⁰⁷ made it impossible for her to have any sort of social life in the community. Most weekends she drove to Oudtshoorn to visit her boyfriend, and her

¹⁰⁶ Vessel Monitoring Systems are mandatory on all South African commercial fishing boats, in all sectors (most use satellite technology while some inshore fisheries rely on cellular networks). The Vessel Monitoring Systems Operations Room at Head Office is equipped with specialised software and several large screens on which staff monitor the position, time at position, speed and direction of the registered vessels. It is both a means to ensure safety, and to prevent or penalise fishing activity in or movement through restricted areas.

¹⁰⁷ See van Zyl, 2008.

son attended school in Napier in order to escape the possible torment that may have been visited on him by the children of those she policed.

Even without family ties to the fishing communities in which they live, the home lives many inspectors are affected by their jobs. The inspectors generally work eight-hour shifts, but in Gansbaai it regularly happens that a shift will run on into the next one. If an inspector works night shift (18:00-06:00) and only makes “the bust” at 05:00 or later, he has to stay on shift until all the processing is complete. This may take several hours. Often inspectors have only six hours or less between shifts. Things can get so busy that they stay on duty for up to 16 hours. This impacts on the inspectors’ ability to do their jobs, bringing them physical strain as well as the strain of dealing with family life. Many inspectors with wives and children living in Gansbaai told me how much their wives complained about the job. If they get a call – even if they had only been home for two hours – they would go out. One inspector with whom I spent a day told me he had not had a meal with his wife in a week, and had barely seen his baby girl awake in that time. Their families know the dangers they face, and fear for them when they hear gunshots in the distance or must wait for them when their return is overdue.

The smaller fishing stations are really quite small – there are few opportunities for young people to get a job and the trend of economic hardship in these small settlements means that there is little opportunity for entrepreneurship without access to considerable capital. As such, there are at least three young inspectors that I know of who were conducting long-distance relationships with partners based in other, larger towns. The fiancée of one inspector was a lawyer in Cape Town, and he was based in a town with barely any industry, much less need for a corporate lawyer. As such, he was facing the inevitability of finding a new career – he desperately wanted to be transferred to Foretrust, but there were no open positions that he believed he could get. However, he was apprehensive about being unskilled in other areas, and starting over. He had been working the job for several years, and so his experience and network of relationships would be lost to the already stretched West Coast contingent.

Race is often a prominent issue in the exchanges between inspectors and fishers. This is a feature of South African collective life, still burdened by the racial classifications of Apartheid that aimed at establishing a hierarchy of racial superiority. White people were treated as superior, ‘followed’ by coloured and Asian people whose rights were severely

limited but still enjoyed more freedoms than the black population. The black population, during Apartheid often referred to as Bantu or African, were relegated to the bottom rung of this status system. The destruction that these classifications wrought on South African life is still being felt, even perpetuated.

I have seen inspectors assume someone is a poacher because of the colour of their skin and the colloquialisms in their Afrikaans, and I have heard fishers mutter racial obscenities, directed at the inspectors, under their breath as they were being inspected. In Gansbaai, it was explained to me by the inspectors that the local poachers have their own racial politics, and that such conflict often turns the poaching syndicates against each other. There are three townships in Gansbaai – Blompark for the coloured community, Masakhane for the black community and a section of government housing on the outskirts of Gansbaai proper for the white community, each with their own syndicate or syndicates. They tend to stick to their groups, and tensions often arise because of it. Also, as many in the black community have moved down from the Eastern Cape, and are seen as encroaching on their turf, the white and coloured poachers will sometimes band together to “teach them a lesson”. When such politics arise, the inspectors will try to get the one group to give information on the other in the hope of gaining the upper hand in the fight for territory and routes. This can work in the inspectors’ favour in terms of gaining information but does little to curb poaching in the long-term. The inspectors cannot fully anticipate, much less control, the reactions of poachers to such news, and it is a risky tactic that can see violence escalate rapidly.

As with any group of people that often face danger together, there is a definite sense of camaraderie amongst inspectors in general, and amongst local units in particular. This is necessary when based in a site where the local community or communities exhibit a collective resistance to their work or an outright aggression towards their presence. They need to be able to trust one another with their lives. I felt some of this camaraderie myself at times, when asked to wear one of their identifying fluorescent vests or when included in their shared use of “we” (See Introduction and Chapter Four). Perhaps because it is the most violent place I visited, Gansbaai was the site where I was included almost immediately in this sense of “us” (versus the poaching “them”). In my introduction to the group, the Chief Inspector spoke of danger, but told me not to worry because “the guys” won’t let anyone hurt someone who was with them. However, within these units and the greater

department, issues of race and political allegiance can quickly and effectively segregate the whole into factions, harming capacity and efficiency. These internal divisions do not define the nature of working within Compliance, but they do inform the relationships and opportunities to which the inspectors may have access.

There is a pervasive sense amongst inspectors that there are networks of vertical and horizontal relations within the structures of the department and Compliance Directorate that favour some individuals over others. This was usually indicated by the phrase “they are friends”. This phrase sounds innocuous enough, but when spoken in conjunction with allegations of tampering with statistics or assessments, it can be read as an euphemism for corruption. Under the requirements of South Africa’s Black Economic Empowerment programme (BEE), the department is obliged to make employment decisions by taking race and gender into consideration. As such, the inspectors know not to take promotions or appointments personally. Nevertheless, it has been known to leave a feeling of resentment that can taint relationships permanently. While the merits of BEE are not being put to scrutiny here, various stories told to me by inspectors show how little faith they have in being tested on what they consider their true merit.

This kind of racial contestation and sense of being undervalued, in conjunction with the marginalisation spoken of in Chapter Three, creates the possibility of harm for the inspector in a number of ways. The job of inspector is a difficult one and presents few prospects for most inspectors in terms of career progression. By fostering racial tension and feelings of inadequacy amongst inspectors, as well as jealousy, the morale of the inspectors can get quite low. The necessity of an atmosphere of teamwork has been discussed at length already; it is clear that tensions amongst inspectors work against that atmosphere. Such tension exacerbates the stress of dealing with a non-compliant or aggressive collective of resource users.

The competition between inspectors and between stations is incentivised by the bonuses that are the reward for positive assessments. Once a year, the inspectors are required to collate their statistics and reports for the previous year. The chief of the station takes these reports to the assessment committee, and together they discuss individual inspectors’ performances and award them scores out of five. If one scores a five, one receives a bonus. Bonuses are very attractive, particularly to those supporting a family on an inspector’s fairly low salary. However, while there may be a theoretically infinite amount

of bonuses to go around, there are only so many cases logged a month. The majority of inspectors have all received assessment results that they did not understand, or expect, at some point or another. Since they are not present at their assessments, they do not know what is discussed and the results are never officially justified to them in person or in writing. What two of the inspectors alleged, was that there were some chiefs who went into the assessment and shifted things so that they and their favourites got most of the credit for the unit's successes (such as complaints answered, arrests made, fines given, number of operations completed), and therefore the bonuses.

The distance many stations are from Head Office in Cape Town means that many inspectors rarely go there, and have little direct communication with the staff there. There is a definite sense in the smaller, outlying stations that they are being left out the loop, and that other stations are somehow benefitting as a result. On the West Coast, one of the inspectors made some remarks about the Laaiplek station and specifically the Chief. The content of the remarks are off the record. What I would like to flag here is that an un-transparent process of rewards is creating a sense of not only competition, but distrust between stations that ideally would be collaborating closely.

Some inspectors claim that their yearly statistics get under-reported because of their roles in operations. One inspector claimed that though he was the best at "sitting observation", and his observations often resulted in the arrests by the reaction team, it was the reaction team (either DAFF or SAPS) that "got the stats"¹⁰⁸ (and so the bonuses). He said this left him unrewarded for all the hours he spent sitting up on the mountain. I asked him why he didn't ask for a different task during operations, and he said that no one was better at observations and that he wouldn't let the poachers win that way. I asked a younger member of the same unit about assessments later in that field-visit, and asked him about why the unit does not get credited as a whole during operations. He said that you could, you must just make a noise about it – "you need to massage the system". Given the lack of transparency that is the inspectors' experience of their assessments, the possible mismatch between targets and progress, as well as the allegations of manipulation, fuels the notion of being undervalued.

¹⁰⁸ As the inspectors refer to it.

The department has a policy of setting targets or goals for the Directorate, as well as individual stations, based on previous performance. This problem with this approach is how success is being measured. If a station managed to open twelve cases in February one year, they are expected to open twelve or more the next to be considered 'making progress'. However, this does not take into account that a lower number of cases do not have to mean that the inspectors have slacked off on their duties. It can also mean that presence of law enforcement (or depleted local resources) has brought down the level of non-compliance and as such there have been fewer cases.

The protocol of the Compliance section means that, as discussed, harm is reacted to but not prevented. The judgement of the effectiveness of law enforcement is skewed when reduced to such a problematically quantitative measurement that is *reactively* concerned with harm. Many inspectors are critical of this reactive protocol. As discussed early in this study, there are two dominant streams of interest expressed by inspectors: conservation and law enforcement (Chapters One and Four). For those who are more interested in conservation work, the criticism of the reactive protocol was expressed in terms of a desire to "keep the fish in the sea", as Pastor termed it. They are aware that confiscating marine fauna does not protect those creatures, that the harm has already been done. For those more interested in law enforcement, the criticism of the reactive protocol was expressed by stating that crime *prevention*, not penalties, would be their ideal outcome of their work. While the intention of some inspectors may be to prevent harm, the design of their job often denies them the opportunity to fulfil this.

The realisation of this frustration amongst the inspectors I worked with, drew my attention to the notion of harm, and how the measurement thereof is a significant factor in how the effectiveness of Compliance activities is judged (See Katzschner 2013, discussed in Chapter Four). Considering the web of relations outlined above, it is clear that the Fisheries Branch's assessments of harm, based on a partial view of the problem of non-compliance and of the personnel who perform compliance duties, cannot fully apprehend the experience of harm. By denying the existence and the value of relations in the ecology of inspectors, resource users and the marine species, relations of harm and well-being are both obscured. Categories of harm experienced exceed the categories of crime and penalties that are contained in the Marine Living Resources Act. Harm can be shown to transmit along the web of relations in ways that are profound but not easily quantifiable.

Measuring harm

Deciding what is success or failure

Harm is done to inspectors' sense of self by being confronted by an often *ad hominem* lack of respect, on a regular basis. Some may have earned this, but it is often applied to all. This is exacerbated by the controversies within the Department and within the Fisheries Branch itself, as well as the sense of confusion that it communicated through failed or opaque bureaucracy. They are held accountable for mistakes by management, and for actions of the resource users. They are largely held accountable for inefficiency, and insufficiently rewarded or valued for efficiency in their job. This harm not only threatens morale, even one's sense of self-worth, but ultimately harms the effectiveness of marine resource law enforcement as it justifies an antagonistic approach to the Fisheries Branch – the brunt of which is borne by the inspectors. The inefficiencies of the Fisheries Branch administrative processes also harm the inspectors economically, for example through delaying the refunding of costs incurred on the job (such as work-related cell-phone calls made on private phones). The lack of infrastructure and welfare support for small-scale fishers makes the spiral into poaching very easy and relatively lucrative, even if it does not justify it. This leads to an introduction to a dangerous world often filled with guns and drugs. For those who resist outright criminality, there is the ever present financial strain and the concomitant pressure this puts on family life. For many in small-scale fishing communities, the figure of the inspector represents what they regard as an obstacle to their well-being.

The constant threat of physical harm is self-explanatory in and of itself, but does further harm in a number of ways. It creates an unsafe working environment, and so creates stress and anxiety in the inspectors and their families and personal networks. The stresses of the job means that there is a culture of heavy drinking in the Compliance Branch, particularly amongst those who work in the hotspots. It is a coping mechanism, as well as something to do in a town where your job limits your social options. This opens up further possibilities for physical harm, and harm to family and social relationships.

Many impoverished residents of the Western Cape's small coastal towns live what anthropologist Fiona Ross has referred to as the "raw" life (Ross, 2009): living from hand to mouth, with many mouths to feed and stretches between earnings. Due to economic and legal constraints, such lives are often beyond the 'safety-net' of state services that are intended as buffers to protect against the vagaries of life – lives deprived by structural

violence (see Chapter Three) to such an extent that they can be called “bare” (Agamben, 1995). Drug and alcohol abuse are prevalent, and so is concomitant domestic violence. However, importantly, these are also communities striving for decency and dignity (Ross, 2009). Sometimes the methods may run counter to that which the law allows, but it is vital to note that many households depend on poaching for food and clothing, not drugs and alcohol. Many syndicate heads live the good life, and show a fair amount of much-needed generosity to the community in order to buy their support/silence. The extended kinship networks in the various townships add to this, and poaching brings money into the community which in many cases would *simply not be there*. Even though long-term poachers and their habits are usually known¹⁰⁹ to the inspectors of the jurisdiction in which they operate, many escape capture or subsequent prosecution, due to the problems of gathering evidence on their direct involvement.

The poachers enjoy a higher pay than the inspectors. Some Senior Inspectors were taking home about R7500 a month after taxes during the time I was doing fieldwork¹¹⁰. This is about half of what some poachers earn in a day. This makes the job hard to swallow sometimes – not only are these men and women literally putting their lives on the line for shellfish, but they are paid relatively paltry sums for doing so. There are some inspectors, in Gansbaai but also elsewhere, that have been working on a contract basis for over seven years. This means that for seven years these inspectors have not had any long-term job security, or full benefits (such as health insurance, housing subsidies, pension funds) .

Not only do the inspectors risk their lives daily, the poachers do too. They risk injury or death from their run-ins with the inspectors, and their gangster affiliations bring another world of violence to play in terms of turf wars and run-of-the-mill armed criminal

¹⁰⁹ It can clear from a person’s house and car that they are making lots of money, even though they do not appear to be employed. Daily surveillance will quickly reveal who does not go to work. These are usually the heads of the syndicates, or the middlemen, who have things set up so that they never even have to see the contraband they make their living off. There are stories of poverty-stricken elderly people in Gansbaai and surrounding towns being convinced to put freezers in their homes for the poachers use, for the relatively paltry sum of a R1000 or so, and then caught with several kilos of abalone worth tens of thousands. The poachers can thereafter not be taken into custody as they are no longer in possession of the contraband, and the inspectors have the responsibility of supplying proof for conviction. Witnesses are often intimidated to remain silent on the source of the contraband.

¹¹⁰ As confirmed to me by four inspectors from three different stations, in 2011. Most recent advertisements for the job of compliance inspector offer a higher salary, in accordance with an approximate 8% per annum rate of inflation since 2011 (early 2014). The rate of increase between inspectors’ salaries between 2011 and 2014 is in fact below 8%, meaning that, in effect, they are not earning “more” money (in relation to the cost of living).

interactions. There is grave risk concerned with the act of poaching itself. Gansbaai/Kleinmond is the Great White Shark hotspot in South Africa, and one of the top in the world. Some poachers even take the risk so far as to swim the five kilometres or so between Pearly Beach and Dyer Island at either dusk or dawn (prime shark feeding times), when the poachers are less visible on the beach. They follow a kelp forest most of the way, but have sections where they must swim through clear open water. Between shark attacks and drowning, many poachers have died in the Overberg.

It is not always considered that children are often present and witness to marine resource law enforcement in the small-scale fishing villages, particularly Arniston, Gansbaai, Paternoster, St Helena Bay, Lambert's Bay and Doringbaai. They watch their fathers, uncles or brothers as they prepare to go to sea, and know that their family's well-being relies on a successful trip. They play on the beach, and follow the women down to greet the boats as they return. Their observations and experiences of how the adults interact will help formulate their future relations with the resource and authorities¹¹¹.

The currently reactive operational protocol of DAFF prioritises the repossession of contraband over making an arrest, which means that the fauna are recovered but the crime is neither prevented nor penalised. In Stilbaai, 2012, I observed an example of this. There were four small pleasure craft on the river, small boats that just fit two people. We checked their permits, and all but one were complying. The one fisher, alone on his boat, claimed to have left his licenses in the car, and he was requested to lead us back to the jetty so that he could go get it for us. At the same time, the officials took his basket of sand prawns from him, to count as they looked to be too many. By the time that we had disembarked and made our way to his car, a second car with two men inside had pulled up and, ignoring the clearly official Cape Nature uniforms of the inspectors, asked the fisher where he could get a boat license and then carried on the conversation for a little longer – as we were recounting the sand prawns in view of the fisher. When we had finished counting, and the second car left, I wanted to throw the excess prawns (he was almost 100 prawns over the bait limit)

¹¹¹ In Paternoster, children from the village will also take part in the mobbing action. The inspector's allege that the parents coach the children to make comments to them designed to play on their emotions. I was told of two examples, one where a young girl asked the inspector to let her father fish because they needed the money. The other story illustrates a different tactic. One day on Paternoster beach, in a situation that was fairly tense and saw a crowd gather on the beach, a small boy tugged on the inspectors leg, asking for his attention. When the inspector turned to him, the little boy told him "jou p***" (you c***) before running away amidst the laughter of the crowd. According to him, this then became a game for the day.

back into the river. The official stopped me, and saying as an aside to me he'll that he would explain later, sealed the still-alive prawns in a plastic evidence bag with a zip-tie. They gave the fisher a fine of R350 for the sand prawns, and a verbal warning about not having his permit on the boat with him. He was quite jocular, very helpful and hardly fazed by the fine, saying he'll pay it immediately (it was clear from his vessel and vehicle that he was financially well-off). We left him, to continue up river.

When back on the water, the official who had bagged the prawns explained to me that often fishers who were about to get penalised for something, will summon a friend to come bear witness – that way, should they feel like contesting, it will be their own and the witness's word against the inspectors. He claimed to have seen it happened before, and the cases are often dismissed or the fine reduced to a minimum. This situation seemed to him to be potentially one of those. Therefore, he had to do everything by the book, which includes killing the sand prawns so that there is evidence to show in court if need be. This was an example of a moment in which the choice had to be made between conservation and law enforcement – the requirements of both could not be satisfied.

Coenie and Ben, the DAFF Compliance inspectors in Stilbaai, said that it was difficult to justify overtime as there was often so little activity in Stilbaai, and Head Office knew it. As such, the fishers could almost guarantee they wouldn't see either of them over the weekend. In January 2013, during my second visit to Stilbaai, I heard rumours of two activities that were allegedly taking place on weekends for this reason. The permit conditions state that commercial linefish boats may only catch one 110 centimetre or larger dusky kob per crew member. However, the kob catches were very low, and that is usually when illegal fishing spikes. I heard that the linefishers were going out on Sundays and loading up with as much big dusky kob as possible. They would offload directly to the fish processor in the harbour, who would process the fish so as to be unrecognisable as dusky kob. They would then write invoices for silver kob, and by Monday the inspectors would not know the difference by sight alone. The second rumour concerned undersized kob. While the pelagic boats in Mossel Bay have a bycatch allowance for undersized kob, it is restricted to all other fishers. The pelagic fleet may sell this bycatch to fish processors. What was alleged was that non-pelagic vessels or fishers were selling undersized kob to these establishments, who were filing the fish under the invoices for the bycatch kob and so rendering the illegal fish, for all intents and purposes, legal.

Even when effective in policing people, marine resource law enforcement is not always successful at protecting marine fauna. If an inspector is chasing a car filled with abalone and poachers, and the poachers toss the contraband, it is the Branch's protocol that the chase be stopped and the abalone retrieved before continuing in pursuit. The focus on reacting to non-compliance, as opposed to a more proactive approach that seeks to prevent non-compliance in the first place, means that for the most part inspectors are asked to deal with marine fauna that is already dead. In order to prevent such harm to the animals, it would be necessary to keep them in the sea in the first place.

Many people, from the public and the Fisheries Branch, have intimated to me in conversation that this is because confiscated marine fauna is sold off in auction after they are no longer needed for prosecution, with the funds going to the Marine Living Resources Fund.

The MLRF was established by Section 10 of the MLRA, and is intended to fund Fisheries Branch (in addition to the budget they receive from the state). The MLRF is a Schedule 3 Public Entity under the Public Finance Management Act of 1999, which means that it is independent entity from DAFF in terms of accounting, information technologies and administration, though the separate accounting authority must report to the designated accounting authority in DAFF itself. The MLRF received all levies, fees, fines and monies from the sale of confiscated contraband or gear. It is based on the user-pays principle, which argues that the broader tax-paying public should not have to fund the private exploitation of national assets for profit.

There have been rumours about irregularities in the accounting of the MLRF for years, and it is often cited, as noted above, as the reason why DAFF are allegedly more interested in confiscating abalone than obstructing or capturing poachers. The sale of confiscated abalone brings in millions to the MLRF annually; in 2012, it was R46 million¹¹². The irony in this instance is that funds for law enforcement come from the act of poaching. In this way, poaching could be said to be a significant contributor to the functioning of the Branch.

¹¹² Marine Living Resources Fund Annual Report 2012-2013, available on: <http://www.nda.agric.za/daaDev/sideMenu/fisheries/MLRA%20DOCS/MLRF%20Annual%20Report%20web.pdf>

While these remain rumours yet to be investigated, the MLRF Annual Report 2012-2013 notes that the budget for the year in question allocated to the directorates of Fisheries Research and Development, Aquaculture and Economic Development and Monitoring, Compliance and Surveillance, was underspent by 61% - a staggering R193 790 000. This is inconsistent with reports by inspectors and managers that the limited training and resources is due to a stretched budget. Another important inconsistency noted in the report is the finding by the auditor that the reported objectives, indicators and targets did not match the objectives, indicators or targets as contained in the approved annual performance plan (in fact, they consistently mismatched)¹¹³. This in and of itself indicates that there is a discrepancy between what is agreed upon, and what occurs, as well as a lack of administrative collaboration that can see underspending of close to R200 million in such vital directorates.

The idea that law enforcement needs poaching was first brought to my attention by the then-Chief Inspector of Hout Bay in 2011, when he called repeat offenders “regular customers” during our conversations. Marine resource law enforcement requires non-compliance in order to be a necessary function. If the levels of poaching in Gansbaai were to drop significantly, and stay low, there is the likely possibility that many of the inspectors – especially those on contract – may lose their jobs. Not only is harm to the environment the reason for law enforcement to be necessary in the first place, it is made necessary for the complex of compliance functions to continue. This is the contradiction in the job which allows the space for allegations of administrative corruption to take root, as claims that poachers are allowed to go free so that the abalone can be sold for legal profit are fuelled by the distrust towards the Fisheries Branch.

This type of reactive enforcement indirectly harms the marine fauna by not taking action to stop their death, but also keeps the markets relying on them going. It is claimed that to destroy such confiscated fauna would mean that “it goes to waste”, but in this formulation the health of the resource is neglected in two ways: they are more valuable dead and their value is measured in monetary value.

¹¹³ See page 16 of the report:
<http://www.nda.agric.za/daaDev/sideMenu/fisheries/MLRA%20DOCS/MLRF%20Annual%20Report%20web.pdf>

Harm is communicated through intricate relations between persons, beings, institutions and environments. In the living of messy life, there are no 'real' boundaries between what is considered social, political, ecological, economic or cultural. These relations cannot be sufficiently addressed by reactive assessments of harm alone, and must *also* be viewed as processes that collect and sustain life – the pursuit of well-being.

Well-being

Alternative values for assessment

The importance of human health and well-being is directly addressed by both the Bill of Rights (Section 24)¹¹⁴ and the Fisheries Branch mandate¹¹⁵, as is the need to protect the marine resources and ecology. While both of these statements deal with the issue of health, they nonetheless emphasise assumed distinctions between the ecological and the social. By addressing these two notions of harm separately, the distinction disallows addressing ongoing processes of relation that hold the assemblage together.

The notions of harm or health suggested by such a framework are not sufficient to address to instances of either success or failure in environmental governance, in either the short- or long-term. Assumptions about the characteristics of both are mobilised as fact and this renders the representation of the assemblage as static and interventions as clumsy. The imposition of harm and the maintenance of health are part of the same processes, and not separate series of causal relations or events, and marine governance must take this into account.

The actions of the Fisheries Branch are justified as preventing harm, and penalising by imposing it, respectively. While well-being or health may be their mandate, the indicator most often used to judge the success of compliance initiatives is statistics. As shown, the types of harmful effects felt in the fisheries complex cannot be fully accounted for in this manner. With law enforcement focussed on identifying and prosecuting the intent to harm, this view of health and harm as interlinked processes of composing a common world becomes obscured. A focus on harm as indicator is reactive. It is through anticipating and preventing harm that it can be most effectively mitigated, which would require an approach

¹¹⁴“Everyone has the right to an environment that is not harmful to their health or well-being.”

¹¹⁵“The aim of the branch will be to contribute to maintaining and restoring the productive capacity and biodiversity of the marine environment, ensuring the protection of human health, as well as promoting the conservation and sustainable use of marine living resources.”

that uses well-being as an objective additionally. The terms health and harm can constructively be used in conjunction to assess environmental governance. It is necessary, however, to offer readings of the terms that exceed the application of event-focused, human-oriented statistics, and that take the ecology of relations more fully into account.

Tebbit argues that intention is “a prerequisite of establishing blame or responsibility, whether legal or moral” (2000:137). The key here is intention: harm is not only an act, but a state of mind (ibid:129). As discussed, there are types of harm that are not covered by criminal law, and which come about neither from intention nor pure accident – they are caused by inadequacies in governance, are historical in nature and are fuelled by contestation. Furthermore, the types of harm at play here are not confined to the human body or even to the social – they are also economic, ecological and physical. Harm is rarely confined to one field, but has effects throughout the assemblage of relations that make up the fisheries complex. While harm is amplified by certain processes or complexes, the moments in which harm is mitigated point the ways to alternate articulations of the relationships between resources users, inspectors and the state, even between humanity and our environment.

It has been taken for granted that we know what it is, and that we can recognise it when it occurs. Yet even the most cursory reflection shows that harm is conceptually foggy, susceptible to fictional applications, and subject to ideologising. (Kleinig, 1978:27)

In explaining harm, philosopher of law and social ethics John Kleinig discusses the issue of individual harm versus harm to society. Like philosophers of law Tebbit and Marmor, he questions the general assumption that the state exists to prevent harm. It is this objectification of the state as legitimate regulator and caretaker that allows for ideas about harm to society to take root. It is through the functioning of the state that the idea of a national or larger society is formulated, given solidity by the laws that define the state’s role in relation to its citizens, and vice versa. As Kleinig explains,

Here the idea of harm to particular individuals seems to require explication in terms of harm to the state. Yet without tacit reliance on some conception of the

importance of the state...to the welfare of individuals, it is difficult to see what justification could be given for criminalising social harms. (1978:35)

It is through the state's position as the entity that protects from harm, that social harm is thus legally defined. This does not cover all the potentials for human motivation and action.

Kleinig expands the narrow, legalistic definition of crime as an interference of an individual's legally protected interests. He argues for replacing the concept of interests – which is largely tied to ideas of ownership and profit – with the concept of well-being. Furthermore, he argues for also expanding the definition to speak of beings, non-humans, in addition to persons. However, the idea of well-being is itself a term that needs careful definition. Glazewski noted that, in South African law, that “the environmental right provides some challenges to judiciary and will have to provide some flesh to the notion of well-being” (2000:122).

The idea of a relational and heterogeneous conception of nature, in which humanity is seen as part of the greater and local ecology, is central to the idea of *buen vivir*, a movement that seeks to displace the development-orientation of neoliberal state policies with those that recognise the rights of Nature, originating in South American attempts to decolonialise¹¹⁶. It loosely translates as living well and/or the good life, and is an innovation to the ideas of nature codified in traditional environmental law. It expands the idea of well-being to include that of human and nature – which is not only the fauna and flora, but the habitats also. It seeks to promote the “promote the reunion of nature and humans” (Acosta, 2009:197). By reuniting nature and humans into a community of life on earth, humans as the only source of value are displaced not by their removal from consideration by bringing nature into the centre also. Gudynas explains that “it includes the classical notions of quality of life, but with the specific idea that well-being is only possible within a community” (2011: 441).

The idea of humans and non-humans sharing an ecology as a community of related beings is an important intervention. It is not confined to the humanities either; the idea of a “community of life” is an important feature of fisheries management measures and studies that are trying to understand harm in terms of well-being.

¹¹⁶ Accepted into the Ecuadorian constitution in 2008, and the Bolivian in 2009.

Rosemary Ommer and the Coasts Under Stress team of researchers, based in Canada, use the idea of interlinked social and ecological health as a primary indicator in their study of the long-term “interactive restructuring between people and the natural environment” (2007: 4). They reference the World Health Organisation’s definition of health, which in turns references the idea of well-being. Ommer and Team do not go on to discuss well-being, but do offer an important conceptualisation of human and ecological health:

The health of communities and the environment is not merely the absence of morbidity/mortality and social dysfunction. It extends to those interactions of communities with their environment in ways that sustain quality of life and promote resilience ... processes operating within social, environmental and cultural contexts that have interdependent relationships and feedback effects, and also causal complexity. (Ommer et al., 2007:18)

Well-being is a central idea in the philosophy behind the design of the Ecosystems Approach to Fisheries (EAF), which South Africa has committed to implement but as yet has not fully done so, as noted in the Introduction. Central is the idea of relationships, as noted by Ommer and Team. As a framework for fisheries management, EAF is a purposeful and dramatic departure from the previously dominant regime of single stock assessment. While the messiness of the fisheries context is conceptually recognised with the EAF framework, for purposes of implementation, an emphasis on three distinct dimensions is reverted to: ecological well-being, human well-being and ability to achieve (FAO, 2003; Paterson et al., 2010; Okes et al., 2012; Shannon, Jarre & Petersen, 2010). Practitioners/researchers of the EAF approach in South Africa have done much work in researching the indicators of each and the links between them, through dialogue and interest groups with stakeholders in the process of developing fisheries policy that addresses social and ecological problems as interlinked, and dependent on a context of good governance (Paterson and Peterson, 2010; Shannon et al., 2010; Sowman, 2011).

However, there are still problems with the EAF system of design, engagement and evaluation, mainly concerned with the manner in which the social and ecological are still held as separate realms, or “dimensions”. The EAF paradigm may strive for holism, but the

practicality of planning and assessment mean that issues are still addressed separately in terms of the identification of objectives and the tracking of indicators. Starfield and Jarre (2012) comment on the difficulty in keeping a practical focus in view of the messiness of social-ecological relations, which Duggan (2012) takes as a basis to highlight the need for flexibility in ongoing attempts to implement EAF. In order for EAF to be successfully implemented, conversations on all aspects of this trans-disciplinary problem need to be realised on every level of design, implementation and assessment (Starfield and Jarre, 2012; Duggan, 2012).

Despite the importance of the paradigm shift and the political commitment to implement an EAF approach, the Compliance section is not actively involved in any policy or protocol formulation in terms of EAF – they are central to good governance, but are not part of the formulation of departmental policy, generally (Hauck, 2008; Okes et al., 2012). They are in charge of designing compliance activities, but within the parameters of their mandate. Therefore, while the design of fisheries management may take an EAF approach, this approach is not communicated to the inspectors as a paradigm for action. The parameters of the mandate remains unchanged in that regard, and so their duties are designed outside the paradigm of EAF.

Their insights could potentially advantage policy formulation with the addition of their insights on non-compliance and the practicalities of enforcement to those of the other professionals involved in the Fisheries Branch's Resource Management Working Groups. While they are invited to attend the Working Group meetings, there are rarely representatives of the Compliance section present. Several inspectors told me that they would like to attend, but were never invited – it seems that the message is getting lost, in both directions.

Almost none of the inspectors had ever heard of EAF, when asked, saying that it sounded like something for the research branch. This may be true to some degree, given the amount of research and stakeholder engagement that is required to formulate the implementation of an EAF approach. Since one of the main concerns of EAF is that of good governance, general exclusion is indicative of the sense in which in which the inspectors are objectified as mere functionaries - cogs in the machine – as if the inspectors will simply fall into expected roles that are imagined for them. While the EAF paradigm is an important feature of fisheries management in South Africa, it does not feature in the work lives of the

inspectors. However, as noted, many have come to an understanding similar to its expanded conception of harm through their immersion in the field.

An expanded concept of harm is discussed in the work of Piers Beirne, whose work focussed on the space given to animal abuse in criminology and philosophy of law. As Beirne states, “To define crime as ‘social harm’ or ‘analogous social injury’...seems to deny space *ab initio* for harms and injuries committed against animals” (1995:24). Ultimately, the harm done to the individual human is seen as harm beyond the individual *and* the human because of the relational nature of collective life and engagement with the environment. Kleinig’s explanation of society fits here, though his statements needs some amendment for my uses:

Society is not constituted by a constellation of atomistic individuals ... Harming a person also tends to warp the fabric which is integral to our personhood. Thus inchoate crimes, even though they may not appear to impair the welfare of an assignable individual, are not without their social consequences. (1978:36)

Forms of harms are not without their consequences, human or ecological. Such consequential harm has the ability to linger due to its effects on relationships. This is because of the effect that harm has on the atmosphere of trust that is essential to compliance, and the prevention of harm. Kleinig adds an important relational understanding of harm to the legal understanding of harm as discussed by Tebbit, which focusses on intention:

Trust is...a relation, and involves a reliance, in the absence of direct evidence, that others will act in ways that reflect our welfare and interests...I shall argue that harm to society is to be understood as the erosion of these relationships of trust. (Kleinig, 1978:35)

In the context of my ethnography, trust between inspectors and resource users is as important as Kleinig claims, but cannot be taken for granted as existing in every site or interaction. Where there is a lack of trust within the fisheries complex, it is not always a case of erosion – it may never have been present in the first place. Working to establish

themselves as part of the local community, against significant odds, is where many inspectors do an essential job. Central to this task are attempts to understand what happens in fishers' homes, away from the public spaces of fishing.

Knowing that hungry dogs bite

The importance of relationships to nurturing networks of care

Working cooperatively with a community requires understanding their actions in balance with their intentions and motivations. Where poverty is commonplace, inspectors are often asked to be the judges of what ends justify what means. This can mean penalising someone's attempts to make their life more food secure.

While working on the West Coast, a local Chief and I drove out to a nearby station, to go meet with the inspector based there. It is a tiny, neat community that is perched above some dramatic scenery of rough-edged rocks and dark Atlantic waves. The inspector met us in his office overlooking the harbour complex, and before long he and the Chief Inspector were into a conversation they admitted to having over and over again. It had started when I asked the inspector what the most prominent form of non-compliance in the community was. He said that there was some lobster poaching, but not like in Paternoster or Lambert's Bay. He then looked pointedly at the Chief, before looking back to me and saying that sometimes he saw someone taking mussels for the pot and let them go, as he knows them, knows their situation – *die honde byt by die huis* ("the dogs at home are biting"; referring to there being no money for food for the people in the home, so the dogs are hungry and desperate). The Chief interjected, saying that they weren't social workers, and that even if things were bad, they weren't doing anyone any favours by allowing non-compliance. This argument went on for some time, and both clearly enjoyed re-hashing and refining their arguments with an audience.

The Chief Inspector clearly understood the punishing level of food insecurity that many were facing, but did not see himself as having a choice in the matter. He did say that he wouldn't go out of his way to catch or penalise such subsistence non-compliance, but that if he encountered it, there was no grey area. By way of explanation, he said that if he heard that an *ouma* (grandmother) was taking too many mussels, for the pot, he would not go find her or try entrap her. However, if he came across such behaviour in the course of patrols, in action, he would confiscate the goods. I pushed him on whether, in the latter

case, he would open a docket. He thought before he answered that yes, he would, but would give the smallest possible fine and would not oppose leniency by the court (or only push for conviction if the resource user appeared unrepentant). His manner of relating to the resource user depended on the respect they gave the law, and the respect they gave him as the figure of the law. His understanding was that the only way to be fair was for himself to obey the law as much as the law expects the resource user to. The inspector, on the other hand, based his relationship with the local community on empathy. He relied on close relations with members to supply him with non-fishing information about local households in order to be able to judge the necessary penalties for encountered non-compliance.

The effectiveness of the compliance and enforcement functions of the Fisheries Branch is reliant on a legitimate state authority that is seen to be everywhere and nowhere at once. In order for the social contract to be trusted and considered fair, and therefore legitimate, the law needs to be as widely applicable and transparent as possible. However, as shown, the current management of the Fisheries Branch is currently unable to equally apply the law to all fishers. Not only is it an issue of a *de facto* open access resource used by thousands of fishers of varying methods, but issues such as those currently¹¹⁷ with the FPV unit means that there are areas in which they are severely under-capacitated. If, in addition, one considers the often confused manner in which policy is formulated and communicated to both resource users and inspectors (for example, FRAP 2013), then the assumption of the Fisheries Branch's capacity to control the fisheries in an equal and stable manner no longer holds.

There are inspectors who amplify harm rather than mitigate it, and who abuse the system for their own profit. However, as I was not shown these actions I cannot include them in the discussion of my observations. Nor would I wish to dwell on them here – the manifold problems within compliance have been discussed at length in earlier chapters, and I wish to now create focus here on the strengths of the inspectors who live consciously in relation with their target communities and local resources.

Poverty is something spoken about in all my sites, though the levels of poverty in some of the sites meant that it was more prominent in some than in others. The West

¹¹⁷ Early 2014.

Coast and St Helena Bay in particular have visibly high levels of poverty and under-employment. In St Helena Bay, I had several conversations around the drive to poach, and food security, during fieldwork there in November 2012. The inspectors in St Helena Bay are very much aware of the levels of poverty and unemployment in the town, and on more than one occasion told me that there will never be full compliance while so many suffer from food insecurity. As Oliver Schultz (2009) discussed in his dissertation, the networks of capital in this community, most of whom do the seasonal factory work in the rock lobster and pelagic factories, means that even those with a job are often underpaid and underemployed. The local inspectors consider their job a careful balance between ensuring compliance and targeting a group of hungry people.

There are several small fishing 'communities' within St Helena Bay itself, as well as a former township¹¹⁸ just outside the town called Laingville where many of the processing staff live. One of the smaller communities within St Helena Bay is called Steenberg's Cove, where the houses are literally right on the beach. Much of the localised poaching of rock lobster is carried out by residents of this little settlement. While the inspectors readily admit to there being poaching, they are quick to point out the differences between here and Paternoster. Each of the inspectors spoken to were of the opinion that the vast majority of poaching committed in St Helena Bay was to alleviate immediate hunger or poverty – selling one or two crayfish to either buy food or pay bills. They all agreed that there are times when they look away from clearly hungry people who are collecting "a few more" mussels than their permits allow, knowing that they are meant for the pot. Each mussel counts because of what it means to the well-being of a family and the resource, simultaneously.

They noted that during the school holidays many of the children have nothing to do, and will take to poaching – often for the pot. The inspectors feel that this 'delinquency' is something they must police. If they let the children under the age of 16 get away with it, the potential is that they will consider it a viable option to continue with in the future, and then they will be in "real trouble" once they are 16 and of age to go to prison. If the young person has been caught more than once, has shown any aggression or disrespect to the

¹¹⁸ The term township refers to settlements established for non-white residents on the outskirts of established towns. This was done in accordance with Apartheid policy, which saw non-white residents barred from living within the limits of "white towns".

inspectors, or is clearly poaching for reasons other than food security (such as to buy drugs), then the inspectors arrest them. They call the parents and social services into the police station, and together try to make sure that the child stays out of trouble and jail. The inspectors claim to always try to get the children into classes offered by the National Institute of Crime Prevention and Reintegration of Offenders (NICRO), which educate young offenders about the law and the consequences for overstepping it.

Such strategies represent a perspective on the situation that operates with an understanding of the long-term connections between lack of infrastructure, food insecurity, education and employment as a factor in fisheries non-compliance. It predicts short- and long-term effects on both people and marine life. While the actions of Fisheries Branch management appears to disregard such connections, it was a sensitivity I encountered in many inspectors (but not all).

As noted, the inspectors are less sympathetic to the residents of Paternosters' claims of poverty, than to those they hear from residents in St Helena Bay. The reasons given for this was the sale of the original fishing houses to (largely) white South Africans by the fishing community in Paternoster. The inspectors say that the fishers of Paternoster made a lot of money doing this, but then did nothing constructive with it the funds (in the inspectors' opinions). The renovations done on their old houses and the establishment of Paternoster as a tourist attraction – as a historic, quaint fishing village – led to a sharp increase in the town's property taxes. This has been hard for the community to accept, alleges one of the inspectors. These comments by the inspectors pointed to something deeper than a criticism of expenditure choices by the community of Paternoster. The inspectors seemed to feel that the sale of the original houses should have meant a different future for Paternoster, one in which new livelihoods were forged. That the inspectors were critical of the fact that the residents of Paternoster are still fishers, despite their past windfall, indicates that they have sympathy for those who *have* to fish, not necessarily for those who choose to.

The inspectors I worked with throughout the Western Cape knew that some of the poachers are making more than themselves a month. One day, while I was driving around with Michael, he mentioned that he was taking me to say hello to Naomi, the local fishing forum's chairperson. He took this opportunity to mention that for such a small community their forum had a lot of cash – they had rented two large air conditioned coaches to drive

them down to a protest at Fisheries Head Office on the 20th November (two days before the day I was working with Michael). “How much did that cost?” he asked, and “Why not just ordinary Golden Arrow [bus]?” He also pointed out the number of satellite dishes on the houses in the new fishing village, as a note on how much money there actually was in the town. Here again is the same undertone I heard in Gansbaai, resentment by the inspectors of the good life that poachers were living in comparison to their own.

Many long-term inspectors on the South and West Coasts are fishers themselves, and as such speak to resource users as both an enforcer and a fellow fisher. Showing a passion for this activity, or sport, allows a rapport between the inspector and resource user that is not *only* predicated on control and penalties. By asking questions of an innocuous nature, that the fishers may regard as ‘harmless’ but which is still connected to the act of fishing, it is possible for the interaction to not be simply about policing/extracting information, but also about engaging about an activity that the fisher, certainly, and possibly also the inspector is passionate about. It expands their relationship, whether short or long-term, beyond the simple equation of enforcer versus user. The inspectors, with such tactics, reinsert themselves into the community through a partial articulation of themselves as fellow citizens. It requires the conscious act of listening. Nature is, in such instances of mitigation, not simply a resource but an environment. It is acknowledged as the context and content of relations. This tactic considers future relations between the inspector and the resource user, and the health of the local resource.

The over-arching, top-down nature of current resource law enforcement has consequences that negatively affect the health of the broader and localised ecology of relations. Certain inspectors are sensitive to this harm and can be motivated to mitigate it by empathising with resource users and ecologies under strain. Such empathy is incompatible with a focus on control as the term of engagement. Empathy is site-specific, based on relationships. An approach to compliance that engages with empathy can only be attempted, effectively, by inspectors and resource users who understand the always-complex local environment of sea and people. Through this approach, certain inspectors de-emphasise the law enforcement nature of their job, making part of their work trying to increase the well-being for the ecology, the fishers and themselves. As this type of behaviour is not formalised within departmental protocol or policy, the approach that the inspector chooses is invariably based on a personal value system.

However, only by acknowledging this mode of interaction (and the sophistication with which many inspectors and resource users already engage in it), can the groundwork be laid for the implementation of the Small-Scale Fisheries Policy and its recommendations for co-management. Such necessary relationships do not exist in every site, in every interaction; either between the inspectors and fishers, or internally in either group. Such relationships will not simply begin to exist because the new policy legislates that they now will. Being told to be cooperative is a form of control, albeit a more passive one than is currently being attempted.

The ideal alternative, as introduced in Chapter One, would be voluntary compliance, or collaboration. However, even when there are constructive relationships between inspectors and local communities, there are always issues that transcend that space – such as poaching or maladministration. These issues require networking between inspectors, other units and outside institutions such as SAPS. This does not always happen, for reasons such as interpersonal politics or some sort of resource or capacity constraint. These problems will need closer facilitation and mediation, for national, regional and localised management structures to be effective.

Compliance management needs to acknowledge an important feature of non-compliance: it is not being effectively managed due to approaches that neglect to fully anticipate relations and reactions. Failure to anticipate these reactions stems from the modernist principles that drive the conceptualisation of problems and formulation of solutions in the sphere of marine governance: the separation of the world into discrete objects that are manageable, apprehended as progressions of cause and effect. Disregarding processes and relations renders these objects inauthentic. The wicked problem of fisheries management will not be ameliorated without trust on the scale of interpersonal interaction. This is something which must be built, as difficult as it may be, before structures that take responsibility for the health of our environments *can be considered able of that task*. This slow but careful approach by Compliance should not be limited to the resource use covered by the SSFP, nor to situations of formalised co-management arrangements: it is necessary for the implementation of systems-focussed marine governance.



Figure 21 Small pelagics boats, St Helena Bay, South Africa.



Figure 22 Lambert's Bay harbour, from Bird Island, Lambert's Bay, South Africa.

Conclusion

The ethnography presented has, as anticipated, shown that marine compliance inspectors have a significant presence in the everyday life of resource users and coastal communities. This presence takes different forms depending on the site, fishing activity, greater social context and individuals involved. Despite observed differences in the nature of this presence and the reaction or reception this presence receives from the local resource-using collective, it has been shown that the characteristics of the job and the inspectors do significantly influence compliance in these settings. As the discussion has shown, understanding these impacts can most definitely help to re-imagine fisheries governance in South Africa, and can shed light on the necessity of small-scale, site-specificity for environmental governance of regional sectors or industries. It is acknowledged that fisheries management is necessarily a regional or even national regime, but it is shown that the implementation of socially-sensitive policies, such as the Small-Scale Fisheries Policy, must address local experiences of harm and attempts at well-being.

Through its idealised conceptualisation of the relationship between the state, the marine environment and the public, the implementation of the MLRA instantiated a set of roles and relationships that have been intensely resisted. Prior studies of resistance to the MLRA have focussed on legal and illegal access to resources, often in terms of the concept of social justice, as detailed in the Introduction and Chapter Three (Crosoer et al, 2006; Hauck, 2009; Isaacs, 2012; Sowman et al, 2013). This study has instead highlighted the kinds of roles and relationships that the MLRA codifies, and how these have come to be imposed onto relationships that exist in the everyday. The study has shown that these codifications frame the inspectors as functionaries, not people, thereby denying the extent to which the inspectors and fishers live in an ecology of relations.

The script that the MLRA offers, serves to define the role players in ways that render marine governance ineffective in addressing both the drivers of non-compliance and its effects. Despite its intentions, the web of relations that the MLRA sets up entangles both inspectors and users in harmful and unproductive dynamics. Laws are not only enacted in Parliament: they become scripts that are enacted in the everyday. The MLRA imposes an ecology of relations that impacts on the ecology itself. Resources users *and* inspectors are

required to amend their daily relations – in response to the relations rendered legal by the MLRA.

The main activities of the inspectors revolves around interpersonal interaction with resource users and colleagues. Furthermore, many inspectors have been very successful in establishing long-term relationships with the community-at-large that they police *and* in which they live; they also shop, go to church and send their children to school. Yet, the policies and protocols that determine what is legitimate behaviour for a Senior Marine Compliance Inspector are removed from the texture of relations and contexts on the ground.

Fisheries law enforcement in the Western Cape currently does not sufficiently address non-compliance and as such, is largely failing to work towards a cooperative environment in which long-term compliance on behalf of resource users can be expected. The structural violence within South African society in general and in the fisheries complex in particular, means that harm is being done to the potential for present and future cooperative relations between people, the state and the environment.

This understanding is vital for a careful implementation of future marine resource law, such as the Small-Scale Fisheries Policy. It needs to be acknowledged, by the state and the resource users, that the fisheries are lived, flexible space, an assemblage in the sense of Latour (2004, 2005). Processes must be put in place, before collaborative marine governance can be attempted, that fully account for the nuances and non-fisheries related motivations that complicate the decisions on how to fish *or enforce*. This thesis has shown that non-compliance cannot be fully apprehended by an investigation of resource users or resource economics alone. It is necessary to problematise such a reading as it does not account for the processes that exceed the formulation of “citizens versus the state” (like the positions occupied by the inspectors who are both state officials and citizens). This counts especially for the processes and actions that occur in the grey zones created by opaque regulations and management processes.

What has been argued, is that a focus on relationality and process allows for more complex, and therefore more useful, representations of the problems to be apprehended. This is not only relevant to the environmental managers themselves, but a necessary intervention in the manner in which environmental issues are identified, defined and researched. These conversations about environmental problems must be inclusive of

understandings of relationality and the complexity that is generated by the always-present entanglement of lives and ideas.

The grey zones and illegal behaviour do not represent an absence of relations – they are the producers and products of destructive relations as much as cooperation is the product and producer of constructive relations. Furthermore, destructive relations may be the products of attempts to protect and share, as in the case of the MLRA, which intended to repair problematic relations but resulted in yet further conflict. Apprehending the complexity through a focus on objects, or formulations that disregard relational processes, means that some basic governance problems will remain unaddressed.

Theories about resource management are premised on the idea of the social contract that holds that the state is the legitimate regulator of social life, and that it will do so in an equitable manner *if* citizens adhere to its rules, as detailed in Chapter Two. . This formulation of the social contract as a stable relationship between a homogeneously submissive public and an objectively fair state, takes for granted the fact that relations of transparency and social equity characterise the field to be regulated. These relations are largely lacking in the South African fishing industry, allowing for high levels of non-compliance and conflict. The large, dispersed population of resource users is not easy to control. Furthermore, the human features of fishing are intertwined with ecological processes that also cannot be directly controlled. It is a situation in which unacknowledged and variant conceptualisations of what constitutes political transformation, sustainable fishing or economic freedom have created an unstable groundwork for cooperative relations between the state, publics, and resources in question.

These discrepancies fuel contestation, and as such need to be carefully considered when mobilised to tailor responses, expectations and behaviour. Relying on a preconceived distinction between good and bad, between destructive and constructive, normative judgements inform how problems are identified and conceptualised, which in turn limits what will be recognised as solutions. By delaying judgment in the vast grey zones of the state versus the citizen, the good versus the bad, harm versus health, we are required to look instead to the relations and processes that co-produce the complexity that asks for understanding.

In such a complicated situation, anthropological methods help to assemble a nuanced understanding of complex, inter-disciplinary problems by doing in-depth, located

studies of the entangled nature of social, political and ecological issues. Site-specific fieldwork has always been the traditional ethnographic method for anthropology, and one of its greatest strengths as it allows for in-depth research into processes over time. Ethnographic studies of the local scale have often been limited in their contribution to larger debates about regions or regional systems because of the localised scale of their investigations. By conducting a study in specific sites, and then using those case-studies to build a nuanced regional view of the issues, while resisting undue generalisation, anthropology can be 'scaled up' to speak to debates that extend beyond the site-specific. However, the representations of the inspectors in this thesis remain, as noted, partial. This is both a question of scale and complexity. Due to practical and theoretical constraints of the research (and despite the multi-sited nature of the study), it was impossible to cover every site, every task of marine compliance. The complexity of the task and the presence of so many variables means that an in-depth understanding of the issues at play cannot be simply extracted – such an understanding is necessarily a compound of inter-disciplinary work at various scales and over time.

In a space dominated by an attempt to control territory and behaviour through legislation and enforcements, the subjective experience of violence and the alienating effects of bureaucracy have become important features of governance that determine the legitimacy of the inspectors' actions. Often, the state's tactics of control have the opposite of their intended effect: they highlight the marginalised position of the inspectors, and the non-compliance that characterises much inshore fishing behaviour. In this difficult space, the inspector is expected to operate according to protocols that do not heed the needs of the body – rendering many of the inspectors' tasks as dangerous or impractical.

Like many long-term resource users, the inspectors' history of interacting with the marine environment is both shared with their colleagues, and personal. There are skills common to them as a group, but also certain skills that individual inspectors learn or choose to develop. Many of these skills are self-taught, or informally taught. The skills they develop in the performance of their job, and which are vital to it, are often unacknowledged by management or the courts, resulting in the undervaluing of experience and, often, the dismissal of expertise. The skills and expertise of the inspectors do not reside in the job. The extent to which inspectors develop their skills is often correlated with the enthusiasm they have for the job – whether the conservation or the law enforcement side of things.

Losing someone with much experience means that the department has lost that person and their wisdom as well as their networks of relationships (with the community and colleagues). By not fully considering the physical presence of the inspectors in a contested terrain, the administration and planning of compliance creates a situation in which the integrity of that person, and therefore the effectiveness of law enforcement, is continually compromised by their very humanity.

Clearly, the job of compliance inspector needs to be urgently rethought.

The inspectors' marginal position are a potentially valuable resource with regards to the channels of communication they have with resource users and fisheries management structures, especially for localised co-management structures. The valuing of expertise and passion, coupled with greater efforts at establishing job stability within the ranks of inspector, this thesis argues, is *one* of the primary ways of ensuring that inspectors across the board can be incentivised to take greater care at fostering cooperative relations with the fishing public (this approach is discussed as the choice of certain inspectors in Chapter Five). Such efforts, according to my own analysis and that of the inspectors, would require greater transparency during hiring and assessment processes; the phasing out of contracts and establishment of permanent posts in their stead; and the collaborative inclusion of inspectors and their insights in the formulation of policy and protocol. A reworking of the job of compliance inspector needs to be done in collaboration with the current inspectors, wherein the inspectors are given the space to voice these issues to management and partake in the process of formalising their insights into the new design.

In the short term, it needs to be acknowledged by management that the job is currently stretched thin by the tensions between what is expected and what training is offered. Furthermore, as discussed in Chapters One, Two and Five, there are times when the conservation or protection of marine resources takes second place as a priority after the penalising of a transgressive resource user. The negotiation between conservation or law enforcement is currently a tension because it is not clarified as a decision nor offered as a choice. It is implicit, and therefore not explicitly addressed. By offering training and enskilment in line with inspectors' personal skills or interests, what is currently tension between law enforcement and conservation could potentially be turned into expert collaboration. However, before such specialisation can occur, the basic resources and training need to be covered. Appropriate, practical uniforms (including head-, eye-, and

footwear) and up-to-date technological gear is often lacking, as is basic training in the relevant laws, armed and un-armed combat, tracking, driving and public relations (to name a few key areas in no particular order).

Many of the other short-term problems within the fisheries sector need addressing by direct legal means, such as poaching, illegal fishing, wilful maladministration and corruption. Problems within the Fisheries Branch, documented in this thesis, include: allegations of inequitable treatment of staff; the fostering of jealousies between individuals, units and stations; insufficient training and resources; the lack of opportunities to develop individual skills and interests; references to a culture of silence that sees the freedom to complain/raise issues curtailed by the possibility of being penalised. The wariness between what the inspectors term “management” and themselves, which the inspectors see the surveillance of their activities as proof of, in turn creates a tense working environment which allows for disruptions in cooperation between levels of management.

The effectiveness of fisheries governance is compromised when the fisheries and by extension the inspectors are used to further political agendas – in terms of both political careers and/or party politics. This exacerbates existing conflict and allows for party-driven political considerations to take the forefront of already hotly contested discussions, as happened with FRAP2013 and the Fisheries Patrol Vessel crisis. The Public Protector’s Office indicated that the previous Minister has serious misconduct to answer for, in both these cases, and has now twice officially urged for disciplinary action to be taken against her¹¹⁹, as noted in the Introduction.

There are two levels here at which short-term accountability must be sought, to correct the current levels of pervasive maladministration that this thesis documents. Neither seeking to replace individuals without attending to the institutional problems, nor attending to institutional problems without dealing with deviant individual behaviour, will correct the current imbalances. Both need to be dealt with, together, in order to re-establish the Fisheries Branch’s legitimacy with resource users and the wider public.

¹¹⁹ *“Docked Vessels”*: An investigation into allegations of irregular awarding of a tender to Sekunjalo Marine Services Consortium by the Department of Agriculture, Forestry and Fisheries. Report 21 of 2013/14 of the Office of the Public Prosecutor. A copy of the report is available at http://www.pprotect.org/library/investigation_report/Docked%20Vessels.pdf.
“Costly Moves”: A Provisional Report on an Investigation into Allegations of a Breach of the Executive Ethics Code by the Minister of Agriculture, Forestry and Fisheries, Ms Tina Joemat-Pettersson. Report 3 of 2012/2013. Office of the Public Protector. A copy of the report is available at: [http://www.pprotect.org/library/investigation_report/2012/Final%20Report%20Signed%20\(2\).pdf](http://www.pprotect.org/library/investigation_report/2012/Final%20Report%20Signed%20(2).pdf)

Seeking a single person or event to attribute the failings of the Fisheries Branch to, can misdirect thoughtful attention away from the long-term imperative to establish a culture of environmental governance that seeks to nurture relationships over and above penalising harm.

Identifying harm is important in understanding the maintenance of a system's health. However, with current compliance protocol in the Western Cape, the task of identifying and preventing harm has been superseded by the imperative to penalise. As shown, this reactive approach to events does not sufficiently take in account processes of seeking well-being, and it inevitably forces the inspector to play the role of enforcer and the resource user that of the suspect. It is an approach that is increasingly unable to anticipate or prevent problems. By acknowledging the central and complex role inspectors play in the everyday enforcement of marine resource laws, new configurations for relationships between the state, fishing publics and nature can be imagined, and through transparency, collaboration and open dialogue, be implemented. The long-term imperative of seeking the well-being of the ecology requires that the conceptualisation of the work of the marine inspectorate be reformulated to take the complex web of relations and extended effects of harm into account.

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