

## Chapter 19

# Governability Challenges Facing Small-Scale Fishers Living Adjacent to Marine Protected Areas in South Africa

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**Abstract** The governability of small-scale fisheries located adjacent to Marine Protected Areas (MPAs) in South Africa has increasingly come under scrutiny as communities, social science researchers, NGOs and human rights activists challenge current governance approaches that disregard the socio-cultural rights and livelihood needs of fishing communities living within or adjacent to MPAs. Drawing on research conducted in seven case studies in South Africa, this chapter explores the current mismatch between the realities facing fishing communities impacted by MPAs and the state-centric and natural science-based approach to governance adopted by South Africa's fisheries management and conservation authorities. This approach to MPA governance persists despite a suite of policy reforms and political rhetoric that indicates the embrace of a more people-centred approach to natural resource governance. The key focus of this chapter is to gain a deeper understanding as to why this mismatch persists despite almost 20 years of democracy and policy reforms. While the devastating impact of South Africa's political history is evident in all cases, other factors that inhibit meaningful change and formation of robust governance systems, are highlighted. These include the persistence of a natural-science paradigm; the divergent principles, values, worldviews and images amongst governance actors; institutional shortcomings; failure to recognize and respect local and customary forms of governance; and the lack of attention to implementation mechanisms that are informed by all governance actors.

**Keywords** Small-scale fisheries • Marine protected areas • Governability • Poverty • Fishing communities • People-centred approach • South Africa

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## Introduction

The transition to democracy in 1994 in South Africa, catalyzed new forms of governance that sought to address past injustices and improve the socio-economic conditions of poor and marginalized communities. The law reform process and institutional restructuring that took place permeated all sectors of society including fisheries and conservation management. Expectations amongst small-scale fishers were high that rights to resources would be restored or re-allocated and that legal provisions for this sector would ensure its protection, development and wise management. However, despite a progressive Constitution and a suite of natural resource management policies and laws that require respect for human rights, restitution and equitable access to resources, coastal fishing communities living in or adjacent to “no-take” Marine Protected Areas (MPAs) in South Africa, continued to be denied access to traditional fishing grounds.

South Africa, like many countries across the world, is employing MPAs as a key tool for biodiversity conservation, habitat protection and more recently, fisheries management (Helvey 2004; Laffoley 2008; DEA 2012). MPAs are considered by marine scientists in South Africa to be the backbone of its marine conservation strategy (Lemm and Attwood 2003), and an increasingly important management tool for rebuilding depleted fish stocks (Kerwath et al. 2013). Despite the ongoing scientific debates surrounding the value of MPAs as a tool for improving fisheries management and fisheries productivity in particular (Hilborn et al. 2004; Kolding 2006), South Africa has embarked on an ambitious programme to expand the coastal and marine area under protection and establish a representative network of MPAs (DEA 2012; Sink et al. 2012). This is in response to South Africa’s commitment to a host of international multilateral agreements including the Convention on Biological Diversity and its various programmes of work, the Johannesburg Plan of Implementation (2002) and the targets set at the World Parks congress in Durban in 2003. Over the past 15 years, South Africa has developed an impressive suite of policies, laws and strategies<sup>1</sup> to give effect to these commitments. Currently, in South Africa, approximately 23.2 % of the coastal zone is under some level of protection (refer Fig. 19.1) of which 9.1 % comprises ‘no-take’ MPAs<sup>2</sup> (DEA 2012). Recently South Africa has declared its first off-shore MPA, in waters surrounding Prince Edward Islands, an area covering approximately 180,000 km<sup>2</sup>. The National Protected Areas Expansion Strategy (RSA 2008) has set ambitious targets for MPAs, aiming to have 25 % of the coastal zone declared MPAs by 2028 of which 15 % of the coastal area would be declared “no-take” zones. However, while plans

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<sup>1</sup>These include the Living Marine Resources Act of 1998, National Environmental Management (NEM) Act of 1998, NEM: Protected Areas Act of 2003 and its amendment of 2014, NEM: Biodiversity Act of 2004, as well as various Biodiversity Assessments (2004 and 2008) and the National Protected Area Expansion Strategy (RSA 2008).

<sup>2</sup>“No-take” MPAs refer specifically to MPAs where no fishing is permitted. Other MPAs may allow fishing of certain species and may also have zones where certain activities (eg boating, fishing, only passive recreation) are allowed.

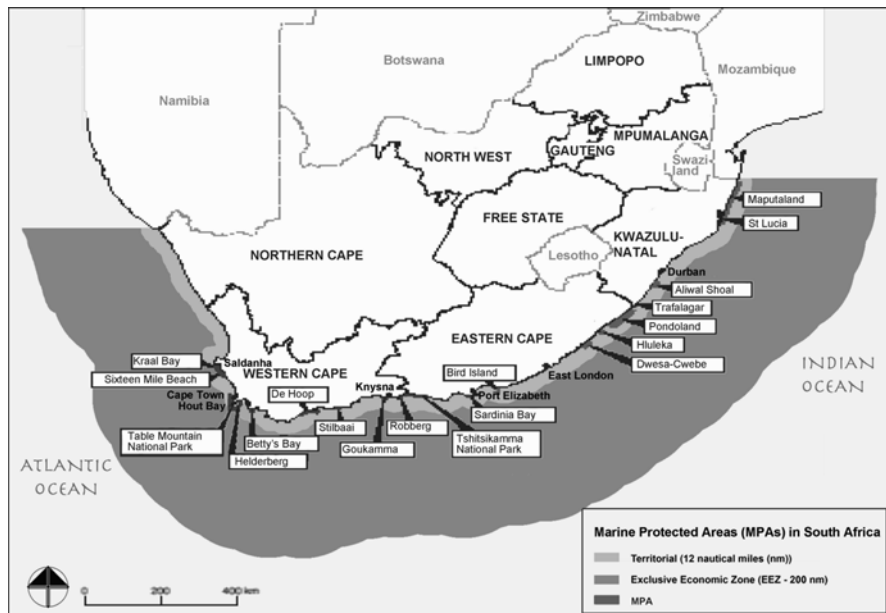


Fig. 19.1 Marine protected areas in South Africa

to expand South Africa’s MPA network is high on the conservation agenda, the focus is shifting to enhance protection of the offshore marine environment (Sink et al. 2012).

Over the past century, many coastal fishing communities have been affected by the establishment and management of MPAs (Sunde and Isaacs 2008; Sowman et al. 2011; Masifundise Development Trust (MDT) 2013). Increasingly, the governability of small-scale fisheries systems in such contexts, has come under scrutiny as fishing communities, social science researchers, NGOs and human rights activists challenge current governance approaches that disregard the socio-cultural rights and livelihood needs of these communities (Sunde and Isaacs 2008; Sowman et al. 2011, 2014a, b, c; Emdon 2013; Jackson et al. 2013; MDT 2013; Sunde 2013, 2014; Sunde et al. 2013; Williams 2013). Pressure on government from these groups to review and revise the regulations restricting access to MPAs has been met with opposition from members of the marine science and conservation community who are concerned about establishing a precedent and argue instead that lack of alternative livelihoods is the key challenge (Minutes of MPA Forum meetings, 2012–2013; expert witness for ECPTA in the case of State vs D Gongqose 2012). Lack of access to MPAs has led to growing discontent amongst fisher communities who argue for restoration of rights in terms of culture and custom and for meeting food and livelihood needs. In recent years, communities have approached the Human Rights Commission, marched to Parliament and launched legal challenges against the state to demand their rights to resources (K George and others v Minister of Environmental

Affairs and Tourism 2005 and 2010; Sunde et al. 2013; State vs D Gongqose 2012; Sowman et al. 2014a, b, c; Sunde 2014). Twenty years after democracy, governance and governability of small-scale fisheries in the context of MPAs appears to be fraught with difficulties.

This chapter is based on information obtained from case study research conducted in seven small-scale fishing communities<sup>3</sup> living adjacent to MPAs in South Africa (or areas being considered for MPA status) (Sunde and Isaacs 2008; Hauck 2009; Sowman et al. 2011, 2014c; de Greef 2013; Emdon 2013; Jackson et al. 2013; Williams 2013; Sunde 2013, 2014; Sunde et al. 2013). Researchers in all sites conducted household surveys, key informant interviews, focus groups meetings and participated in local meetings and activities. This research also draws on information and insights gained from participation in various fisheries and MPA policy and planning forums over the past 5 years. It explores the realities of and challenges facing fishing communities impacted by MPAs – “the system-to-be-governed”, and the relevant authorities’ approach to MPA governance – “the governing system”. The chapter seeks to address questions of governance and governability in contexts where small-scale fishers are living adjacent to MPAs and rely on natural resources for food and livelihoods and have strong cultural ties to the sea. In particular, it explores the extent to which small-scale fishers are recognized and accommodated in planning and decision-making processes relevant to MPAs. Further, it examines the fit between policy rhetoric and practice after 20 years of democracy. This chapter seeks to answer these questions by drawing on the theoretical foundations of the Interactive Governance Approach (Kooiman et al. 2005; Bavinck et al. 2013) and using the Interactive Governance framework outlined by Jentoft (2013). In particular, it explores how principles, values, worldviews and images influence governability at every level of governance.

## **Exploring Governability of Small-Scale Fisheries in the Context of MPAs**

### *The Nature of Governance Interactions*

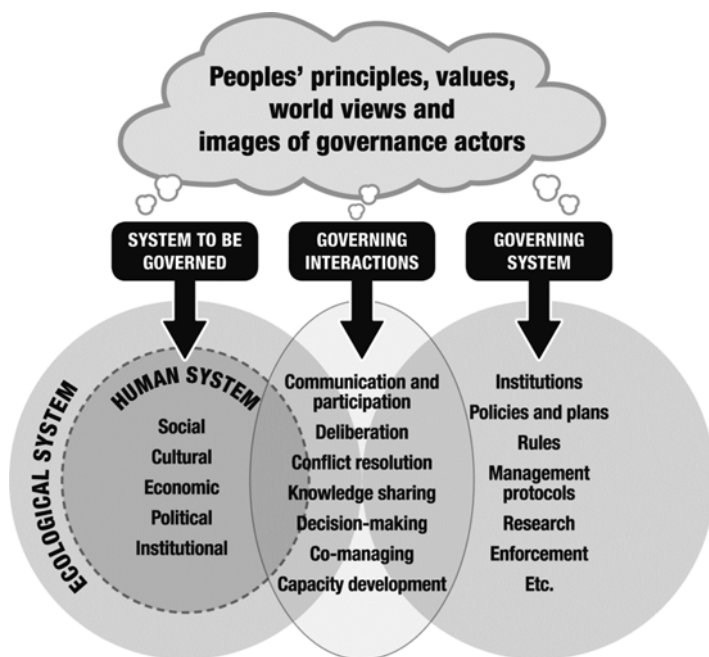
The departure point for an assessment of small-scale fisheries governance in the context of MPAs in South Africa is that the mode of governance relevant to coastal resources is largely hierarchical. Yet, within this hierarchical system principles such as participation, co-management, access to information, respect for local and traditional knowledge, are required by law. This section focuses on understanding the nature of the governance interactions between the governing system and the system-to-be-governed.

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<sup>3</sup>Case studies include fishing communities at Olifants Estuary, Langebaan lagoon, Hangberg in Hout Bay, Tsitsikamma, Dwesa-Cwebe, Hluleka and Kosi Bay.

The Interactive Governance Approach (Bavinck et al. 2013) is mainly concerned with understanding the exchanges, communications, collaboration, knowledge production and decision-making processes that take place between actors involved in the process of governance. The Interactive Governance Approach is premised on a set of normative principles that regard inclusive participation, and deliberation amongst civil society actors and joint problem solving as expressions of democracy and thus desirable (Kooiman and Bavinck 2013). It presumes that problem identification, and development of objectives, plans and solutions should be deliberated upon by the different governance actors and jointly agreed to. While hierarchical governance suggests a top down approach and expects government to play a leading role, the Interactive Governance Approach suggests that high levels of participation, information sharing and joint problem solving should still guide planning, management and decision-making. Thus the nature of the interactions between the governing system and the system-to-be-governed, irrespective of the mode of governance, will have a bearing on the governability of the system. Figure 19.2 provides a conceptual framework of the interactive governance approach that is used to guide the analysis of case material in this chapter.

In the case of small-scale fishing communities living adjacent to MPA's in South Africa, *de facto* governance is largely state-driven, top-down, regulatory and dominated by natural science (Sunde and Isaacs 2008; Sowman et al. 2011; Hushlak



**Fig. 19.2** A conceptual framework of the interactive governance approach that is used to guide the analysis of case material in this chapter

2012). This is surprising in view of the commitments South Africa has made to a host of international multi-lateral agreements relevant to MPAs that call for recognition of the rights of indigenous peoples, greater participation in decision-making and the sharing of benefits from protected areas. The promulgation of the Policy for the Small-scale Fisheries Sector in South Africa in June 2012 (DAFF 2012) confirmed South Africa's commitment to the protection and development of small-scale fishers including recognition of their customary rights and systems in so far as they are consistent with the Bill of Rights.

Yet, the nature of governance interactions between small-scale fishers and other governance actors in the context of MPAs is not participatory and deliberative, nor are the principles of free and informed consent, access to information, accountability, transparency, recognition of local and indigenous knowledge, respect for customary systems of governance and law, upheld in most of these interactions. In fact, in many MPAs, the nature of interaction between key governing actors – namely government officials, local fishing communities, and other stakeholders, is largely conflictual. There is significant evidence from newspaper articles, research reports, minutes of meetings, legal papers and magistrate court records that conflict in MPAs, especially between local fishing communities and conservation officials and agencies, is prevalent (Newspaper articles various (2009–2014); K George and others v Minister of Environmental Affairs and Tourism 2005 and 2010; Sunde and Isaacs 2008; Hauck 2009; Mbatha 2011; Sowman et al. 2011, 2014a, b, c; de Greef 2013; State v D. Gongqose and two others 2012; Emdon 2013; Sunde 2013, 2014; Sunde et al. 2013). These conflicts take various forms including protests outside conservation agency offices, “protest” fishing,<sup>4</sup> marches to parliament, arrests and fines or imprisonment, letters and petitions to the relevant government Ministers, court cases, as well as physical harassment. Examples of such conflicts and governance interactions are provided below.

The Hangberg fishing community in Hout Bay, who live adjacent to the Table Mountain National Park MPA (refer to Fig. 19.1) have been harvesting west coast rock lobster (WCRL) in waters adjacent to the settlement since the nineteenth century (van Sittert 1994). Since the MPA was established as a no-take lobster sanctuary in 1934, and reinforced by the proclamation of the Table Mountain National Park MPA in 2004, the community has been actively excluded from their traditional fishing grounds. After the democratic elections in 1994, the community expected government to grant some level of access to these waters. However, this has not been the case and has resulted in increased frustration amongst the traditional fishers of Hangberg and fuelled further “illegal”<sup>5</sup> fishing activities. Fishers say they are

<sup>4</sup>There are various examples where fisheries have openly defied the state and fished in protected areas. For example in 2007, approximately 70 armed local fishers including both those involved in recreational and subsistence fishing, entered the Tsitsikamma MPA in the southern Cape and fired gunshots in front of the conservation officers.

<sup>5</sup>The term “illegal” has been placed in quotation marks as fishers are claiming rights to these waters where they have historically fished. In cases where small-scale traditional fishers have continued to practice their fishing traditions, the term “informal” fishing is used in preference to “illegal” fishing.

tired of waiting for government to authorize access to traditional fishers. Furthermore, in recent years, interim relief permits have been allocated to community members many of whom have no historical links to fishing in the area (fisher leader, personal communication, March 2013). A recent discussion with a group of fishers indicated that some fishers in Hangberg no longer care about conservation because they see others plundering resources in their waters and argue they are more concerned with their immediate requirements for food and income (fisher, personal communication, March 2013). Recent research has revealed a significant increase in informal and illegal harvesting of resources within the MPA some of which can be attributed to the frustrations of traditional fishers and their desire to assert their rights to resources but also out of necessity to support their families (Hauck 2009; de Greef 2013). Although there have been a few meetings between conservation agencies and fishers over the past 5 years, there has been little progress with respect to addressing the historic rights of these traditional fishers. Instead government has issued interim relief permits<sup>6</sup> to some traditional fishers to harvest resources beyond the MPA boundaries and high levels of informal and illegal fishing have continued within the MPA.

While conservation agencies do in some cases consult the public and local fishing communities regarding development of management plans, or to obtain input regarding certain proposals, these consultations are not meaningful as fishers concerns and perspectives have seldom led to changes in MPA governance. For example, in the case of a proposal to prohibit fishing in the Olifants Estuary in 2008, the concerns raised by local fishers at a stakeholder meeting were ignored, despite the fact that they have been fishing in these waters for nearly 100 years, are dependent on the fishery for food and livelihoods (Sowman 2009).

Objections by the fishers and their social partners<sup>7</sup> to the proposed MPA outlined in a draft management plan (Anchor Environmental Consulting 2008) resulted in a lengthy process of consultation and negotiation between government, their consultants, local fishers and their social partners. Willingness by government to discuss the grievances of the fishers was largely facilitated by an intervention by the Legal Resources Centre, a public interest legal NGO who wrote a letter to the then Minister of Environmental Affairs and Tourism demanding that the rights and socio-economic needs of this fishing community be recognized and addressed. The fishers argued throughout these discussions that their customary, cultural and livelihood rights needed to be recognized and that the proposed no-take MPA was unconstitutional and served only the interests of conservation and other stakeholders. These

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<sup>6</sup>Interim relief permits were the outcome of an Equality Court Ruling in 2007, to provide traditional fishers with legal access to marine resources under specified conditions, while a new small-scale fishing policy was being developed. These permits are still issued on an annual basis to traditional fishers that meet certain government criteria until such time as the new Small-scale Fisheries Policy (DAFF 2012) is implemented.

<sup>7</sup>The fishers of the Olifants Estuary have been working closely with social science researchers at the University of Cape Town, two NGOs namely, Masifundise Development Trust and the Legal Resources Centre, and a community-based organization Coastal Links, for several years to have their rights recognized and their livelihoods preserved.



arguments were supported by provisions in the draft and later final Small-scale Fisheries Policy (DAFF 2012) which requires recognition of customary practices, cultural and socio-economic rights of traditional fishers balanced with sustainable use principles. After several meetings and workshops with government managers and scientists over a 5 year period, there was finally support from government and other stakeholders to allow local fishers to continue fishing in the estuary. While the fishers supported the calls for strengthening protection of threatened resources and habitats, they felt that they should not bear the burden of conservation efforts (Jackson et al. 2013). However, they agreed that the existing protected area at the mouth of the river, an area of approximately 1 km in extent, should be retained and formalized and that they should play a role in its monitoring and management (Jackson et al. 2013).

While the state has committed to co-management in policies and legislation relevant to natural resource management and fisheries management in particular, and has developed guidelines to implement such an approach,<sup>8</sup> evidence from various research projects suggests that co-management in coastal fishing communities is largely state-driven and involves communities in so far as it serves government's agenda (Hauck and Sowman 2003; Schell 2011; Mbatha 2011; Hauck et al. 2014; Hansen et al. 2014).

Further, there is very little evidence that local and indigenous knowledge of fishers is effectively incorporated into MPA planning and management processes. In fact, such knowledge is considered by the majority of fisheries and conservation scientists encountered in this research not to be valid since from their perspective it must be verified by science to be of any value to management and decision-making (Minutes of various meetings, 2011–2014). For example, a workshop with marine scientists and fishers was intended to facilitate sharing of knowledge to generate input for management proposals for the Olifants estuary. At a meeting to prepare for this workshop, one of the main government fisheries scientists commenced the meeting by stating categorically that “only information that could be verified by science” would be considered (Minutes of meeting held at MDT 2011). This position set the tone for the workshop which was not conducive to building relationships, trust and mutual respect. The fishers' felt they needed to defend their information, scientists were cautious and skeptical about fishers' inputs and fishers questioned the basis for some of the scientific information presented (participant observation, Ebenhaeser 2011).

Research in the seven cases revealed that there are few attempts by scientists and conservation managers to recognize and incorporate fisher knowledge in MPA management. However, in Kwa-Zulu Natal, EKZN Wildlife has made efforts through their co-management committees and community monitoring systems, to involve local communities in information gathering and knowledge exchange. However, the

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<sup>8</sup>The People and Parks initiative of the Department of Environmental Affairs is one such example although it has a strong terrestrial focus and has made considerable progress in engaging local communities and other stakeholders in planning and management decision-making. However, this approach is not evident in the MPAs investigated in this study.



focus has been on ecological monitoring, with less effort directed towards incorporating local and indigenous knowledge in management decisions. While there have been interventions (eg beach walks with local fishers, community surveys) to recognize and incorporate fisher knowledge in the process of reviewing zonation plans for Langebaan and Dwesa-Cwebe MPAs, these efforts have to date not resulted in changes to MPA management. Co-production of knowledge as envisaged in the Interactive Governance Approach is not taking place in South Africa's fisheries and MPA governance processes in any meaningful way.

The above review and discussion suggest ongoing challenges to meaningful engagement amongst actors (fishers, scientists, managers and other stakeholders) in MPA governance processes in South Africa. This is having a significant impact on the governability of such areas, with negative social consequences for small-scale fishers and long term implications for sustainability. These shortcomings exist largely due to mismatches that occur at every level of governance but most significantly at the level of meta-governance.

### ***Governance Mismatches and Why They Persist***

This section explores some of the mismatches that exist at different levels of governance and seeks to better understand why they persist. In many respects, it can be expected that if there are major mismatches at the level of principles, values, worldviews and images, it is likely that mismatches will occur at the other levels of governance (Kooiman and Bavinck 2013). Thus if there are fundamental differences at this level, it is likely that the institutions established and rules formulated to steer and regulate the system, will affect governance at different levels. Table 19.1 provides a summary of some of the key mismatches that occur at the different levels of governance. The discussion that follows will focus mainly on the mismatches that occur at the level of meta-governance and explore possible reasons for their persistence.

#### **Divergent Principles, Values, Worldviews and Images**

Fisheries and protected areas in South Africa cannot be understood without considering the historical, political, economic and social context in which these sectors operated. In the case of fisheries, small-scale fishers were actively excluded from participating in the fishing industry while in the case of MPAs forced removals, displacement of communities, dispossession of land, restricted access to resources were all key features of the historical development of terrestrial and marine protected areas (Brockington et al. 2008; Claassens and Cousins 2008; Sunde and Isaacs 2008; Sowman et al. 2011). In addition to political motivations, those steering governance firmly believed that state or private ownership of the marine commons was the only effective means of safeguarding resources and protecting biodiversity

**Table 19.1** A summary of some of the key mismatches that occur at the different levels of governance

	Those steering governance	Actors in the system-to-be-governed
Meta governance level	<p><b>Principles and values:</b> Largely informed by neoliberal thinking, mainstream conservation discourses and principles such as sustainable use, conservation and protection of biodiversity. Management supported mainly by natural science. Participation of stakeholders as required</p> <p><b>Worldviews:</b> State or private ownership of marine commons is required to ensure sustainability and protection of natural resources. Society has a responsibility to “care for nature”. Nature must be controlled and managed by those with requisite knowledge</p> <p><b>Epistemologies</b> Driven by positivist and natural science based approaches. For knowledge to be used and valued it must be measurable, replicable and verified by science</p> <p><b>Images:</b> Poor fishing communities degrade and deplete natural resources due to their poverty status unless government imposes and enforces rules. If left unchecked a “Tragedy of the commons” scenario is likely to be the outcome</p>	<p><b>Principles and value:</b> largely informed by culture, customary practices and governance systems. Respect and care for nature and each other. Resources will replenish themselves. Management informed by local knowledge and experience. Participation in decisions is fundamental</p> <p><b>Worldviews:</b> Ownership is vested in the community, rights of access derive from membership of the group and are relational. Local norms and rules dictate social obligations and resource responsibilities. Nature and society are inextricably linked, identity and culture are tied to people’s relationship with natural resources and each other</p> <p><b>Epistemologies:</b> Based on experiential knowledge, long-standing practices and beliefs passed down through generations by cultural transmission. Knowledge is adaptive, holistic and context specific</p> <p><b>Images:</b> Government’s conservation policies and practices have led to forced removals, restrictions on access to marine resources and harassment. Nature conservation efforts impact livelihoods and exacerbate poverty</p>
Mismatches at the institutional level	<p>Multitude of state institutions at national, provincial and local level with different responsibilities for SSFs and MPAs but little co-ordination</p> <p>No formal recognition of local and customary governance systems including customary laws.</p> <p>Abundant rhetoric about co-management with local fishing communities and other actors despite absence of functioning co-management institutions (except in KZN).</p> <p>Resource rules made and enforced by the state. No recognition of local, customary and cultural norms and practices.</p>	<p>Confusion amongst communities and stakeholders regarding powers, roles and responsibilities of different state institutions</p> <p>Local and customary governance systems guide the behavior and decisions of those living under such systems including their interaction with natural resources.</p> <p>Absence of formal co-management structures (except in KZN) and mechanisms for interaction and decision-making amongst local governance actors.</p> <p>State rules perceived as illegitimate and often inappropriate. Local communities operate within the ‘legal system’ that suits their immediate needs.</p> <p>Conservation enforcement measures seen by many as harassment and a violation of human rights.</p>

<p>Day to day management</p>	<p>Monitoring of status of stocks and habitats undertaken by scientists and conservation officials.                  Focus on practical actions to achieve conservation and fisheries management objectives and targets (e.g. clearing alien vegetation, rehabilitating environments, restocking resources).                  Managers and conservation officers respond directly to natural resource problems and events (beached whale, pollution spill) according to procedures and plans.                  Failure to comply with fisheries and MPA rules results in harassment, fines, confiscation of equipment, imprisonment.</p>	<p>Outsiders (scientists) have access to fishers' resources for scientific purposes — yet locals cannot access these resources.                  Objectives and targets largely unknown to local communities. Some conservation practices contrary to local values, beliefs and practices                  Local communities respond to problems and events according to local experience and/or customary systems and rules.                  Harvesting resources for food, livelihood and cultural purposes is a human right. Local people have rights to resources and do not perceive state rules as legitimate.</p>
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Based on Sunde and Isaacs (2008), Hauck (2009), Sowman (2009), Sowman et al. (2011, 2014c), Mbatha (2011), de Greef (2013), Emdon (2013), Jackson et al. (2013), Sunde (2013, 2014), Sunde et al. (2013), and Williams (2013)

(Hersoug 2002; Sunde et al. 2013). Fishing communities living in or adjacent to these protected areas were not consulted or compensated for loss of access to traditional fishing grounds.

The transition to democracy and the promulgation of a plethora of policies and laws signaled a new more people-centred approach to conservation and fisheries management. Yet, despite these new policies including a small-scale fisheries policy that requires redress and fulfillment of human rights, South Africa continues to embrace neoliberal ideology and consumer capitalism in its approach to natural resource management and conservation. The persistence of the neoliberal ideology articulated in South Africa's macro-economic policy published soon after the democratic elections and reinforced by the recently published National Development Plan (National Planning Commission (NPC) 2012), confirm government's bias towards privatization and faith in the markets to allocate resources efficiently and generate profits that will lead to "trickle down" benefits for the poor. The NPC is clear in its support of big industry and states "*Small-scale fisheries cannot be regarded as a way to boost employment. Capital-intensive industrial fisheries offer better salaries and better conditions of employment than small-scale low-capital fisheries. Reducing the rights allocated to industrial fisheries to award them small-scale operations simply cuts jobs*" (NPC 2012, 229). The significant contradictions that exist between South Africa's neoliberal macro-economic policy and the social justice imperatives underpinning South Africa's new natural resources legal regime, provide significant barriers to meaningful reform in the marine conservation arena.

For many small-scale fishing communities, people and nature are inextricably linked and degradation of the environment or loss of access to resources threatens their livelihoods and their cultural identity and group integrity (Wicomb and Smith 2011; Sunde 2013). In many communities, fishing practices are bound up with cultural beliefs and practices and a strong sense of sharing resources harvested, especially with those in need, prevails (Mbatha 2011; Sunde 2013, 2014; Sunde et al. 2013; Williams 2013). Local and customary governance systems have guided and in some contexts continue to guide resource allocation, use and management decisions although these systems are evolving in response to state imposed rules and other external factors (Kepe 1997; Sunde et al. 2013; Sunde 2013; Williams 2013; Sowman et al. 2014a, b). For coastal communities living adjacent to MPAs, they believe they are entitled to access and use marine resources for livelihood and cultural purposes as has been the practice of many previous generations. There is a belief that nature will replenish itself and traditional harvesting practices will not lead to collapse of stocks (Mbatha 2011; Williams 2013; Sunde 2014). Fishers recognize that they have a responsibility to care for nature but participation in management decisions is regarded as a basic social norm. Yet, 'no take' rules and restricting access have been imposed on many fishing communities living adjacent to MPAs without any consultation and with significant negative social consequences (Sunde and Isaacs 2008; Hauck 2009; Emdon 2013; de Greef 2013; Sowman et al. 2014c).

While there have been shifts in the conservation discourse in South Africa, in practice the philosophy and approach to fishing in MPAs remains consistent with the fortress conservation approach of the 1960s and 1970s. MPAs are considered sacrosanct and opening up of “no take” MPAs for fishing is considered by many marine scientists to be “the thin edge of the wedge” and an “erosion of the conservation estate” (Minutes of Meetings 2012–2014). In commenting on proposals to open up Dwesa-Cwebe MPA to limited local fishing, a marine scientist who has been involved in scientific research to inform MPA planning and management in the area for several years said the following *“It makes no sense in terms of South Africa’s conservation planning programme which is currently being driven by highly reputable management authorities ... to further reduce this figure by opening up a protected area of high quality linefish habitat to fishing... such an action flies in the face of South Africa’s international commitments to biodiversity conservation. There is a clear and urgent need to add to the extent of no-take network rather than to reduce it (Marine scientist, powerpoint presentation, 2011)*. These strongly held beliefs regarding the importance of MPAs, especially no take MPAs, as a conservation and fisheries management tool, are supported by the images held by this group of actors regarding the degradation and overexploitation of resources that would result from opening up MPAs to local fishing communities. There is a firm conviction that such action would result in a “tragedy of the commons” and huge losses to society as a whole.

These beliefs are driven by a conviction that MPAs are a key tool for conservation and fisheries management. Marine ecologists and fisheries scientists in South Africa are at the forefront of endeavors to expand the network of MPAs in the country. Their work is largely informed by natural science although there is an increasing recognition that social science is needed to better inform MPA planning and management (Sowman et al. 2014d). However, there is still a high level of skepticism regarding the value and integrity of local and traditional knowledge to inform these processes. Thus there exist tremendous methodological and epistemological barriers to knowledge sharing and integration. The dominance of the natural science paradigm in conservation and fisheries management in South Africa has perpetuated the unequal power relations that have existed for decades between conservation and fisheries scientists on the one hand and local communities on the other. This represents a fundamental limitation to governability of small-scale fishers in the context of MPAs in South Africa.

The differences in principles, values, worldviews and images of various actors engaged in fisheries governance in the context of MPAs are profound and significantly affect the type of institutional set up, the design and application of rules, as well as the actions and decisions taken by different actors in day-to-day management (See Fig. 19.2). These mismatches also significantly influence the nature of governance interactions and the effectiveness of governance interventions identified to address problems. Simply putting in place mechanisms to improve communication, deliberation, co-ordination, exchange of information and conflict resolution – will not necessarily address the root causes leading to these governance challenges.

## Institutional Shortcomings

The institutional shortcomings encountered in this research are not surprising given the mismatches found at the level of meta-governance. The multitude of state institutions involved in fisheries and MPA governance in South Africa, as well as the many policies and laws governing these institutions, has resulted in overlapping jurisdictions and a lack of clarity regarding roles and responsibilities of the various actors. To further confuse matters, the Constitution recognizes customary law as an independent and equal source of law as well as the authority of traditional leaders and has promulgated legislation<sup>9</sup> to this effect. Various statutes relevant to fisheries and protected area management contain provisions that promote co-management and the establishment of community managed conservation areas. Yet, state governance systems and day-to-day management practices do not reflect an acceptance of this legal pluralism. The lack of clarity has exacerbated the confusion amongst local fishing communities regarding government's intentions to implement the new fisheries and conservation rhetoric articulated in post-Apartheid policies, laws and strategies.

This is well illustrated by examining the underlying philosophy and approach to enforcement that persists in fisheries and MPA management in South Africa. In general terms, small-scale fisheries are considered to be a threat to protected areas due to "illegal" fishing. The response has been to increase enforcement efforts in MPAs. Enforcement performance is measured in terms of the number of arrests, fines and convictions. The higher the numbers the greater the success rate of the enforcement programme (Minutes, MPA forum held at Aliwal Shoal in 2014). There is no interrogation of the possible root causes of the ongoing "illegal" harvesting in protected areas and how these enclosures have affected local livelihoods, food security, cultural and religious expression.

Local fishing communities regard these state-imposed rules as illegitimate and in most cases do not understand the reasons for the establishment of the MPA. They view enforcement measures as harassment and a violation of their human rights (Emdon 2013; MDT 2013; Sunde 2013, 2014; Sowman et al. 2014c). Furthermore, for small-scale fishers the concept of a "no-take" protected areas to rebuild declining fish stocks, restore degraded habitats and enhance ecosystems for the greater public good, are difficult concepts to embrace, especially when other sectors (e.g. recreationists, commercial fisheries, mining and energy) are granted rights to exploit marine resources in or adjacent to their territories. The management plans, protocols and practices are focused on meeting conservation, ecological and fisheries management objectives, which largely fail to give attention to the historical, political, socio-economic and cultural context of the local fishing communities in these coastal areas.

Failure to recognize and respect local and customary forms of marine use and governance is a further reason for mismatches at the institutional level (Sowman

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<sup>9</sup>For example the Traditional Governance and Leadership framework Act of 2003 contains provisions to enable delegation of authority over natural resources to traditional leaders.

et al. 2014a, b; Sunde et al. 2013). This situation persists despite the fact that over 50 % of Africans in South Africa live according to some form of African customary law (Mnisi 2007 in Sunde et al. 2013), and the South African Constitution recognizes customary law and institutions in so far as they are consistent with the Bill of Rights. Furthermore, South Africa has committed to several multi-lateral agreements that require respect for the rights of indigenous peoples and local communities and their involvement in decision-making. While the new Small-scale Fisheries Policy (DAFF 2012) includes principles and provisions to give effect to these rights (Sowman et al. 2014a) it remains silent on how these principles will be applied in MPAs. Except in the case of Kosi Bay, fisheries and conservation scientists do not recognize the existence of customary systems and are reluctant to negotiate changes to current access and use rules in MPAs.

Recent research is enhancing understanding of the complex local and customary marine governance systems in South Africa (Hauck 2009; Wicomb and Smith 2011; Ferris 2013; Sunde et al. 2013; Sunde 2013, 2014; Williams 2013) and is forcing recognition of what Borrini-Feyerband (2008) refers to as “other governance types” including self-governance. Increasing calls by local communities to have their customary, cultural and socio-economic rights recognized, is likely to require a review and reconsideration of access and use rights in many of South Africa’s MPAs.

### **Lack of Attention to Policy Implementation Processes**

South Africa has undergone a major law reform process and is considered to have one of the most progressive Constitutions and suite of natural resource management laws in the world (Hauck and Sowman 2003). However, while much emphasis has been placed on improving participation in policy formulation, and setting in place institutions, processes and standards to promote transformation, insufficient attention has been given to the design of these institutions, and the practical procedures and human resource requirements to give effect these policies and laws. Furthermore, implementation typically falls back to government which is hampered by lack of resources, limited capacity, weak leadership, high staff turnovers as well as lack of political will to ensure effective implementation of laws (Sowman et al. 2014a, b). In many cases, mechanisms for civil society actors to provide input and direction to the implementation phase are lacking. The contradictions inherent in policy frameworks governing economic development and natural resource management in South Africa further undermine the implementation process as these will be open to interpretation by the department mandated to implement the policies.

The importance of monitoring and learning that takes place in the process of policy implementation is well documented (Ojha et al. 2013). The insights and lessons gleaned from such processes are vital to enable the adaptation of policies and plans once understanding of practical implementation and challenges become apparent. Such an approach requires the ongoing involvement of civil society and other governance actors to ensure accountability and that policies and management plans are appropriate to different local contexts. The involvement of all governance



actors in the process of implementation – review – reflection and adaptation is critical in order to enhance governability of small-scale fishers living in and adjacent to MPAs in South Africa.

## Conclusion

This research has explored the nature of governance interactions that take place amongst actors involved in small-scale fisheries governance in the context of MPAs in South Africa. It has also sought to understand the mismatches that exist in the process of governance, why they persist and what the implications are for governability. The assumption of the Interactive Governance Approach that different governance actors will find a way to work collaboratively, deliberate on complex problems and seek to resolve conflicts and give up some of their identity and power in the process (Bavinck et al. 2013) is not borne out in the cases examined in this research. Whilst it is recognized that significant time is required to overcome the devastating impact of South Africa's political history, there are several other factors that inhibit governability.

Foremost amongst these factors are the divergent values, principles, worldviews and images of different actors and the persistence of a natural-science dominated paradigm in achieving conservation and management of small-scale fisheries living adjacent to MPAs. This paradigm is the “powerhouse” of fisheries and MPA management in South Africa. The disjunctures at the meta-governance level reverberate throughout the governance system leading to institutional set ups that are not effective and respected by all stakeholders, and interpretations that are not always consistent with Constitutional imperatives. This in turn leads to management actions and decisions that on a practical daily basis impact heavily on especially poor and marginalized fishing communities. The absence of a set of shared principles and common vision in fisheries and MPA management in South Africa means that the framing of problems, the interpretation of policy and law, the approaches to planning and management as well as the resolution of problems, are often contested. Fisheries and conservation managers are committed to rebuilding fisheries stocks and maintaining and expanding the conservation estate while civil society and their social partners are seeking redress and demanding that human rights be respected first, and are thus approaching governance from very different philosophical, ontological and epistemological positions. Song et al. (2013) have suggested that governance challenges could be reduced if the values, images, and principles of stakeholders are made explicit, understood, and articulated in policy and decision-making processes. This of course is desirable but is unlikely to happen without firstly acknowledging that fundamental mismatches do exist, agreeing on the root causes and then being willing to explore why they persist and how they can be reconciled. This requires political will and leadership as well as wise facilitation to encourage engagement on these fundamental meta-governance mismatches. It also requires ongoing research in order to provide robust evidence for the root causes

underlying governability challenges in small-scale fisheries and MPAs in South Africa, ideas for addressing challenges and showcasing examples where governance interactions and processes have led to more equitable and sustainable outcomes.

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