

CAST OUT

THE SYSTEMATIC EXCLUSION OF THE KWAZULU NATAL SUBSISTENCE FISHERS FROM THE FISHING RIGHTS REGIME IN SOUTH AFRICA



This Policy Brief is a summary of research report on the Exclusion of Subsistence Fishers in KwaZulu Natal from the fisheries policy regime

Written by Jackie Sunde and Kira Erwin For South Durban Community Environmental Alliance and KZN Subsistence Fisherfolk Forum 2020

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Introduction

The Indian subsistence fishers of South Durban and surrounding districts, together with the non-racial community of poor, subsistence line fishers that has joined them in the KwaZulu-Natal Subsistence Fisher's Forum (KZNSFF), have been historically cast out of the legal and policy regime for fisheries in South Africa. Whilst this process of systematic exclusion has taken place over the past century, the Covid-19 lockdown, with its restrictions on the freedom of individuals to sustain their livelihoods, has revealed the underbelly of the post-apartheid state.

The Covid-19 lockdown has put a spotlight on this exclusion of thousands of fishers. It has exposed the continuation of a racist, exclusionary approach to subsistence fishers in KwaZulu Natal that denies their Constitutional right to food security, to their culture and to redress for past injustices. When President Ramaphosa declared a national state of disaster in terms of the Disaster Management Act and introduced Lockdown Level 5, Minister of Environment, Forestry and Fisheries approached the National Command Council and commercial fishing and small-scale fishing were declared 'emergency services', exempting these fishers from sections of the Lockdown regulations and enabling these fisheries sectors to continue to fish. The Department circulated permit conditions to all SSF cooperatives and informed them that all fishers must carry

these permit conditions and a copy of the cooperatives Letter of Grant, which is the letter confirming them as a recognised small-scale fishing cooperative with a fishing right.

For the thousands of fishers who have been excluded from the SSF cooperatives in KZN, the Lockdown Level 5 regulations were a harsh blow. These fishers once again found themselves cast out, at sea. Unable to fish to feed their families, many were desperate. The KZNSFF immediately began to find out how their members, the traditional, subsistence fishers, who have been recognised by TRANSNET as port users, could be similarly exempted and permitted to fish.

SDCEA and the KZNSFF requested a meeting with Minister Creecy and subsequently met with her and the Acting DDG, Ms Sue Middleton. In this meeting, whilst sympathetic about the plight of the fishers who cannot fish with their recreational permits, Ms Creecy did not concede that these fishers had been excluded and marginalised. She agreed to discuss the issue of recreational fishing with the National Command Council. However notably, the Acting DDG informed Desmond D'Sa that subsistence fisheries no longer exists, that subsistence has been erased from the statute books with the amendment of the MLRA.



These fishers have been once again cast out. The exclusion of the subsistence line fishers of KZN Fisher Folk Forum and others from the policy and access to fishing rights has had enormous consequences on the lives and livelihoods of these fishers. In addition to the impact on their household food security and income, the annual cost of recreational and bait permits and restricting their ability to purchase basic household and family necessities, these fishers have faced harassment and discrimination from enforcement officers and the general public. The state's refusal to let these traditional fishers fish to feed their families, particularly during

a time of crisis, is a violation of their dignity as human beings and as workers trying to be independent of the state, to subsist and support their families. This is a culture and tradition that they have practiced since time immemorial. It reflects continuity with the socio-cultural practice of the indentured labourers of the 1800s who fished to become independent and able to provide for their families and contribute towards community food security. Sadly, the state's action reflects a continuity of the discrimination and prejudice of the racist, colonial era in post-apartheid South Africa.

Image Source: The Rising Sun, 19 May 2020

THE RISING SUN, MEREBANK, MAY 19, 2020 - www.risingsunchats.com

Fishermen struggle to make ends meet due to lockdown

The Umkomaas Aliwal Shoal Rock and Surf Fishers Forum, together with fisherfolk in surrounding areas with anglers from Chatsworth and Phoenix, have voiced their concerns regarding the ban on fishing during the lockdown.

Fishermen, especially those, who maintain their families through subsistence fishing, are finding it difficult to make ends meet during the COVID-19 pandemic and the ban on fishing due to the national lockdown. "We all have valid permits and cannot make a living to feed our families during this period. On average, each permit holder has about five family members to feed. Most are bread winners and solely rely on fishing to put food on the table plus earn an income by selling their extra catches. It is that part of the year (winter season) that fisherfolk awaits. This is because fish comes in abundance and migrates along the KZN coastal waters, as can be described by the annual sardine run. Majority of anglers are either unemployed, temporary labourers or pensioners. Now that fishing is banned, we are feeling it tough with bills accumulating and running into arrears," said Allan Naicker, a representative of the forum for Chatsworth.



Fishermen, especially those, who maintain their families through subsistence fishing, are finding it difficult to make ends meet during the COVID-19 pandemic.

Some of the subsistence fishermen have applied for government's aid for the R350 social grant but are still awaiting feedback. "We have now reached a point where we cannot turn to anyone for help. In any event, social distancing is always practiced with rock and surf anglers so as to avoid any tangling of fishing lines. Anglers are usually over two metros apart from each other and therefore, will not compromise the lockdown regulations. We will, however, promise to wear face masks and abide by the strict controls to flatten the curve of the coronavirus. Consideration is given to commercial fishing as in sardine and snoek runs, which are deemed as 'elite' privileged, yet we on the other end are disadvantaged and sidelined by the current regulations. We plead with government to immediately lift the ban for us to be allowed to fish so that we can sustain our living. We are requesting the authorities to change the present angling permit from recreational to that of subsistence angling," he said. The forum is in the process of sending their concerns to the government. For more information on the forum, contact Allan Naicker on 083-263-1237.



Sardine run, 2020



The pioneers of line fishing in KwaZulu Natal

Many of these excluded subsistence fishers are descendants of the Indian indentured labourers who arrived on the shores of Durban in the 1860s. The origins of the net and line fisheries in this province can be traced back to these early residents (Govender and Chetty 2014). These poor, bonded workers brought both their fishing skills and their close relationships with the ocean to the Colony of Natal. So began the proudly cherished cultural tradition of the rod and reel subsistence line fisher along the beachfront of Durban and surrounds. More than just a pastime, this practice represented a means whereby these labourers could express their independence from the bondage of their indentured labour, whilst also ensuring adequate food for their families. Once freed from their indentured labour contracts, many of these Indian workers and their families settled in the area of Durban harbour at the mouth of the Umgeni River,

in the mud marshes and mangroves on the edge of the sea to which they now turned to establish their livelihoods. Angling with rod and reel became a means of subsistence, whilst the seine-netters steadily developed their netting skills into a flourishing enterprise. Fishing lies at the heart of the cultural history of these residents of early southern Durban and surrounds, upon whose labour contribution the development of much of the modern industry in this province rests. This living history continues in the strong fishing culture of the KZN coastline; through family traditions of going to the piers and beachfront to fish, in the rituals of prayers down at the shore break in the early mornings, in the spicy seafood cuisine for which KZN is famous, and in the vibrant life-giving pulse of the sardine netting that brings food and livelihoods to hundreds of people along this section of the coast.

Bluff, circa 1860s. Indentured workers, just arrived in Durban, waiting to be taken to the Quarantine Barracks.
Image Source: Govender&Chetty, 2014
from the Legends of the tide



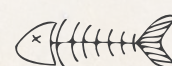
The criminalisation of informal and subsistence fishers in the development of fisheries management in South Africa

Despite their cultural ties to fishing, their close knowledge of the coastal ecology of the Bay and other areas of the coastline, the subsistence fishers of KwaZulu Natal were not recognised during the colonial administration or by the apartheid regime. Although the subsistence fishers in Durban and surrounds were largely of Indian origin, their dependence on the sea for their subsistence and cultural identity was similar to that of rural fishers in other parts of the coastline where Zulu and Thonga communities' had lengthy histories of depending on the sea for food. For many of these communities, the sea and coastal estuaries were places of ancestral belonging, central in the cosmologies and spiritual practices of these communities. Despite the importance of the sea in the subsistence,

cultures and customary systems of these communities, colonial conservation and fisheries management imposed restrictive, racist regulations on these communities, systematically undermining their ability to sustain themselves. The imposition of marine protected areas (MPAs) during Apartheid and the introduction of a range of national, provincial and municipal regulations and by-laws denied these citizens their rights. Thousands of African, Indian and coloured fishers were forcibly removed from their homes adjacent to the coast over the past century and a half, their close connection with the ocean severed and their livelihoods that depended on the sea disrupted by colonial and racist spatial planning and conservation.



Women Fishers from Umgababa picking mussels



The post-apartheid legal reforms and continued discrimination towards subsistence fishers

The dawn of democracy in 1994 and the promises of redress and restitution gave hope to these subsistence fishers. The Constitutional recognition of the impact of forced removals and past discrimination on the freedoms, culture and livelihoods of millions of South Africans provided a legal imperative for the state to develop mechanisms to address the past injustice experienced by these fishers.

In 1998 the Marine Living Resources Act No 18 was promulgated. This Act aimed to address historical inequities and promote transformation in all fisheries sectors. This statute recognised subsistence fishing for the first time in the history of the governance of marine resources. Alongside commercial and recreational fishing, subsistence fishing was therefore given legal status. In 1998 the National Department

Snake Park Pier



responsible for Fisheries Management, namely Department of Environmental Affairs and Tourism (DEAT), Branch Marine and Coastal Management, recognised that little was known about the thousands of subsistence fishers, and hence a Subsistence Fisheries Task Group (SFTG) was established to investigate this sector and to make recommendations on the management of this sector.

The SFTG undertook a socio-economic survey of coastal fishing communities in the subsistence sector, which was published in a series of reports and papers in 2002 (Harris et al 2002b). This report indicated that there were approximately 19 745 subsistence fishers in KZN (Clark et al 2002). The SFTG noted that this group comprised a range of fishers and that it was difficult to define 'subsistence' into a neat

category (Branch et al 2002b). Although it did conduct a socio-economic survey, the SFTG was influenced by the dominant natural science approach to fisheries management at the time which based its approach on the status of the resources. Rather than recommending a review of the entire fisheries allocation system and redistribution of resources from the commercial and recreational sectors, the SFTG restricted subsistence fisheries to those species that were not under pressure from these sectors, and recommended that subsistence fishers be encouraged into alternative livelihood options. Missing from the survey were the communities of South Durban where the traditional Indian subsistence fishers lived after they were moved away from the sea by the racist spatial planning legislation.



Implementation of the Subsistence Fisheries Task Group recommendations

Although management of marine living resources is regarded as a national mandate, fisheries management was delegated in the province of KZN to the Subsistence Fisheries Management Unit, now known as the Ezemvelo KZN Wildlife. This unit was influenced by the resource-centred approach of the SFTG. This Unit focused its work on those who were rural, lived in a community in proximity to the resource. During its period of tenure, the Subsistence Fisheries Management Unit identified and worked closely with 23 rural subsistence communities, working with and granting permits to approximately 2000 subsistence fishers in total in the province,

of whom approximately 928 were line fishers (Mann et al 2014). The remaining fishers were forced by the absence of a management process that would recognise and accommodate them, to purchase recreational permits in order to avoid arrest and criminalisation for fishing without a permit which was in contravention with the MLRA. Those excluded included subsistence fishers who had been identified by the SFTG survey in 1999- 2002, but who were believed to fall outside the definition of subsistence utilised by this Unit and the KZN Provincial enforcement agency, Ezemvelo Wildlife, as well as those who had been left out of the SFTG list completely.

The historical, traditional subsistence fishers of Durban and surrounds, who had always considered themselves subsistence fishers, were thus cast out in the cold and forced once again to turn to recreational permits to protect themselves from criminalisation.



The development of the Small-scale Fisheries Policy (DAFF 2012) and amendment of the MLRA (2014)

Despite some of the 'good intentions' to redress past discrimination and exclusions in fisheries policy reform post 1994, marginalisation and exclusions continued in this sector. Throughout the country subsistence fishers were frustrated with the failure of the DEAT to deliver on the promises of the MLRA, albeit that their reasons for this differed across the provinces. In 2005 subsistence, artisanal and traditional fishers in the Western Cape launched court action against the Minister of Fisheries in the Equality Court. In 2007 the Equality Court ordered the Minister to develop a new policy that "would accommodate the socio-economic rights of traditional, artisanal fishers and ensure equitable access to marine resources for those fishers" around the coastline (EC 1/2005). A National Task Team was to be established to develop a new policy and ensure a participatory process across the country.



KZNSSF protest for opening of the ports, 2007.

From early 2008 to 2010 the National Policy Task team met to draft a new policy that would accommodate subsistence and small-scale commercial fishers. The fisher representatives and civil society members of the National Policy Task Team fought hard for the new policy to lead to a paradigm shift in the entire approach to fisheries in South Africa (Sowman et al 2014). They hoped that the policy would promote and protect the right to food, to culture and the customary rights of traditional fishing communities who had not benefitted yet from the objectives of the MLRA. In line with the global trend towards categorizing subsistence, traditional and artisanal fishers all under the umbrella term 'small-scale' and leaving specific definitions to national governments as the Small-scale Fisheries Guidelines (FAO 2014) do, this draft policy included subsistence fishers under the umbrella definition of small-scale fishers. It was hoped that a community-based right approach would enable the devolution of power to the local level, whereby food security needs of local communities could be protected. Aware that some communities had been moved away from the coast due to the Group Areas Act, the



term 'community' could refer to a community of common interest. It did not have to be limited to people who live together but could include fishers who have a common tradition and set of needs and interests.

In 2010 the DAFF released the draft Policy for Small-scale Fisheries for comments. The KZNSFF was concerned that their unique tradition of working as individuals who come from a wide range of communities and who follow the fish up and down the coastline might not be accommodated by this policy with its emphasis on a community-based approach. In retrospect there was insufficient consultation and dialogue across the different provinces to develop consensus amongst civil society partners and ensure that there was adequate public participation on the ground, that fishers were aware of the policy and that the final draft accommodated all the needs of each province. Despite the KZNSFF concerns this policy was gazetted in 2012 and adopted by Parliament in 2013. The KZNSFF wrote to Minister Joemat Petersen informing her of their frustration with the inadequate public participation process for the policy and requested further engagement. They did not receive a response. In 2014 they commented on the Draft Amendments to the MLRA, again noting their concerns about the Policy for SSF and how subsistence fishers would be included however were not given the opportunity to engage with the policy makers. Picture 20- Co-founder of the KZNSFF Essop Mahomed opening the South Pier

In early 2015, ahead of the the amendments to the MLRA to accommodate the new policy, DAFF hosted a series of meetings in KZN to consult communities about the draft Regulations for SSF. They did not advertise these meetings widely and were largely restricted to the areas where the Ezemvelo KZN Wildlife had contacts, resulting in a strong rural bias in the public participation process. The meeting held at Diakonia in Durban was not well published and the KZNSFF only became aware of the DAFF public participation meetings with selected communities a very short time before the meeting. They raised their concerns with DAFF about the poor notice and inadequate public participation. Subsequently they also wrote to Minister Cele, always citing the KZNSFF and referring to themselves as subsistence fishers. They did not receive a response.

Despite knowing about these traditional, historical subsistence fishers, the amendments to the MLRA were adopted by Parliament in March 2016, replacing the term subsistence with that of 'small-scale fisher' and 'small-scale fisheries'. The actual subsistence fishers on the ground were not informed by DAFF of this change to their status. As they had always been forced to use a recreational permit, nothing changed in their everyday lives and they continued fishing as they had until then.



Co-founder of the KZNSFF Essop Mahomed opening the South Pier



Interpreting the Policy for SSF and restricting small-scale fishing rights through the Regulations for SSF

The new regulations interpreted the Small-scale Policy in a distinctive way, prescribing that identified small-scale fishing communities must form a cooperative in order to be recognised by the Minister and granted a small-scale fishing right. Whilst the small-scale fishers who had gone to the Equality Court had motivated for a community-based approach, they had not anticipated that DAFF would prescribe the way this would be implemented so rigidly. They had hoped that the policy would be adapted to meet the histories, traditions and local context of each and every community where the fishers lived.

In 2016 DAFF commenced with the implementation of the Policy for SSF. They called for 'Expression of Interest' from communities who wanted to be identified as a Small-scale Fishing community (DAFF 2016). The process of communicating, registering and verifying small-scale fishers as part of the process of recognising their rights was very chaotic in KZN. The majority of the KZNSFF

in Durban and surrounds did not even know about this process and those who heard about it did not realise that it applied to them as they thought they were subsistence fishers. Despite numerous complaints to DAFF officials and Parliament by various groups DAFF went ahead and completed the registration process. When the provisional lists were released it was clear that many fishers had been left out. Some fishers appealed but many did not know about the appeal process. In 2017 DAFF released the final lists and in January 2018 commenced the process for registering the small-scale fisher cooperatives in those communities where they had identified fishers. DAFF insisted that they would only register a cooperative and grant a right to this community if there were more than successful 20 fishers in that community. In areas where DAFF verified less than 20 persons this group of fishers was forced to join a neighbouring group of fishers to form a 'community' and then to form a cooperative, even if they had no history of fishing together.



KZNSFF protest, 2016



Where have all the (subsistence) fishers gone?

In 2019 Minister Zokwana recognised 38 cooperatives in KZN, allocating fishing rights to these cooperatives that included a total of approximately 2008 fishers. These fishers' rights are held collectively by the cooperatives. Considering that in 2002 the SFTG appointed to investigate all the fishers left out prior to the MLRA found that there were 19 475 subsistence, artisanal and small-scale fishers in KZN province, and that this excluded the communities of Chatsworth, Wentworth, Merebank, Clairwood and Umkomaas, where

have all the fishers gone? It is known that they have not been included in the commercial sector. We know that many have had to get recreational permits however it was hoped that this new policy would enable their rights to be recognised now, their culture and traditions acknowledged and accommodated. Yet it is clear that the Small-scale Fisheries Policy has excluded thousands of fishers in KZN. There are only 4 cooperatives recognised in the entire eThekweni Metro region, involving approximately 202 fishers in total (DAFF 2019).

Fisherfolk meeting at the Clairwood Tamil Institute, 2014



How can the Constitutional rights of the subsistence fishers of KZN be accommodated?

The following conclusions are proposed based on the interventions and events identified in the larger research report from which this briefing is drawn:



Indian subsistence shore-based line fishers in KZN have been subjected to a century and a half of racism and class-based discrimination. This marginalisation and prejudice commenced in the colonial era, was consolidated under apartheid, and continues to shape these fishers' relationship with the state and their everyday experiences. The distinctive history of Indian fishers and the extent to which fishing forms the material basis of much of their culture has been ignored. This history shapes their specific approach to the concept of 'subsistence' which has not been understood by the fisheries department, marine science community and some civil society partners and fisher movements in South Africa. The term subsistence is no longer officially recognised as a separate category in fisheries policy. This holds direct adverse consequences for these fishers.

Subsistence fishers in KZN represent a racially, culturally and economically diverse group reflecting a continuum of dependency on marine resources for basic food security and livelihoods. This dependency fluctuates in the course of a year for many fishers. Dependency on marine resources is dynamic and has very complex interlinkages with a range of other societal, political and socio-economic factors that are largely out of subsistence fishers' control but shape their need to fish for food and livelihoods.



The local economy of subsistence fishing plays a critical role in contributing to the food security and basic needs of thousands of households. Instead of recognising this subsistence economy and the contribution that individuals and families are making to national growth and development and the well-being of family members, many subsistence fishers in the province have been penalised and excluded from policies that are insensitive to their particular contexts. The tendency in policy implementation and decision-making to prioritise natural science information, and neglect how this data is embedded with social, economic and cultural contexts leads to a failure to adequately understand the complexity of subsistence fishers' livelihoods and the actual use of fisheries resources, thereby impacting the validity of decision-making.





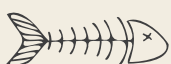
The approach to marine science in the province is located within the distinct historical socio-political and economic relations of the past. This has resulted in a resource-centred approach to fisheries management within a narrow conceptualisation of sustainability that often neglects an environmental and social justice lens. This has enabled a continuation of the privileging and protection of the powerful commercial and recreational sector, and the use of conservation tools such as Marine Protected Areas as safety banks to counteract these high-take sectors. The needs of subsistence fishers have had to be accommodated in the very limited space on the periphery of the commercial and recreational sector.

There have been no fisheries right or access mechanism available to the urban and peri-urban subsistence fishers of KZN, most but not all of whom are of Indian descent with a long heritage and culture associated with subsistence and small-scale fisheries. These subsistence fishers were further marginalised after 1994 by the technocratic, expert-led, resource approach to subsistence fisheries management. Besides the negative attitude towards subsistence fishers, due to difficulties in creating neat criteria of who fitted into these policy categories, some subsistence fishers have been viewed as deviant recreational fishers 'masquerading' as subsistence fishers to take more than their allocated share. In KZN the Ezemvelo Wildlife Subsistence Fisheries Unit, which decided on its mandate, focused on rural subsistence fishers who were part of clearly defined rural communities living in close proximity to the coast, and viewed as highly dependent on these resources. The national fisheries department failed to detect and respond to this narrow focus which resulted in the further exclusion of thousands of subsistence fishers along the KZN coastline. In response these fishers, to shield themselves from criminalisation purchased easily available recreational fishing license at the local post office. Appearing as recreational fishers was a continuation of the practice during the apartheid regime. This has rendered them invisible, conveniently hiding their actual dependence on fish for food and livelihoods, and their cultural connection to fisheries, enabling the fisheries department and marine scientists to avoid having to confront the very unequal, still racially based power relations in both the fisheries, and the linked conservation industries in KZN.



The political economy of fisheries in South Africa still favours the large commercial and the recreational sectors and marginalises subsistence and small-scale fishers. A neo-liberal capitalist approach to fisheries in the national and global economy prevails and has blocked attempts by subsistence and small-scale fishers over the past two decades to demand a radical transformation of the entire sector. The use of business vehicles such as co-operatives in the Policy for Small-scale Fisheries is one such example. Calls from social movements for an alternative approach to the marine commons, one in which the poor can access marine resources in times of need and cultural values are respected has to date gained little traction.

The definition of 'community' and 'small-scale fishing' in the Policy for Small-scale Fisheries and the definition of 'small-scale fishing' in the amended MLRA provides space for the KZNSSF to craft an arrangement that could fulfil their members' respective needs and interests as subsistence fishers under the umbrella term 'small-scale'. This would require DEFF to recognise and acknowledge that they have been left out, and create a legal mechanism to enable them to enter into the SSF sector through a sustainable and environmental justice approach.



Policy Recommendations

1

Call for an official review into the public participation processes comprising the implementation of the Policy for SSF, including a legal review of the Regulations for SSF in the context of the Bill of Rights and the impact of the policy implementation process on subsistence fishers' right to their culture, the right to adequate food and the right to practice one's occupation in the Constitution.

2

Request that the Regulations for SSF be amended to accommodate a flexible approach to the institutional basis for the granting of a small-scale fishing right so that the KZNSFF could be recognised as a 'community of interest' and a community-based right to be granted to them. Individuals would have individual rights within this group-based right.

3

Establish a process to consult all subsistence fishers on how cultural fishing rights, differentiated in the Constitution from customary rights, can be recognised, a process of restitution and redress facilitated and access to resources enabled on a sustainable basis.

4

In the interim, grant an exemption to fish as an interim relief permit to all subsistence fishers, with appropriate permit conditions that allow fishers to sell their fish locally. This would mitigate against food insecurity during unforeseen crisis situations as seen under Covid-19 restrictions.

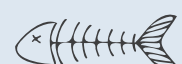
5

Establish a Working Group in KZN immediately, consisting mostly of fishers with supporting experts in civil society and a variety of legal, social and natural science fields, tasked to explore how a more flexible regulatory environment under the current SFF policy may function. This would have to take into account the historic and contemporary complexities of how culture and economic activities are intertwined in KZN and recognise that precarious and informal work opportunities in the province make rigid policy categories for fishers dysfunctional.

Please see South Durban Community Environmental Alliance (SDCEA) website for a copy of the original research report.

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**The Right to Know
The Duty to Inquire
The Obligation to Act**



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