

# ***Cast out: The systematic exclusion of the KwaZulu Natal Subsistence Fishers from the fishing rights regime in South Africa***

## **Policy Research Report**



**KZN Subsistence Fisher's Forum and  
South Durban Community Environmental Alliance  
(SDCEA)**

**2020**

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# Contents

1. Introduction
2. Methodology
3. Historical background: crafting freedom and cultural identity through subsistence fishing in colonial and apartheid waters
4. The post-apartheid legal reforms: 1998 – 2000 the Marine Living Resources Act of 1998 and the Subsistence Fisheries Task Group
5. The challenge of complexity continued discrimination towards subsistence fishers and their forced ‘re-creation’ as ‘recreational’ fishers
6. Implementation of the MLRA and SFTG recommendations in KwaZulu Natal, and the Equality Court Appeal of 2007
7. Securitisation, the closure of the Durban Port to subsistence fishers and the development of eThekweni as a world-class destination
8. The development of the Small-scale Fisheries (SSF) Policy (DAFF 2012) and amendment of the MLRA (2016)
9. Interpreting and implementing the Policy for SSF and ‘co-op-ting’ the fishers
10. Where have all the (subsistence) fishers gone?
11. The socio-economic profile of the subsistence fishers of KZN today
12. The Covid-19 lockdown spotlight on subsistence fishers
13. Conclusion: How can the Constitutional rights of the subsistence fishers of KZN be accommodated?

## References

## Annexures:

1. List of persons interviewed

## Section 1 Introduction

In March 2020, the South African government declared Covid-19 a national disaster in terms of the Disaster Management Act No 57 of 2002. This act introduced, overnight, regulations that prescribed what activities were essential services to society. This national-level intervention ironically, but tragically, exposed the underbelly of the post-apartheid state. The lockdown regulations set in motion a series of administrative reactions that have revealed more starkly the deep-seated and stubborn inequalities in South Africa. Contemporary forms of exclusion through neoliberal capitalism, and the persistence of racism, are entangled with the distinctive racist and oppressive practices of the apartheid past. The Indian subsistence fishers of South Durban and surrounding districts, together with the non-racial community of poor, subsistence line fishers that have joined them in the KwaZulu-Natal Subsistence Fisher's Forum (KZNSFF) found themselves caught in this net of regulatory distortions. Under the lockdown, these fishers were told by the Deputy Director General of Fisheries that subsistence fishers no longer existed as a legitimate category of fishers. Given their illegal status under the new regulations these fishers were unable to turn to their natural commons to feed their families, nor were they eligible for state food parcels. Their situation reflects the plight of many poor South Africans under the disaster management regulations brought in to curb the pandemic.

As this report will illustrate a process of systematic exclusion from the legal and policy regime for these Durban fishers, who view themselves as subsistence fishers but are not legally recognised as such, has accumulatively taken place since the late 1800s. In the city of Durban and the surrounding small coastal towns, many fishers are descendants of the Indian settlers who were dispossessed of their access to the sea and their fishing rights due to racist discrimination, and later through the notorious Group Areas Act. These fishers have crafted cultural meaning and identity through fishing, historically this offered important symbolic freedom from indentured labour, and later under apartheid provided supplementary livelihoods to support families during the on-going, systematic racist and cultural exclusions. There is ample historical evidence of this in both official records and oral history testimonies. 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 seasonal sardine netting that brings food and livelihoods to hundreds of people along this section of the coast. These cultural and heritage practices remain strongly interleaved with economic linkages for these fishers. The social, cultural and economic fishing networks that span many households and communities in KZN require policy recognition in ways that protect and support these fishers as important users and custodians of marine resources in the province. The Covid-19 lockdown, with its associated restrictions on the freedom of movement of individuals and their ability to sustain their livelihoods, has revealed the continuity of marine resource exclusions for these fishers.

Despite some of the 'good intentions' to redress past discrimination and exclusions in fisheries policy reform post-1994, this policy report clearly outlines how marginalisation and exclusions continue in this sector. This requires an urgent policy review process and intervention. This report aims to understand how the current position of marginalisation

and exclusion of the KZN subsistence fishers, particularly those who form part of the KZNSFF, have occurred over time, and what this means for contemporary policy implementation objectives. It explores how discrimination and apartheid forced removals have created a stubbornly unequal fisheries landscape that continues to favour those who already hold wealth and power today. The brief examines how the democratic policy context of the Marine Living Resources Act 18 of 1998 (hereafter the MLRA), amended in 2016 and the Policy for Small-scale Fisheries (DAFF 2012) and its implementation have not managed to address this injustice adequately. It provides an overview of the complex history of these fishers, a constellation of cumulative policy failures, marine science approaches, racial and class-based discrimination and exclusions that have shaped how these fishers are viewed by different parties and institutions, and the current socio-economic realities that they now face. Research focusing on this specific fisher context is necessary given some of the significant differences these fishers face in comparison to small-scale fishers in the Eastern and Western Cape.

All along the KZN coastline, subsistence fishers and their households depend on the sea for their basic food security and livelihoods. However, this important local economy has not been adequately recognised or supported despite two extensive policy and legislative interventions. While the post-apartheid state recognises the rights of fishers on paper, the policy interventions have not led to the actualisation of these rights in practice. Indeed over the years, as shown in this research report, some subsistence fishers have been actively excluded from policy participation and management processes. The MLRA and subsequent policies, certainly in KZN, have had a limited scope concerning subsistence fishers, and have not provided a legal or policy mechanism to secure redress for past discrimination or prevent further marginalisation. Instead, policy instruments have managed fisheries mainly from the perspective of the status of linefish stocks<sup>1</sup> and conserving marine resources. This has been done within the status quo of the existing commercial fisheries total allowable effort<sup>2</sup> and quantum<sup>3</sup>. Recreational fishers face unevenly enforced controls, such as closed seasons and size and catch limits for some species. In comparison, there are heavy regulations for low-income and poor fishers via a very restrictive permit allocation system. Limited regulations for recreational fishing coupled with punitive regulations for what is now termed small-scale fishers, have pushed many subsistence fishers in the province out of official policy recognition. In short, these policy processes and implementation have suffered from a weak environmental and social justice lens, which in turn has severely limited the state's ability to build an overarching, equitable fisheries management process in South Africa.

This one-dimensional view of resource management has underpinned fisheries science and decision-making in South Africa in the two decades since 1994. There remains a tension around the extent of dependence on marine resources, and the lived messy, dynamic and complex nature of subsistence, recreational and small-scale fisheries. Unresolved policy perspectives on whether or not subsistence fishing is viewed as a valid 'safety net' for the poor at various times in their lives remain unanswered, despite rising unemployment and

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<sup>1</sup>Line fish stock in South Africa include approximately 200 species of fish caught by line, either through shore-based fishing with a line and rod or boat based line fishing.

<sup>2</sup>Total Allowable Effort TAE refers to fishing that is regulated by the total number of rights holders permitted to fish in a given sector.

<sup>3</sup>Quantum refers to the total amount of fish that is permitted to be caught.

food insecurity. National legislation and policy for fisheries management are vital to ensure sustainable marine resources in our oceans. Management tools and conservation mechanisms such as marine reserves, space-based or temporary closures and regulatory measures for fishing are necessary instruments to ensure sustainable ocean governance. What is in question here is how legislation and policies may be interpreted and then implemented in ways that have the unintended consequence of entrenching marginalisation, exclusion and inequities, as is currently happening in some areas of the KZN coastline. A very different political perspective might frame these tensions through asking different questions: How have the marine commons<sup>4</sup> been privatised through the approach to property rights and the allocation of resources to industrial and recreational fisheries in the past? How might the marine commons and access to resources be re-imagined in a way that these resources can sustain the lives and livelihoods of the poor and the nation as a whole in a more equitable, socially and ecologically just way? How could a fisher's cultural history be recognised, such as that of the Indian fishers, even if he or she did not need access to fish from a subsistence perspective at specific times in their lives because they had adequate temporary employment? This research report aims to offer evidence for why such a review is imperative if we are to ensure that subsistence and small-scale fishers can establish their legitimate rights to access the sea to support their livelihoods, and have their cultural heritage recognised.

This research report ends by making a call for a serious engagement with these fishers by the relevant ministry. An engagement that recognises the complex entanglements between culture, heritage and economic livelihoods. The current Small-scale Fisheries policy does hold some promise for their inclusion as resource users and active members in South African fisheries management. To make the current policy inclusive, a more nuanced approach to the implementation of small-scale fisheries governance and management is required. Policymakers and management officials would need to understand the historical processes that shape some fishing practices, and become far more comfortable with the dynamic and messy lived reality of fishers who live in a country where clear cut categories of work and employment no longer exist. There is substantive precedent in South Africa where local and national government decision-makers have recognised the precarious nature of work in South Africa, and how informal practices support livelihoods (see for example in the Durban case of street trading economies (WIEGO, 2015)). There is also growing recognition internationally that urban fishers utilise multiple livelihood strategies to support families in cities, of which fishing is an important part (see for example Kadfak's (2019) recent study on urban fishers in India). The current economic context of work and informality must be acknowledged and engaged with in a policy review.

In addition, the policy review process called for in this report requires a far stronger environmental and social justice approach to fisheries policy, governance and management. To adequately redress past injustices, and support more inclusive and sustainable futures for all South Africans, an assessment of the political economy underpinning the current power relations and resource allocations between commercial, recreational and small-scale fisheries (including those discussed in this paper) needs to be urgently undertaken. The

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<sup>4</sup> Commons refers to publicly or state-owned land, forests, ocean or other water bodies and natural resources that are collectively used and managed (FAO 2016).

Department, in partnership with fishers of all kinds, needs to develop a revised, integrated fishing rights policy. This policy must be embedded in an over-arching oceans governance strategy that reflects the current realities of food insecurity, poverty, informal and formal livelihood strategies, as well as the cultures and heritage that shape the country's use and protection of its ocean commons.

## **Section 2 Methodology**

This study includes an overview of the following literature, policy processes and legal documents: relevant legislation, policy and regulations about the governance and management of marine living resources; policy and regulations at small-scale fisheries at the national and provincial level; national-level scientific working group reports; and social and marine science research on the shore-based line fisheries in KZN. The study also draws on published and grey literature from the social movements to which the fishers are affiliated, including correspondence with the fisheries authorities, student theses and a review of local and national media articles on the KZNSFF response to previous exclusions and Lockdown regulations. In addition, telephonic and electronic interviews including Zoom discussions and correspondence via emails were conducted with 14 key stakeholders (see Annexure 1). Apartheid constructed race categories have created a highly racialised South African society. These categories continue to be used by South African people and are demanded by the state to monitoring redress. It is important to note that this study uses the term 'Black' to refer to all peoples and groups racially discriminated against by the apartheid regime. These include people who identify or are identified by others as African, Coloured, Indian and other Asian minority groups. The brief does, however, use the term Indian to single out fishers of Indian descent at times. It does so as this group predominates within the context of marginalised black fishers excluded from current policy implementation in KZN, and it is their distinctive experience that is the focus of this paper. However, it is important to note that the contemporary group of excluded urban-based subsistence fishers in and around Durban, and who were forced to use recreational licenses to avoid prosecution also includes poor fishers classified as white.

### **Section 3 Historical background: crafting freedom and cultural identity through subsistence fishing in colonial and apartheid waters**

The history of marine resource access and governance in South Africa reflects the complex history of different groups of marine resource users along the coast. Marine resource use today is shaped by pre-colonial, colonial, apartheid and now post-apartheid legal and social relations. These relations have frequently, both in the past and in the present, been distorted due to imposed racial, patriarchal and capitalist structures from within and outside of the state. Different narratives have competed for dominance in the marine and coastal governance space. Since the 1890s the capital-intensive industrial fisheries sector established its hegemony, not only over access to marine resources but also through the power it exercised over the National Fisheries Department at various phases in its development. Marine science in this country developed hand in hand with the commercial fishing sector and the powerful predominantly white recreational sector. Similarly, the conservation sector in South Africa has been influenced by the class and racial context in which it originated. For example, conserving wildlife under apartheid led to forms of landgrabs and exclusion from resources for many indigenous peoples in the country (Cock and Koch 1991, Walker 2008). Vestiges of this past persist, and, as a result, South Africa still has a highly contradictory set of governance relations regarding the management and conservation of the ocean and coast (Sowman and Sunde 2018). This is most evident now in an analysis of the rod and reel subsistence (rock and shore-based) line fishers of KwaZulu Natal which shows that..... An understanding of their positionality must be seen in the broader context of the historical policy approach to and management of subsistence fisheries in this province.

#### **Early marine resource users**

There is considerable evidence of traditional and customary harvesting of marine and estuarine resources by the pre-colonial indigenous coastal inhabitants, as well as by the early Indian coastal residents of the Colony of Natal (Kyle 1983, Scott 1994, Peshak 2005, Walker 2008, Whitelaw 2009, Sunde 2014, Govender and Chetty 2014, Scott 2014). The rich shellfish beds dating back to the Iron Age adjacent to many of the original coastal communities' ancestral lands in and around iSimangaliso World Heritage Area, especially around Lake St Lucia (Harris et al 2003, Walker 2008) attest to the use of shellfish by early inhabitants. A common myth perpetuated in some quarters is that other than the Thonga, the Bantu speaking tribes that settled Southern Africa did not fish or eat fish due to ancestral beliefs (Pooley 1992 in Mann, Rhodes and Kyle 2014). Whitelaw has offered a more nuanced analysis, suggesting that the use of fish in some Iron Age coastal groups was woven into the social relations of these groups (Whitelaw 2009:210). Evidence suggests that many tribes living along the coast and near lakes and estuaries included fish and marine resources as a source of food, for social, medicinal, and healing purposes (ibid). Importantly there is considerable research confirming the close socio-cultural relationship to the sea along the KZN coast (Peshak 2005, Sunde 2014, Empatheatre Collective 2019). In addition, oral history suggests that marine resources have been harvested for use in different traditional medicines (Peshak, 2005, Sunde 2013, Govender and Chetty 2014, Empatheatre Collective 2019). Over and above use or consumption of marine resources, the ocean plays a significant role in the cosmology, spirituality, and ancestral relationships of many of these

communities (Peshak 2005, Walker 2009, Sunde 2013, Empatheatre Collective 2019)<sup>5</sup>. Walker reports that the Bhengazi people who were forcibly removed away from the coast and the shores of Lake St Lucia called themselves 'the people of the sea' (2008). Peshak (2005) and Sunde (2013) have documented some of the sea and lake water rituals performed by the customary communities of Kosi Bay, and Govender and Chetty (2014) describe the rituals practised by the early Indian fishers of Durban that invoked the power of the sea goddess, Meenachi, to bless and strengthen their fish catches.

### Meenachi Amman Festival

*Meenachi* is literally the *Fish Goddess* and this was a ritual to entice shad. The women assemble on the beach where sweet rice, rice-flour cakes (*koli-cutta*), boiled lentils, beans, chickpeas and fruits were laid out on huge banana leaves. A rough caricature of the Goddess made from a brick painted with *tumeric* paste and *kumkum* and wrapped with a silk cloth was placed at the head of the offering. The fishermen, freshly bathed in the sea, would sing devotional songs accompanied by traditional drums and wind instruments.

A goat, painted and adorned like the goddess, was dragged into the sea by a boat and released to swim back to shore. It was promptly recaptured and dragged back into the sea where it was released again. This was done three times, after which the goat was set free to roam the beach for several days, cared for by the fishermen. (Govender and Chetty 2014:148)

## The pioneers of the subsistence fisheries in Durban - KwaZulu Natal

The earliest record of shore-based subsistence line fishing in KZN is that of the indentured Indian labourers of the 1860s who fished on the shores of Salisbury Island (Govender and Chetty 2014:62 and <https://www.youtube.com/watch?v=rW218V8hAWk>). These poor, bonded workers brought with them from India to the Colony of Natal both their fishing skills and their close relationships with the ocean. Whilst some indentured labourers were brought specifically for their sea-faring, boat building and fishing skills to assist the Port Captain and to provide fish rations for the workers on the sugar plantations, other indentured workers fished at night with rod and reel to supplement their very meagre food rations.

*During their five-year indenture period, the Indians fished at night only. They clocked out at the sugar mills, picked up their fishing gear and jumped on a train bound for the harbour. They rowed across the Bay and fished on the shores of Salisbury Island. They were joined by the Indian dock workers who lived in the Point Barracks area. These men were paid a pittance and fishing provided extra food for their table (Govender and Chetty 2014:62).*

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<sup>5</sup> [www.empatheatre.com/](http://www.empatheatre.com/) <https://www.empatheatre.com/lalela-ulwandle>, Lalela Ulwandle  
<https://oneoceanhub.org/un-world-oceans-day/>

Indlela Yokuphila <https://www.youtube.com/watch?v=AAy0RDSido0>.



So began the proudly cherished cultural tradition of the rod and reel subsistence line fisher along the harbour and beachfront of Durban. More than just a pastime, this practice represented a means for these labourers to express their independence from the bondage of their contracted indenture, whilst also ensuring adequate food for their families. Thus too began what became a cultural practice for generations of Indian fishers, of getting a train to West Station<sup>6</sup>, and of walking the well-tread pathway to their fishing spots, a pathway with customary 'right of way' that still exists today and continues to be used by third-generation Indian and other traditional fishers in Durban (pers.comm Desmond D'Sa 2020).

Fishing assisted in creating a livelihood in this liminal zone on the edges of indentured labour. But it did more than this, Scott's historical research (1994) sensitively captures how these early fishers used fishing and the social relations around it to craft a cultural response to the harsh environment of indenture and racism. Once freed from their indentured labour contracts, many of these 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 (Scott 1994, Govender and Chetty 2014). Many of these Indian families practised customary seine-net fishing around the south Durban area. As Scott explains.

As a subject group in colonial society, they were to settle in a space that had already been subjected to the ordering system of the dominant group in that society. It is revealed here that the Indian settlers rewrote the text in their own cultural grammar and within the material constraints imposed upon such a subject group. (1994:125)

Scott suggests that the negative image of the southern Durban landscape as a swampy, damp area in the late 1800s led the colonial administration and white settlers to initially ignore the settlement of Indian workers in this area. Later the Bluff beach and surrounds became a sought after recreational destination for the White colonial residents themselves, and they started to assert their dominant cultural expectations for how this environment "should be" and who could have access to it (Scott 1994:134).

For Indian families on Salisbury Island angling with rod and reel became a means of subsistence, whilst the seine-netters steadily developed their netting skills into a flourishing enterprise. These techniques greatly influenced the fishing industries in KZN during this time (Desai and Vahed 2007 in Dunlop 2011:17). In addition to fishing with bamboo rods and simple, hand-carved reels, these fishers harvested a range of other marine resources using a variety of simple, low technology gear. Among the indigenous equipment used by the fishermen were fish-kraals (Govender and Chetty 2014). Whitelaw (2009) also refers to evidence of kraal fishing in the bay. The kraals, which were placed in cross currents and anchored in the riverbed, trapped approaching fish. Govender and Chetty record how people remember both men and women engaged in this activity, and that these fishers usually held day jobs and worked this trade by night to supplement low-incomes (2014:70). Much of this activity took place in the estuarine plains and lagoons of the Umgeni but was

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<sup>6</sup> Fishers protested the closure of this train station, which was an important symbol in their struggle to retain their access to their traditional waters (Pers.comm Desmond D'Sa August 2020).

also practised by Indian settlers further south in Isipingo, Umkomaas and Karridene areas. The mouths of the Umbilo River and Umhlatuzana River were also popular kraal-fishing grounds before their canalisation. Licenses for kraal-fishing for the Indians were subsequently introduced by the colonial administrators in this early period (ibid). In addition to many different linefish that were targeted, various resources such as prawn were used for bait. Shrimp was a popular resource that was harvested for use as food, medicine and spice (Govender and Chetty 2014:71). Crackershrimp became a popular species for bait in the harbour (Burger 2015). The harvesting and selling of “Crackers” as bait continue today in the Durban harbour.

Settling close to the water’s edge, in the area surrounding the harbour and the Bluff, shaped and developed the local ecological knowledge of the Indian fishing community, which in turn became a source of community identity and pride. This is perhaps best illustrated through the art of spotting.

### ***The art of Spotting***

*Professional spotters had the ability to predict the movement and arrival of shoals, the species of fish, the size of the catch, the average size of the fish within the shoal, as well as the exact time it would arrive at a given location. They detected signs of nature hidden to the untrained eye such as the colour of the water, the temperature, the shape of the waves, surface movements, behaviour of birds, and other signs to visualise life beneath the tides. These spotters would be on either North Pier, South Pier or the beach before sunrise, when the scout or pilot boat would be out at sea riding the breakers. The spotters would direct the pilot-boat from the pier or the beach with a unique language comprising hand signals and whistles that communicated, among other things, direction, depth and speed. From the vantage point of their homes built on stilts on the water’s edge in the Village, the spotters were able to study the vagaries of the sea in great detail. (Govender and Chetty 2014:104).*

The settlement of Indians on Salisbury Island and the elaboration of their fishing practices on the surrounding beaches and waters grew steadily. It is reported that by 1887, the community on Salisbury Island included 218 people and they had built a small school (Scott 1994). The beach-seine netting fishers developed their fishery steadily and these Indian netters discovered and pioneered the netting of sardine in what would later become known famously as the ‘sardine run’. At the time a white commentator lamented that “the whole coolie population” was involved, however, the white population took little interest in the sardine run in those days, and sardines were only used by white fishers for bait (Govender and Chetty 2014:102).

Racist stereotypes and specific complaints about the Indian fishers from white residents and recreational users of the Bay began as early as 1877 and grew steadily in the subsequent two decades. The administrative archives bear witness to the racially prejudiced language used to describe the fishers. A white gentleman by the name of Turner penned many such letters to the Surveyor General such as this example:

*I have been informed by the Coolies at present living on the Island in the Bay that it is their intention to squat and erect fishing places on the beach between the Lazaretto and Mrs. Shorts's House. If this should occur I should like to protest against it and to urge on the Government of the desirability of not granting their wish as their filthy way of living combined with fish curing would render it almost impossible for those living in their neighbourhood to remain there. (Govender and Chetty 2014:77).*

The success of the Indian fishers steadily increased and became more publicly visible through the white residents of the Colony exploring the beaches surrounding the harbour area. This visibility led to increasing objections and complaints about the Indian fishers. Govender and Chetty report that because of all the objections, new legislation to regulate the fledgling fishing industry was passed as early as 1883. Subsequently, only licenced boats and nets were allowed in the Bay, and new restrictions designated where people were allowed to fish (Govender and Chetty 2014:83). Archival records provide evidence that the fishers protested these new regulations that restricted their access to fishing grounds, but enabled Europeans to fish with impunity wherever they wanted to (ibid). It is recorded that in 1897 Goondan Muniswami organised the fisherfolk into a loose union of sorts in response to the growing restrictions fishers faced (ibid 88). It is thought that this is the first-ever fisherfolk union to be established in KwaZulu Natal.

The archival evidence of these early expressions of racism towards Indian fishers and the subsequent policy response, suggests that just over a decade after they arrived in the Natal Colony, these local subsistence fishers were subjected to experiences of intense discrimination and material exclusion. These exclusions grew steadily, and half a century later, were consolidated in the Group Areas Act of 1950 and its subsequent forced segregation. This act and related apartheid race-based legislation forcibly removed these fishers away from the coastal locations to areas inland and failed to provide for the legal recognition of their subsistence fishing.

Removals, however, had started before the official start of Apartheid. In 1900, the Indian fisher community of Salisbury Island was moved off the Island due to an outbreak of the plague. They were moved to a harbour site leased from the South African Railways at Fynnlands. Here a thriving fishing community comprising the owners of the beach seine boats, known as the Master Fishers, their crews and their families was established. Fynnlands fast became a community that "apart from its bonds of kinship, language and religion, were bound together by the occupation of fishing, the skills for which they had brought with them from India" (Scott 1994:146).

Scott (1994) and others have documented how the Indian workers of the Colony, once freed from indentured labour, established the informal market gardens in Springfield and the south Durban districts. Fish catches and the flourishing market gardens established by these pioneers provided food security for the expanding workforce of a steadily industrialising city in the years following the first world war. From the historical record, it is very apparent that fishing lay at the heart of the cultural history of these early residents of south Durban and its surrounds. The development of much of the modern industry in this province rests on these labour and farming contributions.

The fishing, market gardens and poultry and dairy farming opportunities these descendants from Indian indentured workers created for themselves enabled them to retain a measure of independence. This possibly delayed a process of proletarianization and integration into the industrial labour force in this part of the Colony of Natal (Scott 1994:221). What Scott's research does show is just how pivotal subsistence fishing was to the history of Indian indentured and ex-indentured labourers in this part of the country, both culturally and as a form of livelihood (1994).

The Indian migrants had a huge impact on the culture of colonial Natal. The Indian communities built beautiful local temples and established schools in their midst, fish markets sprung up, a distinctive seafood culture flavoured with Indian spices developed and the Indian cultural influence became tangible. Yet despite the importance of this contribution to food security, culture and development, these early fishers experienced increasing racism and class-based prejudice as white residents of Durban began using the Bluff and surrounding beaches and waters for their recreational pleasure.

It would appear that the traditional Indian fishers of Durban, and surrounding districts, reflected a range of levels of dependency on fishing and fishing livelihoods. Then, as is the case now, there was a continuum of 'subsistence'. This continuum includes those who supplemented their meagre earnings, to those who depended on fishing seasonally or part-time, to those who were completely dependent on fishing as "professional" fishers. Scott notes that this was particularly evident amongst the seine-netters, "members of whom participated in a 'hidden economy' whenever they were out of formal work" (1994:221). She cites Brownie Pillay (8/1989 in Scott 1994) who noted that the fishing crew of the boat at Addington Beach would vary from month to month depending on who was in or out of work (Scott 1994:221). At the time of the Group Areas forced removals of fishers from the Bluff in 1963 it is recorded that a "survey of tenants in a Bluff Road block indicated that fifty per cent of the tenants were unemployed and considered fishing as a part-time occupation" (City Estates Surveys, 1963-1976 Durban Corporation in Scott 1994:232).

In 1963, invoking the Group Areas Act the Indian fishing community from Salisbury Island was forcibly removed by the apartheid government to Bayhead, and then later to the inland area now known as Chatsworth. This was devastating economically and socially for the fishers, their families and their social networks (Scott 1994, 2013 and Desai and Vahed (eds) 2013). Specifically, the impact of these removals on the Indian seine-netters has been documented (Scott 2013). As Scott explains;

When the land they occupied at Flynnlands was required for the construction of harbourside oil tanks by the Railways, the seine-netters were relocated first to Bayhead and then because of their mutual dependence on fishing, the Durban Corporation moved them once more as a group to Havenside in Chatsworth. This is the only known instance of Indian communal groups being relocated to the same area of a public housing scheme. (2013:42).

Despite their removal to areas over 20 kilometres away from the sea, to Chatsworth, Merebank, Clairwood, Phoenix and Verulam amongst others, many of the descendants of

this early community of Indian fishers continued to rely on fishing for their food and basic livelihoods. Subsistence fishing continued as a livelihood for hundreds of fishers who became regular users of the Durban port piers and beaches. The lines between subsistence fishing and recreational fishing have always been blurred for these fishers, this makes sense when recognising how fishing was both a source of food and livelihoods, as well as the material basis of their cultural identity in South Africa, as well as a source of local knowledge and pride. Apart from fishing for their livelihoods, fishing outings to the beachfront became common cultural practice for the next generation of Indian residents. Fishers report that their family joined them over weekends, a long-standing customary practice that continues today (Dray 2009, Burger 2015, pers.comm JP Naranasamy August 2020, Clinton Alexander August 2020).

The Indian fishers who fished along the piers and beaches of Durban increasingly shared fishing spots with the growing recreational fishing sector. As subsistence fishing was not legally recognised, these fishers blended into this recreational sector to avoid detection and punitive measures from the authorities. Subsistence fisheries steadily grew in and around the industrialising centre of Durban during the colonial and early apartheid period, drawing in not only Indian but also coloured, black and white poor who turned to the marine commons as a means of survival. Fishing and/or seasonal crew work in the commercial fishing sector has historically supplemented meagre wages for poor workers.

The history of linefish management in KZN is unique to this province, dating back to the colonial administration restrictions on fishing in the 1870s. As early as 1883, after complaints from white anglers, colonial regulations were introduced to control the fledgeling Indian seine-net fishery that was growing in an around Salisbury Island. From then on only licenced boats and nets were permitted in the Bay (Govender and Chetty 2014:78). In 1887 the Port Authority introduced additional laws to control fishing activities and licences were extended to fish kraals, stakenets, drag nets, crab pots and wire mesh traps (Govender and Chetty 2014:81).

The introduction of the Natal Ordinance in 1916 consolidated all laws before this and lay the foundation for marine conservation along the coast in this province (van der Elst and Garatt 1984 in Dunlop 2011:5). This Ordinance focused on inter-tidal resources. The Natal Ordinance introduced a limited range of restrictions on shore-based angling of certain species but it was not until the sea Fisheries Act 58 of 1973 was introduced that a comprehensive approach to regulating the sector was introduced, including measures such as daily bag limits and minimum size limits, closed seasons and closed areas (Dunlop 2011:5). Significantly, it was through this national legislation that control of the KZN inshore fisheries was delegated to the Natal Conservation Ordinance which refined the regulations over the subsequent years. In 1984/1985, following the Smith Committee of Enquiry undertaken in 1979, a nationwide linefish management framework was introduced to standardise certain regulations and introduce the division of linefish sectors. It is important to note that this management system also introduced a two-tiered licensing system for commercial line fishing: which included recognition that there were full-time (A category license holders) and part-time (B category) commercial fishers. As Dunlop explains “B-license holders were essentially recreational fishers who subsidised their fishing to some degree by selling their catch. In contrast to A-licence holders, they did not exclusively rely on

the fishery itself and often had other sources of income” (2011:6). As will be discussed later on, following amendments to the Sea Fisheries Act in 1992 the Marine Living Resources Act of 1998 consolidated both the Sea Fisheries Act and the provincial Nature Conservation Ordinances which had previously regulated fishing in KZN. The MLRA introduced a recreational licensing system for the first time, whereby all recreational fishers were required to purchase a license from the post office for fishing and harvesting of marine resources (Dunlop 2011:6).

Rural-based subsistence fishers in Natal, predominantly of isiZulu and Thonga culture, also experienced exclusions and forced evictions during these colonial and apartheid periods. Early colonial writers and conservationists refer to these rural inhabitants of coastal Natal living around lakes and estuaries. There is an oral and written record of their dependence on a range of marine, lake and estuarine resources, particularly mussels and fish at varying times of the year and to varying extents (Heeg and Breen (1982) in Pollard and Cousins (2014), Harris et al 2003). From the 1950s onwards the declaration of reserves and protected areas in northern Natal increasingly restricted the freedom of these indigenous communities to harvest marine resources. From the 1960s onwards numerous coastal communities were dispossessed and forced to leave their ancestral territories, including their traditional fishing waters, due to the imposition of Marine Protected Areas and nature reserves (Walker 2008, Sunde 2014). In the St Lucia and Maputaland Marine Reserves, subsequently amalgamated under the Isimangaliso World Heritage Authority, 14 different communities were dispossessed of their access to their traditional fishing lands and waters (Isimangaliso 2016). This amounted to approximately 1200 families (6000 persons) who were forced to move from the coast to make way for the Richards Bay development (Walker 2008). Many of these families depended on the sea for their livelihoods. Whilst the term ‘*abadobi*’ or ‘fisher’ in isiZulu does not have variations to categorise *abadobi* as either subsistence, recreational or commercial, it is clear that these fishers have a long history of subsisting off marine resource use that continues today (pers.comm anonymous indigenous fisherwoman, Mpembeni, Richards Bay August 2020).

In the decades immediately before the advent of democracy, thousands of subsistence fishers in rural Natal were harassed and arrested for fishing illegally and treated as “poachers”. The experience of the rural isiZulu fishers of the south coast and those of the north coast differ due to the settlement patterns of white colonialists, the racial spatial planning on the two coastlines, and the presence of marine protected areas. In the North, an extensive section of the Natal coastline was declared conservation estate. In the south, the coastal settlement has been dominated by white residential areas, a large tourism sector and considerable recreational fishing for many years.

These two very different groupings of subsistence fishers, the more urban and peri-urban Indian fishers of Durban and the south coast, as well as the more rural isiZulu fishers of the south and the isiZulu and Thonga fishers of northern Natal, whilst targeting some of the same species, had diverse experiences of the apartheid governance and management of subsistence fishing. What they shared historically was being forcefully removed, as the large majority of black people were under apartheid, from coastal areas, a purposeful denial of their livelihoods and a lack of recognition of their cultural relations to the oceans. Despite decades of marginalisation and harassment by successive colonial, apartheid, and post-

apartheid authorities these cultural practices continue today (Dray 2009, Burger 2015, Empatheatre Collective 2019).

In conclusion, the weight and power of the word 'subsistence', and the resistance to being classified as 'small-scale' in the current national policy among a segment of the traditional fishers in KZN, has its roots in the very specific socio-cultural history of Indian fishers in the province since 1860. Holding onto the category of 'subsistence' is an assertion of human dignity and a direct response to the racist, ethnic and class-based prejudice suffered over the last hundred and fifty years. Stories of ancestors who experienced forced removals three times in their lifetimes are not forgotten in many fisher families. Given this historical and intergenerational struggle for rights, it is not surprising that the descendants of these fishers in Durban, many who are members of the KZNSFF, continue to demand recognition as subsistence fishers. Nor is it surprising that these fishers view contemporary regulations and enforcement that deny them fishing access to public beaches, the Durban Port, and Marine Protected Areas in the South Coast, as a continuation of their marginalisation and exclusion in society. As will be shown in the following sections, the racist undertones in the past, and arguably in the present, evoke powerful resistance from fishers today.

Irrespective of different levels of 'subsistence' or dependence on fishing for food security and livelihoods, fishing has formed the basis of their cultural identity **and in terms of the right to culture, this needs to be acknowledged by policymakers.** In the context of South Africa's transformative constitutionalism, failure to understand the cultural meaning of fishing and appreciate its influence is a failure of governance and a denial of collective human rights.

## Section 4 The post-apartheid legal reforms; 1998 – 2000 the Marine Living Resources Act and the Subsistence Fisheries Task Group

The dawn of democracy in 1994 and the promises of redress and restitution gave hope to the subsistence fishers of KZN. The Constitutional recognition of the impact of past discrimination on the freedoms, culture and livelihoods of millions of Black South Africans, and in particular, the call for equality, redress and restitution provided a legal imperative to address the past injustice experienced by these fishers. Recognition of historical injustices and the need for transformation was stated explicitly in many post-apartheid legal and policy reforms (Isaacs 2006, Harris et al 2007). This included the 1998 Marine Living Resources Act (MLRA) which aimed,

*To provide for the conservation of the marine ecosystem, the long-term sustainable utilisation of marine living resources and the orderly access to exploitation, utilisation and protection of certain marine living resources; and for these purposes to provide for the exercise of control over marine living resources in a fair and equitable manner to the benefit of all the citizens of South Africa. (MLRA 1998).*

Within this broader goal, one of the key objectives of the MLRA was “the need to restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry” (SA Government 1998). A subsistence fisher in the MLRA was defined as:

*Subsistence fisher means a natural person who regularly catches fish for personal consumption or for the consumption of his or her dependants, including one who engages from time to time in the local sale or barter of excess catch, but does not include a person who engages on a substantial scale in the sale of fish on a commercial basis. (MLRA 1998)*

As outlined in more detail in the previous section subsistence fisheries in South Africa had historically existed on the margins of the white-owned commercial fishing industry and the white-dominated recreational sector. Frequently treated as ‘informal’<sup>7</sup> and illegal fishers in South Africa, this legal recognition for the first time in 1998 was a substantive win for all subsistence fishers.

In 1998 the Department of Environmental Affairs and Tourism (DEAT), responsible for Fisheries Management, recognised that little was known about the thousands of subsistence fishers around the country. Under the Marine and Coastal Management branch of the department, a Subsistence Fisheries Task Group (SFTG) was established to investigate and make recommendations on the management of this sector (Harris et al 2002a). The group aimed to (1) recognize the needs of subsistence fishers to harvest adequate amounts; (2) legalize modest sales by them; (3) set aside areas for their exclusive use if this was deemed

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<sup>7</sup> This term ‘informal’ was used by the fishing authorities and marine scientists in KZN and continues to be used to describe subsistence fishers who fall outside KZN Ezemvelo’s definitions of ‘subsistence’, see Mann et al (2014:112). In the context of the Constitutional recognition of customary rights, the MLRA and the new Policy for SSF, it is not clear why this term is still being used as recently as 2014.



necessary; and (4) protect the long-term sustainability of the resources (Branch et al 2002b). They submitted the findings of their investigations to the DEAT in 2000 and their reports were published in a series of publications in 2002 (Branch et al 2002). The SFTG had high hopes and were aware of the importance of their work:

*Restoration of rights goes to the heart of subsistence fishers who rely on marine resources to meet their basic needs of food security. Until the Marine Living Resources Act focused attention on them, they were marginalized and either ignored or persecuted. They did qualify as “recreational fishers”, legally entitling them to harvest resources. The quantities they could harvest legally under this guise were, however, inadequate to meet their nutritional needs. Restoring their rights and recognizing their distinctive needs, as well as establishing appropriate management procedures for them, are giant steps that must be taken.* (Branch et al 2002a:456).

The SFTG undertook a survey of coastal fishing communities and did in-depth fieldwork in specific case studies. This enabled the completion of a socio-economic profile of the subsistence sector in 2000 (Clark et al 2002, Branch et al 2002b). For the purposes of this survey, the coastline was divided up into eight regions. The coastline of Kwazulu Natal comprised of region ‘G’ from Mtamvuna river on the border of the Eastern Cape to uMvoti north of Durban, and region ‘H’ stretched from Mvoti to the border with Mozambique at Kosi bay. Most significantly, this report indicated that there were approximately 19 745 Black subsistence fishers and households in KZN (Clark et al 2002) and that a large percentage of these fishers were poor and marginalised (Branch et al 2002b:447). The shockingly high levels of poverty in KZN specifically were apparent with just under half of all the estimated 19745 falling on the 40<sup>th</sup> percentile (49,32%) ‘poor’ and 19,6% falling into the ‘ultra-poor’ (ibid).

**Table 1: Poverty and food security profiles of subsistence fishing communities in South Africa**

Province	Food insecurity %	% falling on 40 <sup>th</sup> percentile ‘poor’	% falling in 20 <sup>th</sup> percentile Ultra- poor	Sample size
KwaZulu Natal	45.9	49.32	19.6	148
Eastern Cape	77	57	34.6	106
South coast	48.7	28.1	16.1	159
West coast	43.1	18.1	5.6	71

Source: (Branch et al, 2002a:447).

It was this very desperate socio-economic profile of subsistence fishers, namely approximately 19 745 persons of whom more than half (over 10 000) were poor that faced the Ezemvelo KZN Wildlife Subsistence Fisheries Unit in 2000. In 2001 DEAT contracted Ezemvelo KZN Wildlife to take on the responsibility of recognising these fishers and developing a management system that would ensure redress and equality for subsistence fishers in the province. Importantly, the SFTG survey also noted that fishers within this

group had exceptionally low levels of education and that women made up a significant proportion of the subsistence harvesters, particularly for the lower value species such as mussels. In relation to fishers surveyed in urban areas;

*the fishers contacted during the study had low levels of education and were not well placed to obtain other jobs. Not having agricultural land to fall back upon in metropolitan areas, they were very dependent upon marine resources for their survival. Their location in an urban centre meant that they were part of a cash economy and sold most of their catch for money. Whether they should be termed "subsistence fishers" or not, it is clear that they are extremely vulnerable. (Branch et al 2002b:455)*

The SFTG grappled with defining subsistence fishers and subsistence fishing (Branch et al 2002a). The definition of subsistence in the MLRA was seen to be lacking in that it appeared "vague and did not adequately characterize the sector and does not allow one to separate people who could genuinely be regarded as dependent on the resources to meet the needs of food security from those who desire to make a living out of selling resources" (Branch et al 2002a:476). The SFTG observed that this group comprised a range of fishers and that it was difficult to pin down 'subsistence' into a neat category. They noted that it included,

*people, who personally harvest marine resources for their own use, through to wealthy businessmen who harvest, process and sell marine resources purely for profit. Many of the fishers on the lower end of the scale are clearly very vulnerable and require protection in order to survive. However, any special dispensation or even special concessions afforded to the true subsistence fishers could quite easily become a loophole for unscrupulous poachers or for opportunistic commercial or recreational fishers. (Clark et al 2002)*

They initially identified three broad sub-groups namely those that they referred to as 'true' subsistence fishers, artisanal fishers and small-scale commercial. Ultimately, they asserted that subsistence fishers must be distinguished from small-scale commercial fishers in that:

*Subsistence fishers are poor people who personally harvest marine resources as a source of food or to sell them to meet the basic needs of food security; they operate on or near to the shore or in estuaries, live in close proximity to the resource, consume or sell the resources locally, use low technology gear (often as part of a long-standing community-based or cultural practice), and the kinds of resources they harvest generate only sufficient returns to meet the basic needs of food security. (Branch et al 2002a:475)*

The SFTG emphasised the following characteristics of subsistence activities in that they are

- (1) local (occurring within a limited range);
- (2) customary, traditional or cultural (and often associated with indigenous or aboriginal peoples);
- (3) undertaken for personal or family use;
- (4) primarily for nutritional needs (though excess resources may be traded to ensure food security); (5) based on minimal technology; and

(5) undertaken by people with low cash incomes (SFTG Branch et al 2002a).

After considerable dialogue and deliberation on the definitions by a special task team, the group decided on key principles informing the definition and criteria. They agreed that the two groups “subsistence” and “artisanal” should be merged into a single definition. The SFTG recommended that the DEAT amend the MLRA to accommodate those small-scale commercial fishers whom they felt did not fit the definition of subsistence, such as the West Coast Rock Lobster and abalone harvesters from the Western Cape. They further recommended which resources were suitable for subsistence harvesting (Cockroft et al 2002). Line fishery was regarded as suitable for subsistence fishing, not for commercial use (Harris et al 2007).

## **Section 5 The challenge of complexity, continued discrimination towards subsistence fishers and their forced 're-creation' as 'recreational' fishers**

The historic discriminations and lack of recognition of subsistence fishers appeared more stubborn to shift in the subsequent management processes designed to address this discrimination, despite the legal recognition of these fishers in the MRLA of 1998. The management steps taken by the Department and its provincial delegated authority, the KZN Subsistence Fisheries Unit did not address the complexities of how cultural practise are interwoven with economic activities within recreational, small-scale and subsistence fishing.

It is significant to note that there was surprisingly little discussion about race, racism and redress for rights dispossessed in the SFTG reports, despite the opening statement that *"restoration of rights goes to the heart of subsistence fishers"* (MLRA, 1998). Although access to the sea and resources was identified as an important issue from the perspective of the fishers (Hauck et al 2002), the SFTG appears to have underestimated the cultural meaning and heritage value of access to the sea for many fishers. While a cultural connection to the sea was observed to be a defining characteristic of "true" subsistence fishers (Branch et al 2002b), the SFTG reports show very little discussion on what cultural attachment and history meant for the wide range of subsistence fishers they were attempting to map. The lack of depth in understanding how cultural practices shape a variety of fishing practices meant that the Indian fishers' cultural rights do not appear to have been on the agenda at all.

At the time there was a growing awareness in international fisheries literature of the importance of social and cultural attachments to marine resources for traditional and subsistence fishers (McCay and Acheson 1987, Ruddle 1988, Johannes 1978). The new Bill of Rights in South Africa also focused on the recognition of socio-economic rights. Despite these international and national focus points the SFTG reports and recommendations, however, took a technical approach that focused on marine science and conservation perspectives. The departure point for the report recommendations was the assumed status of overexploited marine resources that required strict regulating. Undoubtedly marine resources management is critical, but without an integrated approach to sustainability based on environmental and social justice, resource management can further entrench existing marginalisation. This was the case for many of the 'subsistence' fishers in Durban and the surrounding coastal towns.

In addition to a lack of recognition of how cultural and economic practices are related, the survey itself raises questions around the adequate sampling of fishers and the omission of key areas in which many of the Indian urban subsistence fishers reside. Missing from the survey, and the SFTG discussion, were the communities of South Durban where the traditional Indian subsistence fishers lived after they were forcibly removed from the sea by the Group Areas Act. Fishers in Chatsworth, Wentworth, Merebank, Clairwood, Isipingo and Umkomaas amongst others were left out of this study.

This lack of historic recognition, and the fact that fishers in Durban often fished in similar spaces as recreational fishers, made the group as a whole vulnerable to assumptions by marine scientists and government officials around the validity of their subsistence status. Tensions around whether these fishers were ‘true subsistence’ fishers rather than recreational fishers were fairly regularly publicly expressed. As early as 1997, even before the MLRA introduction of subsistence fisheries, the Chair of the Interim Task Team set up by the DEAT stated,

*there are a great many people calling themselves subsistence fishers, ranging from the most needy marginalized fishers to those that unscrupulously parade as subsistence fishers who in reality are nothing more than recreational or illegal commercial fishers. (van der Elst 1997)*

The opinion that many fishers claiming to be subsistence are not ‘true’ subsistence fishers has held sway in KZN. Many scientists and fisheries officials continue to express a general opinion that the Indian and other subsistence fishers are mostly recreational (Dunlop 2011, Mann et al. 2014) or “are actually recreational anglers” (DAFF Senior Manager, anonymous, April 2020), and are not subsistence but “recreational anglers with political allies” (DAFF Manager, anonymous August 2020). It is a discourse that continues today, for example, the national minister responsible for fisheries during the 2020 Covid-19 pandemic, is quoted as saying “the alleged 12 000 fishermen who are represented by the KZN Subsistence Fishing Forum are recreational fishermen and anglers. Based on the definition of recreational fishing in the act, they are not allowed to sell their catch” (The Post, May 28 2020).

There is an irony in this MLRA legislative moment. On the one hand, the MLRA was a well-intentioned piece of legislation. It rightly made provision for transforming fisheries through recognising Black subsistence fishers and aligned to the national objectives of addressing past racial injustices (Isaacs 2006). Yet it was at this exact moment in which a renewed focus on fisheries by marine scientists and the state asserted a strong expression of concern around subsistence fishing. The dominant discourse suggested that subsistence fishing should be very tightly defined to prevent any recreational fishers going under the radar as subsistence fishers (van der Elst 1997, Clark et al 2002, Branch et al 2002). There was also a view that generally, subsistence fishing was to be eliminated through channelling fishers into other livelihood alternatives wherever possible (Harris et al 2002:520).

In hindsight, there are additional concerns around the assumptions made in the SFTG. These questions emerge when comparing the findings to other important publications on marine resource use and status of the stocks that were published shortly before the SFTG (Brouwer et al 1997). For example, in 1997, Brouwer et al published the results of the nationwide shore-based line-fishery survey. This survey was held in high regard by the fisheries science community (Dunlop 2011, Dunlop and Mann 2012, Kramer et al 2017). The KZN component of this study estimated that the recreational sector in KZN was around 100 000 (van der Elst in Dunlop 2011). This survey revealed that the majority of the shore-based line fishers in the province were Indian. It indicated that a significant proportion of all the fishers surveyed, 14.4%, were unemployed (this excluded retired persons), and significantly 6% of them depended on the fish they caught for their livelihood (Dunlop 2011). Drawing on these

statistics, it can be estimated that in 1997 approximately 10 000 recreational fishers in KZN were unemployed, and around 4320 of them depended on line fishing for their livelihoods.

Subsequently, based on post office sales following the new 1998 MLRA regulations, this figure of 100 000 recreational fishers was revised down to 72 000. The SFTG report states that many subsistence fishers are 'just recreational fishers masquerading as subsistence fishers' (van der Elst 1997 in Clark et al 2002). Yet given the Brouwer et al (1997) study published just four years before the SFTG survey, it is strange that the expert team did not equally ask the reverse of this sentiment; How many subsistence fishers are masquerading as recreational fishers and how do we bring them into a subsistence management regime? If, as Brouwer et al (1997) recorded, 6% of recreational fishers admit to depending on fishing for their livelihoods are they "true" recreational fishers? This amounts to a number of over 4000 fishers. This is double the number of subsistence fishers ever identified and given subsistence permits by Ezemvelo Subsistence Fisheries Unit in the subsequent decade. Indeed in 2012, only 928 subsistence license were administered (according to Mann 2014). The 1997 survey indicated that 14.4% of recreational fishers were unemployed but not retired, therefore it stands to reasons that many would be subsisting on the fish that they catch. Add a sentence summing up the above argument. What do these numbers show?

The creation of a dedicated task group focused on researching and making recommendations on the management of the fishers sector in KwaZulu-Natal was much needed after the coastal evictions and marginalisation that had occurred during apartheid. Unfortunately, the SFTG, while composing of a diverse range of experts from a variety of disciplines (both marine and social scientists), was influenced by the dominant natural science narratives of the early 2000s: that most of South Africa's in-shore marine resources, particularly the linefish stocks, were already oversubscribed, and hence whilst there was a political imperative to identify and recognise this previously ignored category of fishers, there was simultaneously pressure to restrict their access to resources, and to divert them into other livelihoods.

This more technical resource management approach ignored the possibilities of restructuring the recreational or commercial linefish sectors through enabling some subsistence fishers to grow into small-scale commercial fisheries. This would have been a more constructive step towards a larger strategy to redress racial inequalities. Instead, the approach was "subsistence fisheries should be a shrinking, not expanding, sector and they should not be seen as the last-stop solution to coastal poverty", and that "alternative resource use and livelihood strategies should be explored to alleviate the harvesting pressure" (Harris et al 2002b:520). More recent research by marine scientists indicates that subsistence fishing is not a threat given the very small numbers compared to the recreational fishers, and, in the words of Kramer et al "the extremely low catch rates among them" (Dunlop and Mann in Kramer et al 2017:333, see also Dunlop 2011 and Mann et al 2014). Given this the SFTG appears, in hindsight, to have had a rather skewed view around concerns that, at the time of their survey, some recreational fishers were 'masquerading' as subsistence fishers. Nor does this recent research substantiate the initial panic around subsistence fishing posing a threat to fish stocks after the end of apartheid.

Interestingly there does not appear to have been any suggestion in the literature during 1998-2000 that the recreational sector should be restricted as strictly as the subsistence sector has been. Neither is there a concerted effort to accommodate the recognition of the subsistence sector within this group. Before 1998, unlike the subsistence line fishery which was deemed illegal, the recreational shore-based linefish sector had flourished in KZN over the past century. In 1987 van der Elst estimated that there were 102 000 shore-based line fishers in KZN (Dunlop 2011:34), the survey indicated that the majority of these fishers were white, with Indian fishers the second highest group of users (Dunlop 2011). In a survey conducted by Brouwer et al between 1994-1996, it was estimated that there were 72 419 shore-anglers. In 1998, after the permit process for recreational fisheries was put in place by the MLRA, a further survey indicated there were 90 000 recreational angling permits sold by the post office in KZN (Dunlop 2011:34).

While the subsistence sector was tightly 'ring-fenced' in KZN from 1999 onwards, there were no equally stringent efforts to restrict recreational fishers. During this time the linefish crisis was used to motivate the re-zonation of several Marine Protected Areas (MPAs) to become no-take MPAs to protect threatened linefish species. It was argued that all the resources used by subsistence fishers were fully or overexploited. The exclusion of subsistence fishers from coastal no-take MPAs had devastating consequences on the livelihoods of local Black subsistence communities (Sunde 2014). The focus on subsistence fishers as conflicting with the conservation of species by marine science in KZN did not extend to restrictions on the recreational fishing sector. The only management measure introduced in 1998 was that recreational fishers had to purchase permits at the post office. Given the somewhat expected need to accommodate any increase in effort that might arise when the subsistence sector was finally legally recognised in 1998, the lack of regulations on the limit of permits sold offered open access to fisheries from anyone with a recreational permit. At the time the recreational sector was largely white and appeared to convince the authorities, and the scientists, that they played an important role in the tourism economy of the province.<sup>8</sup>

Given the discrepancies in management between subsistence and recreational fishers, it is easy to see why this was perceived by black subsistence fishers as favouring white fishers, and as a continuation of the racist exclusions they had experienced under apartheid (pers.comm Riaz Kahn August 2020). While recreational fishers could easily prove their legitimacy to fish in certain areas through a reasonably priced and easily accessible permit bought at a post office, subsistence fishers without a permit still attracted suspicion from the authorities. The historic sharing of space over time that blended the Indian and urban subsistence fishers with recreational fishers was now unintentionally cemented by an initial lack of clear management procedures applicable to subsistence fishers flowing from their

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<sup>8</sup> The amount of income generated from recreational fishing in small towns and coastal provinces is not very well understood in South Africa. Whilst there are economic gains for these coastal areas when recreational fishers from inland provinces migrate to the coast for weekends and holidays, there is also emerging research that indicates significant economic leakages for towns where these leisure activities occur (see Butler et al. 2020).

MLRA statutory recognition. For example, it is only in 2000 that a task team is set up to start discussions about how to regulate and permit the subsistence sector. This is a significant delay when compared to the quick introductions of the permit system set-up for recreational fishers. It is perhaps unsurprising then that many of these subsistence fishers turned to purchasing recreational licenses to secure their livelihoods and their fishing rights.

The underlying narrative of the SFTG was a mixed message of recognition of prior exclusion and marginalization of subsistence fishers on the one hand, and on the other a firm assertion of the impossibility of them all getting access to marine resources, given the already over-subscribed state of commercial and recreational resource use. The strength of this narrative in KZN specifically is evidenced in the approach to the implementation of the SFTG findings in the province after 2000 (see the following section). It is also evidenced in the fact that an estimated third of the identified subsistence fishers in KZN in the 1999-2000 survey just 'disappeared' after the SFTG. Ironically by their exclusion, they by default moved into the category of 'recreational'.

At this pivotal policy moment after 1994, there was insufficient debate around the need to transform the whole fisheries system. Particularly lacking was a discussion around preferencing food security and livelihoods over export-driven, capitalist industrial fisheries interests. There was little conceptualisation of the importance of access to the commons for the poor as a constitutional right. Equally, there is little evidence of considering subsistence fishers' relationship with the sea, where intangible heritage and cultural value can interleave with, and at times supersede, purely economic values, as is the case in KwaZulu-Natal for the subsistence fishers in the Indian community. The SFTG hoped that subsistence fishers' need for access to fish and resources for their livelihoods could be restricted to 'own use', for food on their tables. It appears to have led to them underestimating the sizeable group of 'recreational' that were indeed subsisting. The adoption of an approach that tried to strictly restrict subsistence was in discord with the messy reality of the historic entanglement between subsistence and recreational fishers in Durban and the surrounds. In many ways, the SFTG report and subsequent fishers management suggestions were both a product of, and reproduced, the status quo in South African fisheries. The reports and the associated management systems left the economic power relations and economic structure of the fisheries industry in the country largely unchanged. Save for some small transformation in racial profile fisheries management continues to benefit commercial and recreational fisheries.



## **Section 6 Implementation of the MLRA and SFTG recommendations in KwaZulu Natal, and the Equality Court Appeal of 2007**

Although management of marine living resources is regarded as a national mandate, fisheries management was delegated in KZN to a provincial conservation body, KZN Ezemvelo Wildlife. Initially called the KZN Subsistence Fisheries Management Unit this provincial mandate was established in 2001 to take forward the work of the SFTG. This Unit interpreted its mandate by focusing its work on those who were rural, and communities who were living in proximity to the resource. During its period of tenure from 2001 to 2014, the SFMU identified and worked closely with 23 rural subsistence communities. Co-management approaches to the management of subsistence fisheries were piloted, and permits were granted to approximately 2000 subsistence fishers in total in the province (Mann et al 2014). A figure substantially less than the SFTG survey had recorded. Estimates from the two different figures given by the marine scientists involved in the survey of the line fisheries in 2010 suggested that approximately between 354 and 928 of these were line fishers (Dunlop 2011, Mann 2014, Mann et al 2014).

This left the remaining fishers, those identified by the SFTG survey in 1999-2000, but who were believed to fall outside the definition of subsistence utilised by the KZN Provincial management and enforcement agency, as well as those who had been left out of the initial SFTG list completely such as the Indian subsistence fishers from South Durban and surrounds, in a very precarious legal predicament. Forced by an absence of a management process that would recognise and accommodate them these fishers found other ways to avoid arrest and criminalisation for fishing without a permit under the MLRA. The traditional subsistence fishers of Durban and surrounding areas, who had always considered themselves historically subsistence fishers, once again turned to recreational permits to protect themselves from criminalisation.

Given the delays since the 1998 MLRA legislation, and the above exclusions in terms of subsistence fishers management processes, carrying such a permit ensured they could not be harassed or removed from fishing areas in and around the city. Understanding historic racism and exclusions of these fishers over generations enables us to see how ensuring one's legitimate right to fish would be an important strategy to get recognition and dignity for many subsistence fishers. Recreational permits also secured personal safety when approached by enforcement officials during fishing trips. In this way despite the initial intentions of the SFTG to respond to the Constitutional imperative to secure redress, the majority of the historical subsistence rod and reel line fishers of KZN were further pushed into buying recreational permits. This, in turn, entrenched the view of the marine scientists on the SFTG that the blurry lines between subsistence and recreational fishers in KZN needed stricter regulations.

The exclusions of many subsistence fishers above resulted from a particular provincial approach in KZN. It is important to point out that marine scientists and experts who were part of the SFTG were aware that this was a group of fishers they needed to understand better. They were also aware of the difficulties of defining such a group. Both government funds, surveys and monitoring programmes enabled Dunlop, writing in 2011, to state that through several research projects "much headway has been made in identifying this group

of fishers as a separate sector in the line fishery". The exclusions of fishers rather than a lack of focus on subsistence come from three underlying assumptions about subsistence fishing within the SFTG and KZN SFMU. The first is a technocratic assumption that you can divide fisheries into neat categories. This assumption leads to prolonged anxiety, embedded in policy, that "the actual number of 'true' subsistence fishers in KZN is unknown" (Dunlop 2011:18). The reality is that many subsistence fishers move in and out of forms of low-end precarious or seasonal work. There are also fishers sometimes who have other work but fish as a form of cultural heritage. This requires nuanced and responsive policy regulations. Informal practices in all forms of work create tricky, but not impossible, dilemmas for governance and regulations. Much progress has been made in other informal work settings to enable more dignified and supportive regulations for people who in general receive low incomes and no social protections linked to work (see groundwork's work with Waste Pickers (nd) for example). Unfortunately, this desire for neat categories translated into a sense of unease and a discourse of deviance around subsistence fishing, particularly in the more urban areas. Dunlop, in the same paper, suggests,

*it is quite evident that there are many people unscrupulously posing as subsistence fishers, when in reality they are nothing more than opportunistic recreational fishers. The estimated total number of 'true' subsistence fishers (i.e. 354-585 subsistence fishers; see Chapter 2) in the KZN shore linefishery is therefore a realistic value; however, even this could be an overestimation. Although in South Africa there are many anglers on the lower end of the income scale that do require some sort of support to survive (McGrath et al. 1997; Clark et al. 2002), any special dispensation or even special concessions given to these fishers quite easily becomes a loophole for poachers. (2011:18).*

Dunlop (2011) puts into print an implicit approach to the management of subsistence fisheries in KZN. An approach evident in the management of this sector in this province from 2000 until today. These underlying assumptions were expressed in a range of academic and marine scientific publications on the shore-based line fishery in KZN (Dunlop and Mann 2012, Mann 2014, Mann et al 2014, Kramer et al 2017). While there is an acknowledgement of many very poor fishers who subsist, and "require some sort of support to survive", the uncertainty of what subsistence means in relation to the more 'consistent' practices of recreational and commercial fisheries made this category of fishers undesirable. Given the view that many subsistence fishery resources were seen as already fully utilised or even overharvested (Cockroft et al. 2002) the official approach was that subsistence fishing needed to be phased out in favour of findings alternative livelihoods (Harris et al 2002). This approach, to state the obvious, was in discord with the growing inequality and unemployment in the province, where the informal and precarious nature of work increasingly pushed fishers to draw on their cultural practices as a means to achieve food security and eke out a living.

It is unique to KZN that some subsistence fishers were excluded from the legal regime designed to accommodate them. However, throughout the country subsistence fishers were frustrated with the failure of the DEAT to deliver on the promises of the MLRA, albeit for reasons that differed across provinces. Post-democracy the other provinces recognised that subsistence fishers, a group who were not homogenous and reflected diverse levels of

dependence on marine resources, needed access to resources for food and livelihoods. With varying degrees of success, these fishers were steadily accommodated into a subsistence fisheries permitting system. In the Eastern Cape, a system of permits distributed approximately 7500 subsistence fishing permits in the decade after the MLRA (Ngqongwa 2015). In the Western and Northern Cape, however, the fishers were frustrated with the lack of transformation in the fisheries as a whole. Small-scale and subsistence fishers argued that large industrial fisheries and the recreational fishers continued to get preferential access to resources. They cited the restrictive permit regulations and bag limits attached to the permits which did not accord with their histories of artisanal and small-scale commercial fishing. There was also frustration that the new permit system did not provide any restitution or redress for the dispossession that they had experienced under colonial and apartheid rule. Whilst able to apply for limited commercial fishing rights, the number of individual rights allocated to this sector was very limited (less than 1000), and the processes for application were complex and biased towards the large commercial rights holders. Besides, these fishers did not support the individual transferable quota system that was the dominant means of allocating high-value species such as west coast rock lobster (Masifundise 2003). They felt that the subsistence definition in the MLRA did not accommodate them.

In 2005 subsistence, artisanal and traditional fishers in the Western Cape who felt that they had been excluded from the fishing rights allocation processes under the MLRA mobilised and launched court action against the Minister of Fisheries in the Equality Court (Kenneth George vs the Minister). Whilst this court action was pending, DEAT finally released a draft policy for Medium Term Small-scale Commercial Fisheries (DEAT 2007). This draft explicitly excluded linefish resources which were not considered suitable for any additional commercial exploitation, beyond the rights already allocated through the commercial fishing rights process. In February 2007 the Subsistence Fisheries Unit Director in KZN, Mr Sibiya, met with KZNSFF to discuss this policy with them (Dray 2007). This meeting alone suggests that DEAT implicitly acknowledged that these were subsistence fishers who might be impacted by the introduction of a new category of small-scale commercial fishers. In December 2008 DEAT gazetted a draft Medium Term Subsistence Fishing Rights Policy (DEAT 2008). This policy included a reference to the 19 745 subsistence fishers and the list of subsistence fishing communities identified in the SFTG. It is interesting to note that DEAT accepted this SFTG figure as an accurate reflection of the subsistence fisheries of KZN, rather than the much-reduced list being used at the time by the KZN SFMU.

Sadly and rather ironically for the subsistence line fishers of KZNSFF, who had already formed their organisation and were visible in the public domain in KZN by the end of 2008, the existing exclusions in the SFTG were reproduced in the new policy. Although the list did include several subsistence fishing communities in the northern districts of Durban such as Phoenix and Verulam (Clark et al 2002), the fishing communities of Durban, particularly those in South Durban, were largely omitted from the policy list. Both of these draft policies, however, were soon to be withdrawn. 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 for all traditional and artisanal fishers in South Africa and ensure a participatory

process of policy development. This participatory policy development process eventually overtook the DEAT driven process and the two draft policies described above that had been tabled by DEAT in 2007 and 2008, namely the medium-term subsistence and the medium-term small-scale commercial policies were withdrawn.

Whilst this advocacy action was being spearheaded from the excluded fishers in the Western Cape, subsistence fishers who were direct descendants of the original Indian subsistence fishers in KZN were facing an exclusion battle of a different nature on their doorstep in Durban.

## **Section 7 Securitisation, the closure of the Durban Port to subsistence fishers and the development of eThekweni as a world-class tourist destination**

Since its declaration as a metropolitan municipality in 2000, eThekweni Metro Municipality adopted a pro-growth approach to urban planning. A range of developments hoped to locate the city as a premier tourism destination in South Africa. Included in these new developments were plans to expand the port to maintain its position as the largest and leading Port in Africa (Dray 2009).

The harbour area and its surrounds, as outlined in Section 2, had historically been the fishing grounds for many of the Indian fishers in Durban. Yet from 2003 onwards, over and above their exclusion from the national polices and provincial fisheries management processes, these fishers were systematically barred from areas of the Durban harbour and piers. The reasons for this were initially due to new international security legislation following the terrorism attack in 9/11 in the USA (year). Subsequently, reasons for prohibition from accessing harbour spaces has been a result of development plans to widen the harbour, deepen the Port and develop the back-end of the Port, known as Durban Point Development. The widening of the Port and back end development was part of the suite of projects aimed at preparing Durban for the Soccer World Cup (Dray 2009). The National Ports Act (2005) came into effect in 2006 and aimed “to ensure the safety and security of ports and trade”, which included denying public access to most of the harbour and port area (Transnet National Ports Authority in Dray 2009).

The subsistence fishers of KZN actively resisted the privatisation of what were previously public spaces available for fishing in Durban (SDCEA 2003, 2007 and Dray 2009). At the time thousands of fishers and their families protested their removal from their traditional fishing grounds. Fishers used a visible protest campaign at the port and the city hall, on the beaches, piers and in Parliament. Fishers have systematically written many editorials, ensuring media coverage in local and national newspapers, on television and radio to bring attention to their exclusions (Dray 2009, Grootheest 2010).

Approaching the Port Regulator in 2009, the KZNSFF launched legal action to secure their right to fish in the harbour (KZNSFF 2009). Their court papers included a series of affidavits from *bone fide* subsistence fishers and users of the Port. They also submitted a list of over 700 members of the KZNSFF who were impacted by the closure of the Port. Their legal representatives cited their use of these waters since ‘time immemorial’, describing their history as descendants of the early users of the harbour, their traditional practices that have contributed to the fishing industry, and their close cultural ties with this area. They argued that the Port Authority had a responsibility to consider fishing as an activity in the waters of the Port and hence they had to consider their responsibility to fishers as port users. In 2013 the KZNSFF advocacy actions were finally successful: the Port Regulator found in their favour, and Transnet agreed to issue permits to the KZN Subsistence Fishers Forum members as ‘port users’. This fight for fishing rights and access raised the profile of the KZNSFF in the fisheries and marine and coastal sector in South Africa.

This struggle for access to the Port took an enormous amount of resources. Although fortunate to have pro bono legal representation, the KZNSFF relied on the South Durban Community Environmental Alliance (SDCEA) for considerable assistance. Importantly, whilst their subsistence counterparts in the rest of the province were being engaged by the KZN Ezemvelo Wildlife and DAFF, preparing them for a new policy during this period 2008-2013, the Durban fishers, were engaged in a parallel process of struggle for survival and for access to their traditional fishing waters and walkways to which they had previously enjoyed a common law right. Despite this critical recognition by Transnet, the key parastatal in charge of ports, this struggle to protect their access to their traditional fishing spots in Durban has continued. In the seven years since the legal ruling against Transnet fishers have been denied access to various piers, beaches and sites by the Department of Agriculture, Forestry and Fisheries (DAFF) and the eThekweni municipality.

## Section 8 The development of the Small-scale Fisheries Policy (DAFF 2012) and amendment of the MLRA (2016)

From early 2008 to 2010 the National Policy Task team (NTT) met several times in Cape Town to draft a new policy that would accommodate subsistence and small-scale commercial fishers (see Figure 1 below).

Figure 1: **TimeLine of Policy development and implementation processes in South Africa**

<b>Date</b>	<b>Small-scale Fisheries Policy development processes</b>
May 2007	Equality Court (Kenneth George vs Minister 2007 EC1/2005) ruling recognises exclusion of SSF fishers from MLRA and orders new policy process to develop a policy for SSF fishers that amends the legislation and recognises their rights. The order makes provision for an Interim Relief Measure (IR) in Western and Northern Cape which was rolled out in June 2007
Nov 2007	Small-Scale Fisheries Summit in Port Elizabeth establishes a National Policy Joint Task Group (NTT)
September 2010	Draft SSF Policy released for comments in Government Gazette No.33530 of 3 September 2010, Notice No 852 of 2010
October 2010	National Economic Development and Labour Council (NEDLAC) negotiations on Draft Policy for SSF commence, includes labour and big business involvement
November 2011	Submitted to Parliament and then Cabinet for approval
June 2012	Policy for Small-scale Fisheries gazetted
November 2012	Directorate: Small-scale Fisheries Management established in DAFF commences SSF Policy Implementation and sets up an Internal departmental Task Team
August 2013	DAFF Directorate SSF releases first SSFP Implementation Plan
September 2013	Directorate SSF holds a public stakeholder meeting on implementation in Cape Town
May 2014	Marine Living Resources Act Amendment Act 5 of 2014 (Gov Gazette No 37659) is signed by President paving the way for SSF fishers to be legally recognised for the first time in SA
February 2015	Draft Regulations for the SSF sector released for public comment. Comment period later extended in April by an additional 30 days
February 2015	Public Roadshows on the Draft Regulations held with extensive public comments submitted on the Draft Regulations
March 2016	MLRA Amendment Act 5 of 2014 adopted (Government Gazette 39790)
March 2016	Regulations for Small-scale Fisheries gazetted Government Gazette No. 39790, 2016 Call for Expressions of Interest in SSF sector invited and completed April 2016
March 2016	DAFF commences visitations to SSF communities expressing interest in SSFP
March 2016	SSF Directorate commences with SSF registration, verification and

	application process, releases lists of successful SSF communities, manages appeals process
July 2017	Announcement of provisional lists of successful fishers completed for all provinces
November 2017	Appeals processes for all provinces completed
January 2018	Ministerial approval of final lists Training for fisher co-operatives in Northern Cape, KZN and Eastern Cape commences
October 2018	SSF Directorate addressing outstanding Tip Offs in Western Cape
September 2018	SSF fishers in Northern Cape registered co-operatives receive fishing rights
October 2019	Fisher co-operatives in KZN receive fishing rights, await finalisation of management plans
November 2019	Fisher co-operatives in Eastern Cape receive their fishing rights, await finalisation of management plans
November 2019	Fishers in the Western Cape receive Interim Relief rights for the 13 <sup>th</sup> year, the final list of successful co-operatives in the WC has yet to be released and training of coops is pending
March 2020	Letters of Grant of Rights and permits sent to all SSF co-operatives, some coops receive List of Resources permitted for harvesting

**Source: Sowman and Sunde 2020 forthcoming**

The role of the community representatives on the NTT from all the provinces was extremely difficult. No budget was provided for them to report to and consult their constituencies at all. Three fishers represented the KZN subsistence fishers at various stages in this process. One of these fishers represented the KZNSFF, however, towards the end of 2009, his representation of this NTT became infrequent as the KZNSFF focused on the struggles on their doorstep in the Durban Port. One of the representatives from the Kosi Bay customary fishing communities died suddenly in August 2009, and the other representative withdrew without explanation. Although the EZEMVELO Fisheries team was represented in the National Policy Task Team there was very limited input from KZN fishers themselves in the last year of the process.

The fisher representatives and civil society members of the National Policy Task Team fought hard for the new policy to lead a paradigm shift towards an 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. The draft policy aimed to ensure recognition and redress for subsistence and small-scale fishers who had yet to enjoy the promise of equality and transformation included in the MLRA. In line with global policy trends, this draft policy included subsistence fishers under the umbrella definition of small-scale fishers. This 'small-scale' umbrella term also encompassed traditional and artisanal fishers. Specific definitions of fishers were left to national governments as in the Small-scale Fisheries Guidelines (FAO 2014). In this draft policy, small-scale fishing is defined in the following broad way to accommodate subsistence fishing:



*Small scale fishing means the use of marine living resources on a full-time, part-time, or seasonal basis to ensure food and livelihood security. For the purposes of this policy fishing also means the engagement in ancillary activities such as pre and post harvesting, including of preparation of gear for harvesting purposes, net making, boat building, (beneficiation, distribution and marketing of produce) which provide additional fishery related employment and income opportunities in these communities (DAFF 2010).*

The draft policy for SSF proposed a ‘community-based approach’ to the allocation of rights to avoid the negative consequences of a privatised, individual property right that fishers had witnessed in the commercial allocation of rights. Fishers in the Western Cape argued that these individual rights, often in the form of Individual Transferable Quotas, lead to the privatization and closure of the commons to the community. They hoped that a community-based right would enable the devolution of power to the local level, whereby the 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, some members of the Task Team discussed the fact that the term ‘community’ could refer to a community of common interest rather than rooted in a geographic area. In this case, ‘community’ 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. The community was defined broadly as “*any group of persons or a part of such a group that share common interests and regard themselves as a community*” (DAFF 2010). It is important to note that the definitions of small-scale fishing, community and small-scale fishing community remained broad and explicitly refer to communities that had been impacted by the Group Areas Act (DAFF 2012).

In 2010 the DAFF released this draft policy for Small-scale Fisheries for comments. The KZNSFF was concerned that their unique tradition of working as individuals, and who come from a wide range of communities, albeit with a shared heritage of fishing in KZN, might not be accommodated by this policy. They voiced these concerns in writing to DAFF (KZNSFF DAFF No 1 2010). Despite the KZNSFF concerns about their interests, this policy was gazetted in 2012 and adopted by Parliament in 2013. As will be outlined in the following section the use of co-operatives entrenched the concerns raised by the KZNSFF about their unique practices. The KZNSFF then wrote to Minister Joemat Petersen informing her of their frustration with the inadequate public participation process for the policy and requested engagement with her as they were worried about how the policy accommodated subsistence fishers (KZNSFF DAFF No 4 2013). 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, again however they were not given the opportunity to engage with the policymakers (KZN DAFF No 5 2014).

In early 2015, ahead of the promulgation of the amended MLRA to accommodate the new policy, DAFF hosted a series of consultations meetings in KZN about the draft SSF regulations. These meetings were not advertised widely and were largely restricted to the areas where the KZN Ezemvelo Wildlife had contacts. This resulted in a strong rural bias in the public participation process. The meeting held at Diakonia Centre in Durban was not well publicised. The KZNSFF only became aware of the DAFF public participation meetings with selected communities a few days before the meeting was to take place. They raised

their concerns with DAFF about the inadequate public participation; poor notice and the promise for transport to attend meetings which had not materialised (KZNSFF DAFF No 6). Subsequently, the KZNSFF met with Minister Cele in Umbilo, and a group also met him in Mtwalume (pers.comm Israel Mbhele 2020). They again raised their concerns about the SSF policy and inadequate consultation. They then wrote to Minister Cele requesting further engagement on the issues (KZNSFF DAFF No 7). They did not receive a response.

In retrospect, there was a lack of national policy dialogue across the different provinces to develop consensus amongst civil society partners and fishers to ensure that the final draft accommodated the diverse needs of each province. It is clear there was insufficient consultation with the fishers of KZN and in Durban inadequate public participation to ensure that fishers were aware of the policy. Despite knowing about these specific subsistence fishers, the DAFF promulgated amendments to the MLRA were adopted by Parliament in March 2016. The term subsistence was replaced with that of ‘small-scale fisher’ and ‘small-scale fisheries’. The MLRA amended in 2016 defined small-scale fisher as,

*small-scale fisher means a member of a small-scale fishing community engaged in fishing to meet food and basic livelihood needs, or directly involved in processing or marketing of fish, who— (a) traditionally operate in near-shore fishing grounds; (b) predominantly employ traditional low technology or passive fishing gear; (c) undertake single day fishing trips; and (d) is engaged in consumption, barter or sale of fish or otherwise involved in commercial activity, all within the small-scale fisheries sector, and small-scale fishing must be interpreted accordingly. (Marine Living Resources Act 5 of 2014)*

For the majority of fishers in both rural and urban areas, these technical amendments to the law went unnoticed. Communication between the National Fisheries Department and the provinces, other than in the Western Cape, is relatively poor due to the lack of human resource capacity in the Directorate for SSF. The actual subsistence fishers on the ground who were members of the KZNSFF were not officially informed by DAFF of this change to their status. Since they were already excluded from the previous policy round and had been forced to purchase recreational permits, nothing changed in their everyday lives, and they continued fishing as they had until then.

The confusion around the policy shift that subsumed subsistence under the umbrella of small-scale fishers remains. Under the Co-vid 19 lockdown, a range of stakeholders used the term subsistence (See Annexure 1 Media Articles), for instance, fishers, several politicians, government officials and many other key stakeholders in the sector, such as the Fishing Industry News. Confusion regarding their status is not surprising given that the DAFF resource manager himself still used the terminology ‘small-scale-subsistence’ in a letter to SDCEA dated in May 2020 (SDCEA DAFF No.8).

## **Section 9 Interpreting and implementing the Policy for SSF and ‘co-op-ting’ the fishers**

Problematic participatory processes were not the only concerns raised about the promulgation by DAFF of the Regulations for Small-scale Fisheries in March 2016 (DAFF 2016). The regulations interpreted the Small-scale Policy in a distinctive way. DAFF interpreted the policy for SSF community-based right and community-based institution in the narrow form of a cooperative. The template for the cooperative included in the draft regulations and later in the DAFF Constitution for Cooperatives revealed that it was conceptualised as a business entity. Without an identified co-operative small-scale fishing communities could not be recognised by the Minister, or granted small-scale fishing rights.

The small-scale fishers who had gone to the Equality Court and their civil society partners had motivated for an inclusive small-scale definition that recognised the complexity of the sector. An inclusive definition would include all fishers, ranging from subsistence fishers who fished for food security, to those who fished to feed their families and make a modest living from selling their fish commercially. The fisher and academic representatives, particularly those from the Western Cape who dominated the proceedings, had motivated strongly for a community-based approach. What had not been anticipated was that DAFF would prescribe the implementation of this approach so rigidly. Small-scale fishers had hoped that the policy would be adapted flexibly to meet the histories, traditions and local context of each community where the fishers lived. Importantly, they had anticipated that there would be a process whereby the historical rights of a fisher community would be recognised and ‘restituted’. To do this, it was imagined, that the community holding the rights would do so through a community-based institution, which would also be involved in co-managing the fisheries. Co-operatives set up as forms of business entities established to market the fishers’ fish are totally different entities to such an imagined community institution.

In 2016 DAFF commenced with the implementation of the SSF policy. Communities who wanted to be identified as Small-scale Fishing communities were asked to submit an ‘Expression of Interest’ form (DAFF 2016). The process of communicating, then identifying, registering and verifying small-scale fishing communities was very chaotic in KZN. DAFF initially contracted this process to a new consultancy called Amagagazi, which was made up of former KZN Ezemvelo Wildlife officials. These officials were known to the fishers, and for many, they represented the harsh might of the law which had harassed them and accused them of being poachers in the past (pers.com Mbehele 2020). The organisation of fishers known as Coastal Links complained to the Minister and Parliament that these former officials (now part of Amagagazi) were biased towards fisher groups in the rural areas that Ezemvelo had recognised in the past. They raised concerns that this would exclude the majority of small-scale fishers in the province.

When Minister Bheki Cele visited Mtwalume in December 2016, the Coastal Links fishers cited numerous examples of chaotic registration processes in the rural areas that left many people excluded, mostly due to the lack of information and poor communication. In the urban areas, the majority of the KZNSFF in Durban and surrounds did not even know about this process. Those who heard about it did not realise that it applied to them given that they still thought of themselves as subsistence fishers. In some areas, the DAFF officials just did

not bother to hold a meeting to inform the local fishers. For example, three fishers from the KZNSFF heard about a DAFF meeting in Umgababa. When they arrived at the meeting they were told by the DAFF officials that since they lived in Umkomaas they could not attend and register in Umgababa and that DAFF would come to Umkomaas to register them. DAFF never arrived and Umkomaas has been left out of the process entirely with no rights registered in this town (Pers.com David Naicker 2020). 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 (pers.com anonymous Mpembeni 2020). A few fishers appealed but many did not know about the appeal process.

In 2017 DAFF released the final fishers lists, and in January 2018 commenced the process for registering the small-scale fisher cooperatives in the listed communities. DAFF insisted that they would only register a cooperative and grant a right to a community if there were more than 20 successful 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 an artificial 'community', and then in turn to form a cooperative, even if they had no history of fishing together.

One of the weaknesses in the DAFF registration and verification process was the application of the policy criteria recommended by the NTT in a very narrow way, rather than in a flexible, context-specific way in which the criteria were designed. This issue was addressed by the NTT at the time, where members warned that different customary practices and complexities along the coast would require context-specific adaptations of the criteria. Often implementation ran counter to an understanding of the dynamic, complex nature of small-scale fisheries; which exists in an everchanging continuum of dependence from subsistence fishers to small-scale commercial livelihoods. For example, the issue of dependency on fishing for a livelihood was at times strictly determined, whereby the successful applicants were supposed to be 100% dependent on marine resources. Even the earlier SFTG had stated that "rural households engage in a wide range of activities to generate a livelihood to achieve food security" and that this variation had been observed in "all fishing households, whether they were in rural, town or metropolitan areas" (Branch et al 2002b). These lived realities of South African fishers were not taken into consideration.

In addition, the policy was supposed to include youth and women. The SFTG had previously noted that men were the dominant players when it came to harvesting high-value species. Women played a significant role in the harvesting of intertidal resources. Women had made up 17% of the fishers interviewed for the survey conducted on the shore-based line fishery in 2010 (Dunlop 2011). This is still a substantial figure and requires recognition in the policy. Both patriarchal and cultural hierarchies mean that some women who contribute in important ways towards the fishing value chain, do not get remunerated directly. Acknowledging this would require accepting that women on the surface may not appear entirely dependent on the marine resource. Besides, if a strict 100% dependent approach was adopted youth who may not yet have had the opportunity to become fully engaged in the fishery due to prior regulatory restrictions may be disqualified. Some of these built-in exclusions due to strict and narrow qualifying criteria, resonate with the earlier technocratic

demands to have distinct categories of fishers and may explain why so many fishers continue to be excluded from the lists of fishers.

## Section 10 Where have all the (subsistence) fishers gone?

*“It’s like we don’t exist. They don’t see us,” Layla Ebrahim, KZN (2020)*

In 2002 the SFTG appointed to investigate all the fishers left out before the MLRA was promulgated found that there were 19 745 subsistence, artisanal and small-scale fishers in KZN province, keeping in mind that this figure already *excluded* the communities of Chatsworth, Wentworth, Merebank, Clairwood and Umkomaas. In 2012 when the Policy on SSF was gazetted in South Africa, the Ezemvelo Subsistence Fisheries Management Unit (the fisheries authority in KZN), had only recognised 938 subsistence line fishers from 12 recognised subsistence fishing communities including Kosi Bay, Mabibi, Mbila/Sodwana, Sokhulu, Nhlabane/Mbonambi, Port Durnford, Mpembeni, Amatikulu, Nonoti, Umgababa, Mfazazana/Mthwalume and Nzimakwe/Port Edward (Mann 2014). In 2019 Minister Zokwana recognised 38 cooperatives in KZN, and, through these cooperatives, allocated fishing rights to approximately 2100 fishers (pers.comm Ngqongwa 2020). The downward shift in subsistence fishers numbers in official policies begs the question: where have all the subsistence fishers gone? Since the number of linefish rights in the commercial sector has been steadily reduced since 2000 they certainly have not been absorbed into the commercial fisheries (Dunlop 2011). Many, as this report illustrates, have had to get recreational permits to legitimize their fishing. Simultaneously erasing them from the small scale fishing policy.

The policy shifts after democracy offered hope that cultural and traditional fishing rights would be acknowledged and accommodated. On paper, the MLRA and the more recent small-scale fishers policy acknowledge the importance of this. Yet, as outlined above, stubborn residual forms of past discrimination, contemporary structural inequalities, poor policy implementation and problematic discourses around subsistence fishers has meant that, even the progressive attempts at inclusion in the Small-scale Fisheries Policy have excluded thousands of rural and urban fishers in KZN (pers.com anonymous fisher Mpembeni, Mbehele August 2020). The low number of cooperatives in Durban, and the lack of cooperatives in areas where many subsistence fishers live such as sections of Chatsworth, Wentworth, Umkomaas, Phoenix and Verulam are testimony to this. There are only 4 cooperatives recognised in the entire eThekweni Metro region, these are in Merebank, Crossmoor, Clairwood and Isipingo respectively and involve a total of only 202 fishers (DAFF 2019). These figures are glaringly out of sync with even the most conservative number of subsistence fishers provided by SDCEA. SDCEA has reported that 12 000 forms were completed for access to the Port as ‘port users’ when Transnet opened this process in May 2013 (Pers.com Desmond D’Sa). In the first month alone 4000 forms were filled in at a hall in Clairwood (See media article with photo of packed Clairwood Tamil Institute hall in May 2013)<sup>9</sup>. Given that over 700 subsistence fishers signed onto the list for the court case with the Port Regulator in 2009 (SDCEA 2009), it could be assumed that at minimum there are 700 fishers in eThekweni in the South Durban area alone.

The ‘disappearance’ of these subsistence fishers is not unique to Durban or KZN. Up and down the coast fishers report that many *bone fide* subsistence-small-scale fishers with long

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<sup>9</sup> <https://www.iol.co.za/news/south-africa/kwazulu-natal/anglers-apply-for-permits-1518658>

histories of fishing or harvesting marine resources have been left out of DAFFs lists (pers.com Mbehele 2020, Nongcavu 2020, Adams 2020). Masifundise Development Trust estimates that 50% of fishers in the small-scale fishers group have been excluded. An analysis of other key regions and communities in KZN suggests that this might be an accurate estimation in many areas (Sunde 2020). For illustration, in the Kosi Bay area, which comprises 6 different customary communities, DEFF has only registered 4 cooperatives. This leaves a large group of fishers who have not had their rights respected or secured through the policy process. In the Western Cape, fisher leaders have actively lobbied the Minister to conduct a review of the application and registration process of fisher co-operatives. The Minister has ordered an audit in the Western Cape and is in the process of reviewing the audit outcomes. It remains unclear why a similar process of review has not been undertaken for KZN. While these KZN fishers may have disappeared from the DAFF lists they most certainly have not gone away.

## Section 11 The socio-economic profile of the subsistence fishers of KZN today

Twenty-two years after the MLRA recognised subsistence fishers, the state still knows extraordinarily little about the demography, histories, cultures and socio-economic profile of these fishers in KZN. Neither is the contribution that subsistence fishers' make to national accounting in the form of food security and local livelihoods and value chains well understood. After the national survey undertaken by the SFTG in 1999 (Clark et al 2002), only one further national survey, commissioned by DAFF in 2016, was conducted on fishers. The full results of this latest survey (DAFF 2019), have yet to be released into the public domain. Notwithstanding this dearth of official information, a great deal of knowledge and information is held by local community-based organisations. Non-governmental organisations, as well as research and conservation organisations who have worked with subsistence fishers in certain areas over the past two decades also hold useful longitudinal information.

Unfortunately, the SFTG survey did not provide a racial profile of subsistence fishers. It is commonly known, however, that in KZN, Indian fishers, isiZulu fishers and Thonga fishers predominate, with smaller numbers of coloured and white subsistence fishers. Indian fishers also make up the majority of the recreational fishing sector (Dunlop 2011). In the 2010 survey of the shore-based line fishery, Dunlop found that 60% of the anglers were Indian, White fishers comprised 30.9%, Black (6.1%), Coloured (2.4%) and Asian made up only 0.1% (Dunlop 2011).

Already in 2000, the SFTG reported that more than half the fishers interviewed complained about the racism of the fishery authorities, experienced through their interactions with enforcement officers. Fishers reported being "harassed", receiving "little respect" from the authorities, "feeling threatened", as well as the ongoing "tension" between them and the authorities. *"[we] are considered poachers by authorities not considering the fact [that we] have been denied permits"* (SFTG fisher in Hauck et al 2002:467). Nowadays the racism remains in some areas, albeit in a less overt form. Often entwined with class-based prejudice against the fishers, who are viewed as poor and seen as leaving a mess on the beaches. For example, wealthier property owners', predominantly white, lobby to establish zonation in the local MPA that will keep the fishers off the beach. Law enforcement officials, alerted by these residents, have been known to harass fishers just for walking on the beach with a rod in their hands. Subsistence fishers in KZN continue to cite racism on the part of both Ezimvelo officials and also white fishers and conservationists (pers.comm KZNSFF subsistence fisher August 2020). One fisher interviewed recalls how in the past white landowners living adjacent to the beach on the Durban south coast near Clansthal Conservancy used to set their dogs on the fishers to keep them away (JP pers. comm August 2020). The KZNSFF also cite the action taken by residents of Clansthal Conservancy to push for the 3km of the beach in front of their private residences to be closed to the fishers in 2016. Fishers have also reported harassment in the Aliwal Shoal MPA (McGarry et al. 2019). They say that in the more recent MPAs they were not adequately consulted. Fishers here feel that broken promises were made by scientists, and their knowledge of the local habitat



and species dismissed from decision-making processes (pers.comm Chairperson KZNSFF Umkomaas Branch August 2020, pers.comm David Naicker 2020).

The local indigenous subsistence fisher communities up the north coast, have also in recent years, protested against their exclusion and the racism that they experienced from engagements with Ezemvelo within the Isimangaliso World Heritage Site. In 2016 the Concerned Coastal Dwellers group, a group of indigenous owners of land in the Isimangaliso site wrote to the President complaining of the failure to consult them in the planning and management of the World Heritage Site. They indicated that their rights as indigenous peoples had been violated (Concerned Coastal Dwellers 2016). In 2017 subsistence fishers and owners of customary fishing traps in Kosi Bay, St Lucia, Sokhulu, Nibela and Nkundusi wrote to Minister Zokwana and complained that their customary fishing rights were being violated (KZN Coastal Links letter to Minister October 2017). They received no response to their correspondence.

### **The contribution of subsistence fishing today to livelihoods at varying levels**

Subsistence fishing contributes enormously to household and individual food security, survival and livelihoods at different times of the year, and different stages in a family's life cycle. Fishers households in South Africa engage in wage labour, self-employment and state grants for cash income. The SFTG survey observed that of the fishers who reported other jobs, almost two-thirds of the jobs identified fell in the secondary labour market, which is characterized by poor pay and little security or opportunity for improvement (May 1996 in Branch et al 2002b:449). Also, the survey reported that approximately 43% of fisher households were involved in self-employment and/or microenterprises as an income-generating activity (Branch et al 2002b:449).

In 2015 Burger identified a wide range in the level of subsistence of the 8 different groups of fishers that she interviewed in various fishing spots around eThekweni. This ranged from those who were extremely dependent on fishing for most of their basic food security and household income, to the more affluent fishers. On the extreme dependence end of the spectrum, the most marginalized focus group had an average monthly household income of just R2500. Just under 50% of those interviewed reported their combined household income was less than R1000. These fishers sell 60% of their catch and fish daily, both day and night (Burger 2015:17)<sup>10</sup>. Several respondents stated they had suffered forced removals from Clairwood under racist legislation. Most interviewed were residents of Isipingo or Merebank. Burger notes that,

*most fishers claiming subsistence rights within the urban context, do utilize the majority of their catch themselves (57%) and earn on average - after the deduction of bait, transport and licence fees - less than R500 per month from the sale of excess fish. Of the cross-section of fishermen interviewed, the*

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<sup>10</sup> This issue of night fishing which is commonly reported by the KZNSFFF is interesting noting that the marine science survey of the KZN line fishery in 2010 did not include night fishing as this was considered a security risk for the researcher (Dunlop 2011). The scientific survey would ideally need to be adjusted to accommodate subsistence fishers who do fish at night.

*majority are generally poor, with an average income of R4500 per month per household, comprising of between 3 and 4 people. They are increasingly suffering the burden of unemployed family members, high living expenses – particularly food – transport costs and other socioeconomic stresses. (Burger 2015:5).*

These figures have been confirmed for this research reports current values at the time of writing. Income from the sale of fish varies considerably depending on whether it is summer or winter and whether it was a 'good week' when fishers might earn between R1000 and R1500 or a 'bad week' when they may only earn "enough to buy a loaf of bread", between R100 and R200 in the week (pers.comm Clinton Alexander August 2020). Informants indicated that subsistence fisher income per household might now be R8000 in July, as fishing during the winter months yields a good catch. This enables these households to cover basic of necessities (pers.com Riaz Kahn August 2020).

In addition to putting food on the table for many thousands of families, subsistence fishing enables fishers' to send their children to school. The pride that many fishers place in being able to send their children to school and provide for them without state help is expressed by Layla Ebrahim, a third-generation fisherwoman. Layla says she "grew up on the beaches and piers that line the KwaZulu-Natal coast". The waters there have been good to her and, like her father and grandfather before her, she has built a life for herself and her family off the back of daily hauls of shad and rock cod. The proud 56-year-old mother stated, "I put my two children through school and kept them fed without anyone else's help" (Layla Ebrahim, interviewed by Bernadette Wicks, May 2020, The Citizen).

JP Naranasamy, secretary of the KZNSFF, indicates that this is a widely shared sentiment and that the income that many fishers get from fishing enables families to put their children through education. He has been able to study part-time, working as a labourer, as a result of his fishing which paid his student fees. JP says that supplementing their wages with money from fishing is particularly marked in the winter months when many subsistence fishers can fish, and get a small income that can cover expenses (Pers.comm JP Naranasamy, August 2020). He observes that these multiple livelihood strategies are happening more and more, especially now with the Covid-19 Lockdown.

Over and above an economic livelihood analysis, the sea and the activity of fishing form the material basis of the culture of many subsistence fishers. Fishing communities, as highlighted in Section 2, continue to regard fishing as much more than just a means of earning an income. Fishing is part of their identity and their cultural heritage (SFTG Harris et al 2002, Sunde 2013, Sowman et al 2013, Burger 2015). This seems particularly evident for the Indian subsistence fishers of Durban and surrounding coastline. Contemporary fishers talk about the ocean as "my life" (Clinton Alexander 2020) and "my heritage" (Burger 2015). The way in which fishing and their relationship with the sea has informed both the culture of Indian fishers in South Africa and the greater KZN culture, is evident in all sectors of the fisheries in KZN, up and down the value chain. For example, the earliest fish markets were established by Indian fisher communities (Scott 1994, Govender and Chetty 2014), and the influence on the seafood cuisine of KZN, and the cultural attachment to the sardine netting that takes place as part of the sardine run each year.

During the 2020 Covid-19 disaster management regulations the exclusions of the KZN subsistence fishers, and their dependence on ocean resources for subsistence, were again flung into the spotlight. The critical role that fish plays in the diet of many households and the need these households have to supplement both their source of food, and their income with the sale of fish, has become very apparent during the Covid-19 Lockdown (See Section 13). The very desperate economic plight of many fishers during Levels 5 and 4 was reiterated by all the fishers interviewed for this research (Annexure 1). It was also cited in the media by local and provincial politicians who reported that they had received an increase in requests for support from many desperate fishers. The critical role that subsistence fishing plays as a safety net and as a survival mechanism has been most visible during Covid-19. Unable to fish, many families have been desperate. As Riaz Khan, the KZNSFF chair, said “I’ve seen people without food, crying..if the virus doesn’t kill them, then hunger will” (Riaz Khan, Chairperson KZNSFF).

## **Section 12 The Covid-19 lockdown spotlight on subsistence fishers**

The Covid-19 lockdown exposed the continuation of an exclusionary approach to subsistence fishers in KwaZulu Natal that denies their Constitutional right to food security, to their cultural heritage 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, the Minister of Environment, Forestry and Fisheries rightly approached the National Command Council to declare commercial fishing and small-scale fishing 'essential services'. This exempted commercial and small-scale fishers from sections of the Lockdown regulations and enabled them 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 confirming them as a recognised 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, many of whom had purchased recreational licenses for reasons outlined earlier, once again found themselves cast out. 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. The SDCEA approached a DEFF official via email and asked how they could be permitted to fish, motivating that these subsistence fishers depend on fishing for a livelihood and hence they needed to get access to the beaches and piers. This email was forwarded to the Acting Manager of Resource Management. He informed SDCEA that "all the exemption provisions granted by the Department to the Fisheries Sector do cover the Small-scale subsistence fishers" (DEFF 2020). He added that "there should not be any prohibition of access to the marine resources by any arm of the state". SDCEA responded confirming that all the fishers would require a permit in order to fish. The DEFF official responded noting that where they did not have a permit they would need their 'Grant of Right Letter'. He attached copies of the Exemptions issued by the Department. He also copied in the Acting DDG of DAFF amongst others (DEFF 2020).

SDCEA, not having been informed about the SSF cooperatives by the Department, asked for a Grant of Right letter. The DEFF official continued to assume that the subsistence fishers were part of the cooperatives. When the Chairperson of the KZNSFF subsequently made copies and distributed the permit documents emailed to SDCEA he was visited by a range of different law enforcement officials and police who confiscated his laptop and threatened to arrest him for fraudulent behaviour (pers.comm Riaz Khan August 2020). This harassment arose due to the ignorance of DEFF's own officials of the situation on the ground in KZN. This highlighted once more the invisibility of the KZN subsistence fishers, and that even their exclusion from the most recent policy process has gone unnoticed by some DEFF senior officials.

SDCEA and the KZNSFF requested a meeting with Minister Creecy and subsequently met with her and the Acting DDG, Ms Sue Middleton in an online meeting on 4 June 2020. 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. During the meeting, the Acting DDG Sue Middleton informed Desmond D'Sa that subsistence fisheries no longer exist, that subsistence fishers have been erased from the statute books with the amendment of the MLRA.

The earlier policy exclusions of the subsistence line fishers of KZN Fisher Forum and others have had detrimental consequences on the lives and livelihoods of these fishers during the pandemic. In addition to the impact on their household food security and income, these fishers faced severe harassment and discrimination from enforcement officers and the general public when attempting to fish during the lockdown. The state's refusal to let these traditional fishers fish to feed their families, particularly during a time of crisis, was a violation of their dignity as human beings and as workers trying to be independent of the state, to subsist and support their families. For many of these fishers who had over the years felt trapped into the murky waters of recreational license purchases due to poor policy consultation and implementation, this represented a further dismissal of their cultural practices and heritage passed on from the indentured labourers of the 1800s. Sadly the state's actions reflect a continuity of the discrimination and prejudice of the racist, colonial-era in post-apartheid South Africa. These Indian fishers continue to have their access and traditional fishing rights denied.

### **13. Conclusion: How can the Constitutional rights of the subsistence fishers of KZN be accommodated?**

This report has attempted to systematically document the sequence of policy and legislative interventions that have shaped the lives of the subsistence fishers of KZN. The following conclusions are proposed based on the interventions and events identified in this report:

- 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 KZNSFF 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.



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## **Annexure 1**

### **List of persons with whom discussions were held for this research paper:**

1. Mr Riaz Khan, Chairperson KZNSSF
2. Mr Peter John (PJ) Naransamy Secretary, KZNSSF
3. Mr Israel Mbehele former Chairperson, Coastal Links KZN
4. Mr Clinton Alexander KZNSSF
5. Mr David Naicker, Secretary, KZNSSF Umkomaas
6. Mr Thomas Nkuna, Nibela Coastal Links
7. Ms Tozi Mthiyane, Director, SSF Cooperative Mgababa
8. Mr Velloo Govender (former member of the NTT)
9. Mr Allen Naicker, Chairperson, Umkomaas Angling Branch of KZNSSF
10. Women Fisher leader (anonymous)
11. Mr Desmond D'sa, Coordinator of SDCEA
12. Ms Sherelee Odayar, Programme Manager, SDCEA
13. Member of the National Task Team from academia (anonymous)
14. Marine Ecologist, KZN (anonymous)

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The South Durban Community Environmental Alliance

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

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