

High & Dry. KwaZulu Natal Fishers Fight for their Rights

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“Subsistence fishing” is no longer a category of fishing in South Africa. Legislation does not recognise it as such so by default the fisheries management does not either. But in KwaZulu Natal the ‘subsistence’ fisher is alive and well and there is an urgent call to go back to the drawing board with the Small-scale Fisheries Policy to accommodate them.

In 2014 the Marine Living Resources Act was amended to formalize the small-scale fisheries sector in South Africa. In line with the Small-scale Fisheries Policy (2012), the category titled “subsistence fishing” was replaced with “small-scale fishing”.

The KwaZulu Natal Subsistence Fishermen Forum which has 12000 members has a different view. It says of KZN fishermen, “we have been around for 160 years and we have been subsistence fishers from generation to generation. The former president thought poor people should not enter the harbour to fish (Durban

harbour), so we took it to the courts. Although it took 10 years, we won. We are now recognized as subsistence fishers by Transnet and allowed to fish on the Durban beachfront.”

Formation of cooperatives

For its part, the Department of Environment, Forestry and Fisheries says it has made progress. It explains that all KZN fishing communities that wanted to progress under the new legislation, had signed expressions of interest in 2015 and 2016.

These same communities were visited, interviewed, and applications were put forward. Those that underwent assessment included Mgababa, Isipingo, Merebank, Crossmoore and Clairwood. The successful applicants were then mobilised into forming cooperatives.

They were offered training and help to apply for fishing rights, which they were later issued with.

COVID-19

In KwaZulu Natal (KZN) fishing rights were only granted to small-scale fishers on 26 March 2020. This was just before the COVID-19 national lockdown.

According to the Department they were exempted to fish during the lockdown.

One of the problems though was that the permits were not translated into isiZulu, the regional language. As a result, many fishers did not properly understand their permit conditions.

After Level 2 of the lockdown was announced, some interprovincial travel was allowed. A team from the Department of Environment, Forestry and Fisheries

travelled to visit the cooperatives allocated fishing rights in KZN to explain the information.

The Department says it has followed this up via regular WhatsApp chats and is now working on translating the necessary information into the local languages.

Excluding the subsistence fishers

Unfortunately, the lockdown created a vacuum for Indian subsistence fishers of South Durban and surrounding districts and the non-racial community of poor, subsistence line fishers.

These people turned to the KwaZulu-Natal Subsistence Fisher's Forum (KZNSFF) for help when they found out that under their new "illegal" status as subsistence fishers, they could not access the beach.

Not being able to fish meant they could not feed their families, nor were they eligible for state food parcels.

It was presented to the parliamentary portfolio committee for fisheries last week by the KZN Subsistence Fisher's Forum and South Durban Community Environmental Alliance (SDCEA).

It makes for interesting reading. Written by Jackie Sunde and Kira Erwin, it presents the historical background, post-apartheid legal reforms, and the 're-creation' of subsistence fishers into 'recreational' fishers.

It also addresses the implementation of the MLRA and SFTG recommendations in KZN, the Equality Court Appeal of 2007, the closure of the Durban port to subsistence fishers and the development and interpretation of the Small-scale Fisheries Policy which includes 'co-op-ting' the fishers.

The closing chapters ask where the subsistence fishermen have gone, delves into their socio-economic profile and the impact the Covid-19 lockdown has had on this sector.

Constitutional rights of subsistence fishers

The conclusion is about how the Constitutional rights of the subsistence fishers of KZN can be addressed.

The point is made that the Indian subsistence shore-based line fisherman cannot be categorized as 'small-scale'.

Unlike other small-scale fishermen elsewhere along the Southern African coastline, history, policy, and legislative interventions have shaped how they live for decades.

KZN subsistence fishermen are a racially, culturally, socially and economically diverse group dependent on marine resources for basic food security and livelihoods.

The report states that the marine science approach does not fit, and that the fisheries management does not have sufficient understanding of the history that has shaped KZN's subsistence fishers.

"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,” says the report.

Recommendations

The report offers recommendations. These are to:

- Call for an official review into the public participation processes. This should comprise 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.
- 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. This 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.
- Establish a process to consult all subsistence fishers on how cultural fishing rights, differentiated in the Constitution from customary rights, can be recognized, a process of restitution and redress facilitated and access to resources enabled on a sustainable basis.
- 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.
- 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. They must be tasked to explore how a more flexible regulatory environment under the current SFF policy may

function. This would have to consider 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.

As the authors mention in the introduction: "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."

