



**DIRECTORATE OF FISHERIES**

Marine life– our *common* responsibility

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**User rights and definitions  
The South African example**

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## Good old days

- Universal Declaration of Human Rights: UN General Assembly 10 December 1948;
- By that time I was already 2½ months old;
- Anyone could engage in any form of fishing in any scale, more or less anywhere;
- **FISHING: GENUINELY AND TRULY A HUMAN RIGHT!**  
(Although not mentioned in the UN's Universal Declaration, and still not included)

## Limitation of access and other constraints

- Introduction of –
- Fisheries zones *e.g.* 12 nautical miles;
  - 200 nautical miles EEZs
  - Schemes of licensing/concessions: Trawling; Purse seining: => Complete closure of the commons
  - UNCLOS (1982); UNCED Agenda 21, Chapter 17 (1992); FAO Compliance Agreement (1993); FAO Code of Conduct for Responsible Fisheries (1995); RFMOS such as for instance NEAFC, NAFO, ICCAT, IOTC, CCAMLR, SEAFO, etc...
- **FISHERIES GENERALLY PROHIBITED UNLESS SPECIFICALLY PERMITTED: UTILIZATION OF MARINE LIVING RESOURCES REQUIRES TODAY IS A RIGHT IN TERMS OF LEGISLATION. BUT IS IT NECESSARILY LEGITIMATE?**

## South Africa – Development of policy

- The Minister: DEAT initiated a process of developing a national marine fisheries policy at a public launch on 27 October 1994, and a Fisheries Policy Development Committee (FPDC) had its first meeting on 6 March 1995.
- The FPDC submitted its 18 pages report (“Green Paper”) to the Minister: DEAT on 4 June 1996.
- A process of transforming the Green Paper into a White Paper on a Marine Fisheries Policy for SA (WP) commenced on 14 October 1996 with the arrival at DEAT: Sea Fisheries of an adviser from Norway who assisted in reviving the policy process and driving it forward. A first Draft White Paper was ready by mid-December 1996. Simultaneously a legal opinion on the implementability of the policy in terms of the existing Sea Fishery Act (1988) was also ready, developed by a specially nominated international Legal Task team (LTT). Its unanimous advice was to develop a new act based on the WP.
- The final version of the WP was approved by the Cabinet in June 1997. At the same time a first Draft Marine Living Resources Bill was also ready, developed by the LTT.
- The Marine Living Resources Act was signed by the President on 21 May 1998 and adopted by Parliament in October 1998.

## South Africa – User right policy (Quote: WP)

- The fisheries policy is founded on the belief that all natural marine living resources of South Africa, as well as the environment in which they exist and in which mariculture activities may occur, are a **national asset and the heritage of all its people, and should be managed and developed for the benefit of present and future generations in the country as a whole.**
- A dynamic, thriving fisheries sector depends on a **sound resource base**. The primary objective of South African fisheries policy must therefore always be to **protect and safeguard the resource and its environment**, in order to be able to reap an optimum, long-term sustainable harvest. To achieve this, **limiting entry is imperative**. The alternative, open or liberal access to the resource, inevitably leads to overexploitation, depletion or even extinction of stocks, wasteful overcapitalization of the industry and consequent loss of income and jobs

## South Africa: MLRA Objectives (Decisionmakers shall have regard to)

- (a) Achieve optimum utilisation and **ecologically sustainable development** of MLRs;
- (b) **Conserve marine MLRs** for both present and future generations;
- (c) Apply **precautionary approaches** in respect of the management and development of MLRs;
- (d) Utilise MLRs to achieve **economic growth, human resource development, capacity building** within fisheries and mariculture branches, **employment creation** and a **sound ecological balance** consistent with the development objectives of the national government;
- (e) **Protect the ecosystem as a whole**, including species which are not targeted for exploitation;
- (f) Preserve **marine biodiversity**;
- (g) **Minimise marine pollution**;
- (h) Achieve to the extent **practicable a broad and accountable participation** in the decision-making processes provided for in this Act;
- (i) Any relevant obligation of the national government or the Republic in terms of **any international agreement or applicable rule of international law**; and
- (j) **Restructure the fishing industry to address historical imbalances and to achieve equity within all branches of the fishing industry.**

## User rights: Definition and characteristics

- Definition: A user right is allocated on application to a natural or juristic person who qualifies i.t.o. criteria/requirements as determined by a country's mandated competent authority. A universally recognized set of criteria does not exist
- Characteristics: The user right is normally allocated conditional upon certain limitations or restrictions such as *e.g.* –
  - the amount of fishing effort that may be exerted in terms of type and size of fishing vessel;
  - type of fishing gear or fishing method, areas or zones where the right may be exercised;
  - size of individual fish species caught, time periods (seasons) within a year in which the right may be exercised;
  - quantity of target species and of other species taken as unavoidable by-catch, *e.g.* limited in terms of a percentage of the *TAC*.

## South Africa – MLRA: Categories of User Rights

- Commercial fishing
- Recreational fishing
- Subsistence fishing
  
- Subsequently introduced: Limited commercial fishing (very small scale)
- In the process of being developed: Small scale fishing rightd





## South Africa: Policy for the allocation of rights

SA has codified an overarching general fisheries policy as well as specific policies for each of its 22 commercial fisheries. These are

1. Hake Deep Sea
2. Hake Inshore trawl (hake & sole)
3. Hake Longline
4. Hake Handline
5. Horse Mackerel
6. SCRL
7. WCRL offshore
8. WCRL nearshore
9. Patagonian Toothfish
10. KZN Prawn trawl
11. Small Pelagics
12. Large pelagics (tuna and swordfish)
13. Tuna pole
14. Shark Demersal
15. Seaweed
16. Squid
17. Oysters
18. White mussels
19. Traditional Linefish
20. Netfishing
21. Beach seining (KZN)
22. Abalone (closed down in 2008)

## South Africa: Policy for the allocation of rights (2)

- Prior to being adopted as national policy each of the fishing policies were subjected to both a notice and comment period and a public participation process (conducted in four languages) spread among 53 coastal villages from Port Nolloth to Richards bay.
- The criteria for assessment of applications, in particular in respect of the more capital-intensive fisheries, were very detailed and meticulously weighted and balanced. Strong emphasis was put on **transformation performance and commitment in terms of active industry involvement including investments**

## Distribution of fishing rights (quota holders) in SA in 1996

FISHERY	TAC (TONS)	NUMBER OF QUOTA- HOLDERS	% OF TAC HELD BY LARGEST QUOTA-HOLDERS		
			ALL	3 TOP	10 TOP
Hake	148 300	49	72	82	87
W Coast Rock Lobster	1 500	104	23	51	73
S Coast Rock Lobster	427	6	82	100 (6 all)	-
Abalone	615	16	75	95	100 (16 all)
Pilchard	105 000	59	30	55	63
Anchovy	70 000	18	36	79	100 (18 all)
Sole	872	11	71	100 (11 all)	-



## Situation after the allocation of medium-term fishing rights in 2001/2002 and LTRs in 2005

- VERY DIFFERENT FROM 1996 –
  - EXISTING RIGHTS HOLDERS TRANSFORMED (GREATER OR LESSER EXTENT)
  - MANY NEW RIGHTS HOLDERS

## South Africa –User rights: Unfinished business?

- Small-scale fishing? (A dead fish is a dead fish: small catch x large numbers = tonnage)
- Communities, user groups & co-management? (Organization, mandates, accountability)
- Development of marine aquaculture? (Biodiversity freaks' sabotage of national policy)
- Sea Ranching => abalone replenishment?? (In SA? Never! Biodiversity & poverty for ever!!)
- Human rights approach to user rights in fisheries & open access? (Goodbye resource!)

THANKS!

## Situation after the allocation of medium-term fishing rights in 2001/2002 (3); (4) & (5)

FISHERY	OWNERSHIP		EMPLMT EQUITY		TAC DISTRIBUTN	
	(1)HDI %	White %	HDI %	White %	HDI %	White %
Hake longline	89	11	70	30	90	10
Hake & Sole Inshore	50	50	42	58	37-46	63-54
Hake Deep-Sea	74	26	53	47	25	75
SCRL	71	29	47	53	77	23
WCRL	66	34	34	66	60	40
Pelagic	73	27	53	47	75	25
Shark longline	24	76	29	71	14	86
Horse mackerel	41	59	29	71	37	63
Abalone (2)	88	12	71	29	84	16

## Footnotes from previous slide

1. HDI definition: Those persons or categories of persons who prior to the new democratic dispensation marked by the adaption coming into force of the RSA Act 1996 (Constitution) were disadvantaged by unfair discrimination on the basis of their race, and includes juristic persons or associations owned and controlled by such persons.
2. The abalone fishery was closed down in 2008: Rampant poaching.
3. Source: “Where have all the fish gone?” – Measuring Transformation in th SA’n Fishing Industry. Minister Valli Moosa, October 2002: “I believe that the SA’n fishing industry has reason to feel proud of the important strides that have been taken towards addressing the past injustices in their industry.”
4. Whereas previously quotas were allocated on an annual basis to approximately 400 holders, the medium-term were allocated to more that 3900 rights holders for a duration of four years
5. Not informed whether similar analysis conducted after allocation of LTRs. HDI shareholding and employment equity reflected in the General Reasons for decisions on LTRs allocation.