

## **Q&A summary of LandNNEs policy brief: South African Small-Scale Fisheries Policy**

### **1. What is a small-scale fisher?**

Small-scale fishers engage in fishing for livelihoods. They derive income from selling their catch to consumers or traders who are mostly local. They must be seen as different from subsistence fishers, who fish for their own consumption, recreational fishers, who fish for sport and recreation, and large-scale commercial fishers, who fish at large, industrial scales for the purpose of corporate profit.

### **2. What are the social conditions of small-scale fishers?**

Small-scale fishers are generally black people who are members of low income or, at most, middle income communities. They are mostly marginalised from decision and policy making. On the east coast of South Africa small-scale fishers tend to live in communal areas, fish on-shore and mix fishing with other livelihood strategies such as farming. On the west coast small-scale fishers tend to live on privately owned or municipal land while pursuing fishing off-shore in small boats as their only or main livelihood strategy.

### **3. Which laws and policies are important for small-scale fishers?**

- The Marine Living Resources Act (MLRA) of 1998
- Long-Term Fishing Policy (LTFP) of 2005
- Small-Scale Fisheries Policy (SSFP) of 2012
- Amendment of MLRA of 2014
- Small Scale Fishers Policy Regulations (SSFPR) of 2016

### **4. How does gender affect the experience of small-scale fishers?**

Fishing is widely seen as a male pursuit. Women are therefore marginalised in decision-making and policy processes, despite the fact that women play an important role in the small-scale fisheries value chain, especially pre- and post-harvest.

### **5. Which government institutions are important to small-scale fishers?**

The Department of Environment, Forestry and Fisheries (DEFF) at a national level and traditional authorities in communal areas.

### **6. How are small-scale fishers marginalised by government policies and institutions?**

Small-scale fishers were not included in the MLRA of 1998, which was the first post-Apartheid legislation passed to regulate the fishing industry. They were subsequently also excluded from policies such as the LTFP and their demands for inclusion were ignored by government until the *Kenneth George and others v Minister of Environmental Affairs* Equality Court order in 2007 compelled government to include small-scale fishers. Unfortunately, this inclusion could be said to have lasted from 2012 with the promulgation of the SSFP to 2014 with the amendment of the MLRA. The promulgation of the SSFR in 2016 and its implementation from then on, excluded small-scale fishers in similar ways as in the past.

**7. What is the *Kenneth George and others v Minister of Environmental Affairs* Equality Court order?**

Small-scale fishers applied to the Western Cape High Court for an order compelling government to include them fairly in policy decisions and the allocation of fishing licences. The court issued this order as the Equality Court in 2007. The fishers were supported by Masifundise Development Trust and represented by the Legal Resources Centre. This court order was an important moment of recognition for small-scale fishers.

**8. What is the Small-Scale Fisheries Policy?**

The SSFP is a policy of the DEFF that was promulgated in 2012 after successful court action, community mobilisation and public participation by small-scale fishers. The policy, for the first time, recognised the rights of small-scale fishers to be allocated a fair share of fishing quotas and to be included in legal, political and policy processes that affect them.

**9. What are the Small-Scale Fishers Policy Regulations?**

The SSFPR was promulgated in 2016 by the DEFF. Small-scale fishers see these regulations as a reversal. They were not consulted in its drafting and not included in its content. It contradicted the stipulations of the Equality Court order for the inclusion of women and youth and it ignored submissions by Coastal Links and Masifundise that raised the concerns of small-scale fishers. It signalled the return to the government practice of excluding small-scale fishers and prioritising fishing corporations and recreational fishers.

**10. Why is a one-size-fits-all approach to small-scale fishers causing problems?**

This approach does not recognise cultural, socio-economic and political diversity among small-scale fishers. It therefore prevents the development of the tailor-made solutions that are needed. On the east coast many small-scale fishers live on communal land administered by traditional authorities through a plural legal system. They also tend to fish on-shore and to mix fishing with other livelihood strategies such as farming. On the west coast small-scale fishers tend to live on private or municipal land with no traditional authorities. They also tend to fish off-shore using small boats and have fishing as their only or main livelihood strategy. These different situations require different interventions to support small-scale fishers. A one-size-fits-all approach is not appropriate.

**11. What is a Community Based Legal Entity (CBLE)?**

Once the DEFF allocates fishing rights to a particular community, those rights are held in a CBLE on behalf of that community. The stated purpose is to protect the fishing rights of communities. Small-scale fisher communities wanted a vehicle for the holding of their rights collectively, but the department decided unilaterally to include this unique cooperative in the 2012 policy. Several problems have been identified. The process was top-down. CBLEs are special cooperatives with a pre-determined constitution that communities have to follow in order to access fishing rights. Communities did not receive adequate training to understand this model and make it work.

**12. How many fishers applied for recognition by the Department of Environment, Forestry and Fisheries (DEFF)? What was the outcome?**

22 621 people applied to be recognised as small-scale fishers to date by the DEFF but only 10 424 (47%) were successful. A total of 152 CBLEs were registered with the following provincial breakdown: Northern Cape 2, Western Cape 49, Eastern Cape 72 and KwaZulu-Natal 29. The failure of the majority of applications created widespread feelings of unfair exclusion. Registered cooperatives are struggling to function in the policy context and many feel the DEFF has let them down with inadequate training.

**13. What are the advantages of a successful application?**

The main advantage is the allocation of fishing licences for quotas of fish.

**14. What is an interim relief (IR) measure?**

This was a special permission granted by the courts to small-scale fishers on the west coast to catch and sell specified marine resources according to species and permit conditions. It was meant to support the fishers pending policy implementation. Small-scale fishers on the east coast did not get a similar IR measure. This placed small-scale fishers at varying levels of access and advantage.

**15. What is climate change? How does it affect small-scale fishers?**

Climate change is “a change in global or regional climate patterns, in particular a change apparent from the mid to late 20th century onwards and attributed largely to the increased levels of atmospheric carbon dioxide produced by the use of fossil fuels.”<sup>1</sup> This causes threats to small-scale fishers such as unpredictable and changing sea currents and dwindling fishing stock. Permits that allow fishing between specified times may no longer be appropriate as the behaviour of fish species also change.

**16. What are Marine Protected Areas (MPAs)?**

These are areas designated by government where fishing is not allowed or is restricted. The purpose is to conserve fish stock that dwindled because of over-exploitation and other reasons. Small-scale fishing communities had to fight for the right to be included in the decisions to designate MPAs. The *S v Gongqose and others* court order, known as the Dwesa-Cwebe court order, stipulated that the customary fishing rights of small-scale fishers must be respected and fisher communities must be engaged prior to the establishment of MPAs.

**17. What is Operation Phakisa (OP)?**

OP is the government’s drive to boost the ocean economy by fast tracking projects such as on- and off-shore mining, MPAs and aqua culture. These are seen as threats to marine resources as well as the livelihoods of small-scale fishers. Current mining projects at various

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<sup>1</sup> Oxford dictionary

places around the entire coastline of the country are a particular threat to fisher communities as these initiatives will limit access to marine resources and place the marine ecosystem at risk.

#### **18. Which NGOs are important for small-scale fishers?**

Masifundise Development Trust is an NGO working with small-scale fishers. It works closely with Coastal Links South Africa, a community-based organisation of small-scale fishers. The Legal Resources Centre (LRC) is a public interest law firm. These three organisations have played an important role in supporting the struggles of small-scale fishers for access to marine resources and inclusion in policy processes and decision-making.

#### **19. What is the state of self-organisation of small-scale fishers?**

Between the Equality Court order (*Kenneth George and others v Minister of Environmental Affairs*) of 2007 and the promulgation of the Small-Scale Fisheries Policy (SSFP) in 2012 there was strong mobilisation of small-scale fisheries communities. The voices of small-scale fishers have been central to the development of the SSFP principles and objectives. Self-organisation of small-scale fisher communities have weakened since then. This is a result of the marginalisation of small-scale fishers who no longer believe they can influence policy and are less motivated to mobilise and organise.

#### **20. What interventions are recommended to support small-scale fishers?**

- i. Support diversification of livelihood strategies. This will look different in different contexts depending on the different resources and livelihood strategies available and preferable to small-scale fishers.
- ii. Climate change adaptation. This must combine a science-based perspective with a perspective based on indigenous knowledge and local experiences of small-scale fisher communities.
- iii. Co-management. Power must be decentralised and local communities must be engaged as co-managers of marine resources and policies. The voices of local communities must inform institutional arrangements and local practices in specific contexts.
- iv. Building capacity and support for fishing cooperatives. Fishing communities, for example, need training on how to run a fishing cooperative and marketing skills. Opportunities must be created for women and youth, who have been excluded from policy processes thus far.