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## **WP 10.1. Deliverable: 'Report on national legal commitments to sustainable marine fisheries (with database)'**

Summary:

Workpackage 10 has developed a database, including

- a) country profiles,
- b) a web-based annotated links inventory (<http://www.incofish.org/IncoFishv1/Results/AnnoLinksWP10.php>) and
- c) a web-based fisheries ministries compendium ([http://www.incofish.org/IncoFishv1/Workpackages/WP10/ministry\\_guide.php](http://www.incofish.org/IncoFishv1/Workpackages/WP10/ministry_guide.php)).

The database provides easy access to national and international legislation and legal information regarding sustainable marine fisheries. It is aimed at government officers, NGOs, businesses as well as academics.

While the 'links inventory' and the 'fisheries ministries compendium' offer pre-selected access to internet sources focussing on fisheries legislation and respective administrative structures world wide, the 'country profiles' present a 15 to 35 pages overview of national legislation concerned with sustainable marine fisheries and empirical information concerning fisheries management.

Up to now, existing databases had merely offered comparatively unspecific links and rather general information about national conservation measures regarding marine fisheries resources.

To attain the above described objectives, a common structure, based on indicators, has been developed for the country profiles, including

- the respective country's participation in international agreements concerned with the conservation of marine fisheries resources,
- its participation in regional fisheries bodies,
- an overview of respective national legislation towards sustainable marine fisheries (distinguishing between coastal and EEZ fisheries),
- a review of available empirical information on management actions and the state of the marine resources.

Moreover, pertinent internet-links and a bibliography are included. Based on this structure, profiles of South-Africa, India, Russia and Sri Lanka have been elaborated.

The 'links inventory' is divided into three sub-sections. The first two sections offer useful link lists and websites with relevance to international fisheries law. The third section presents information available on the web on national fisheries laws. All annotations follow the same structure giving a brief overview of the provider, the content and the available information of the web-pages.

The 'fisheries ministries compendium' offers a comprehensive link list giving access to nearly all ministries responsible for fisheries issues world wide. The list briefly describes what the user will find on the ministries' web-portals.

The data base is available on the INCOFISH portal. To further its usefulness, the database will also be linked to other data bases.

## D 10.1: Profile of South Africa's legal commitments to sustainable marine fisheries (November 2005)

Marion Markowski, Research Center for European Environmental Law (FEU)

### I. International legal commitments to sustainable marine fisheries

#### 1. *Participation in international agreements*

	Date of Signature	Date of Ratification	Entry into force
Accord entre le Gouvernement de la République algérienne démocratique et populaire et le gouvernement de la République de l'Afrique du Sud relatif à la coopération dans les domaines de la pêche et de la gestion du littoral (Pretoria, 2001)	19 Oct 2001	?	?
Southern African Development Community (SADC) Protocol on Fisheries (Blantyre, 2001)	14 Dec 2001	24 Jul 2003	08 Aug 2003
Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO) (Windhoek, 2001)	20 Apr 2001		
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 1995)		Accession 14 Aug 2003	13 Sep 2003
United Nations Convention on the Law of the Sea (Montego Bay, 1982)	05 Dec 1984	23 Dec 1997	23 Jan 1998
Convention on the Conservation of Antarctic Marine Living Resources (Canberra, 1980)	09 Nov 1980	23 Jul 1981	07 Apr 1982

Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979)		Accession 27 Sep 1991	01 Dec 1991
Convention for the Conservation of Antarctic Seals (London, 1972 )	09 Jun 1972	15 Aug 1972	11 Mar 1978
Convention on the Conservation of the Living Resources of the Southeast Atlantic (Rome, 1969)	23 Oct 1969	02 Oct 1970	24 Oct 1971
International Convention for the Conservation of Atlantic Tunas (Rio de Janeiro, 1966)		Accession 17 Oct 1967	31 Mar 1969
The Antarctic Treaty (Washington, 1959)	01 Dec 1959	21 Jun 1960	23 Jun 1961
Convention on Fishing and Conservation of the Living Resources of the High Seas (Geneva, 1958)		Accession 09 Apr 1963	20 Mar 1966
Convention on the Territorial Sea and the Contiguous Zone (Geneva, 1958)		Accession 09 Apr 1963	10 Sep 1994
Convention on the High Seas (Geneva, 1958)		Accession 09 Apr 1963	09 May 1963
Protocol to the International Convention for the Regulation of Whaling (Washington, 1956)	19 Nov 1956	25 Apr 1957	04 May 1959
International Convention for the Regulation of Whaling (Washington, 1946)	02 Dec 1946	05 May 1948	10 Nov 1948
Convention for the Regulation of Whaling (Geneva, 1931 )			16 Jan 1935

## ***2. Participation in Regional Fisheries Bodies***

CCAMLR Commission for the Conservation of Antarctic Marine Living Resources

CCSBT Commission for the Conservation of Southern Bluefin Tunas

ICCAT International Commission for the Conservation of Atlantic Tunas

IOTC Indian Ocean Tuna Commission

IWC International Whaling Commission

SEAFO South Atlantic Fisheries Organisation

SWIOFC Southwest Indian Ocean Fisheries Commission

## **II. National legislation towards sustainable marine fisheries**

Section 44(1)(a)(ii) and Schedule 4 of the Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996) define marine resources as a matter of national, rather than provincial, competence. Consequently, all marine fisheries in South African waters, including foreign fishing, as well as fishing activities by South African vessels beyond domestic waters are governed by the Marine Living Resources Act 1998 (Act No. 18 of 1998) (MLRA), which repeals most parts of the Sea Fishery Act 1988 (Act No. 12 of 1988). The MLRA was amended by the Marine Living Resources Amendment Act 2000 (Act No. 68 of 2000) and shall further be amended according to the Marine Living Resources Amendment Bill 2005. Under the MLRA, several regulations and notices have been promulgated.

South Africa's fisheries policy pursues the objectives of equity, sustainability, and stability of the fishing industry.<sup>1</sup> Consequently, the purpose of the MLRA is stated in

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<sup>1</sup> See D. J. Bailey, 'South African perspectives on rights in fishing and implications for resource management', in Ross Shotton (ed.), *Use of property rights in fisheries management: Proceedings of the FishRights99 Conference, Fremantle, Western Australia, 11-19 November 1999, Workshop presentations*, 2 (Rome: FAO, 2000), FAO Fisheries Technical Paper 404/2, p. 352; L. v. Sittert, G. M. Branch, M. Hauck and M. Sowman, 'Benchmarking the first decade of post apartheid fisheries reform in South Africa', article in press, *Marine Policy*, available online at

its long title as 'Act 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; and to provide for matters connected therewith'. The objectives and principles acknowledged in s. 2 of the MLRA comprise, inter alia,

- the need to achieve optimum utilisation and ecologically sustainable development of marine living resources, to conserve marine living resources for present and future generations, to preserve marine biodiversity, and to protect the ecosystem as a whole, as well as
- the need to utilise marine living resources to achieve economic growth, human resource development, capacity building and employment creation, and
- the need to restructure the fishing industry to address historical imbalances.

The MLRA comprises 86 sections within 8 chapters, whereof Chapter 3 especially deals with the management of marine living resources. According to s. 14, the Minister of Environmental Affairs and Tourism (the 'Minister') determines the total allowable catch (TAC), the total applied effort (TAE), or a combination of the two, and allocates portions thereof to subsistence, recreational, local commercial and foreign fishing annually. Section 24 in turn empowers the Minister to reduce the portions of the TAC or TAE allocated to the subsistence, local commercial and foreign fishing sectors, as well as the rights granted in respect thereof. The Minister may also establish priority fishing areas to ensure that authorised fishing within that

area is not interfered with<sup>2</sup> and fisheries management areas for the management of specified species<sup>3</sup>, and may restrict or suspend fishing to address an emergency<sup>4</sup>.

Chapter 4 of the MLRA provides for the declaration of marine protected areas (MPAs), where fishing, amongst other activities, is prohibited (except where such activity is required for the proper management of the MPA, and subject to permission)<sup>5</sup>. Chapter 5 deals with prohibited fishing activities and stowage of gear, *inter alia* requiring a special permit for driftnet fishing in terms of s. 47.

Chapter 6 of the MLRA is dedicated to law enforcement. Section 50 provides for the appointment of observers who are placed on vessels to exercise scientific, compliance, monitoring and other functions. In addition, fishery control officers<sup>6</sup> are furnished by ss. 51 et seq. with various powers for the purpose of enforcing the MLRA, ranging from ordering vessels to stop, boarding vessels, making examinations and enquiries to ascertain whether a provision of the MLRA has been contravened, to searching vessels, seizing property and vessels and arresting persons.

According to s. 77 of the MLRA, the Minister may make regulations *inter alia* prescribing fisheries management and conservation measures (including mesh sizes, gear standards, minimum species sizes, closed seasons, closed areas, prohibited methods of fishing or gear and schemes for limiting entry into fisheries), regulating the management and protection of marine protected areas, establishing measures for the protection of specified species, and regulations regarding the import, export, trade in, distribution and marketing of fish and fish products. The administration of any provision of the MLRA may be assigned to the executive authority of a province<sup>7</sup> and powers of the Minister, apart from the power to make regulations, may be

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<sup>2</sup> Section 17.

<sup>3</sup> Section 15.

<sup>4</sup> Section 16.

<sup>5</sup> Section 43(2).

<sup>6</sup> Section 9.

<sup>7</sup> Section 78.

delegated under s. 79 to the Director-General or an officer of the Department of Environmental Affairs and Tourism, as well as to the local sphere of government.

### *Commercial fishing*

Rights to undertake commercial fishing can be granted to South African nationals for a period not exceeding 15 years.<sup>8</sup> An environmental impact assessment report may be required to be submitted by the applicant<sup>9</sup> and rights may be subject to sustainable conservation and management measures determined by the Minister<sup>10</sup>. Fishing rights are leased by the state against the payment of a fee<sup>11</sup>, and are to be understood not as property rights, but as 'statutory permission to harvest a marine resource for a specified period of time'<sup>12</sup>, while the resources remain state property<sup>13</sup>. Section 21(3)(a) describes the commercial fishing right as a 'portion' of the allowable commercial catch.<sup>14</sup> Section 28 allows for the revocation, suspension, cancellation or reduction of rights *inter alia* in the interest of the promotion, protection or sustainable utilisation of a particular marine living resource.

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<sup>8</sup> Section 18.

<sup>9</sup> Section 18(3).

<sup>10</sup> Section 18 (7).

<sup>11</sup> Sections 22, 25.

<sup>12</sup> Department of Environmental Affairs and Tourism, *General Policy on the Allocation and Management of Long Term Commercial Fishing Rights: 2005*, p.13.

<sup>13</sup> M. Mayekiso, R. Tilney and J. de Swardt, 'Fishing rights in South Africa', in R. Shotton (ed.), *Use of property rights in fisheries management: Proceedings of the FishRights99 Conference, Fremantle, Western Australia, 11-19 November 1999: Mini-course lectures and core conference presentations* (Rome: FAO, 2000), FAO Fisheries Technical Paper 404/1, p. 161.

<sup>14</sup> B. Hersoug and P. Holm, 'Change without redistribution: an institutional perspective on South Africa's new fisheries policy' (2000) 24 *Marine Policy*, 221-231 at 227, and M. Mayekiso, R. Tilney and J. d. Swardt, 'Fishing Rights in South Africa', in R. Schotton (ed.), *Use of property rights in fisheries management: Proceedings of the FishRights99 Conference, Fremantle, Western Australia, 11-19 November 1999, Mini-course lectures and Core Conference presentations* (Rome: FAO, 2000), FAO Fisheries Technical Paper 404/1, p. 164, state, with reference to the evolution of the provision, that thus the quota is defined as a fixed quantum rather than as a proportion of the TAC, 'with the intent that quantities of fish made available by increases in the TAC would be available for allocation to new entrants'. However, according to W. H. H. Sauer, T. Hecht, P. J. Britz and D. Mather (eds.), *An Economic and Sectoral Study of the South African Fishing Industry: Economic and regulatory principles, survey results, transformation and socio-economic impact*, Report prepared for Marine and Coastal Management by Rhodes University, 2 vols. (2003) vol. I, p. 65, rights are awarded as a proportion of the TAC allocated to the respective sector, so that allocations adjust to an increase or decrease in the TAC.

Section 21 provides for the transferability of commercial fishing rights, which may be leased, divided or otherwise transferred, subject to the consent of the transfer by the Minister, who will take into account the death, dissolution, liquidation or sequestration of the right holder, transformation, and the promotion of the consolidation of the number of right holders and effort in a fishery<sup>15</sup>.

The exercise of rights granted in terms of s. 18 requires, in addition, a permit sold in terms of s. 13 for a period not exceeding one year, which may be subject to conditions. Furthermore, vessels registered in the Republic of South Africa and operating in South African waters must be licensed in terms of s. 23.

#### *Limited commercial fishing*

Following recommendations of the Subsistence Fisheries Task Group (appointed to facilitate the implementation of the MLRA's subsistence provisions) in 2000, a 'limited' commercial fishing sector was recognised by means of regulations as a new subcategory within the commercial sector to accommodate artisanal fishers who fish for sale rather than subsistence.<sup>16</sup> From 2001, limited commercial rights are awarded to small-scale commercial, including artisanal, fishers.

#### *Foreign fishing*

For the operation of a foreign fishing vessel in South African waters a foreign fishing vessel licence is required.<sup>17</sup> A licence will only be issued to a foreign vessel under a fishery agreement between the flag state and the Republic of South Africa<sup>18</sup>, or where the applicant provides sufficient guarantees relating to the fulfilment of all obligations arising inter alia in terms of the MLRA<sup>19</sup>. International access agreements entered into by the South African government shall not exceed the portion of the

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<sup>15</sup> Department of Environmental Affairs and Tourism, General Policy on the Allocation and Management of Long Term Commercial Fishing Rights: 2005, p. 44.

<sup>16</sup> E. Witbooi, 'Law and fisheries reform: Legislative and policy developments in South African fisheries over the decade 1994-2004', *Marine policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), pp. 9 et seq.

<sup>17</sup> Section 39(1).

<sup>18</sup> Section 39(3).

<sup>19</sup> Section 39(4).

TAC allocated to the appropriate category of foreign fishing vessels<sup>20</sup>, and shall include a provision establishing the responsibility of the foreign state or association to take necessary measures to ensure compliance by its vessels with the terms and conditions of the agreement and with the legislation relating to fishing in South African waters<sup>21</sup>.

### *Subsistence fisheries*

For the first time in South African history, the MLRA recognises subsistence fishers as a legitimate category of fishers (see ss. 18 et seq.).<sup>22</sup> Rights to undertake subsistence fishing can thus be granted to South African nationals in terms of s. 18, their exercise requiring, in addition, a permit obtained in terms of s. 13.

Section 19 of the MLRA makes provision for the formal identification of fishing communities and subsistence fishers, as well as for the declaration of coastal areas for the (exclusive) use by subsistence fishers.

### *Recreational fishing*

Recreational fishing is regulated through a permit system only. Recreational fishing permits are not transferable, nor may fish caught under a recreational fishing permit be sold, bartered or traded.<sup>23</sup>

*Sauer et al.*<sup>24</sup> assess the MLRA against the South African Constitution, and arrive at criticising a potential conflict of ss. 13 (Permits) and 18 (Granting of rights), inconsistency of ss. 21(2) with 21(1), the indemnities contained in ss. 59 and 66, the centralisation of powers in the hands of the Minister of Environmental Affairs and Tourism, and a general lack of legislative guidance on administrative decisions.

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<sup>20</sup> Section 38(1).

<sup>21</sup> Section 38(2).

<sup>22</sup> E. Witbooi, 'Subsistence Fishing in South Africa: Implementation of the Marine Living Resources Act', (2002) 17 (3), *The International Journal of Marine and Coastal Law*, 431-40 at 431.

<sup>23</sup> Section 20 of the MLRA.

<sup>24</sup> W. H. H. Sauer, T. Hecht, P. J. Britz and D. Mather, *An Economic and Sectoral Study of the South African Fishing Industry, Economic and regulatory principles, survey results, transformation and socio-economic impact*, Report prepared for Marine and Coastal Management by Rhodes University, 2 vols. (2003), vol. I, pp. 80 et seq.

### III. Review of available empirical information

#### 1. Management actions

South Africa deploys six main types of control, namely TACs, limiting TAE (i.e. limiting the number of individuals or vessels through licensing), and indirect measures comprising seasonal closures, closed areas (especially MPAs), and gear as well as size restrictions.<sup>25</sup> For the decade following the end of apartheid in 1994, *Crosoer et al.*<sup>26</sup> identify 'conservative changes to the global TAC', which increased on average by only 2.4 % per annum. The decrease in TACs for most species ranged from an average -0,1 % to -10.5 % per annum, while TACs increased for pilchard (21.3% per annum) and west coast rock lobster (1.7 % per annum) only. However, *Croeser et al.* perceive a growing pressure on the state to increase quotas since 2002.

*Hauck and Kroese* report a significant increase in the government's effort to enhance compliance with fisheries governance, mainly through law enforcement activities and strengthening law enforcement capacity.<sup>27</sup> Since 1999, the Compliance Directorate was restructured; a specialised investigation unit established to focus on serious crimes and offences; the Hermanus Environmental Court created, primarily to try abalone-related offences; regional and international co-operation fostered to improve surveillance and law enforcement; formal and informal partnerships between the Department of Environmental Affairs and Tourism's Marine and Coastal Management branch (MCM) and other government departments were introduced to conduct joint investigations and implement special operations (though co-operation among government departments for other purposes related to fisheries management fails<sup>28</sup>); and steps were taken to tackle corruption within MCM.<sup>29</sup> In

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<sup>25</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 5.

<sup>26</sup> D. Crosoer, L. van Sittert and S. Ponte, 'The integration of South African fisheries into the global economy: Past, present and future', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 4.

<sup>27</sup> M. Hauck and M. Kroese, 'Fisheries compliance in South Africa: A decade of challenges and reform (1994-2004)', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 2.

<sup>28</sup> L. van Sittert, G. Branch, M. Hauck and M. Sowman, 'Benchmarking the first decade of post-apartheid fisheries reform in South Africa', *Marine Policy*, article in press, [www.sciencedirect.com](http://www.sciencedirect.com), p. 13.

addition, *Hauck and Kroese* identify strategies on the part of MCM, such as broadening legal access, introducing co-management, and delegating management authority to provincial or local government levels, with a potential to provide incentives for voluntary compliance through a greater sense of ownership of resources and legitimacy of resource management amongst fishers.<sup>30</sup>

For instance, in 2000-2001, the fishing industry was involved in the revision of the rights allocation process through extensive consultation.<sup>31</sup> Fishery specific so-called Management Working Groups, comprising industrial bodies and interest groups, have been established to make management recommendations, and the General Policy on the Allocation and Management of Long Term Commercial Fishing Rights: 2005 (the 'General Policy') further endorses a system of co-management in commercial fisheries involving right holders, fishing communities and other stakeholders.<sup>32</sup>

Co-management has also been introduced in the small scale and subsistence fisheries sectors through various policy documents.<sup>33</sup> In particular the coastal province of KwaZulu-Natal has successfully implemented a provincial policy of establishing co-management arrangements to manage subsistence fisheries. Outside KwaZulu-Natal, however, co-management arrangements have hardly been implemented.<sup>34</sup>

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<sup>29</sup> M. Hauck and M. Kroese, 'Fisheries compliance in South Africa: A decade of challenges and reform (1994-2004)', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), pp. 4-6.

<sup>30</sup> M. Hauck and M. Kroese, 'Fisheries compliance in South Africa: A decade of challenges and reform (1994-2004)', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), pp. 6-8.

<sup>31</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 9; D. W. Japp, 'The allocation of harvesting rights in the South Africa hake fishery', in R. Shotton (ed.), *Case studies on the allocation of transferable quota rights in fisheries* (Rome: FAO, 2001) FAO Fisheries Technical Paper 411, p. 134.

<sup>32</sup> Department of Environmental Affairs and Tourism, General Policy on the Allocation and Management of Long Term Commercial Fishing Rights: 2005, pp. 42 et seq.

<sup>33</sup> L. van Sittert, G. Branch, M. Hauck and M. Sowman, 'Benchmarking the first decade of post-apartheid fisheries reform in South Africa', *Marine Policy*, article in press, [www.sciencedirect.com](http://www.sciencedirect.com), p. 9.

<sup>34</sup> M. Hauck and M. Kroese, 'Fisheries compliance in South Africa: A decade of challenges and reform (1994-2004)', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 7.

From 2001, commercial fishing rights were granted for a medium-term period of 4 years. According to the General Policy, long term commercial fishing rights will be granted for a period up to 15 years from 2006. Exclusionary criteria (such as formal requirements, compliance, paper quotas and access to a suitable vessel), sector specific comparative balancing criteria (such as transformation, investment in the fishery, past performance, value-adding and enterprise development, the ability to commence with fishing operations, employment-related aspects [job creation as well as working conditions], by-catch mitigation and reduction measures, environmentally sustainable practises, local economic development, the failure to pay outstanding fish levies and compliance), and so-called tie-breaking factors will be used to assess applications for long term commercial fishing rights, as well as quantum criteria to award quantum or effort.

In the 2001/2002 fishing season, 713 limited commercial fishing rights, amounting in total to 18.6 % of the TAC for west coast rock lobster and 29 % of the abalone TAC<sup>35</sup>, were allocated to fishers from disadvantaged communities. The rights entitled recipients to catch and sell limited quantities of abalone (430 kg each) and west coast rock lobster (between 200 and 1.500 kg) and were limited to periods of two and four years, respectively.<sup>36</sup>

However, by the end of 2004, only few subsistence fishing rights had been issued, the government preferring to grant exemptions under s. 81 of the MLRA<sup>37</sup>, nor had exclusive subsistence fishing areas been established<sup>38</sup>. The lack of clarity regarding rights allocation procedures and the government's reluctance to issue subsistence

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<sup>35</sup> M. Sowman, 'Subsistence and small-scale fisheries in South Africa: A 10-year review', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 8.

<sup>36</sup> Department of Environmental Affairs and Tourism, *Where have all the fish gone: Measuring transformation in the South African fishing industry (2002)*, p. 12.

<sup>37</sup> M. Sowman, 'Subsistence and small-scale fisheries in South Africa: A 10-year review', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 8; E. Witbooi, 'Law and fisheries reform: Legislative and policy developments in South African fisheries over the decade 1994-2004', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 10.

<sup>38</sup> M. Sowman, 'Subsistence and small-scale fisheries in South Africa: A 10-year review', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 8.

fishing rights are perceived to cause frustration among fishers, resulting in an increase in illegal fishing.<sup>39</sup>

#### *Offshore management actions*

In respect of the various species, offshore management actions include TACs; bycatch limitations; limiting TAE through access rights and permits, as well as boat size and power; seasonal closures; area restrictions; gear restrictions such as minimum mesh sizes; observers deployed on vessels; logbook record requirements; and monitoring and inspection of landings.<sup>40</sup> However, only 1.4% of the South African EEZ fall within MPAs.<sup>41</sup> Thus, *Branch and Clark*<sup>42</sup> point to 'a pressing need for inclusion of offshore habitats, particularly given trawling effects'.

#### *Coastal management actions*

In respect of coastal management, the provisions of the MLRA are complemented by the White Paper for Sustainable Coastal Development in South Africa<sup>43</sup>, which applies to coastal waters as well as the coastline and coastlands, and 'aims to achieve sustainable coastal development through a dedicated and integrated coastal management approach'<sup>44</sup>. The policy's stated goals comprise, among others, natural resource management. More specifically, it intends *inter alia* to limit development that could disrupt natural processes, to identify priority areas for protection, to protect sensitive coastal ecosystems, extend marine protected areas, reduce competition for resources, control coastal resource use, address the depletion of fish stocks by South African and foreign trawlers, and to address offshore gill-net fishing.

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<sup>39</sup> M. Sowman, 'Subsistence and small-scale fisheries in South Africa: A 10-year review', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 8.

<sup>40</sup> See FAO, 'Information on Fisheries Management in the Republic of South Africa' (2001), available online at <http://www.fao.org/fi/fcp/en/ZAF/body.htm>.

<sup>41</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 11.

<sup>42</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 11.

<sup>43</sup> Department of Environmental Affairs and Tourism, Chief Directorate Marine and Coastal Management, White Paper for Sustainable Coastal Development in South Africa (2000).

<sup>44</sup> Department of Environmental Affairs and Tourism, Chief Directorate Marine and Coastal Management, White Paper for Sustainable Coastal Development in South Africa (2000), foreword.

The White Paper, though influential as a national policy, has not yet been transformed into legislation.<sup>45</sup>

In respect of the various species, coastal management actions comprise TACs; limiting TAE; closed seasons and seasonal restrictions; closed areas; area restrictions and reserves; gear restrictions such as minimum mesh sizes; bag and size limitations; restrictions not to land females in berry; logbook record requirements; and monitoring and inspection of landings.<sup>46</sup> The network of marine protected areas has expanded since the promulgation of the MLRA, placing 9.1 % of the coastline in no-take, and 12.3 % in limited-take MPAs.<sup>47</sup> However, illegal fishing has contributed to a massive decrease in the abalone TAC between 1996 and 2005.<sup>48</sup>

## 2. *State of marine resources*

*Branch and Clark*<sup>49</sup> as well as *van Sittert et al.*<sup>50</sup> see most of the major commercial fish stocks in South Africa in good condition. Hake stocks have recovered after the uncontrolled international exploitation of South African waters in the 1960s and 1970s, and were stable for some time, though recently declined once more. Nonetheless, in 2004 the South African hake fishery became one of currently fourteen fisheries certified as sustainable and well-managed by the Marine Stewardship Council. Pilchard, anchovy, west coast rock lobster and south coast rock lobster stocks have increased. *Branch and Clark* and *van Sittert et al.* ascribe these improvements, at least in part, to successful management. In particular, *Van Sittert et*

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<sup>45</sup> E. Witbooi, 'Law and fisheries reform: Legislative and policy developments in South African fisheries over the decade 1994-2004', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 7.

<sup>46</sup> See FAO, 'Information on Fisheries Management in the Republic of South Africa' (2001), available online at <http://www.fao.org/fi/fcp/en/ZAF/body.htm>.

<sup>47</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), pp. 10 et seq.

<sup>48</sup> M. Hauck and M. Kroese, 'Fisheries compliance in South Africa: A decade of challenges and reform (1994-2004)', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 4.

<sup>49</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 13.

<sup>50</sup> L. van Sittert, G. Branch, M. Hauck and M. Sowman, 'Benchmarking the first decade of post-apartheid fisheries reform in South Africa', *Marine Policy*, article in press, [www.sciencedirect.com](http://www.sciencedirect.com), p. 14.

al. make conservative fishing policies, alongside good recruitment, responsible for a strong recovery of pilchard and anchovy stocks.

However, the condition of most linefish is critical<sup>51</sup> and abalone is highly endangered by severe and increasingly organised illegal fishing and trade, despite the government's initiatives to enhance law enforcement<sup>52</sup>.

Nevertheless, the Department of Environmental Affairs and Tourism sees room for the expansion of fisheries, stating that 'South Africa has a number of undeveloped and unexploited fish species'<sup>53</sup>. According to *Branch and Clark*<sup>54</sup>, however, most stocks are fully exploited or even over-utilised, while those still under-exploited are most appropriate for use by subsistence fishers and small-scale commercial enterprises. Thus, there appear to be only limited opportunities for expansion.

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<sup>51</sup> G. M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 13; L. van Sittert, G. Branch, M. Hauck and M. Sowman, 'Benchmarking the first decade of post-apartheid fisheries reform in South Africa', *Marine Policy*, article in press, [www.sciencedirect.com](http://www.sciencedirect.com), p. 4.

<sup>52</sup> M. Hauck and M. Kroese, 'Fisheries compliance in South Africa: A decade of challenges and reform (1994-2004)', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 4.

<sup>53</sup> Department of Environmental Affairs and Tourism, Annual Report 2003/2004, p. 22.

<sup>54</sup> M. Branch and B. M. Clark, 'Fish stocks and their management: The changing face of fisheries in South Africa', *Marine Policy*, article in press, available online at [www.sciencedirect.com](http://www.sciencedirect.com), p. 3.

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- Sea Fishery Act 1988 (Act No. 12 of 1988) <http://faolex.fao.org/docs/pdf/saf2147.pdf>

## VI. Links

CoastCARE, South African Coastal Information Centre	<a href="http://sacoast.uwc.ac.za/">http://sacoast.uwc.ac.za/</a>
Department of Environmental Affairs and Tourism, South African Government	<a href="http://www.environment.gov.za/">http://www.environment.gov.za/</a>
ECOLEX	<a href="http://www.ecolex.org/index.php">http://www.ecolex.org/index.php</a>
FAO Country Profiles and Mapping Information System, South Africa - Fishery sector	<a href="http://www.fao.org/countryprofiles/index.asp?lang=en&amp;iso3=ZAF&amp;subj=6">http://www.fao.org/countryprofiles/index.asp?lang=en&amp;iso3=ZAF&amp;subj=6</a>
FAOLEX	<a href="http://faolex.fao.org/faolex/">http://faolex.fao.org/faolex/</a>
IGIFL, Internet Pathfinder Part 10: National information, South Africa	<a href="http://www.intfish.net/netpath/page10-afr.htm#southafrica">http://www.intfish.net/netpath/page10-afr.htm#southafrica</a>
Marine and Coastal Management	<a href="http://www.mcm-deat.gov.za/">http://www.mcm-deat.gov.za/</a>
Nelson Mandela Metropolitan University, Faculty of Science, Institute for Environmental and Coastal Management	<a href="http://www.nmmu.ac.za/default.asp?id=380&amp;bhcp=1">http://www.nmmu.ac.za/default.asp?id=380&amp;bhcp=1</a>
Policy and Law Online News	<a href="http://www.polity.org.za/pol/home/">http://www.polity.org.za/pol/home/</a>
Rhodes University, Department of Ichthyology and Fisheries Science	<a href="http://www.ru.ac.za/academic/departments/difs/">http://www.ru.ac.za/academic/departments/difs/</a>
South Africa Government Online	<a href="http://www.gov.za/">http://www.gov.za/</a>
The International Ocean Institute, Southern Africa	<a href="http://www.ioi.uwc.ac.za/">http://www.ioi.uwc.ac.za/</a>
University of Cape Town, Department of Oceanography	<a href="http://www.sea.uct.ac.za/">http://www.sea.uct.ac.za/</a>