

MARINE LIVING RESOURCES AMENDMENT BILL

ISSUE	MILRAB	LEGALITY
<p>Application of classification of fishing rights: excluded coastal and subsistence fishers.</p> <p>Principal Act:</p> <ul style="list-style-type: none"> - may not undertake fishing unless the Minister has granted a right in terms of section 18 - section 14: Minister shall determine portions of the total allowable catch to be allocated to subsistence, recreational and local fishing. 	<p>Clause 2 amends the principles of the Principal Act:</p> <ul style="list-style-type: none"> - by the inclusion of equitable access to marginalised groups, i.e. women. - recognition of socio-economic development and poverty alleviation. <p>Clause 3:</p> <ul style="list-style-type: none"> - includes the new definition for small scale fishers. 	
<p>Minister changed the categories and how the right to be granted in terms of section 18 was implemented: Court said that the Department had created its own problem:</p> <p>“Limited commercial rights” and ignored a considerable number of subsistence and coastal communities.</p>	<p>Clause 1: includes new definition for small-scale fishers which corrects problems of the previous categories.</p>	

<p>Equality Court 1 agreement: "Interim measures to accommodate fishers along the Western and Southern Cape Coastline.</p> <p>Once identified, these persons would have to apply for recreational fishing permits and allowed to catch other fish until 30 SEPTEMBER 2007 but may be extended.</p>	<p>Clause 5:</p> <ul style="list-style-type: none"> - where the small-scale fishers may fish. - the recognition of community. - may prescribe procedures for the recognition and granting of rights. <p>Clause 6:</p> <ul style="list-style-type: none"> - Minister may also reduce rights granted to small-scale fishers. 	<p>Acceptable to introduce interim measures in order to accommodate and meet the needs and objects of the MLRA:</p> <p>PREAMBLE: "[l]ong term sustainable utilisation of marine resources...in an equitable and fair manner."</p> <p>Section 18(5): "[s]hall have particular regard to the need to permit new entrants, particularly those from historically disadvantaged backgrounds."</p> <p>These interim measures were deemed acceptable in West Coast Rock Lobster Association v The Minister of Environmental Affairs and Tourism 9532/09 [2010] ZASCA 114:</p> <p>"The court below held that the Minister had acted rationally and that the transformative agenda of the MLRA, of restructuring the fishing industry to address the historical imbalances of the past, had been rightly taken into account."</p> <p>"[t]he minister had acted <i>intra vires</i> in his application of s 81..."</p>
--	--	---

Equality Court 2 agreement: finalisation of policy.	Introduction of Bill addressed Equality Court Agreement between the parties.	
--	--	---