Samudra Monograph

Marine Protected Areas and Small-scale Fisheries in South Africa: Promoting Governance, Participation, Equity and Benefit Sharing

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International Collective in Support of Fishworkers
www.icsf.net

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September 2014

Edited by
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Layout by
P Sivasakthivel

Cover
Women inter-tidal harvesters,
Dwesa-Cwebe MPA, South Africa

Photo by
Jackie Sunde

Printed at
L.S. Graphic Prints, Chennai

Published by
International Collective in Support of Fishworkers
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ISBN 978 93 80802 30 5

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Acronyms and Abbreviations

CBD	Convention on Biological Diversity
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFS	Committee on Food Security (of FAO)
CMC	Co-Management Committee
CMRU	Community Marine Resource User
COFI	Committee on Fisheries (of FAO)
COP	Conference of the Parties
CPA	Communal Property Association
CPP	community-public partnership
DAFF	Department of Agriculture, Forestry and Fisheries
DEAT	Department of Environmental Affairs and Tourism
DEA	Department of Environmental Affairs
DLA	Department of Land Affairs
DPME	Department of Performance Monitoring and Evaluation
EAF	ecosystem approach to fisheries
EBSA	Ecologically and Biologically Significant Area
ECPTA	Eastern Cape Parks and Tourism Agency
EEU	Environmental Evaluation Unit
EEZ	exclusive economic zone
EKZN	Ezemvelo KwaZulu-Natal Wildlife
EPWP	Expanded Public Works Programme
FAO	Food and Agriculture Organization of the United Nations
FIP	Fisheries Improvement Project (of WWF)
GSLWA	Greater St Lucia Wetlands Authority
ICMA	Integrated Coastal Management Act of 2009
ICSF	International Collective in Support of Fishworkers
IUCN	International Union for the Conservation of Nature
LRC	Legal Resources Centre

MCM	Marine and Coastal Management
METT	Management Effectiveness Tracking Tool
MLRA	Marine Living Resources Act
MoU	memorandum of understanding
MPA	marine protected area
NEMA	National Environmental Management Act
NEMPAA	National Environmental Management: Protected Areas Act of 2003
NGO	non-governmental organization
OBI	Offshore Biodiversity Initiative
PA	protected area
PF	Park Forum
PMR	Park Management Review
PoWPA	Programme of Work on Protected Areas (of the CBD)
SANBI	South African National Biodiversity Institute
SANParks	South African National Parks
SAPA	Social Assessment of Protected Areas
SFMU	Small-scale Fisheries Management Unit (of EKZN)
SFTG	Subsistence Fisheries Task Group
SSF	small-scale fisheries
SSF Guidelines	Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication
SSFU	Small-Scale Fisheries Unit (of EKZN Wildlife)
Tenure Guidelines	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation
WCNP	West Coastal National Park
WHA	World Heritage Authority
WIOMSA	West Indian Ocean Marine Science Association
WSSD	World Summit on Sustainable Development

ACKNOWLEDGEMENTS

I would like to thank all the officials from the Department of Environmental Affairs (DEA) and from the conservation management authorities and organizations for generously giving of their time and expertise in the interviews conducted for this research.

I would also like to thank the small-scale fishing communities of Maputaland MPA, Dwesa-Cwebe MPA and Langebaan MPA with whom I have engaged over the past three years for sharing their knowledge and experience with me and deepening my understanding of the way their lives and livelihoods have been shaped by MPAs.

In addition, I would like to thank my colleagues at the University of Cape Town, Environmental Evaluation Unit (EEU), Professor Merle Sowman and Dr Serge Raemaekers for many shared insights on the human dimensions of MPAs during the work on the EEU Human Dimensions of MPA project which has contributed substantially to my understanding of MPAs in South Africa.

EXECUTIVE SUMMARY

In line with an increased international focus on marine protected areas (MPAs) as a key spatial planning tool in the protection of marine biodiversity and the promotion of sustainable fisheries management, South Africa has gazetted 24 MPAs. Twenty-three of these are on the coast and one, Prince Edward Islands, is an offshore MPA (Sink et al 2012:143). The 23 MPAs along the coast comprise a total of 23.17 per cent of the coastline (Sink et al 2012:143). The expansion of this network of MPAs and, in particular, an increase in the proportion of the coastline that is protected as "no-take", is a key strategic objective for South Africa in line with its international and national commitments to protect marine biodiversity.

This research reflects on the progress achieved by conservation partners in South Africa on the implementation of the Convention on Biological Diversity (CBD) Programme Element Two components of governance, participation, equity and benefit sharing, from the perspective of small-scale fishing communities. In so doing, it explores the strategies and mechanisms used by different authorities to create the conditions whereby local communities can benefit from MPAs, highlighting examples of best practice, where appropriate.

In 1994, at the outset of democracy, the country inherited a complex apartheid-based protected area and natural resource governance legacy. This was at odds with the new Constitution of South Africa, which provides for the protection of biodiversity and the environmental rights of present and future generations, whilst simultaneously restoring the dignity and human rights of its citizens and ensuring redress for past injustices. South Africa now has an exemplary set of biodiversity protection policies and strategies and has made considerable progress in working towards creating the conditions that will enable the country to implement the CBD Programme of Work on Protected Areas (PoWPA). The conservation authorities have demonstrated their excellent marine biodiversity assessment and planning capabilities through their cutting-edge ecological gap assessments, development of frameworks for ecological risk assessments, and identification of ecologically and biologically significant areas (EBSAs) and leading marine spatial planning methodologies.

However, this capacity has to date been directed at the ecological components of the marine and coastal ecosystems. In comparison, understanding the social component of the marine ecosystems along the South Africa coast and the interactions of the socio-ecological layers within the near-shore has lagged behind. The struggles of small-scale fishing communities have highlighted the disjuncture between policies in place for the governance of protected areas and actual practice "in the coastal waters". In several MPAs, small-scale communities continue to experience significant negative social impacts without enjoying the potential benefits that the proponents of MPAs have argued.

Small-scale fishing communities' recent advocacy and legal action have contributed towards a more integrated, human-rights-based approach; however, there is still a lack of coherence between the principles inherent in the Constitution, the policies in place within the conservation and fisheries management authorities and the *de facto* treatment of small-scale fishing communities within the governance and management processes of many MPAs. Small-scale fishing communities have begun to actively assert their right to be recognized as partners in governance, management and research. In this challenging and contested environment, diverse communities, government departments and civil society stakeholders are being forced to forge new ways of working together. Innovative means of ensuring full and effective participation, beneficiation and enhancing the value of MPAs for small-scale fishing communities have been developed by some agencies, notwithstanding the challenges of extreme poverty in which most of the MPAs are located. Considerable progress has been made and a foundation for the realization of the CBD PoWPA and the Aichi Targets has been established but requires refining to ensure that small-scale fishing communities are targeted in this process and do not fall through the net.

SECTION 1

THE GOVERNANCE, LEGISLATIVE AND POLICY CONTEXT OF MPAs IN SOUTH AFRICA

1.1 INTRODUCTION

Prompted by increasing pressures on oceans and coasts, international attention has focused on mechanisms for protecting biodiversity whilst simultaneously exploring new pathways and opportunities for sustainable utilization of marine resources (Dudley et al 2010, TEEB 2010). MPAs have been promoted as one of the means whereby the dual objectives of marine conservation and fisheries management can be achieved (Garcia et al 2014, forthcoming). Increasingly, MPAs are seen to protect and provide critical ecosystem goods and services, they are described as "natural solutions" to climate change and are seen as key in the development of new opportunities for sustainable growth and food security (WBGU 2013).

An MPA is defined as

> *a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values* (IUCN 2007).

The definition used by the CBD Ad Hoc Technical Expert Group on Marine and Coastal Protected Areas states that

> *'Marine and Coastal Protected Area' means any confined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna, and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings* (CBD/COP/7/DEC/VII/5 (note 11)).

The Food and Agricultural Organization (FAO) has noted that in fisheries management "spatial management tools, including MPAs, have been used for centuries and do not constitute a new management tool. Protection of specified areas through bans on gears or fishing activities have long been part

of the fisheries management toolbox and have been practised by communities employing traditional management arrangements around the world" (FAO 2011:1).

Similarly, within conservation circles there is recognition that indigenous and local communities have employed spatial and other measures for generations to conserve and use resources sustainably (Vierros et al 2010, Borrini-Feyerabend et al 2013). However, there is now a renewed focus on MPAs and other spatial management tools across the conservation, fisheries and coastal management sectors.

Fisheries management and biodiversity conservation institutions at the international level, such as the CBD Secretariat and the FAO, have developed frameworks and methodologies for the promotion of MPAs and other area-based marine spatial planning tools (CBD 2012, FAO 2011). Most notably, the CBD Strategic Plan (2010), which serves as the overarching biodiversity framework not just for the biodiversity- related conventions but for the entire UN system, identifies the importance of a global network of MPAs.

Aichi Target 11 aims for a global system in which

> *by 2020, at least 17 per cent of terrestrial and inland water areas, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes* (CBD/COP/10/DEC/X/2/2010).

Towards this end, the CBD Secretariat has re-affirmed its commitment to promoting the CBD PoWPA developed in 2004, which provides a comprehensive, globally recognized standard for the establishment, governance and management of protected areas, including MPAs (CBD/COP/DEC/X/31/2010).

Nearly a decade after the CBD PoWPA was introduced, an evaluation of progress towards the implementation of PoWPA indicates that whilst progress has been made in many areas, progress in Programme Element Two: focusing on governance, participation, equity and benefit sharing, is lagging (IUCN-TILCEPA 2010, Borrini-Feyerabend et al 2013).

Programme Element Two goals and targets are:

GOAL 2.1: TO PROMOTE EQUITY AND BENEFIT SHARING

> **Target:** Establish (by 2008) mechanisms for the equitable sharing of both costs and benefits arising from the establishment and management of protected areas.

GOAL 2.2: TO ENHANCE AND SECURE INVOLVEMENT OF INDIGENOUS AND LOCAL COMMUNITIES AND RELEVANT STAKEHOLDERS

> **Target:** Full and effective participation (by 2008) of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas.

Over the past decade, there has been recognition by state parties and international organizations that the type and quality of governance of protected areas is central to achieving equitable and effective protected areas. Simultaneously, there has been a concomitant recognition of the close link between the quality of governance and the rights and participation of indigenous peoples and local communities, and the extent to which they benefit from MPAs (IUCN-TILCEPA 2010). This has prompted the International Union for the Conservation of Nature (IUCN) to support a range of programmes that focus on these aspects of governance. Most notably, there has been collaborative action to deepen understanding of the dimensions of governance as well as how to assess the associated social dimensions and social impacts of protected areas. The Social Assessment of Protected Areas (SAPA) project aims to develop appropriate indicators and methodologies for assessing the social impacts of protected areas to contribute towards and complement the work done on evaluating management effectiveness (IUCN-TILCEPA 2010, Schreckenberg et al 2010). Considerable work has been undertaken to develop a framework for understanding and evaluating governance of protected areas (Borrini-Feyerabend et al 2013) and this work has contributed extensively towards the CBD in advocating for actions by States towards enhancing governance of protected areas.

Recently articulated goals and associated tasks to effectively achieve CBD targets have thus included an emphasis on governance and participation and

the equitable sharing of benefits by indigenous peoples and local communities. This has shaped the approach to MPAs. At CBD COP 11 in Hyderabad in India in 2012, the COP took Decision XI/14 in which the COP invited Parties to take a number of steps towards the implementation of Articles 8j and 10c, and made specific reference to MPAs in the agreed-upon indicative tasks and priority actions. Decision XI/14 notes the following tasks amongst others to promote Article 10c in relation to Article 8j:

> *Task 14: To identify best practices (for example, case studies, mechanisms, legislation and other appropriate initiatives):*
>
> *(a) to promote, in accordance with national legislation, and applicable international obligations, the full and effective participation of indigenous and local communities and their prior and informed consent or approval and involvement in the establishment, expansion, governance and management of protected areas, including marine protected areas that may affect indigenous and local communities;*
>
> *(b) to encourage the application of traditional knowledge and customary sustainable use in protected areas, including marine protected areas, as appropriate;*
>
> *(c) to promote the use of community protocols in assisting indigenous and local communities to affirm and promote customary sustainable use in accordance with traditional cultural practices, in protected areas, including marine protected areas* (CBD/COP/XI/14).

This increasing focus on local communities in the context of protected areas and other area-based conservation measures within the CBD is paralleled with a slow, but growing, awareness of the role of local communities within other international forums. Extensive advocacy and lobbying internationally by these groupings has heightened awareness of the contribution of local fishing communities to the livelihoods of their coastal communities, the role of small-scale fisheries in global fisheries production systems as well as the broader social and cultural values associated with small-scale fisheries.

Notwithstanding this increased awareness of small-scale fisheries, the rights of small-scale fishing communities have continued to be neglected in national and international global governance systems, until recently. In the past decade, however, small-scale fishing communities and small-scale fisheries have gained attention internationally in fisheries, biodiversity conservation policy and mainstream human-rights processes, largely as a result of advocacy from these groups.

In 2012, the Committee on Food Security (CFS) within FAO embarked on the process of developing a set of international Voluntary Guidelines on the

Governance of Tenure (FAO 2012) and the Committee on Fisheries (COFI) requested the FAO Secretariat to develop Guidelines on Small-scale Fisheries (2012). Both these sets of guidelines are based on international human-rights standards and re-affirm recognition of the human rights of small-scale fishing communities. The Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines) note

> *"the need for responsible and sustainable use of aquatic biodiversity and natural resources to meet the developmental and environmental requirements of present and future generations. Small-scale fishing communities need to have secure tenure rights to the resources that form the basis for their social and cultural well-being, their livelihoods and their sustainable development. The Guidelines support equitable distribution of the benefits yielded from responsible management of fisheries and ecosystems, rewarding small-scale fishers and fishworkers, both men and women."* (FAO 2014: section 5.1).[1]

The principles embodied in the SSF Guidelines, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Tenure Guidelines), CBD and the CBD PoWPA reveal considerable overlap (see Table 1).

Despite this international policy focus on small-scale fisheries, advocacy and research have raised concerns that MPAs, whilst serving the greater public good, have immediate social impacts on the lives and livelihoods of local, small-scale fishing communities living in, and adjacent to, MPAs. These factors are not always taken into consideration in MPA planning and management, and these communities may carry a disproportionate amount of the costs and losses associated with the establishment of an MPA, without enjoying the benefits (Sunde and Isaacs 2008, Sowman et al 2014 forthcoming).

Indigenous peoples' and small-scale fishing communities' advocacy around MPAs has also brought into focus key philosophical and ethical issues and dilemmas facing humankind in relation to marine resource use and protection in the 21st century. In a context in which global capital is turning to the oceans as the last frontier for growth and development, contestation over ocean space and marine resources is growing, and poverty and basic food security remain pressing problems. Who should decide what strategies and management measures are most appropriate? If an area of the coast or ocean is closed to human use in the interests of protecting biodiversity for the public good, how

[1] This text has been negotiated and accepted.

Table 1: Cross-cutting principles inherent in international guidelines within which fisheries management and conservation measures that use MPAs or other area-based measures are located

SSF Guidelines	Tenure Guidelines	CBD and CBD PoWPA
Respect for, and recognition of, human rights: universality and inalienability; indivisibility; interdependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.	**Human dignity:** recognizing the inherent dignity and the equal and inalienable human rights of all individuals. These Guidelines should be interpreted and applied consistent with existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.	To be implemented "in accordance with the Charter of the United Nations and the principles of international law". "Recognizing the need for a governing framework consistent with international national laws, local users of biodiversity components should be sufficiently empowered and supported by rights to be responsible and accountable for use of the resources concerned".
Respect of cultures: recognizing and respecting existing forms of organization, traditional and local knowledge and practices of small-scale fishing communities, including indigenous peoples and ethnic minorities.	States should, in drafting tenure policies and laws, take into account the social, cultural, spiritual, economic and environmental values of land, fisheries and forests held under tenure systems of indigenous peoples and other communities with customary tenure systems.	Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices; and protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable-use requirements;

Equity and equality: promoting justice and fair treatment – both legally and in practice – of all people and peoples, including equal rights to the enjoyment of all human rights.	**Equity and justice:** recognizing that equality between individuals may require acknowledging differences between individuals, and taking positive action, including empowerment, in order to promote equitable tenure rights and access to land, fisheries and forests, for all, women and men, youth and vulnerable and traditionally marginalized people, within the national context.	"encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".
Gender equality and equity: is fundamental to any development. Recognizing the vital role of women in small-scale fisheries, equal rights and opportunities should be promoted.	Ensure the equal right of women and men to the enjoyment of all human rights, while acknowledging differences between women and men and taking specific measures aimed at accelerating *de facto* equality when necessary. States should ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status.	Recognize also the vital role that women play in the conservation and sustainable use of biological diversity and affirming the need for the full participation of women at all levels of policymaking and implementation for biological diversity conservation.

Consultation and participation: ensuring active, free, effective, meaningful and informed participation of small-scale fishing communities, including indigenous peoples, taking into account the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the whole decision-making process related to fishery resources and areas where small-scale fisheries operate as well as in adjacent land areas, and taking existing power imbalances between different parties into consideration.	Engaging with, and seeking the support of, those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes. States and other parties should hold good-faith consultation with indigenous peoples before initiating any project or before adopting and implementing legislative or administrative measures affecting the resources for which the communities hold rights. Such projects should be based on an effective and meaningful consultation with indigenous peoples. Consultation and decision-making processes should be organized without intimidation, and be conducted in a climate of trust.	Full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities, consistent with national law and applicable international obligations, and the participation of relevant stakeholders, in the management of existing, and the establishment and management of new, protected areas.

Economic, social and environmental sustainability: applying the precautionary approach and risk management to guard against undesirable outcomes, including overexploitation of fishery resources and negative environmental, social and economic impacts.	Where States own or control land, fisheries and forests, they should determine the use and control of these resources in light of broader social, economic and environmental objectives. States should monitor the outcome of allocation programmes, including the gender-differentiated impacts on food security and poverty eradication as well as their impacts on social, economic and environmental objectives, and introduce corrective measures as required.	The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components. Sustainable use is a valuable tool to promote conservation of biological diversity, since, in many instances, it provides incentives for conservation and restoration because of the social, cultural and economic benefits that people derive from that use.
Holistic and integrated approaches: recognizing the ecosystem approach to fisheries (EAF) as an important guiding principle.	**Holistic and sustainable approach:** recognizing that natural resources and their uses are interconnected, and adopting an integrated and sustainable approach to their administration.	**Ecosystem approach:** Calls upon Parties, other governments, and international organizations to apply, as appropriate, the ecosystem approach.

(Adapted from the SSF Guidelines text 2012, Tenure Guidelines 2012, CBD Convention, CBD PoWPA and Addis Ababa Principles).

should those communities living in, or adjacent to, that area or dependant on that area be compensated? Increasingly, these questions relate to issues of governance: Who has power to shape interactions with the marine environment and how that is framed? How should benefits, goods and services be shared in the context of this generation and with the rights and needs of future generations in mind?

1.2 PURPOSE OF THIS RESEARCH

In 2007, the International Collective in Support of Fishworkers (ICSF) commissioned studies in six countries to understand the social dimensions of implementing MPAs, with the following specific objectives:

- to provide an overview of the legal framework for, and design and implementation of, MPAs;
- to document and analyze the experiences and views of local communities, particularly fishing communities, with respect to various aspects of MPA design and implementation; and
- to suggest ways in which livelihood concerns can be integrated into the MPA Programme of Work, identifying, in particular, how local communities, particularly fishing communities, could engage as equal partners in the MPA process.

In 2013, ICSF decided to commission studies in South Africa and Brazil to update this earlier research. This research report explores the current status of MPAs in South Africa with a particular focus on small-scale fishing communities. The study locates the discussion of MPAs in the context of the developments in international policy and legislation on marine biodiversity protection and small-scale fisheries governance presented in this introduction. In this regard, it complements other studies that look at the state of MPAs in South Africa more broadly (Lemm and Attwood 2003, Tunley 2009, WWF 2014 forthcoming).

The objectives of this research are:

- to provide an overview of the governance framework for MPAs in South Africa and to explore coherence with other frameworks linked to small-scale fisheries;
- to assess progress towards CBD PoWPA Programme Element Two on governance, participation, equity and benefit sharing in relation to small-scale fisheries in and adjacent to MPAs; and

- to identify best practice and explore key challenges and constraints to implementation of Programme Element Two in South Africa.

The research draws on interviews with MPA governance authorities (see Annexure 1), desktop research and three case studies, coupled with examples from all of the conservation management agencies, to explore current approaches to MPAs in South Africa from the perspective of small-scale fishing communities.

1.3 METHODOLOGY

ICSF contracted the researcher, a South African member of the organization, to conduct this study over the period October 2013 to March 2014. The researcher was one of two authors of the previous study in 2008 (Sunde and Isaacs 2008) and hence this study served to update the earlier research, whilst deepening understanding of the challenges and constraints facing small-scale fishing communities in relation to MPAs in South Africa.

1.3.1 RESEARCH CONCEPTUAL FRAMEWORK

In developing the conceptual framework for the study, the researcher drew on the reporting framework developed for the CBD PoWPA country assessments in 2011 (UNEP/CBD/COP/X/31), which reflect the key elements of the CBD Strategic Plan and Aichi Targets, the 13 key goals of the PoWPA and related indicative tasks. The researcher adapted these to develop a framework to guide the assessment in South Africa that would also incorporate relevant aspects of the Tenure Guidelines and the SSF Guidelines (Table 1). This includes indicators of relevance to Programme Element Two, which were then applied specifically in the context of small-scale fishing communities and MPAs in South Africa (see Table 2).

1.3.2 RESEARCH METHODS

This research comprised a qualitative study, including limited fieldwork and desktop research. A combination of face-to-face, telephonic and electronic interviews was conducted with 10 key stakeholders, comprising official representatives from the Department of Environmental Affairs (DEA), including the Oceans and Coasts, Research and the National DEA Biodiversity and Conservation Branches as well as officials from all four of South Africa's primary conservation management organizations which collectively manage 20 of South Africa's 22 MPAs. They include the South African National Parks (SANParks), CapeNature, Eastern Cape Parks and Tourism Agency (ECPTA) and the

Table 2: Goals and indicative tasks of relevance to Programme Element Two in relation to MPAs and small-scale fishing communities in South Africa

Goal	Indicative actions	Indicators
To promote a diversity of MPA governance types	• Actions taken to assess governance types • Actions taken to improve and diversify governance types • Action taken to recognize customary tenure systems where appropriate • Action taken to change the legal status and governance type of MPAs • Action taken to promote awareness of diverse governance types	• Undertaken governance assessment of MPAs • Changed laws or policies to enable new governance types and to recognize customary governance, where appropriate • Created new protected areas with innovative forms of governance, such as community-conserved MPAs • Conducted training and capacity-building activities promoting diverse governance types
To promote equity and benefit sharing in MPAs	• Actions taken to assess the equitable sharing of costs and benefits of establishing MPAs • Actions taken to improve equitable benefit sharing • Actions taken to assess and improve the equitable sharing of benefits by women • Actions taken to monitor and assess benefit- sharing on an ongoing basis • Actions taken to monitor, assess and take action with respect to elite capture of benefits • Take actions to develop customary sustainable use as a key component of access and benefit sharing	• Established mechanisms for assessing equity and benefit sharing • Developed and applied policies for access and benefit sharing • Developed and applied mechanisms for access and benefit sharing • Developed and applied specific measures to ensure gender equity • Developed and applied specific measures to protect and promote customary governance processes • Diverted PA benefits towards poverty alleviation • Developed compensation mechanisms where appropriate • Other actions taken to ensure equitable benefit sharing

To enhance and secure involvement of indigenous and local small-scale fishing communities and relevant stakeholders in MPA planning, management and decision-making	• Actions taken to identify and understand stakeholder groups and their needs and interests • Actions taken to assess the status of participation of indigenous and local small-scale fisheries communities and other key stakeholders in key MPA decisions and processes • Actions taken to improve the effectiveness and equity of indigenous and local small-scale fishing communities' participation • Actions taken to accommodate customary systems of deliberation, dialogue and decisionmaking • Actions taken to promote and protect the use of traditional and local knowledge	• Assessed opportunities and needs for local small-scale fishing community participation in key MPA processes and decisions • Improved laws, policies and/or practices to promote participation • Implemented opportunities for customary processes of dialogue and decisionmaking • Developed policy on free prior informed consent • Developed mechanisms for enhancing participation of women • Increased participation in key decisions of men and women from small-scale fishing communities • Other actions taken to build capacity for effective and equitable participation • Regular monitoring and assessment of participation, disaggregated according to gender • Developed mechanisms for recognizing and integrating traditional and local knowledge in planning and management

(Adapted from UNEP/CBD/COP/X/31/2010).

Ezemvelo KwaZulu-Natal Wildlife (EKZN Wildlife). Two of the smaller MPAs, managed by municipal authorities, were not interviewed (see Annexure 1 for a list of the officials interviewed). The iSimangaliso Wetlands Park Authority, a World Heritage management authority within which two MPAs are located, refused to be interviewed despite repeated requests. Interviews were conducted with the EKZN Wildlife authority that manages fisheries and marine biodiversity within this heritage site. In addition, secondary sources and existing interview material were used to assess the position of the 14 communities living within the iSimangaliso Park.

The research included an examination of a wide range of documentation on all 23 MPAs, including management plans where these were available, conservation agency policies, annual reports and case studies. In addition, information was sourced from the National Biodiversity Expansion Strategy (DEAT 2008), the National Biodiversity Assessment (Sink et al 2012) and the South African Protected Area Action Plan (DEA 2012) submitted to the CBD Secretariat. Related research studies, project reports and academic papers were also reviewed.

A semi-structured interview schedule was developed as a guide for the interviews and was circulated to all officials prior to the interviews. This guide adapted the indicators developed by the CBD Secretariat for the PoWPA country evaluation. As a guide, however, it was found that, given that most officials are not familiar with the CBD PoWPA, these questions were difficult for them to answer. The researcher, therefore, tended to use them merely as a guide and concentrated on asking the officials to report on activities their agency undertook to promote small-scale fishing communities' participation and benefit sharing. Specific questions were then asked as to whether the organization had policies that guided how these activities were undertaken and whether or not they had a specific gender component. Permission was requested from the officials to record their names and examples from their organizations, with their prior approval for any direct reference to information that they had provided in the interview.

In addition to the above-mentioned research, the case studies presented in this work draw in part on research conducted by the researcher herself in three small-scale fishing communities during the period 2010-2014. This includes research conducted in Langebaan MPA and Dwesa-Cwebe MPA as part of a research project on the Human Dimensions of Marine Protected Areas co-ordinated by the Environmental Evaluation Unit (EEU) at the University of

Cape Town and which formed part of the researcher's doctoral studies,[2] as well as research conducted in these areas subsequent to her doctoral research. It also includes fieldwork conducted in Kosi Bay within Maputaland MPA, as part of a research project on customary law and small-scale fisheries management on behalf of the Legal Resources Centre (LRC), a human-rights public litigation NGO, in 2012-2013.[3]

1.3.3 DEFINITIONS OF SMALL-SCALE FISHERIES AND SMALL-SCALE FISHING COMMUNITIES

For the purposes of this research, small-scale fisheries are defined according to the Policy on Small-Scale Fisheries Sector (DAFF 2012), including small-scale fishing and small-scale fishing communities:

> ***Small-scale fishing*** *refers to "the use of marine living resources on a full-time, part-time or seasonal basis in order to ensure food and livelihood security. For the purposes of this policy, fishing also means the engagement (by men and women) in ancillary activities (such as pre- and post-harvesting, including preparation of gear for harvesting purposes), net making, boat-building (beneficiation, distribution and marketing of produce) which provide additional fishery-related employment and income opportunities to these communities".*
>
> ***Small-scale fishing community*** *refers to "an established socio-cultural group of persons who are, or historically have been, fishermen and -women, including ancillary workers and their families; have shared aspirations and historical interests or rights in the harvesting, catching or processing of marine living resources; have a history of shared small-scale fishing activity but, because of forced removals, are not necessarily tied to particular waters or geographic area; and were, or still are, operating near or in the seashore or coastal waters where they previously enjoyed access to marine living resources, or continue to exercise their rights in a communal manner in terms of an agreement, custom or law; and who regard themselves as a community"* (DAFF 2012).

[2] See Sunde 2014a. This research has been funded in part by the National Research Foundation, the WWF Green Trust and the REINCORPFISH project.

[3] See Sunde 2013. This research was funded by the Canon Collins Trust, through the LRC.

1.4 BACKGROUND AND HISTORY OF SMALL-SCALE FISHERIES AND MPAs IN SOUTH AFRICA

1.4.1 SMALL-SCALE FISHERIES ALONG THE SOUTH AFRICAN COAST

The South African coastline extends approximately 3,113 km from its western border with Namibia at the mouth of the Orange River on the Atlantic coast to the border with Mozambique on the Indian Ocean in the far north east of the country (Sink et al 2012:143). This coastline is embraced by two very diverse ocean systems, their meeting point at the base of the African continent creating a very unique marine and coastal socio-ecological environment. The customary fishing and harvesting practices that developed along this vast and diverse coastline differ considerably from region to region due to the different marine ecosystems and associated resources along the coast, the diverse histories of the peoples of the region and the distinctive ways in which their customary systems interfaced with colonial and apartheid governance.

There is archeological evidence of pre-historic shore-based harvesting and consumption of shell-fish along the entire coastline (Clark et al 2002), and pre-colonial consumption of certain fish species in several regions (Deacon and Deacon 1999). However, very little is known of the customary tenure systems of these pre-colonial coastal dwellers (Sunde et al 2013). Since the 1600s, an artisanal, boat-based small-scale fishery has emerged along the nutrient rich western seaboard, shaped by the influences of Malay slaves brought to the Cape, European sailors and the indigenous Khoisan peoples who had extensive knowledge of the coastline. Responding to the demand for fish from the growing settlement at the Cape, fishing communities sprung up along the Western Cape coast (van Sittert 1992, Dennis 2010). It appears that local customary rules of access and use soon evolved in response to the contours of local fishing practices, closely entwined with the net of racial and class relations that spanned these early settlements. By the late 1800s, these fishing practices became subject to the introduction of fisheries management measures by the colonial provincial authorities (Wardlaw Thompson 1913). In contrast to the Cape, the majority of the coastal communities along the eastern seaboard[i] of the country continued to access and use marine resources in accordance with the African customary legal systems that predominated in these parts of the country (Sunde et al 2013).

In the Western Cape, distinctive tenure patterns and rules emerged as use of, and competition over, marine resources intensified with the growing commercialization of the fisheries. Local fishing communities defended their traditional fishing grounds against newcomers, in so doing giving expression to

a range of customs, rules and norms regarding ownership of territory, entry and gear (van Sittert 1992:79, Sunde 2014b). During the early decades of the 20th century, the State was barely visible in the governance of coastal fisheries; however, from the mid-1930s onwards, the authority to manage marine fisheries shifted from the provinces to the State as the State attempted to gain a measure of control over the lucrative and rapidly expanding commercial fishing sector, located along the western seaboard (van Sittert 1992). The industrial sector came to dominate the fisheries in these two provinces, pushing the local practices of the predominantly black artisanal and subsistence fishing communities to the margins. A number of regulations and prohibitions placed increasing restrictions on subsistence and artisanal fishers in the Western and Northern Cape, and brought them under the control of the industrial sector, eroding the customary access and use rights of these fishers (van Sittert 1992, Sunde et al 2013). Simultaneously, a series of State interventions in the 1940s aimed to industrialize the inshore fisheries and increase the competitiveness of white fishers in the market through facilitating access to finance, infrastructure and boats (van Sittert 2002). van Sittert has noted that many of the small-scale fishing communities along the coast, far from having their origins in local customary practices, were established directly in response to the demand for labour from the industrial fisheries sector (van Sittert 2002).

In the Eastern Cape and KwaZulu-Natal, following the Native Land Act of 1913 and the Native Administration Act of 1936, large sections of the coastline fell under the administration of the Native Affairs Administration. In 1950, these areas were reserved for the residence of African persons by apartheid planning legislation, and were subsequently referred to as 'Bantustans' or 'homelands'. In these two provinces, customary tenure systems predominated; however, fishing rights derived from these systems were not recognized (Sowman et al 2006). A *de facto* system of legal pluralism emerged, with both statutory fisheries legislation and customary law operating in these regions (Sunde 2014a). In all areas of the country, however, small-scale fishing was not formally recognized and, prior to the end of apartheid, the focus of fisheries management was primarily on the large, commercial fisheries sector, based in the Western and Eastern Cape.

1.4.2 Small-scale fisheries governance and its interface with MPA governance

The Marine Living Resources Act (MLRA) (DEAT 1998), introduced following the first democratic elections, was aimed at transforming the fishing industry and ensuring equitable access to marine resources. Notwithstanding these objectives, the MLRA was geared towards the transformation of the established,

commercial sector. Although it recognized three categories of fisheries—commercial, recreational and subsistence—small-scale artisanal fisheries fell through the net. Small-scale fishers in the Western and Northern Cape responded to this exclusion and mobilized. With the support of two non-governmental organizations (NGOs), namely Masifundise and LRC, they embarked on legal action in 2005 against the Minister of Environmental Affairs and Tourism on the grounds that the MLRA had violated their human rights in failing to recognize them (Kenneth George *vs* the Minister EC 1/05). In 2007, the Equality Court ordered the Minister to develop a policy that would recognize the rights of small-scale fisheries and, in the interim, provide them with a relief measure. A National Policy Task Team, comprising representatives from small-scale fishing communities in all four coastal provinces, was established in 2007 to develop the new policy. During the policy deliberations, the representatives from small-scale fishing communities placed a number of demands related to MPAs on the negotiating table: the policy must acknowledge the dispossession of their rights that they have suffered due to the imposition of discriminatory conservation policies and provide for redress; and it must recognize their customary rights, their traditional knowledge and must ensure preferential rights to marine resources for small-scale fishers in their traditional fishing grounds (DEAT 2009).

In addition to lobbying actively for their rights via the National Policy Task Team, fishing communities have used different national, regional and international forums over the past few years to advocate for participation and equitable benefit sharing in relation to MPAs specifically. In 2010, Masifundise and a community based network of fishers called Coastal Links Langebaan convened a national MPA Workshop entitled "Protecting Community Rights in Marine Protected Areas" in Langebaan. The outcome of this workshop included a statement in which the coastal communities noted their approach to MPAs:

We see MPAs as one of several important tools in order to protect our marine environments in the future. We believe that MPAs are very important but they need to be planned and managed in such a way that they balance the needs to protect the marine environment whilst promoting poverty alleviation, integrated livelihoods and a human-rights approach to development along the coast.

Further, they requested that the State must recognize:

- *the rights of bona fide small-scale fishing communities living in, or adjacent to, MPAs and grant them preferential access to marine resources in these areas;*
- *the right to participation and the full involvement of fishing communities in all stages of planning and decision-making in all MPAs;*

- *the role and value of their indigenous knowledge in the research involved in the planning process;*
- *the importance of gathering information on the potential social, cultural and economic impacts on the local communities living in, and adjacent to, the area; and*
- *and affirm the principle of co-management and decentralisation of decision-making, establish the necessary and appropriate institutional arrangements such as forums at local, regional and national levels that will work towards progressively achieving a partnership between the government, communities and other stakeholders, including for each MPA. The development of MPA policy and planning must include representatives from fishing communities* (Masifundise 2010).

Subsequently, these communities were invited to participate in the annual National MPA Forum where their representatives have reiterated their need to participate in planning and management (Gongqose, pers. comm., 2012, 2014). Representatives from these small-scale fishing communities have participated actively in several international Protected Area and MPA meetings, including CBD COP 11 (WFFP and ICSF 2012). In 2013, Masifundise and Coastal Links hosted a second National MPA Workshop in which representatives requested that the new Small-scale Fisheries Policy be taken into consideration in the management of MPAs (Masifundise 2013).

The Policy on Small-scale Fisheries was finally gazetted in 2012 (DAFF 2012). In the opening paragraph, the policy recognizes the negative impact of conservation on small-scale fishing communities in the past. It states: "This policy aims to provide redress and recognition to the rights of small-scale fisher communities in South Africa previously marginalized and discriminated against in terms of racially exclusionary laws and policies, individualized permit-based systems of resource allocation and insensitive impositions of conservation-driven regulation" (DAFF 2012:1). Further, it recognizes the following key principles of relevance to the governance of MPAs:

The state must:

a) recognize the existence of any rights conferred by common law, customary law or legislation to the extent that these are consistent with the Bill of Rights;

b) recognize rights guaranteed by custom and law and access to, and use of, natural resources on a communal basis to the extent that these are consistent with the Bill of Rights;

c) adopt an integrated and holistic approach which is based on human-rights principles; and

d) recognize an approach which contributes to alleviation of poverty, food security and local socioeconomic development.

Significantly, from the perspective of governance of MPAs, the Policy also states that the State must:

k) *promote equitable access to, and involvement in, all aspects of the fishery, in particular noting past prejudice against women and other marginalized groups; and*

q) where tenure to coastal land involved coastal communities and affects the implementation of this policy, there must be liaison with the relevant organs of State to resolve such issues (DAFF 2013:11).

The above-mentioned principles indicate close policy coherence between this policy on the small-scale fisheries sector in South Africa and the SSF Guidelines (2014). The SSF Guidelines adopt a human-rights-based approach and emphasize the link between responsible governance of fisheries and basic human rights:

> *All parties should recognize that responsible governance of tenure of land, fisheries and forests applicable in small-scale fisheries is central for the realization of human rights, food security, poverty eradication, sustainable livelihoods, social stability, housing security, economic growth and rural and social development* (FAO 2014:5).

The new Policy on Small-scale Fisheries in South Africa will apply to an estimated 130 small-scale fishing communities along the coast (Sowman, Raemaekers and Sunde 2014). Estimates of the number of small-scale fishers range from 28,000 (Branch et al 2002) to closer to 100,000 (Raemaekers 2010) (see Figure 1 below).

Figure 1. Small-scale fishing communities along the South African coastline

Source: Sowman, Raemaekers and Sunde 2014

More than one-third (approximately 56) small-scale fishing communities lie in, or adjacent to, an MPA (see Table 2 below). Each of the communities that lie in, or adjacent to, an MPA has a story to tell about the impact of the MPA. Notwithstanding the new policy, the *de facto* rights of these communities in relation to their status within MPAs and their access to resources in these MPAs remains unclear, as will be elaborated in the following discussion and in Section 3 below.

1.4.3 History of MPA governance and marine spatial planning in South Africa

The concept of protecting an identified fishing area, designating marine spatial territory and linking this to specific regulations has a lengthy history in South Africa, from both a customary and a statutory perspective (van Sittert 2002, 2003a, Sowman et al 2011, Sunde 2013). Although the customary fish trap system of the Thonga peoples of northern Maputaland was recorded by Portuguese explorers as early as the 1500s (Whitelaw 2009), little attention has been paid to these age-old customary systems of tenure. In the early 1900s, local net fishing communities in the Western Cape turned to the Provincial Administration

to recognize their customary fishing territories and to develop statutory regulations to enable them to assert their customary rights to these grounds in the face of increased competition from outsiders (van Sittert 2002, Sowman et al 2011, Sunde 2014b). The territories recognized in St Helena (van Sittert 2002) and in Langebaan (Sunde 2014b) appear to have been the forerunners of later statutory-based and designated MPAs, albeit for a range of different objectives (Sowman et al 2011).

In the 1960s, the conservation of marine resources in South Africa was influenced by the call of the IUCN for the establishment of MPAs (Faasen 2006). A growing conservationist perspective is associated with subsequent increasing calls for the establishment of MPAs all along the coastline (Attwood et al 1997:343). The promulgation of the Sea Fisheries Act of 1973 signalled a response to these calls and a new approach to the statutory management and regulation of both fisheries and marine conservation. This Act provided for the establishment and management of marine reserves (Sea Fisheries Act 1973, Article 10). In 1976, a Marine Reserve Committee was established to "investigate and recommend guidelines on marine reserves" in terms of this Act (Attwood et al 1997:343). This committee recognized the dual objectives of MPAs: protecting and enhancing marine species resources (Attwood et al 1997:343). Statutory provision for the protection of marine areas was also covered in a range of other legislation introduced in the 1970s, including the National Parks Act (1976) and several provincial nature conservation ordinances.

The new wave of conservation thinking influenced marine resource management and dovetailed closely with the apartheid spatial planning legislation, also introduced in the 1960s (Sunde 2014a). A considerable proportion of the coastal land forcibly cleared through either forestry conservation or racial segregation laws was subsequently opportunistically declared part of the national conservation estate, either as part of coastal forest reserves, marine reserves or contiguous marine and terrestrial reserves. The histories of all of the major MPAs in South Africa are shaped by racially based removals in the apartheid land and seascape during the 1970s and 1980s. Most notably, Maputaland, St Lucia, Pondoland, Hluleka, Dwesa-Cwebe, Addo, Tsitsikamma, De Hoop and Langebaan MPA all have dispossession legacies (Faasen 2006, Sunde and Isaacs 2008, Sowman et al 2011, Sunde et al 2013). All of these MPAs are located adjacent to terrestrial reserves upon which land claims have been registered post-apartheid. As will be discussed below, this history shapes the type of governance arrangements in these protected areas very directly and has an impact on the way in which equity and beneficiation from the MPA component of the land claim settlement is perceived by small-scale fishing communities.

In 1994, at the dawn of democracy, South Africa inherited a legacy of apartheid land and natural resource policies, spatial plans and protected areas, with MPAs and fisheries access rights closely entangled in the racially distorted natural resource ownership and use patterns of the past. These patterns were at odds with the new Constitution of South Africa which provides for the protection of marine biodiversity and the environmental rights of present and future generations, whilst simultaneously providing redress for past injustices and restoring the dignity and human rights of its citizens. The Department of Environmental Affairs and Tourism (DEAT) and its provincial conservation management agency partners were thus faced with the challenge of balancing the need for protection of marine resources with the demand for restitution of coastal land to land claimants, and ensuring equitable yet sustainable access to marine resources. In the following decade, a suite of legal reforms in the environmental, land, forestry and marine resource sectors variously aimed to give effect to these Constitutional commitments, and a complex set of overlapping governance arrangements was introduced in each of these sectors.

1.4.4 Restitution, redress and recognition of rights to coastal land

In the land sector, the State embarked on a process of restitution and reform (DLA 1996). Those rural coastal communities living in, or adjacent to, protected areas that had been dispossessed of their coastal land and forests due to racially based discrimination were able to submit land claims in order to regain the land they had lost or seek compensation. A complex set of institutional arrangements and legal entities was established to provide for the governance of these areas (Paterson 2011). Where the land under claim was now under conservation status, as was much of the land in the former Bantustans,[4] including much of the land comprising South Africa's key National Parks and Heritage Sites (such as the Tsitsikamma National Park, the St Lucia Wetlands Park and Maputaland MPA, now known as the iSimangaliso Wetlands Park which is a World Heritage Site), the State took the decision that these areas should remain under conservation status (DEAT 2007, Walker 2008). In this instance, the State agreed to recognize these communities land claims but to enter into a range of what was termed 'co-management agreements' with these communities for the future conservation of this land (Walker 2008,

[4] 'Bantustan' is the term used to refer to the areas previously designated by the apartheid government for African residents.

Paterson 2011).[5] This was a contested issue that raised questions related to the significance of conservation land for the "greater public good" and for the benefit of the country as a whole. It also highlighted the many layers of different claims that various groups and communities operating at different scales and from different historical junctures had to a particular space and area. In many claims, there were so many competing interests that any negotiated settlement would involve trade-offs and compromise (Walker 2008). Subsequently, the DEAT, through a memorandum of understanding (MoU) with the Department of Land Affairs (DLA), developed a 'co-management' approach to claims in terrestrial protected areas and a National Co-management Framework was later developed to give substance to this agreement (DEAT 2009).

The specific legislation developed to recognize the restitution rights of those who lost land due to discriminatory practices post-1913—the Restitution Act– failed to accommodate the distinctive nature of African systems of property and tenure rights pertaining to marine and coastal land and resources. It failed to secure redress for the coastal fishing communities who had lost coastal land and access to the marine resources associated with that coastal land through apartheid interventions. Both the land legislation and the marine resource use legislation—the MLRA of 1998—were silent on the issue of the recognition of pre-existing customary access rights to marine resources. Although several post-apartheid land claims lodged in terms of the Restitution of Land Rights Act (Act No. 22 of 1994) have been for land adjacent to the coast or estuaries in communally owned areas, and several of these claimant communities' assumed that the Settlement Agreements that they signed included recognition of their customary rights to marine resources in these areas, to date no Settlement Agreements has enabled the *de facto* recognition of customary rights to marine resources.[6] None of the coastal communities who voiced their rights to marine resources in the immediate post–apartheid period lodged specific customary marine resource claims as part of the official post-apartheid restitution claims process. They believed that the land claims processes, coupled with the reform processes that were underway to transform fisheries governance, would ultimately lead to the restoration of their coterminous rights of access to the land upon which they and their forebears had lived and the adjacent waters upon which they depended for their livelihoods.

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5 The continuum of 'co-management' was implemented. In most instances, the State remains the dominant governance and management authority. See Paterson (2011) for a thorough discussion of the interpretation of 'co management' arrangements.

6 For example, the communities of Paternoster (Sunde 2003), St Lucia (Walker 2005).

However, coastal communities' land claims were ultimately framed around their loss of land within the dominant narrative of property, that is, property equated with land. This, despite the fact that the property clause in the Constitution explicitly states that property is not limited to land and that the historical documentation for these claims in all instances notes the existence of a lengthy history of marine resource use and the impact of the dispossession of resources on the communities' culture and livelihoods (Sunde 2003, Walker 2005, Sunde 2014a).

In post-apartheid South Africa, the Truth and Reconciliation Commission was the primary space and means for retribution and healing but issues of dispossession of land and other natural resources were largely de-linked from this process and it was assumed issues related to the loss of land would be dealt with by the Land Claims Commission (Walker 2010). Healing was narrowly defined, disembodied from the social-cultural and material relations within which this loss had been experienced (Krog et al 2008). There was silence about where the issues related to the loss of livelihoods and sense of place associated with the coast would be heard (Sunde 2014a).

As a result of this silence in both the land restitution and the marine governance policy domains over the past two decades, the small-scale fishing communities living in, or adjacent to, MPAs established during apartheid have experienced little change in their access to marine resources or their authority in MPAs, despite these legal reforms. Even where they were claimants as part of adjacent terrestrial protected areas and MPAs, there was no coherence in the approach to restitution across these sectors. On the contrary, the MLRA consolidated and, in many areas, extended their exclusion and dispossession. This is explored in the case studies in Section Three.

1.5 GOVERNANCE OF MPAs POST-APARTHEID: LEGAL AND POLICY ENVIRONMENT

South Africa has continued to have a rather fragmented legal and policy framework for the governance of MPAs post-apartheid. However, recently, considerable progress has been made in developing a more coherent legislative and policy framework for managing fisheries and other marine living resources, protecting marine biodiversity and promoting environmental rights.[7]

[7] The NEMPAA Amendment Bill was accepted by Parliament in March 2014. This effectively transfers the legal authority of MPAs from the MLRA to the NEMPAA and hence confirms the DEA as the primary governance authority.

The Constitution of South Africa (SA 2006) provides the overall vision for the governance of MPAs in South Africa through various provisions, most notably Section 24, which provides that

Everyone has the right –

(a) to an environment that is not harmful to their health or well-being; and

(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –

(i) prevent pollution and ecological degradation;

(ii) promote conservation; and

(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Significantly, the above sections lay the foundation for the sharing of benefits from MPAs and the need to negotiate a balance of objectives to ensure conservation whilst promoting economic and social development. The standard for securing such a balance is guided by this section stating that this must be through "reasonable legislative and other measures" and this standard of reasonableness is given further effect in Section 36, which provides that any limitation on someone's rights must be reasonable and must adopt the least restrictive measure possible.[8]

The National Environmental Management Act (NEMA) 107 of 1998 provides the legislative framework to give effect to the Constitutional provisions on environmental governance in South Africa. NEMA provides clear recognition of the need to protect biodiversity and maintain a strong human-rights-based approach. Environmental rights are to be balanced with socioeconomic rights. In addition, the National Environmental Management: Biodiversity Act 10 of 2004, which makes provision for the management and conservation of biological diversity, promotes "the fair and equitable sharing among stakeholders of benefits" (DEAT 2004).

The National Environmental Management: Protected Areas Act of 2003 (NEMPAA) has the explicit objective of providing for the declaration and management of protected areas (PAs), but until recently, excluded MPAs, which were all declared under the MLRA. The NEMPAA incorporates key principles related to co-operative governance in the declaration and management of PAs and the need to "promote sustainable utilization of PAs for the benefit of

[8] This is discussed in more detail in relation to case study 3 in Section 3.

people, in a manner that would preserve the ecological character of such areas; and to promote participation of local communities in the management of PAs, where appropriate" (NEMPAA 2003).

Biodiversity protection and the sustainable use of biodiversity involves a complex set of overlapping mandates in South Africa at national, provincial and local levels and both horizontally and vertically. Whilst governance of marine resources is an exclusive national mandate, conservation straddles both national and provincial government. As many of the MPAs are managed together with adjacent terrestrial reserves, including, in many instances, forest reserves, this presents a complex set of legal and policy arrangements for the managing authority and the local communities, who have to negotiate myriad and diverse legal regimes and, in some contexts, conflicting management paradigms applying to the same area. In many respects, small-scale fishing communities are uniquely impacted in this regard: trapped in a transitional zone between land and sea, straddling both terrestrial and marine legal and policy regimes. Within the specific history of colonialism and apartheid legislation in South Africa, this has meant that they have often been dispossessed of their material culture in unique ways. Similarly, they are impacted by new biodiversity legislation and policy in distinctive ways which are often not sufficiently acknowledged in the current 'one-size-fits-all' approach to conservation and fisheries management.

Although also promulgated under this suite of NEMA, the MLRA of 1998 placed the overall authority for allocating rights to, and managing, marine living resources, for both inshore and coastal resources, in the hands of the Minister responsible for fisheries governance. Responsibility for the establishment and management of MPAs was provided for in the MLRA Section 43, and not the NEMPAA discussed above. The MLRA made provision for the declaration of an MPA for the following objectives:

> *(a) for the protection of fauna and flora or a particular species of fauna or flora and the physical features on which they depend;*
>
> *(b) to facilitate fishery management by protecting spawning stock, allowing stock recovery, enhancing stock abundance in adjacent areas, and providing pristine communities for research; or*
>
> *(c) to diminish any conflict that may arise from competing uses in that area* (DEAT, 1998, Section 43).

Further, the Act provided for the declaration of no-take MPAs, and parties had to apply to the Minister for an exemption permit should they wish to fish in an MPA. Thus, in 1998, the establishment and management of MPAs was separated

from that of terrestrial PAs, although those MPAs that were in a national park or national reserve after 2003 were also designated under the NEMPAA, effectively giving them dual designation but with the MLRA taking precedence. This was in line with the legal principle in the NEMPAA that any MPA that lies adjacent to a terrestrial area should be managed by the same management authority (NEMPAA 2003). This applies to more than half of the MPAs. The separation of legal powers has had a very significant and lasting impact on the governance of MPAs.

Prior to 2009, the fisheries management portfolio fell to the Minister of Environmental Affairs and Tourism (DEAT). In 2009, however, the environmental and fisheries mandates were separated. Responsibility for fisheries management went to the Ministry of Agriculture, Fisheries and Forestry (DAFF), whilst other environmental functions were retained by the Ministry of Environmental Affairs (DEA), including that of the management of PAs. In 2009, therefore, a very complex situation prevailed. Not only were terrestrial PAs and MPAs promulgated under different legislation, but even within MPAs, since 2009, the mandate for managing MPAs has essentially been split across the DEA and the DAFF. The proclamation of an MPA was the responsibility of the DEA; however, if any fishing activities were to take place in that MPA, then this necessitated an exemption permit from the DAFF in terms of the MLRA. These institutional arrangements have been clumsy, and poor communication between departments hampered governance. Most importantly, from the perspective of CBD PoWPA and the governance of MPAs, the MLRA made no provision for different types of governance. The Act did not specify any requirements regarding the inclusion of rights holders or stakeholders in the establishment or management of an MPA. Rather, all MPAs were conceptualized and designed as State-driven MPAs.

In contrast to the MPAs, the terrestrial PAs designated under the NEMPAA could potentially facilitate a range of partnership and co-management governance arrangements (Paterson 2011). These included variations of different governance aspects, depending on the tenure of the area, the management authorities and the type of beneficiation envisaged (Paterson 2011).

Section 39-41 of the NEMPAA provides for the mandatory development of management plans, with public participation, and provides legislative guidance in the form of regulations on the listing of communities and the participation of stakeholders in the management of PAs (DEAT 2003, DEAT 2005).

Specifically, Section 41 (2e) states that a management plan must contain

(e) procedures for public participation, including participation by the owner (if applicable), any local community or other interested party;

(f) where appropriate, the implementation of community-based natural resource management; and

(g) a zoning of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections.

In 2005, the DEAT gazetted regulations for the administration of special nature reserves, national parks and world heritage sites related to key principles and processes of direct relevance to PoWPA Programme Element Two in MPAs (DEAT Government Gazette 28181:2005). Section 2 (2) notes: "These Regulations apply to a marine protected area that has been included in a special nature reserve, national park or world heritage site". These regulations provide for the granting of permission by a management authority, for the right to the sustainable use of biological resources in a National Park or Heritage Site. They make provision for a local community to be granted such a right in terms of community-based natural resource utilization.

The regulations provide for the granting of access to a local community to a special nature reserve, national park or world heritage site for cultural, spiritual, heritage or religious purposes. Most significantly, the regulations provide for a register of local communities that obliges the management authority to develop a register of local communities' rights and to review and update the register every two years. The regulations also provided for the establishment of Advisory Committees and set out the procedures for establishing the Committees, their mandate and term of office (DEAT 2005).

In 2013, an executive decision was taken to remove the section pertaining to MPAs from the MLRA and to amend the NEMPAA to include MPAs together with all other PAs. This legislative amendment signals a shift in the governance of MPAs (Razack, pers. comm., 2014). It is intended to facilitate increased coherence in governance across PAs. These proposed amendments were adopted in March 2014. The provision for MPAs in the amended NEMPAA (Section 22 A (1)) now states:

The Minister may, by notice in the Gazette—

(a) declare an area specified in the notice—

(i) as a marine protected area; or

(ii) as part of an existing marine protected area.

Section 48A (1) (a) prohibits fishing in an MPA; however, in terms of the same section (2), and notwithstanding subsection (1),

the Minister may, in relation to a marine protected area, prescribe—

(a) different zones to regulate different activities within that marine protected area; and

(b) activities which require a permit.

(3) Before exercising the power referred to in subsection (2), the Minister must consult with the Minister responsible for fisheries and the management authority that is responsible for managing the relevant marine protected area.

Significantly, Section 14 states in (1), that "Chapter 1, this Chapter and section 48 apply to marine protected areas" but in (2) it states that "The other provisions of this Act do not apply to marine protected areas, but if a marine protected area has been included in a special nature reserve, national park or nature reserve, such area must be managed and regulated as part of the special nature reserve, national park or nature reserve in terms of this Act. Any marine protected area which had been declared as such in terms of section 43 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998), and which exists when the National Environmental Management: Protected Areas Amendment Act, 2013, takes effect, must be regarded as a marine protected area declared as such in terms of section 22A."

Chapter 1, in which the objectives of the Act are articulated, and which will apply to all MPAs, states that, amongst others, the following objectives apply:

(b) to provide for co-operative governance in the declaration and management of protected areas;

(e) to promote sustainable utilisation of protected areas for the benefit of people, in a manner that would preserve the ecological character of such areas;

(f) to promote participation of local communities in the management of protected areas, where appropriate.

Whilst Section 14 (2) raises the possibility that MPAs not managed in conjunction with an adjacent terrestrial PA as defined in this section might not adopt the same standards as those that are managed in terms of Section 14 (2), it is assumed that it the NEMA provisions would suffice in ensuring that similar standards on issues pertaining to participation, equity and benefit sharing would be required.

In addition to the change in legislation in recent months that opens up the possibility that new governance types can be considered for MPAs in accordance with the provisions of the NEMPAA, the promulgation of the Integrated Coastal Management Act (ICMA) in 2009 provides umbrella legislation to guide coherence

across a range of different environmental planning and management functions. It also opens up space for a more diverse array of governance options for MPAs, in line with Aichi Target 11. Section 6 (23 (1)) of the ICMA states that the Minister may declare a 'special management area'. The Act makes provision for the area to be managed by an array of different bodies, including traditional councils (DEAT 2009: 23 (2)).

The ICMA places some responsibility for coastal management and land-use planning aspects that impinge on MPAs directly, in the hands of provincial authorities and steering committees, thereby devolving powers to these authorities (ICMA, 2009). The Provincial Coastal Committees are intended to provide the mechanism that will ensure co-ordination. In the past two years, it is evident that the DEA Oceans and Coasts Branch has functioned in a more integrated way as a result, and this is evident in the increased coherence and integration of planning across estuaries, PAs, pollution and water quality, research and marine spatial planning (Mkefe, pers. comm., 2014).

The amendments to the legislation pertaining to MPAs also open up the possibility that a suite of policies that have been developed by the DEA and its conservation partners in order to give effect to the above-mentioned objectives of NEMPAA but have largely been restricted to terrestrial PAs, will now also influence policy on MPAs. This includes the National Co-management Framework (DEAT 2009) and the Guidelines for the Implementation of Community-Based Natural Resource Management in South Africa (2003), as well as the People in Parks Programme. It must be noted, and as will be discussed in Section 2, where MPAs have been managed by management authorities spanning both terrestrial and marine environments, the approach of some authorities has been inspired by the spirit of NEMPAA and they have already ensured that these policies shaped their marine sections and principles such that equity and benefit sharing permeate their MPA management approach, despite the fact that there has been little guidance on this from MPA legislation and policy to date.

1.6 THE CURRENT INSTITUTIONAL ARRANGEMENTS AND MANAGEMENT OF MPAs

1.6.1 National-level authority and accountability

The management of all marine living resources is a national competency. Whilst the DAFF is the competent authority for fisheries management, the DEA is the responsible authority for the governance of MPAs. This function falls under the Oceans and Coasts Branch, where there is a Directorate responsible for

Marine and Coastal Biodiversity, including MPAs. The DEA has to account to the Executive via the Minister on its performance in relation to the national strategic priorities and outcomes (Medium Term Strategic Framework 2010-2014), and these are also monitored by the national Department of Performance Monitoring and Evaluation (DPME) (Mkefe, pers. comm., 2014). Outcome 10: Protected and Enhanced Environmental Assets and Natural Resources, Output 4, includes specific reference to MPAs in the key indicators. These include:

4.1.3 Maintain percentage of coastline prohibiting fishing or any form of harvesting or extraction;

4.1.4 Percentage of offshore area of the exclusive economic zone (EEZ) under formal protection;

4.1.5 Percentage of coastline with partial protection (no fishing for bottom fish species or shore angling);

4.1.6 Minimum 20% of estuaries with full protection /partial protection by 2014. (DPME 2013).

Outcome 10 identifies clear activities, milestone deliverables and roles and responsibilities for different agencies. The Director responsible for this directorate is obliged to report on success in relation to Outcome 10 and the key performance indicators of this post are tied to these indicators (Mkefe, pers. comm., 2014). However, implementation of the PoWPA falls under the competencies of the Biodiversity and Conservation Branch. This branch has an Action Plan on Protected Areas (DEAT 2012), which is currently being revised; this branch is also responsible for managing the Management Effectiveness Tracking Tool (METT) assessments (Khumalo, pers. comm., 2014).

As can be seen from the above Outcome 10 indicators, these are limited to narrow ecological goals and quantitative targets and do not address the quality of governance type or issues that are indicative of Programme Element Two. Notwithstanding this limitation, however, this increased line of accountability has clearly helped to focus attention on MPAs, and several officials interviewed referred to the fact that reporting processes were now more specific (interviews with DEA officials 2014, CapeNature officials 2014).

Mechanisms for increased coherence, co-operative governance and accountability include the structures introduced relatively recently at national and provincial levels. The DEA Minister meets with all the provincial members of the executive council who have an environment portfolio in a quarterly meeting known as MINMEC, where co-operative governance between the national and the provincial level is facilitated (Mkefe, pers. comm., 2014). Provincial

ministers are obliged to report on Outcome 10-related indicators at MINMEC. At a technical forum called MINTECH, the provincial ministers and departments address technical matters related to the management of PAs, including MPAs. In addition, in line with CBD PoWPA, a multi-stakeholder Working Group has been established and meets quarterly. This Working Group, known as Working Group 8, includes representatives from all the management authorities contracted by DEA to manage MPAs and representatives from the provinces. At a provincial level, the Provincial Coastal Co-ordinating Committees include representatives from all the authorities and provincial departments responsible for implementing key environmental legislation pertaining to the coast. These committees are now functioning in all the coastal provinces except KZN, where a process of establishing a committee is underway. Governance issues pertaining to the integration of conservation and fisheries management planning, connectivity between an MPA and surrounding landscapes, including estuary management, water quality, pollution control, land management and cultural heritage are addressed in these committees.

In addition to the above accountability mechanisms, parliamentary oversight takes place through annual budget meetings where statutory conservation bodies managing national parks and world heritage parks, including SANParks and iSimangaliso, are obliged to report and motivate their expenditure. That this mechanism is taken seriously is indicated by the fact that in 2012 the Chairperson asked that SANParks draw up a developmental plan for communities around the parks that it operated (Parliamentary Monitoring Group 2012: 3).

Within the Directorate of Biodiversity and Conservation a dedicated programme —People in Parks—is responsible for promoting the participation of people in the management of protected areas. Towards this end, this Directorate hosts a People in Parks Forum every two years. The overall aim of the People in Parks programme is "to address issues at the interface between conservation and communities, in particular the realization of tangible benefits by communities who were previously displaced to pave the way for the establishment of protected areas". The slogan of this programme—"Conservation for the people, with the people" (www.environment.gov.za)—is indicative of the governance type and approach. This programme receives dedicated funding from DEA to promote participation and ensure benefit sharing (Khumalo, pers. comm., 2014). Representatives from the People in Parks programme, including community representatives from all the parks and MPAs, attend a national departmental steering committee meeting which meets quarterly to address issues of implementation. Established in 2004 following the World Parks Congress, the People in Parks programme did not initially target fishing

communities living in, or adjacent to, MPAs and tended to focus on terrestrial parks. In the past two years however the Programme has actively sought to include fishing communities.

The People in Parks programme has placed issues related to the implementation of CBD PoWPA on the agenda at each of its national workshops. Most recently, in 2012, the theme for the National Conference was Programme Element Two (DEA 2012).

1.7 DELEGATED AUTHORITY AND MANAGEMENT

The protected area legislation makes provision for the management of PAs to be delegated and contracted out to provincial and local agencies. Historically, the management of MPAs in South Africa has been contracted to four key conservation management agencies, with two local municipalities also each managing an MPA within their jurisdiction. These same authorities are responsible for managing the adjacent terrestrial parks and reserves under the NEMPAA, and this system will continue under the recently amended legislative regime, potentially enabling a more integrated approach from the perspective of these agencies. The largest of these statutory bodies—SANParks—manages eight MPAs, CapeNature manages five, ECPTA manages four, EKZN Wildlife manages four, two of which fall within the iSimangaliso Wetland Park, which is a World Heritage Site and hence shares a mandate for the management of these MPAs, which straddles both the MLRA and the World Heritage Act of 1999. The City of Cape Town manages the Helderberg MPA whilst the Nelson Mandela Bay Municipality manages the Sardinia Bay MPA (see Table 2 for the list of MPAs and management authority).

Conservation management agencies sign a contract with the DEA or appropriate provincial department which stipulates the conditions of management as well as the reporting requirements. The outcomes in this contract are also linked to the Outcome 10 indicators mentioned above, and responsibility for achieving these targets cascades down from the DEA Oceans and Coasts Branch to the local conservation management level (Phadima, pers. comm., 2014). They are required to submit a Quarterly Report to the DEA. This report includes certain indicators of relevance to PoWPA, although it was not designed specifically as a PoWPA monitoring tool. For example, the number of stakeholder advisory forum meetings held per quarter is captured. However, little qualitative information of relevance to the quality of governance or equity is captured in these reports.

Institutional arrangements pertaining to the management of biodiversity in general (as opposed to the specific marine component and arrangements mentioned above) are guided by the Biodiversity Act. In addition to the DEA Biodiversity and Conservation Branch, the Act made provision for the establishment of the South African National Biodiversity Institute (SANBI) as a public entity falling under the DEA, with the mandate to play a leading role in South Africa's national commitment to biodiversity management. In partnership with DEA and the biodiversity sector, SANBI is tasked with leading the biodiversity research agenda (SA Report to CBD, 2009 vii). SANBI manages the national spatial assessment and planning aspects of MPAs, in collaboration with the DEA Oceans and Coasts Branch (Sink et al 2012).

1.8 INTERNATIONAL AND REGIONAL COMMITMENTS TO MARINE BIODIVERSITY PROTECTION AND FISHERIES MANAGEMENT

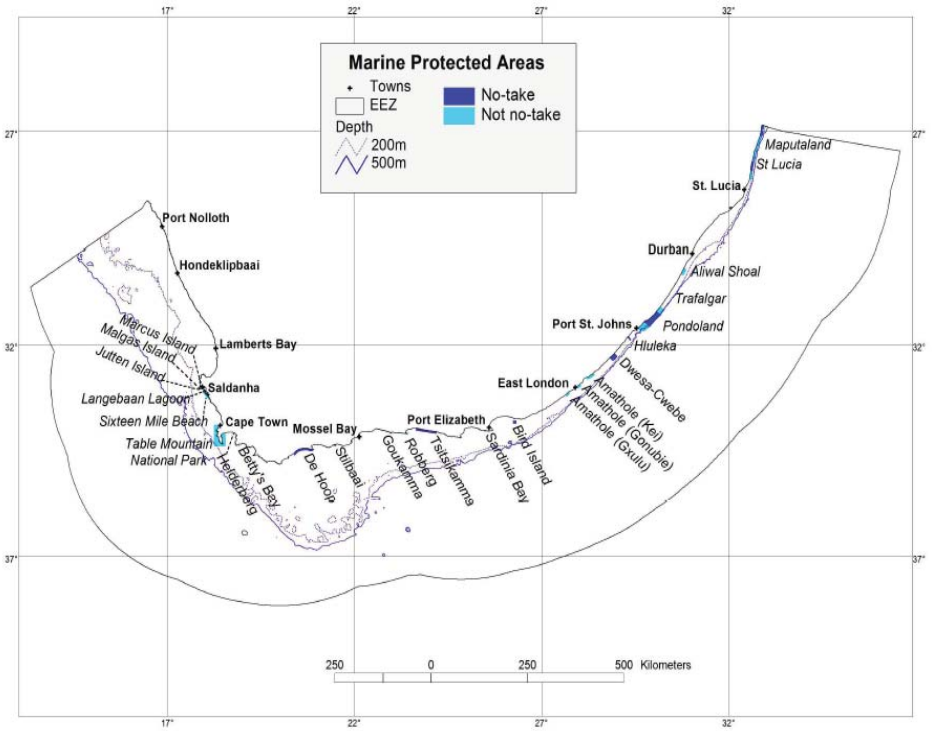
South Africa signed the CBD in 1995 and, as a signatory, has committed itself to the PoWPA, which was adopted by COP7 in 2004. The PoWPA is a multi-year programme with 16 major goals and sub-goals aimed at giving substance to the CBD objectives of developing ecologically representative networks of PAs. Much of the content of the PoWPA was first motivated at the fifth World Parks Congress held in Durban, South Africa, in 2003 (IUCN-TILCEPA, 2010). The PoWPA also provides a means for giving effect to several of the key commitments made at the World Summit on Sustainable Development (WSSD), held in Johannesburg in 2002.

Within the DEA, the Biodiversity and Conservation Directorate currently manages reporting to the CBD Secretariat on the CBD PoWPA for both terrestrial PAs and MPAs, although DEA Oceans and Coasts is responsible for the actual management and implementation of MPAs. In addition to the PoWPA, South Africa is signatory to a range of other international and regional instruments of direct relevance to the PoWPA Programme Element Two Goals including, the Ramsar Convention on Wetlands, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Declaration on the Rights of Indigenous Peoples, the African Charter for Human Rights, the FAO Code of Conduct for Responsible Fisheries, the Southern African Development Community Protocol on Fisheries and the Tenure Guidelines, amongst others.

1.9 CURRENT STATUS OF MPAs IN SOUTH AFRICA

South Africa has 24 gazetted MPAs, of which 23 are on the coast and one, Prince Edward Islands, is an offshore MPA (Sink et al 2012:143). The 23 MPAs along the coast comprise a total of 23.17 per cent of the coastline in South Africa (Sink et al 2012:143).

Figure 2. Map of MPAs in South Africa



Source: Sink et al 2012

In 2013, Prince Edward Islands MPA was officially declared. This is Africa's first offshore MPA and is one of the largest in the world, at 180,000 sq km. The MPA will be zoned and will include a 12-nautical mile sanctuary where no fishing will be allowed, four restricted zones, where limited fishing will be allowed, and a controlled zone which links the four restricted areas spatially (http://www.csir.co.za/news/2013/10/marine_protected_area.html).

In addition to these MPAs, the fisheries department has utilized marine spatial planning tools to develop a range of other spatial measures, including seasonal closures for specific species, trawl exclusion areas and experimental small pelagic exclusion areas. These do not impact any small-scale fisheries directly to any

significant extent; however, they are significant within an overall ecosystems approach to fisheries and, therefore, do have an indirect impact on the small-scale fisheries sector (Figure 2). (See Section 1.10 below for a more detailed discussion on marine spatial planning and the identification of EBSAs.)

Each MPA has a unique management history and has impacted the small-scale fishing communities living in, or adjacent to, the MPA in distinctive ways (see Table 3).

1.10 CURRENT STATE OF INFORMATION ON MARINE AND COASTAL BIODIVERSITY, MARINE SPATIAL PLANNING AND THE IDENTIFICATION OF EBSAs

South Africa is a global leader in systematic biodiversity planning (Sink et al 2011:10). The 2004 National Spatial Biodiversity Assessment included a comprehensive marine component that significantly advanced the assessment of marine biodiversity in South Africa and represented the first spatial assessment in South Africa (Sink et al 2012:34). This assessment has now been considerably consolidated and extended with the 2011 Marine Biodiversity Assessment. SANBI developed a national marine and coastal habitat classification to support the classification, mapping and assessment of coastal and marine habitat types at a national scale, using a uniform approach. This work indicates the considerable progress made by South Africa towards the CBD PoWPA goal of establishing an ecologically representative network of PAs in that the establishment of a comprehensive assessment methodology for classifying and mapping habitat and species contributes towards assessing the representativeness, comprehensiveness and ecological gaps of the protected area network. The planning process included an analysis of the drivers of ecosystem change and "produced 27 GIS layers reflecting the relative intensity of 27 drivers of ecosystem change. These 27 pressures include 18 types of extractive marine living resource use (13 commercial fisheries, commercial kelp harvesting, two types of recreational fishing, subsistence harvesting and shark control programme), petroleum activities, diamond and titanium mining, shipping, coastal development and disturbance associated with coastal access, waste-water discharge, mariculture, invasive alien species and the reduction of freshwater flow into marine ecosystems" (Sink et al 2012:74).

This study noted that fishing is a key driver of change in marine and coastal ecosystems and has the highest impact score in 10 of 13 broad ecosystem groups (Sink et al 2012:74). This 2011 assessment included some socioeconomic layers linked to human use in both the coastal and offshore environments that drew on work done by Sink and others (Sink et al 2011) and Harris

Table 3: MPAs in South Africa indicating management agency, communities impacted, date of establishment, legal framework and related impact on small-scale fishing communities

Name of MPA, management authority and SSF communities	History	Legislation, regulations and zonation	Key impact on small-scale fishing communities
Maputaland MPA Size 384.5 km²	**Managed by EKZN Wildlife and iSimangaliso as part of iSimangaliso Wetlands Park, Ramsar status**		
Mvutshane KwaHlomula KwaMazambane KwaGeorge KwaDapha Mnyayisa MalangenI Novunya KwaMqobela Mabibi KwaMpukane	Forest Reserve declared in 1950 Verbal agreement with Traditional Authority in 1957 to recognize their customary rights Marine Reserve declared in 1974 MPA in 1987 Incorporated into contiguous MPA with St Lucia and declared a World Heritage site in 1999	Provincial Ordinance 15 of 1974 Sea Fisheries Act MPA 1987 World Heritage Site in 1999 MPA in terms of MLRA in 2000 Shore angling (all species), recreational linefishing (pelagic species only) Zoned for multiple use, includes sanctuary areas, no take 33.8%	Forced removal of communities from several coastal areas Land claim not yet settled 3 communities live inside and 9 live adjacent to the MPA but all 12 live inside the iSimangaliso Wetlands Park, which is a World Heritage Authority Statutory regulations imposed in 2010 Small-scale fisheries co-management committees in some areas (EKZN Wildlife) but with limited scope Numerous arrests and prosecutions for fishing and harvesting in contravention of statutory regulations

St Lucia MPA 442 km²	**iSimangaliso Wetlands Park Authority and EKZN Wildlife, Ramsar status**		
KwaMbila Dukuduku KwaSokhulu	Declared a reserve in 1890s Declared an MPA in 1976 Incorporated into World Heritage Park in 1999	Sea Fisheries Act 1973 World Heritage 1999 Declared MPA in terms of MLRA in 2000 Shore angling (all species), recreational linefishing (pelagic species only). Zoned for multiple use, includes sanctuary areas No take 30.3 %	Forced removals Several land claims within the reserve not yet completed. Co-management committee in Sokhulu (EKZN Wildlife) Expansion of MPA proposed and planning conducted but no consultation with local small-scale fishing communities as yet 2 communities live the iSimangaliso Park and 1 (Sokhulu) lives outside but adjacent to the Park and will be directly impacted by proposed MPA extension
Aliwal Shoal MPA 124.7 km²	**EKZN Wildlife**		
A range of recreational divers, fishers and ecotourism stakeholders drawn from across several local communities on the south coast, KZN	Declared an MPA in 2004	MLRA of 1998 Shore and boat based angling, commercial Line fishing, subsistence harvesting permitted. Zonation: No take 1.7%	No direct impacts on small-scale fishing communities but small-scale fishing community organisations not included in planning processes or Stakeholder Forum Proposed expansion and new zonation

Trafalgar MPA	**EKZN Wildlife**		
Nzimakwe	Declared in 1979	Declared in terms of the MLRA in 2000 Recreational shore angling permitted. No zonation	No small-scale or subsistence harvesting in the MPA (although recreational fishing permitted) but community does have access to the shoreline adjacent to the MPA Small-scale Fisheries Co-Management Committee but with limited scope and focus on fisheries only
Pondoland MPA 1237.3 km²	**East Cape Parks and Tourism Agency (ECPTA)**		
Mzamba Mtentu Ndengani Rhole Cutweni Mbotyi Manteku Noqekwane Mkhambathi	1991, revised in 2004	Multiple zonation to accommodate a range of uses and includes a no-take section Commercial linefishing, recreational shore and boat based linefishing, subsistence fishing. No-take 47.8%	Land Claim Land Trust Co-Management Committee Fisheries sub-committee Public-private partnership negotiated for management of the ecotourism component of the reserve
Hluleka MPA 40.9 km²	**East Cape Parks and Tourism Agency (ECPTA)**		
Mdzwini Xhuthudwele Elucingweni Bhucula Igangaand Xhuthudwel	1975	NO Take zonation 100%	Land claim Tensions with traditional authorities and Communal Property Association (CPA) so no functional Co-Management Committee to date

Dwesa Cwebe MPA 191.5 km²	**East Cape Parks and Tourism (ECPTA)**		
Cwebe Hobeni Mendwane Ntlangano Mpume Ntubeni Ngoma	Forest Reserve 1903 Communities removed from 1890s 1975 Nature Reserve 1991 Marine reserve 1997 2000 declared a no-take MPA	Forestry regulations Transkei Conservation Nature Act Transkei Degree Sea Fisheries Act of 1978 MLRA of 1998	Land claim Forced removals 1890's 1930s and again in 1977s and 1980s MPA closed to inter-tidal harvesting in 1991 Settlement Agreement and co-management agreement signed in 2001 Land Trust established, recently replaced by CPA No functional co management committee focusing on fisheries Fishing continued in certain areas until 2000, then MLRA only finally enforced in 2004 Over 100 arrests and prosecutions, 3 community members killed by rangers and 1 ranger killed by community members No take zonation 100% but under review
Amathole MPA 246.5 km²	**ECPTA**		
Kei Mouth Gonubi Gxuluku	Proclaimed in 2011	No zonation Recreational angling	No immediate small-scale fisheries impacts No Stakeholder Forum
Bird Island MPA 70.6 km²	**SANParks, managed as part of the Greater Addo National Park**		
Colchester Sunday's River	Declared in 2004	Incorporated into Addo National Park in 2005 No-take 100%	Small-scale fishing in the area adjacent to MPA. Proposed expansion will impact traditional line-fishers (Turpie 2012).

Sardinia Bay MPA 12.9 km²	**Nelson Mandela Bay Municipality**		
No SSF communities Recreational communities from surrounding region	1990	No-take 100%	No immediate impacts
Robberg MPA 26.2 km²	**CapeNature**		
Plettenberg Bay New Horizons Kwa-Nokuthula	1990	No zonation Re-zonation plans tabled and stakeholder process underway	Recreational shore angling No Stakeholder Forum
Goukamma MPA 34 km²	**CapeNature**		
Sedgefield Buffalo Bay Knysna	1990	No zonation rezonation plans tabled and stakeholder consultation process underway	Recreational shore angling No Stakeholder Forum
Tsitsikamma MPA 264.4 km²	**SANParks, managed as part of Garden Route National Park**		
Covie Thornham, Coldstream Storms River	1964	Re-proclaimed in terms of MLRA in 2000 No-take zonation 100%	Land Claim for area adjacent to the Park Mixed recreational and subsistence lobby group requested re-zonation in 2007 Stakeholder Advisory Forum

Still Bay MPA 31.9 km²	**CapeNature**		
Melkhoutfontein	2007	MLRA of 1998 Zoned for multiple use No-take 62%	Traditional traps recognized as heritage sites Co-management arrangements and sustainable use negotiated with local trap fishers Stakeholder Advisory Forum working well
De Hoop MPA 288.9 km²	**CapeNature, adjacent to De Hoop Reserve**		
Skipskop Arniston Struisbaai	1985	No-take 100%	Forced removals due to military base establishment in 1980s. Adjacent communities impacted by exclusion zone and Ongoing missile testing scares fish and no communication of this to the fishing communities Stakeholder Forum being reconstituted
Bettys Bay MPA 20.1 km²	**CapeNature, managed as part of Kogelberg Biosphere**		
Kleinmond	Plans to incorporate it into Kogelberg Biosphere	Sea Fisheries Act 1973, then 1990, and again in 2000 No zonation Only shore-based angling permitted	Shore based angling is permitted but re-zonation has been tabled and it is intended to make it a no-take MPA. Small-scale fishers have been included in planning process for inclusion in Kogelberg Biosphere Multi-stakeholder process WWF Fisheries Improvement Project (FIP) underway with SSF sector, linked to MPA planning

Helderberg MPA 2.4 km²	**City of Cape Town municipality**		
Strand Macassar	2000	No-take 100%	Impacts local small-scale fishing communities adjacent but they do have access to other beaches nearby
Table Mountain MPA 956 km²	**SANParks, managed as integrated component of Table Mountain National Park, a World Heritage Site**		
Ocean View Masiphumele Hangberg, Hout Bay Redhill Simonstown Fish Hoek Kalk Bay	1977, revised in 1994 and 2004	MLRA and NEMPAA, World Heritage Act 1999 Multiple small-scale, commercial and recreational fisheries inside and adjacent to the MPA Zonation but continued user conflicts and perceptions of bias towards commercial fisheries	Forced removals due to Group Areas Act; Small-scale fishers have not had preferential access to their traditional fishing grounds and in some places are excluded from these fishing grounds Conflict with large-scale commercial interests fishing in near-shore zones No Stakeholder Advisory Forum

Langebaan MPA 47.1 km²	**SANParks via West Coast National Park , the adjacent terrestrial park, Ramsar status**		
Langebaan Churchaven	Declared a marine reserve in 1973 1985 West Coast National Park MPA 2000	Sea Fisheries Act of 1973 Revised 2000 MLRA Joint designation with NEMPAA 2003 3 zones including sanctuary no take zone, Commercial and recreational fishing in controlled A Zones, limited commercial net fishing (motorised) in Restricted B Zones No-take 22%	MPA impacts small-scale fishers in several ways: Forced removal of some families from farms inside the Park Restricted access to sections of the MPA Ecotourism activities prioritised over traditional fisheries User conflicts on the water Restricted access to traditional fishing grounds No participation in decision-making over zonation Land ownership based access agreements have unintended racial consequences Zonation impacts catches of target species No clear science based evidence for management approach to target species Stakeholder Advisory Forum
Marcus Island MPA 0.4 km²	**SANParks via West Coast National Park**		
Langebaan Saldanha	2000	Commercial rock lobster, limited recreational and commercial boat-based linefishing. This excludes SSF fishers	Regulations exclude SSF fishers

Malgas Island MPA 0.9 km²	**SANParks via West Coast National Park**		
Langebaan Saldanha	2000	No zonation Commercial rock lobster, limited recreational and commercial boat based line fishing.	Regulations exclude SSF fishers
16 Mile Beach MPA 107 km²	**SANParks via West Coast National Park**		
Langebaan Churchaven	2000	Commercial rock lobster, limited recreational and commercial boat-based linefishing No zonation	Regulations exclude SSF fishers
Jutten Island MPA 1.6 km²	**SANParks via West Coast National Park**		
Langebaan Saldanha	2000	Commercial rock lobster, limited recreational and commercial boat-based linefishing. No zonation	Regulations exclude SSF fishers
Prince Edward Island (Off-shore MPA)	**DEA**		
No particular community Various industrial fisheries stakeholders	Declared in 2013		No direct small-scale fisheries impacts

(in Sink et al 2011). Although the assessment and the analysis of drivers of ecosystem change make a very significant contribution towards achieving the PoWPA goals, it is noted that the authors of this assessment themselves highlight a key gap in the data related to small-scale fisheries. "The subsistence fishing dataset is outdated and needs to be improved using more recent information" (Sink et al 2012: 141). In addition, the data set does not include the range of values inherent in the use of marine ecosystem from the perspective of small-scale fishers, and a planning framework for integrating the social, cultural and ecological layers has yet to be developed.

This primarily ecologically focused data has been complemented over the past decade with three assessments of the management of MPAs in South Africa, funded by WWF (Lemm and Attwood 2003, Tunley 2009 and WWF 2014 (forthcoming)). The first of these assessments conducted in 2003 (Lemm and Attwood 2003), aimed at surveying key aspects of management. The findings from this research provided critical insight into the overlapping and confusing governance mandates and gaps in the legal framework, inadequacy of management plans and zoning plans, and infrastructure and budgeting issues but provided little detail on issues related to governance from the perspective of community involvement, equity and benefit sharing. The second survey conducted in 2009 attempted to build on this earlier survey and to develop a system that can be used in future to assess the key elements that influence management effectiveness (Tunley 2009:12). The survey included questions on a range of management issues and provided a score and broad assessment of progress on key indicators such as stakeholder participation and perceptions of management about the importance of this. Regrettably, this assessment does not capture the quality of governance on these issues. Participation in planning and management decisionmaking are conflated, so it is difficult to gauge the extent to which it assessed real participation in decisionmaking. Although a range of questions was asked of managers, it would appear that these were closed questions which did not elicit qualitative responses, making the quality of governance rather difficult to assess. For example, the following questions were asked of managers:

4.9 Does the planning process allow adequate consultation with key stakeholders in the compilation of the management plan?

4.10 Is the local culture, including traditional practices, social systems, cultural features,historic sites and monuments, considered in the planning process?

4.11 Do stakeholders/community have meaningful input to management decisions? (Tunley 2009).

The questions are extremely subjective and will inevitably elicit different answers from different actors, rights holders and stakeholders in the MPA system. For example, the iSimangaliso scored 100 per cent on issues of participation of stakeholders and yet lack of co-management and consultation is one of the complaints most commonly cited by stakeholders trying to work with iSimangaliso (Sunde 2013, Parliamentary Monitoring Group 2013). This highlights the challenge of designing an appropriate methodology and the value of a combination of methods that will enable an assessment that can be validated through triangulation.

The 2009 report notes that stakeholder issues were inadequately dealt with and required management actions (Tunley 2009). The 2013 assessment has attempted to use the METT more closely. This report has not yet been published. Regrettably, the methodology used for this report drew on the responses from the conservation authorities only and did not include stakeholders in the assessment.[9] Nonetheless, it has institutionalised the importance of regular management effectiveness assessments and an informal report indicates improvement in stakeholder consultation through the use of stakeholder advisory forums (Tunley, pers. comm., 2014). WWF has indicated its commitment to continuing to support the promotion of management effectiveness assessments and the development of appropriate methodologies that promote a participatory approach (Duncan, pers. comm., 2014). It is anticipated that this process will gradually be merged with the METT assessments conducted by DEA for the terrestrial protected areas (Khumalo, pers. comm., 2014).

1.11 EXISTING MARINE SPATIAL MANAGEMENT AND PLANNING RELATED TO PAs AND EBSAs

"The National Protected Area Expansion Strategy (DEAT 2008) emphasizes the need to strengthen existing MPAs through the establishment of more no-take zones and through other mechanisms that will reduce the impact of exploitation within MPAs" (Sink et al 2012:174). Contributing towards this aim, the SANBI marine component of the Biodiversity Assessment identified several strategic geographic priority areas for the establishment of new MPAs and other types of spatial management measures (Sink et al 2012:10). This work has been

[9] This has been acknowledged as a limitation and steps have been taken to address this in some agencies. In Pondoland MPA, the Co-Management Committee has begun to participate in the quarterly meetings where the METT issues will be addressed in future (Kostauli, pers. comm., 2014).

complemented by the extensive work undertaken over the past five years through the Offshore Marine Protected Areas and Offshore Biodiversity Initiative (OBI). This OBI aims to facilitate the development of a representative offshore MPA network based on the best available scientific information, for the conservation of the country's offshore biodiversity and the wise use of its offshore marine resources. It further aims to ensure that there is broad support from the various offshore marine use sectors. The project was developed jointly by SANBI and the marine branch of DEAT, with financial support from the WWF Green Trust and in consultation with the Department of Minerals and Energy, the Petroleum Agency of South Africa and stakeholders from commercial fishing, mining, petroleum and other maritime industries (Sink and Attwood 2008 in SA Report to CBD, 2009).

The Offshore Project has engaged in a range of marine spatial planning and undertaken an analysis of EBSAs around the South African coast. These analyses have been used in two policy and planning contexts: nationally, they have been used to identify focus areas for offshore PAs and other types of spatial management (Sink et al 2011:57), whilst regionally and internationally, they have been used in the context of the CBD regional workshops aimed at identifying EBSAs (UNEP CBD Report 2013). The South African data sets have been used to contribute towards the identification of EBSAs in two CBD Regional Workshops, one for the Indian Ocean and one for the Atlantic Ocean (UNEP CBD 2011 and 2013). The EBSAs that South Africa has identified straddle both inshore and offshore areas, and overlap with the MPA expansion planning processes undertaken by the DEA and provincial conservation partners. Thus far, 18 EBSAs have been identified. As noted above, the planning undertaken for these areas has included some socioeconomic data related to extractive use by key large commercial industries in these areas; however, it has not included traditional knowledge or social and cultural information as urged by the COP in CBD/COP/DEC/XI/17.

Several of the EBSAs identified have potential socio-ecological impacts for small-scale fisheries; yet, to date, the planning processes for these EBSAs have not included small-scale fishing community representatives. For example, there are several small coastal MPAs within the Cape Canyon area (CBD summary report 2013). This area will overlap with the small-scale fisheries component linked to West Coast National Park and the Langebaan small-scale fishing community. Others have the potential to overlap with planning for the traditional linefish sector which forms a significant component of the policy on small-scale fisheries.

Sink and others (Sink et al 2011) note that the focus areas "include the best options to meet multiple objectives for protection and sustainable use of South

Africa's offshore environment". Whilst the boundaries of each of these areas still require further fine-scale planning and stakeholder consultation, it is intended that this data set will provide the basis for a range of spatial management, including zoned MPAs or Fisheries Management Areas, seabed protection zones, and experimental closures or listing of threatened species (Sink et al 2011:57). "Over the next few years, the co-ordinated implementation of a network of spatial management measures is proposed. This will advance the expansion of South Africa's MPA network, minimize cumulative impacts on industry through ad hoc implementation of individual spatial management measures and will ensure that offshore habitats are represented in a spatially efficient network of spatial management measures that meet multiple objectives" (Sink et al 2011:57).

In addition to the marine spatial planning work conducted by SANBI described above, spatial planning has been conducted by other authorities managing MPAs along the coast, with a view towards expansion or re-zonation. Most notable in this regard is the spatial planning undertaken by EKZN in KwaZulu-Natal (EKZN 2011). Over the past four years, EKZN has mapped and identified a number of possible areas for extension of existing MPAs or re-zonation and is in the process of developing proposals to the DEA in this regard. Whilst these planning processes have included some key stakeholders, particularly those from other management authorities such as iSimangaliso and local and provincial government and recreational angling associations, they have not included representatives from small-scale fishing communities themselves, despite the fact that several of these proposed expansion plans will impact small-scale fishing communities directly. Most notable in this regard is the possible extension of the St Lucia MPA and the borders of the iSimangaliso World Heritage Site. This planning has been underway for several years and the proposed extension has been documented in the iSimangaliso Integrated Management Plan (iSimangaliso 2011). However, the local community of Sokhulu, who will be impacted by this plan, has not participated in the planning process to date (Rhodes, pers. comm., 2014). This situation appears to arise due to the fact that the NEMPAA only requires a public participation process to be triggered once the planned extension or change in zonation has been officially submitted to the Minister. However, in practice, several officials within conservation authorities have noted the need to include communities at an earlier stage in the planning process; however, this appears to be left to the discretion of the management or planning authority.

SECTION 2

ASSESSING IMPLEMENTATION OF CBD PoWPA PROGRAMME ELEMENT TWO IN MPAs IN SOUTH AFRICA FROM THE PERSPECTIVE OF SMALL-SCALE FISHERIES

CBD PoWPA Programme Element Two specifically focuses on governance, participation, equity and benefit sharing. The following section of this report provides an overview of the approach to governance, participation, equity and benefit sharing for each of the primary MPA management authorities.

The interviews conducted for this research highlighted the fact that whilst the majority of the interviewees were not familiar with the content of the PoWPA, nor are there social indicators and targets for these issues included in Outcome 10 or the national protected area expansion strategy, they could easily relate to these four issues and processes through their conservation authorities general approach to planning and management.[10] These processes and issues are thus not new to the conservation and fisheries management of MPAs in South Africa, as they form the basis of core principles embodied in the South African Constitution and in NEMA.

2.1 GOVERNANCE AND PARTICIPATION

Increasingly the term 'governance' is being used in policy and planning circles to refer to "who decides what to do, how those decisions are taken, who holds power, authority and responsibility, who is (or should be) held accountable", whilst the term 'management' refers to "what is done in pursuit of conservation objectives and the means and actions to achieve such objectives" (Borrini-Feyerabend et al 2013:25). Both the type and quality of governance of a PA, or of a PA system, can be evaluated against a number of broad principles of good governance that have been developed by a variety of people, nations and UN authorities (Borrini-Feyerabend et al 2013: 43). IUCN has developed a set of "principles of good governance" that serve to guide assessments of this component of Programme Element Two. These include:

- legitimacy and voice;
- direction;

[10] At a recent MPA Forum, none of the MPA managers had heard of the PoWPA. Whilst Regional MPA managers and Marine Programme Managers have heard of the CBD, no one has a close working knowledge of PoWPA.

- performance;
- accountability; and
- fairness and rights (Borrini-Feyerabend et al 2013:43).

'Governance' in this approach thus incorporates 'participation' as participation in decision-making in relation to PAs is itself indicative of good governance. Similarly, the concepts of equity and benefit sharing are regarded as principles of good governance.

Participation in the context of CBD PoWPA Programme Element Two includes ensuring the full and effective involvement (participation) of "relevant rights holders and stakeholders, including indigenous peoples, local communities and actors entitled because of customary rights and considerations of gender and social equity, in: national reviews of suitable forms of conservation; site-based planning and decision-making; development of national policies; and identification of relevant knowledge, resources and institutions. Where necessary, this should include removing barriers to participation by introducing legislation, policies, capacities and resources so that all rights holders and stakeholders can participate effectively, if they wish" (Borrini-Feyerabend et al 2013:4).

The CBD has actively promoted the need to focus on governance of PAs in recent years, directing attention to the types of governance and the quality of governance. In particular, it has called on Parties to the Convention to take actions towards "diversifying and strengthening PA governance types" and "establishing effective processes for the full and effective participation of indigenous and local communities in the governance of PAs" (CBD XI/18 in Borrini-Feyerabend 2013:298).

IUCN has developed a matrix classifying different types of governance that is now recognized by CBD.[11] Four types of governance are distinguished on the basis of who has authority, responsibility and can be held accountable for decisions. However, in each context a distinctive combination of characteristics might be present and a continuum of governance can often be discerned. These include:

[11] CBD Decision X/31, Nagoya, 2010.

Type A Governance by government	Where a Federal or national ministry or agency in charge Sub-national ministry or agency in charge (e.g., at regional, provincial, municipal level) Government-delegated management (e.g., to an NGO)
Type B Shared governance	Transboundary governance (formal arrangements between one or more sovereign States or Territories) Collaborative governance (through various ways in which diverse actors and institutions work together) Joint governance (pluralist board or other multi-party governing body)
Type C Private governance	Conserved areas established and run by: ¤ individual landowners ¤ non-profit organizations (e.g., NGOs, universities) ¤ for-profit organizations (e.g., corporate landowners)
Type D Governance by indigenous peoples and local communities	Indigenous peoples' conserved territories and areas—established and run by indigenous peoples Community conserved areas and territories—established and run by local communities

Source: IUCN Governance Types in Borrini-Feyerabend et al 2012:29

Research suggests that there are various benefits to having diverse forms of governance of PAs as that increases the potential for enhanced governance quality. Not only does this enable government to meet its obligations in terms of key human-rights instruments, but it is likely to contribute towards a wider network, to strengthen the resilience of the overall network, and it is cost-effective whilst also strengthening capacity as it incorporates a range of actors (Borrini-Feyerabend et al 2013).

2.2 ASSESSING EQUITY AND BENEFIT SHARING

Marine and coastal ecosystems provide a wide variety of ecosystems benefits for life on the planet. These benefits include direct benefits such as natural resources that can be used as food, shelter, fuel, medicines and clothing, as well as indirect benefits such as secondary products that can create employment and generate income, as well as other intangible benefits such as spiritual healing and well-being. Marine and coastal ecosystems also provide a large number of provisioning services, mitigating climate change and other environmental impacts. All of these goods and services are considered the benefits of biodiversity.

Marine science has long argued the benefits of MPAs and other spatial conservation and fisheries management measures in order to protect marine biodiversity. They have argued the benefits of MPAs in the form of 'spill-over effects' to users in adjacent communities and to other resource users as well as other benefits in terms of enhanced ecosystem functioning. However, many small-scale communities around the world have voiced their concern that these benefits are not enjoyed equally by all and that they carry an unfair burden of the losses and costs associated with MPAs.

The CBD commits to ensuring that communities enjoy the benefits of conservation and sustainable use of biodiversity. In this context, benefit sharing refers to "ensuring that mechanisms are in place to assess the economic and socio-cultural costs, benefits and impacts arising from the establishment and management of PAs, and to share those equitably, in particular with indigenous peoples and local communities. The benefits include those related to access to natural resources, including genetic resources, and those to compensate for costs incurred because of conservation regimes, as appropriate. Benefits may or may not take a monetary form" (Borrini-Feyerabend et al 2013:4).

The promotion of equity and benefit sharing in MPAs overlaps closely with the issue of governance. In South Africa, there is a strong legal imperative for equity and participation in benefit sharing entrenched not only in NEMPAA but also in the country's Constitution. Equity can be conceptualised to include both procedural and substantive equity; however, both of these aspects of equity are difficult to measure. Efforts to develop indicators for measuring equity are currently underway (IUCN-TILCEPA 2010, Schreckenberg et al 2010). Indicative tasks that will contribute towards equity are included in Table 2 presented in Section One.

2.3 MPA MANAGEMENT AUTHORITIES' POLICY AND PRACTICE ON GOVERNANCE, PARTICIPATION, EQUITY AND BENEFIT SHARING—THE VIEW FROM 'ON THE WATER'

2.3.1 Governance and participation

There has been no assessment of governance and participation from the perspective promoted by PoWPA Programme Element Two within the MPA sector in South Africa to date. The status quo of governance by government is accepted as the norm, and there has been little reflection within the MPA network about the type of MPA governance in terms of the IUCN framework and no attempts to diversify governance types in the MPA sector. The transfer of MPAs to NEMPAA, however, does indicate progress in ensuring that a coherent legal and policy framework for governance of PAs exists.

Since the 1940s, there has been a very strong, State-driven, top-down approach to the governance of marine living resources in South Africa with particular reference to what was called 'subsistence' fisheries, now known as small-scale fisheries. The governance of fisheries and subsequently all marine living resources has been the mandate of national government, with devolution at provincial level in only one province (KwaZulu-Natal). Notwithstanding this, historically, however, responsibility for management of MPAs has been devolved to national and provincial para-statal conservation authorities and registered public entities, such as SANParks, EKZN or CapeNature. In this regard, South Africa had a very singular legislative and policy approach to the governance of MPAs. The MLRA did not make provision for diverse governance types and all of South Africa's MPAs have been State-governed ('governance by government'), even though the authority to manage MPAs is devolved to statutory conservation agencies. Fisheries management, more broadly, has often included the large industrial fisheries interests in Scientific Working Groups where a degree of co-management was promoted; however, these working groups have not included small-scale fishing representatives in the past (Dopolo, pers. comm., 2014).

As discussed in Section One, after the end of apartheid in 1994, there was recognition that many communities who had been dispossessed of their coastal land had pre-existing rights to that land. In some instances, these were ownership rights and in others they were access and use rights. In the terrestrial PA sector, these pre-existing rights have been recognized through various mechanisms, including restitution, compensation and co-management agreements, thereby diversifying the nature of the governance model in South

Africa, shifting it along the continuum (Paterson 2011). Although still essentially 'governance by government', even in many situations of co-management, the foundation for shared governance has been established in principle, and there is legal provision for such governance in National Parks, special nature reserves and other PAs. In contrast, however, in the marine sector, this has not occurred and all reserves have remained Type A with no effective co-management of the marine component. More importantly, the prevailing paradigm only conceptualises 'governance by government'. This has happened despite the fact that many MPAs are adjacent to terrestrial reserves with land claims in which the community have signed a settlement agreement that confirms 'joint management' of the reserve (See Case Study 1) and the fact that the NEMPAA stipulates that where there is a terrestrial reserve and an MPA, the two should be managed under one authority.

Governance of MPAs is the mandate of the Ministry of Environmental Affairs, held within the Oceans and Coasts Branch, Integrated Coastal Management Chief Directorate. This department then delegates aspects of governance and management to conservation authorities in terms of NEMPAA and, in some instances, provincial environmental legislation provides for the establishment of provincial conservation boards to whom management of MPAs is delegated. The aspects of governance and the management of World Heritage Sites is delegated to World Heritage Authorities in terms of the World Heritage Act of 1999, who may, in turn, delegate certain management functions to other conservation management agencies.[12]

Beyond these authorities, there is a very confusing array of institutional arrangements and diverse set of mechanisms aimed at promoting participation of communities in governance. Some management authorities have statutory entities termed 'co-management committees' or 'Local Boards', which are bodies set up either in terms of a Land Claim Settlement Agreement (for example, iSimangaliso for some of the communities in St Lucia MPA, and ECPTA in Pondoland MPA) or for conservation management purposes (EKZN Wildlife). Some MPAs have Stakeholder Advisory Forums or Park Forums set up in accordance with the NEMPAA regulations (DEAT 2005) and the management plans for that PA (for example, SANParks Tsitsikamma MPA). These bodies have varying authority, roles and powers, depending on the specific

[12] Considerable confusion was reported by several officials on the issue of the relative authority and powers of iSimangaliso as the World Heritage Authority responsible for biodiversity conservation vis-a-vis the responsibility of EKZN Wildlife, the authority contracted to manage marine biodiversity and fisheries.

legal regime in which they were established, and there is very little consistency across MPAs in terms of how these latter bodies are viewed in terms of their powers as governance mechanisms, at different levels of governance. Some MPAs that are part of National Parks do not have a Stakeholder Advisory Forum currently or any other stakeholder representative body (for example, Table Mountain, Hluleka, and Amathole MPAs). Some management authorities have developed clear terms of reference for the Stakeholder Advisory Forum in accordance with the regulations, for example, West Coastal National Park (WCNP) (Nel, WCNP, pers. comm., 2007). These terms of reference indicate that this is an advisory body only.

Shifting perspectives on the role of local communities in the governance processes of MPAs

A very practical example of a step taken towards shifting attitudes towards the role of local communities in the governance of marine areas is evident in the Knysna Protected Environment, a marine and coastal lake and forest area located within the broader Garden Route National Park and protected as a protected environment under the NEMPAA. Part of the management of this area requires the establishment of a Park Forum which serves as an advisory forum. This forum includes representation from the local authorities, ward councillors, NGOs, interest groups, resource users and the Park management. Local interest groups include, amongst others, representatives of the traditional healers, Rastafarian community and traditional surgeons, etc. Forum representation includes divergent class, race, religious and spiritual experience of members. Aware of the diverse representation of the Park Forum members and their respective roles as part of the forum as well as their needs, the park management team invited all representatives to provide the forum with a presentation in order to understand their role and participation. At these quarterly forum meetings, representatives continue to present their roles and interests in the Park.

An example of a presentation which made a significant impact was when the traditional healers and the Rastafarian communities shared their cosmology, local knowledge of, and approach to, conservation and sustainable use of the forest with the other stakeholders who had limited knowledge of the range of values or the knowledge that the traditional healers and other user groups held towards the forest. This activity enabled the other stakeholders to appreciate the importance of ensuring that the traditional healers and others gain sustainable, albeit carefully

controlled, access to the forest, and that they work closely with the management authority, enabling transfer of local ecological knowledge, thereby necessitating a shift in a key governance-related decision about the overall approach to the PA and highlighting the influence of values, knowledge and communication in governance processes (*Case example kindly provided by Andre Riley, SANParks, 2014).*

In addition to these governance entities described above which have a basis in statutory regulations, some management authorities have established fisheries-specific co-management committees at the local level as part of their fisheries management implementation (for example, EKZN Wildlife Small-Scale Fisheries Unit [SSFU] Co-Management Committees or the Pondoland Co-Management Fisheries Sub-Committee). In other MPAs, some communities are part of ongoing ad hoc consultations but this has not been formalized (for example, local fishing communities are part of the CapeNature-WWF planning processes for the Kogelberg Biosphere within which Betty's Bay MPA is located and ECPTA has established loosely organized Community Marine Resource User (CMRU) groups at Dwesa-Cwebe MPA) (ECPTA 2013).

The advantage of the establishment of these fisheries or marine resource use specific bodies, in addition to a Park or Stakeholder Advisory Forum, is that they provide a focused forum in which traditional and local knowledge and observations about marine resources can be shared whereas within the broader co-management and stakeholder advisory entities established by PAs that include terrestrial components and a more diverse group of rights holders and stakeholders, the specific needs and interests of small-scale fishing communities are often lost. This is most visible, for example, in Langebaan MPA within the WCNP, where the local traditional small-scale net fishing community participates in the Stakeholder Advisory Forum with recreational fishers, kite surfers, yacht club representatives and the representatives of the ratepayers association and the associations of powerful land owners.

Perceptions of the roles, powers and functions of these committees vary considerably from MPA to MPA. For example, EKZN Wildlife views the SSFU co-management committees as having some decision-making powers at the local, community level. Similarly, iSimangaliso, the World Heritage Authority (WHA) within which these communities are living, views them as having a say in governance via their representative on the board of iSimangaliso. However, in the context of the overall governance of MPAs and small-scale fisheries, the power and authority of these communities are tightly circumscribed and, until

the Small-scale Fisheries Policy is implemented, they will continue to have no line of influence on how policy on small-scale fisheries within the overall policy on the MPA within which they live is developed or implemented. Hence, they cannot be considered to participate in governance "fully and effectively". Rather, they participate in an instrumental way in a very limited range of management decisions, rather than governance at a more strategic level.

A range of co-management arrangements has been authorized in the land claims settlement agreements signed since 1994 (Paterson 2011). A full discussion of these arrangements is beyond the scope of this research but suffice it to note that the type of Land Claim Settlement Agreement negotiated with communities adds a layer of complexity to the governance arrangements of MPAs where there are land claims (and this applies to five of the MPAs and approximately one-third of all small-scale fishing communities). In some cases, the term 'co-management' refers to a community that has received financial compensation in return for their land remaining under conservation status, where they have limited access to marine resources restricted to subsistence use only, to communities who were promised 'joint-management' but have no access to marine resources along the coast adjacent to their land. In the latter case of Dwesa-Cwebe MPA, for example, the Settlement Agreement recognizes the community as the owners of the land comprising the terrestrial reserve and specifies that the reserve should be jointly managed, with the management of the terrestrial component of the reserve reverting back to the community after 21 years. As the NEMPAA requires that a single authority should manage coterminous MPAs and terrestrial reserves, this raises the question as to whether or not the community will be able to take over management of Dwesa-Cwebe MPA as well in 2022. In the interim, they are supposed to have 'joint management', referred to in the settlement agreement as 'co-management' powers; however, this has not materialised (see Case Study 2 in Section 3).

Assessment of governance is made very challenging by the very different interpretations of 'governance', 'participation', "co-management', consultation, and 'advisory function' by officials and the vast array of mechanisms used by management authorities to promote participation in governance, irrespective of the quality and nature of that participation. In general, management authorities have not taken indicative steps towards diversifying governance types, assessing the nature of governance rights held by local small-scale fishing communities or recognizing customary governance systems where they exist (Sunde 2013).

In several MPAs, in the development of management plans or in the planning for proposed expansion or re-zonation, small-scale fishing communities have either not participated in the planning or have only been invited to comment during the public participation phase. As noted on page 50, this situation appears to arise due to the fact that the NEMPAA only requires a public participation process to be triggered once the planned extension or change in zonation has been officially submitted to the Minister. However, in practice, several officials within conservation authorities have noted the need to include communities at an earlier stage in the planning process; however, this appears to be left to the discretion of the management or planning authority. One of the obstacles to this appears to be the fact that some marine ecologists and management officials do not perceive the value of the inclusion of indigenous and local knowledge in spatial planning processes and have a negative perception of small-scale fishers' knowledge as unreliable and prone to 'lying' in order to get access to their favourite fishing spots (anonymous official, Dwesa-Cwebe MPA, pers. comm., 2012). However, despite this pejorative attitude, several MPA planning and re-zonation processes have recently promoted best practice in terms of trying to include information from small-scale fishers in planning processes, albeit prior to an official public participation process. SANParks Addo and Bird Island MPA management contracted an expert to conduct an assessment of the value of the fisheries in the area under consideration for a proposed expansion of the Addo National Park marine component and to make recommendations with regard to the potential impact of different scenarios on different fisheries, which include the line-fishery (Turpie et al 2012). CapeNature, in anticipation of its proposed re-zonation of three MPAs in the Cape, contracted consultants to undertake an assessment of the fisheries in these MPAs and surrounding areas and this assessment included information pertaining to small-scale fisheries (Anchor 2011).

Building trust and enhancing shared governance through participation, capacity-building, creative zonation and co-management mechanisms

Pondoland Protected Area in which the MPA and PA are jointly managed has moved towards the implementation of a 'shared governance' approach on the ground. There is a Land Trust with whom the authorities have signed a Land Claim Settlement Agreement and hence this serves as a shared governance mechanism that has some decision-making powers at the reserve and MPA level. The ECPTA management authority aims to build the capacity of the local community in order to ensure that this 'co-management' starts to work towards real shared governance

(Kostauli, pers. comm., 2014). Towards this end, ECPTA and the Land Trust have developed a draft co-management agreement and have begun implementing co-management through regular co-management meetings. This co-management agreement will be finalied this year. The community, including the Traditional Authority, was involved in developing the vision, objectives and management plan for the area (ECPTA 2012). Further, the no-take status of the former MPA was changed through re-zonation, and a creative mix of zones was introduced to ensure both full protection of habitat and species in some sections, with opportunity for various consumptive and non-consumptive uses in others. The management agency has observed a significant increase in the level of trust between the community and the management agency since introducing the new zonation and the co-management processes (Kostauli, pers. comm., 2014). Whilst in the overall context of the national mandate of NEMPAA and the MLRA, governance still leans in favour of government as the primary authority with the overall power to determine the approach towards the planning and to prescribe the scope of the access and use regulations, great strides have been made at the local level in shifting towards real shared governance. *(Case example kindly provided by Mzwabantu Kostauli, ECPTA 2014).*

The CBD Decision IX/18 calls on Parties to "establish multi-sectoral advisory committees… in support of the implementation of the Programme of Work on Protected Areas" and indicates that the committees should include representatives from "government authorities and departments, indigenous and local communities, NGOs, the private sector, experts, academia and research institutions" (Borrini-Feyerabend et al 2013:297). The DEA has established such a multi-sectoral committee in the form of the PA Steering Committee. In February 2014, the Oceans and Coasts Branch committed to establishing an Advisory Committee on MPAs and has extended an invitation to a range of stakeholders, including conservation management agencies, community representatives, research institutions and NGOs (Mkefe, pers. comm., 2014). The precise roles and powers of this committee have yet to be established.

In addition to promoting participation in decisionmaking, planning and strategic reviews, a wide range of opportunities exists for promoting participation in activities that contribute towards effective and equitable governance. These include, amongst others, participation in mapping the cultural heritage, values, goods and services derived from the MPA. In particular, the need to include small-scale fishing communities in mapping the cultural heritage

of their territories is critical. A range of methodologies has been used for including indigenous peoples and local communities in such mapping, and several conservation agencies have taken steps to document the cultural histories of fishing communities in the PA and to include this in their assessment of the key attributes requiring protection.

Promoting participation in cultural heritage assessment processes

In the Langebaan MPA within the West Coast National Park, the MPA has actively included persons from a local fishing family in documenting the cultural histories of the fishing communities in the Park.

(Case example and map provided with kind permission by Pierre Nel, WCNP 2013)

2.3.2 EQUITY AND BENEFIT SHARING

Whilst all organizations have committed to promoting participation, equity and benefit sharing, the measures adopted to facilitate this and the quality and extent vary considerably from MPA to MPA as well as across institutions. Authorities have a range of MPA-specific projects and actions to secure benefit sharing.

The first level of benefit sharing includes direct access to natural resources within the MPA and the sharing of the benefits of sustainable use. Whilst the NEMPAA makes provision for sustainable use and the Minister may permit

such use, as did the MLRA, the dominant paradigm within the marine science community is that MPAs should be no-take areas and this approach has prevailed in many MPAs. There has thus been considerable reluctance to consider providing for sustainable use in several of the older MPAs; however, MPAs re-zoned or planned since the introduction of the NEMPAA have tended to include a range of zonation that enables some degree of sustainable use, depending on the specific habitat and species protection required and the socioeconomic context of the area (Boyd, pers. comm., 2010). Proponents of MPAs have argued strongly the benefits of MPAs to neighbouring and adjacent areas and hence the next level of beneficiation from the perspective of small-scale fishing communities is determined by the extent to which they can benefit from the spill-over, enhanced recruitment and other effects of an MPA. This benefit sharing, however, depends directly on the extent to which small-scale fishing communities are permitted to fish in adjacent areas, or in any area along the coastline where the spill-over and recruitment benefits of an MPA might be felt. For example, the valuation done of the Garden Route MPA (Turpie et al 2007) focused on the benefits for the recreational and commercial line-fish sectors but failed to consider the position of artisanal, small-scale fishers who, at the time, had no legal access to marine resources (Sunde and Isaacs 2008). Similarly, whilst Fielding (2010) argued strongly that the Dwesa-Cwebe MPA should not be re-zoned as the benefits that adjacent small-scale communities could get from the existence of the no-take MPA in terms of spill-over effects outweighed the value of benefits to be gained from opening the MPA, his study failed to take cognisance of the fact that these communities are restricted by two major estuaries on either side of the MPA and hence do not have the mobility that would enable them to benefit fully. In addition, the permit regulations pertaining to small-scale fisheries in these open areas were not developed with their participation and did not reflect their customary practices (Sunde 2014a).

The next level of beneficiation comes from a range of measures designed to secure benefits from other goods and services provided by the MPA. This might include the use of other natural resources that are not threatened, or the use of the MPA and marine resources for non-consumptive purposes such as ecotourism. The promotion of ecotourism benefits is a common objective for several of the MPAs and for the iSimangaliso WHA.

The most commonly used mechanism for securing secondary benefits across all MPAs is the Expanded Public Works Programme (EPWP) which has enabled the establishment of hundreds of jobs in all of the MPAs through several programmes including Working for the Coast, Working for Fire, Working for Wildlife and Working for Water. In some instances, management authorities

have been innovative in using this programme to create community-based data monitoring and fisheries monitors, drawn from the local fishing communities. Regrettably, the statistics on the EPWP programmes are not disaggregated in terms of communities of interest and hence it is difficult to assess to what extent small-scale fishers in local communities have benefited from these programmes. In general, these programmes do not target small-scale fishers but rather target people considered 'indigent'. Anecdotal evidence suggests small-scale fishers have not benefited extensively from these projects as an interest group; however, these projects have had an important impact on communities living in, and adjacent to, MPAs in general.

A study conducted by Mbatha with a community living adjacent to the iSimangaliso World Heritage Site suggests that, in many instances, there is a danger of elite capture of benefits, and small-scale communities may not enjoy some of the benefits that the management authorities think they and their conservation partners are providing (Mbatha and Wynberg 2014). Further, this community is not enjoying equitable benefits from the tourism spin-offs of the MPA and the World Heritage site and there is deep-seated resentment towards the authorities (Hauck, Mbatha and Raemaekers 2014:52).

In some instances, where conservation authorities use traditional authorities as the conduit to distribute benefits, these benefits do not reach the more marginalized groupings within these communities.

2.4 ASSESSMENT OF GOVERNANCE, PARTICIPATION, EQUITY AND BENEFIT SHARING AT MANAGEMENT AUTHORITY LEVEL

2.4.1 SANPARKS

SANParks has adopted a definitive approach and policy towards governance, which is very visible in its Co-ordinated Policy Framework (2006). The organisation states its commitment "to adhere to the internationally accepted five principles of good governance identified at the 5th World Park Congress, namely:

1) legitimacy and voice;
2) performance responsiveness of institutions and processes to stakeholders, effectiveness and efficiency;
3) accountability to the public and to institutional stakeholders;
4) transparency.; and
5) fairness, including equity and the rule of law" (Graham et al 2003 in SANParks 2006:5).

Co-operative governance is seen as a central guiding principle, and collaborative methodologies are thus seen as fundamental. The organization has a Stakeholder Relationship Policy (SANParks 2006:27-28). This policy recognizes the contribution of stakeholders to "certain decision-making processes". Further, it recognizes that stakeholder participation is an ongoing process that improves communication and interaction between different stakeholders. It also commits towards building capacity for effective stakeholder participation. Gender is not a specific focus of the policy but the policy does commit to giving particular attention to ensuring participation by marginalized communities, communities with specific concerns, or communities that have contractual rights in the National Park" (SANParks 2006:28).

Park Management Review (PMR) process and Park Forum (PF) Meetings are the primary mechanisms for facilitating participation of stakeholders in Park or MPA management and programmes. The PMR takes place every three to five years, while the PF Meeting takes place at more regular intervals (quarterly) (Dopolo, pers. comm., 2014).

Very clear procedures have been developed to guide stakeholder participation in the development of management plans in line with the regulations (DEAT 2005). All MPAs, as part of National Parks, are obliged to fulfil these requirements and report on them as part of the management planning process. In most of the SANParks MPAs, the Stakeholder Forums are working well. The manager of the Knysna Lakes area indicated that whilst involvement of stakeholders in the planning process was mandatory, he found that it worked well to regard the forum members as management partners and to involve them beyond the development of the plans. Feedback on the management plan is presented to the Stakeholder Forum when it meets quarterly and, in this way, a measure of accountability is built into the process (Riley, pers. comm., 2014).

Promoting the integration of traditional and local knowledges with scientific knowledge systems

SANParks Vision is "Connecting to Society" and the organization aims to promote this vision through a range of mechanisms and programmes, including its approach to research. The research done by the SANParks Cape Reserch Centre in Langebaan Lagoon MPA on gillnet fisheries from 2011 to 2013 aimed to ensure that the SANParks scientist worked hand in hand with the gillnet fishers in a participatory fashion, going out on the boats with the fishers, gaining insight into the socio-ecological perspectives of the fishers and their relationship with the lagoon. This

research included a community-sourced monitor to collect data from the fishers. Information was shared and exchanged between the scientist and the local indigenous fishers regarding the fishery dynamics. The outcomes of this research will be published in peer-reviewed literature, and will subsequently be incorporated into the review of the management of the system. *(Case information kindly provided by Wendy Annecke and Mbulelo Dopolo, Cape Research Centre, SANParks 2014)*

Despite the above-mentioned policy commitments, in practice, several challenges are experienced in relation to fulfilling the stakeholder participation requirements in MPAs. As noted earlier, whilst the intention is to establish Stakeholder Advisory Forums, not all SANParks-managed MPAs have Stakeholder Advisory Forums. In the Table Mountain MPA, the very diverse stakeholder constituency in the adjacent communities of Cape Town presents challenges for the establishment of such a forum and, as a result, there is currently no forum operating. Where there is a Stakeholder Forum the challenge of managing diverse interests in one forum can be overwhelming, and the needs and interests of small-scale fishers might get lost. An additional challenge is that the finalization of the management plan and the submission of this plan to the Minister require the costing and acceptance of key performance indicators. These are then confirmed. Whilst involving stakeholders in the ongoing processes of management provides an important accountability check, it is not easy to alter the management plan once it is accepted, and stakeholders need to understand these limitations to their inputs in between planning processes.

SANParks has a well-established policy on equity and benefit sharing, including a Resource Use Policy (2010). This policy recognizes that "the conservation of biological diversity is …intricately connected with its sustainable use and the fair and equitable sharing of benefits arising from it" (SANParks 2010:3). The policy draws guidance from the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity (UNEP/CBD/COP/7/DEC/VII/12).

It realizes that the socioeconomic circumstances of local communities surrounding national parks cannot be addressed solely through access to biological resources, and, therefore, should not be considered in isolation from broader, cross-sectoral socioeconomic developments (SANParks 2010:6). In some instances, the current fragmented institutional arrangement, with separate and contrasting objectives, makes it difficult to fully incorporate the small-scale fishing communities (Annecke, pers. comm., 2014).

The Knysna Lakes Protected Area has taken a pro-active stance in order to understand the socioeconomic drivers behind the increase in small-scale fishers over the past few years. A catch and effort monitoring programme using roving creel surveys has evolved into a more substantial research project that aims to include data about the shore-based line fishers, to understand the socioeconomic context of these fishers and some of the possible drivers of angler behaviour (in particular, relating to site selection and non-compliance). Ultimately, we hope this information would help us in understanding how best to engage with the implementation of the Policy on Small-scale Fisheries (Smith, pers. comm., 2014).

SANParks has an extremely well-developed EPWP programme. The organization has committed to drawing staff for these jobs from the surrounding communities living adjacent to the MPAs. In addition, they are committed to up-skilling workers from within this pool of workers (Riley, pers. comm., 2014).

There are many benefits beyond direct employment. The organization has been pro-active in developing alternative livelihood projects and projects, and ensuring that communities perceive benefits from the PAs. For example, in the Garden Route National Park, the organization has developed a project making furniture from alien vegetation cleared from the park and a coffin-making small business. In addition, SANParks is in the process of drafting a Community Public Partnership Policy (2014). This policy is in draft from but through community-public partnership (CPP), the organization intends to promote "clearly defined, economically empowering, community-based projects involving SANParks making resources available to a community adjacent to a national park for undertaking economic empowerment activities in terms of an executed CPP agreement between SANParks and a legal entity formed by the community, such as a Community Trust" (SANParks 2014).

To date, the organization has facilitated a number of opportunities linked to the provision of accommodation in National Parks that benefit local coastal communities such as the Duinepos Accommodation adjacent to the Langebaan MPA.

2.4.2 Ezemvelo KZN Wildlife

Ezemvelo KZN Wildlife has a 'Community Conservation Policy' that sets out the organization's clear commitment to working with communities and to develop processes for stakeholder engagement (EKZN Wildlife 2014). The policy notes that "communities have unique perspectives and knowledge which need

to be incorporated into decisionmaking by KZN Wildlife" and "approaches to community conservation should be conducted within consultative partnerships which are inclusive, transparent and accountable." The primary mechanism towards achieving this is through the establishment and maintenance of "participatory structures with staff, neighbours and user groups (for example, Local Boards, Liaison Forums and special interest group committees), and to participate in other community structures when requested and where this relates to biodiversity conservation" (www.ekznwidlife.com).

Four Local Boards have been established thus far. The aim of the Local Boards is

> "to promote local decisionmaking regarding the management of nature conservation and heritage resources within PAs as well as to promote the integration of the activities of the PA into that of the surrounding area".

The KwaZulu-Natal Nature Conservation Board sets the powers and functions of the Local Boards. The Boards are able to influence decisionmaking through their powers to compile and monitor the implementation of management plans for PAs.

Promoting co-management with local, small-scale fishing communities

For the past 20 years the EKZN Small-scale Fisheries Unit (previously the Subsistence Fisheries Unit) has been promoting co-management with small-scale fishing communities along the KwaZulu Natal coastline (Harris et al 2003). The authority now has lengthy experience in the establishment of these committees, and has built up extensive capacity and knowledge in this regard. The benefits of these committees and this institutional history and capacity are significant.

The organization has developed and refined its methodology for these committees over time and is continually adapting it within the dynamic environment of small-scale fisheries management. Fishing and harvesting communities are invited to nominate representatives to sit on a co-management committee. The composition, roles and function of these committees are discussed with the community at workshops. The committee plays an important role in working with the management authority to determine the overall effort and restrictions that are appropriate for each fishing area. In addition, they co-ordinate and oversee the community data gathering process. This includes stock assessment

data which is used to inform quota allocations for the next harvesting season. The 22 co-management committees currently functioning thus provide an important measure of participation in certain aspects of decisionmaking at the local community level for small-scale fishing communities. They also provide a very valuable mechanism for integrating traditional and local knowledge. In addition, they provide concrete, tangible benefits in the form of a limited number of jobs through the community data monitoring projects.

Specific steps have been taken to promote the participation of women, for example, through establishing separate committees for the predominantly women harvesters. Active measures are taken on an annual basis to build capacity for participation in co-management through training workshops that include both information about the marine ecosystems as well as social skills such as conflict resolution and listening skills. In addition, opportunities for attendance at specific training events and exchange opportunities are provided on a regular basis (Rhodes, pers. comm., 2014). An evaluation of these co-management committees indicates that these committees have contributed towards the empowerment of the local communities (Phadima, pers. comm., 2014). Community members report that they have gained "skills and confidence that enabled them to play an important role in making decisions about resources" (Hauck, Mbatha and Raemaekers 2014: 59).

A key enabling factor in the establishment of these co-management committees is the existence of dedicated, skilled extension staff who are able to establish relationships with the communities over time, thereby building trust with these communities (Rhodes, pers. comm., 2014). This requires adequate and consistent budgetary support over time. The approach to working towards co-management requires institutional commitment over time.

(Information kindly provided by Gillian Rhodes and Joe Phadima, EKZN Wildlife, 2014).

Whilst the co-management committees established by EKZN are an example of best practice in terms of creating a structure and mechanism specifically for local small-scale fishing communities living in, or adjacent to, MPAs, and are unique along the South African coast, they face a number of challenges. The fact that several of the communities have submitted land claims that have yet to

be settled is a huge obstacle to promoting equitable governance as some of the communities concerned are reluctant to engage fully in the small-scale fisheries unit processes until their land claims have been settled (Rhodes, pers. comm., 2014). A further obstacle is the overlapping and unclear scope of iSimangaliso and EKZN's authority when it comes to the implementation of the Small-scale Fisheries Policy and working in an integrated and holistic manner with fishing communities living inside iSimangaliso (Phadima, Rhodes, pers. comm., 2014). In addition, the lack of co-operative governance amongst stakeholders at a regional level appears to hamper governance. It has also been noted that these co-management committees have limited scope and terms of reference and, in a recent study, representatives of the Sokhulu community expressed "a desire for more equitable sharing of power, as power is still perceived to lie ultimately with Ezemvelo and the national fisheries authority" (Hauck, Mbatha and Raemaekers 2014:59).

The EKZN is committed to promoting conservation that ensures that "communities should derive value from the conservation of biodiversity and from PAs" (EKZN 2014).

One of the primary mechanisms for ensuring equity and benefit sharing is the Community Trust. This fund was established in 1998 to ensure that communities living adjacent to PAs benefit directly from tourism activities. Benefits derived from tourism through visitors payment of a community entry levy are deposited in this fund. The Local Boards are responsible for managing the disbursement of funds from the Community Trust and making decisions regarding the use of the funds. Various projects have been funded to date. These are social development projects which benefit all members of the communities involved. There are no specific equity and benefit-sharing projects that have targeted fishing communities as a distinct interest group.

There is no specific gender policy component but at the local level, measures are adopted to ensure women's participation in the co-management committees (Rhodes, pers. comm., 2014).

2.4.3 Eastern Cape Parks and Tourism Agency (ECPTA)

ECPTA has a dedicated People in Parks policy (ECPTA 2009). The People in Parks policy defines a 'co-management arrangement' as "a natural resource management structure wherein management responsibility is shared amongst stakeholders over an agreed period" (ECPTA 2009:2). The People in Parks policy seeks to advance the ECPTA strategic objectives of "creating an enabling environment for community and stakeholder participation; developing co-management and access and benefit-sharing models" (ECPTA 2009:2). Towards this end, it is committed to

- facilitating the establishment and maintenance of effective liaison mechanisms with stakeholders, including, inter alia, ensuring that the required institutional development and capacity building happens within ECP as well as amongst its stakeholders;
- ensuring participatory management planning; and
- developing and implementing effective mechanisms for the resolution and settlement of land ownership issues on ECP protected areas, including co-management agreements and committees.

The organization recognizes that "conservation targets can be met under varying partnership arrangements" and "acknowledges the need to engage resources users and other stakeholders, to share the responsibility and authority for managing resources".

The section on the principles that underpin the ECP People in Parks programme does not mention participation but does refer to "developing partnerships".

ECPTA aims to promote the equitable sharing of benefits by local communities. One of the key mechanisms to achieve this is the development of job opportunities within PAs through the Expanded Public Works Programme (EPWP). Gender relations are not mentioned specifically in the policy but the policy does commit ECPTA to "empowering previously disadvantaged individuals, including women, youth and the physically disabled through various projects" (ECPTA 2009). The organization has engaged the services of Vumelane[13] to facilitate public-private partnerships in its MPAs that are intended to secure long-term benefication for local land claim communities. An agreement has been signed for Pondoland and an agreement is being explored for Dwesa-Cwebe (Mkhulisi, pers. comm., 2013).

[13] Vumelane is a non-profit organisation that helps communities in the land reform programme to develop their land.

Developing integrated guidelines for land claims equity and benefit sharing through co-management in PAs where there is a land claim (ECPTA 2012)

The ECPTA has 14 Reserves that are implicated in land claims, three of which comprise MPAs. Dwesa-Cwebe MPA and Mkambati (Pondoland MPA) have been settled whilst the Hluleka land claim is outstanding. ECPTA recognizes that "if planned for effectively, the land claims process can deliver positive impacts to conservation and development goals" and that "this is an opportunity to build relations with communities" (ECPTA 2011). Towards this end, the conservation authority has contracted expertise to help ECPTA develop the necessary understanding and guidelines to address this complex problem. The organization has recognized that "there is a need to look at the specific case-by-case scenarios from social, biodiversity conservation and economic angles within the restrictions of the legal framework to be able to arrive at a mutually beneficial situation.

The ECPTA, therefore, seeks to:

- develop a model, methods and guidelines that will assist in striking a balance between the objective of biodiversity conservation and local economic development in cases of land restitution; and
- incorporate social, economic, biodiversity conservation and legal elements into an effective approach (ECPTA 2011).

2.4.4 CapeNature

CapeNature is committed to promoting people's participation in marine biodiversity conservation and to developing a range of innovative governance partnerships in this regard. In addition, CapeNature states that it strives "to ensure that benefits and opportunities accruing from the conservation of biodiversity are equitably shared and that our resources and services are accessible to all; ensuring redress for historically disadvantaged individuals with specific emphasis on women, youth and the disabled; and enabling cultural, traditional and spiritual uses of natural resources on a sustainable basis" (CapeNature 2013).

Although the organization has only recently acquired dedicated marine biodiversity management capacity, it is steadily developing this division, working to increase its research and human capacity through building strong partnerships with research and training institutions and NGOs. It is committed to promoting active participation as part of its management effectiveness. Towards this end, it has conducted METT assessments in all of its MPAs in the past year.

The organization has a Community Liaison Services Unit that manages all community liaison and participation. Whilst the advantage of this separate unit is that it has dedicated staff with social facilitation skills and capacity, it means that it is not always smoothly integrated into the management of the MPA. As a result, there are currently no Stakeholder Advisory Forums in Robberg, Goukamma or De Hoop MPAs. The Stilbaai Forum is functioning well and the De Hoop Forum is being re-established. The Betty's Bay fishers are part of the Kogelberg Working Group.

Developing innovative measures to promote coherence, connectivity and collaboration across land and seascapes

CapeNature is committed to enhancing the effectiveness of the MPA network through increasing connectivity across area-based protection measures as well as promoting an integrated approach to spatial planning. Further, it aims to ensure that there is policy coherence on a local, provincial and national level across PAs and within each area. Towards this end, it is working with a range of partners to develop innovative approaches to marine biodiversity protection.

One example of this is CapeNature's approach to the Betty's Bay MPA, which lies along the southwestern coast of South Africa. It forms part of the core zone of the United Nations Educational, Scientific and Cultural Organisation (UNESCO)—designated Kogelberg Biosphere Reserve. The surrounding area is intensively utilized for recreational rock and surf fishing, rock lobster fishing, boat fishing and bait collecting. The area is also a very popular holiday destination and experiences increased fishing pressure during long weekends, school holidays and public holidays. Together with its government, NGO and research conservation partners, such as WWF Marine Programme, CapeNature is seeking to implement the proposed Kogelberg Integrated Coastal and Marine Management Plan. Towards this end, the organization commissioned a study to explore "The Ecology, Value and Management of the Kogelberg Coast" (Turpie et al. 2011) and, through its partners, has worked closely with the local small-scale fishing community to ensure their involvement in the planning process. CapeNature has now submitted proposals to the DEA to re-zone the area as a complete no-take MPA as part of an integrated plan to re-build stocks in the area as well as ensure connectivity and coherence with the larger Kogelberg. A key strategy in this regard is to seek opportunities to ensure that the small-scale fishing community of area benefits from the change in zonation. One of the

core mechanisms being considered is the establishment of a Fisheries Improvement Project (FIP). CapeNature is working closely with WWF Marine Programme that is implementing the FIP to ensure that opportunities for the local small-scale fishing communities to add value to their fish catches in the surrounding waters are maximized, thereby reducing the pressure on the MPA. This is a pilot project that seeks to explore innovative, participatory, community-based solutions to MPA management challenges.

(*Information kindly provided by Pierre de Villiers, CapeNature 2014).*

2.4.5 iSIMANGALISO WETLANDS AUTHORITY

iSimangaliso Integrated Management Plan commits the authority to "maintain relationships and implement effective consultation processes with communities living in and around the Park and land claimants" and "establish and maintain appropriate consultative forums for involving communities living in and around the Park and land claimants" (iSimangaliso 2011:95). In iSimangaliso "the vehicles for participation are co-management and equity partnerships, where appropriate, as well as numerous activities and programmes that aim at poverty alleviation and providing benefits from the Park" (iSimangaliso 2011:99). To date eight co-management agreements have been signed with communities living in the area (Zaloumis 2012).

> *After a claim is settled, the iSimangaliso Wetland Park Authority and the land claimants enter into a co-management agreement which provides a framework for their relationship. For each settled claim a benefit package is developed which includes economic, training and job opportunities, equity partnerships in tourism facilities, rights of access, use of natural resources and the establishment of an education trust to educate land claimant youth. The benefits accruing to new land owners through co-management agreements include those associated with the natural resource base as well as those which flow from tourism, infrastructure and local economic development. The delivery and implementation of the benefit package is co-managed by the Land Claims Trusts and iSimangaliso. The State retains custodianship of the Park and manages it in terms of the World Heritage Convention Act and Protected Area Management Act. Co-Management Committees are established to oversee the planning and implementation of the beneficiation package. Furthermore, land claimants are represented on the iSimangaliso Wetland Park Authority Board* (iSimangaliso 2011:148-149).

Despite this intention and commitment, it is noted, however, that the Board of the iSimangaliso Authority is only required to consist of nine to 13 members and must include representatives of the iSimangaliso Authority, DEAT, local government, a representative traditional authority, EKZN Wildlife and land claimants. The *de facto* representation of local fishing communities via their representatives (either the traditional authority or the land claimants) is very limited, considering that there are 14 fishing communities living inside the Park, with very different histories of marine resource use.

The language used to refer to the participation of communities in governance and management varies and the precise mechanisms to secure participation in the actual decision-making processes are not clear. At times, this refers to co-management and at times it refers to consultation only. The organization also adopts the approach that

> *co-management arrangements should enable parks to be managed effectively and efficiently by the State and remain unencumbered by several joint management committees and unwieldy co-management arrangements* (iSimangaliso 2011:58).

It states that 'unrealistic expectations' with regard to co-management have developed (iSimangaliso 2011:62) but it is not clear in what way these might be unrealistic in the context in which the claimants reside in, or adjacent to, the Park, even if their land ownership has yet to be confirmed through a land claim settlement. Regrettably, because some of the communities have yet to sign Settlement Agreements in terms of their land claims, they do not yet have any co-management structures. Although the land claimants, via their traditional authorities, are represented on the iSimangaliso Board, the fishing communities are not represented in any co-management forum that addresses the issues pertaining specifically to these communities within the WHA. These communities have informed the EKZN management authority responsible for managing fisheries and marine biodiversity within iSimangaliso that they do not wish to be part of a small-scale fisheries co-management structure until their land claim is settled (Sunde 2013). There are many frustrations voiced by both community leaders and other stakeholders that iSimangaliso does not participate in governance structures related to fisheries management. In a recent presentation to Parliament, it was stated by a small-scale fisher representative that "they would like for iSimangaliso Wetland Park to be part of the stakeholder group for co-management of fisheries resources as they are often a stumbling block" (PMG 2013 http://www.pmg.org.za).

There is no policy to address gender discrimination nor is there a policy to promote women's participation in governance and management.

Public participation is also achieved through the implementation of its policy on equitable access which is maintained through the Park's pricing strategy on entry fees, the provision of appropriate accommodation types, and recreational facilities and activities such as picnic sites. It also implements special programmes for specific groups, including schools and adjacent communities (iSimangaliso 2011: 99). In addition, the organization aims to deliver benefits to communities living in, and adjacent to, the Park by "facilitating optimal tourism and related development, and to promote equitable access" (iSimangaliso 2011:75). The implementation of local economic development programmes, such as the craft and cultural performance programmes, do target women and youth.

iSimangaliso's mandate includes the protection and conservation of the rich cultural heritage of the Park. This includes the Kosi bay fish traps and the customary and cultural heritage associated with this customary system of tenure and indigenous technology and associated intellectual property. The organization itself has noted that "to date, there has been no co-ordinated and cohesive management of the Park's cultural heritage" (iSimangaliso 2011: 84). This was confirmed in a World Bank assessment report in 2009 which noted that "the extent of participation and obligations of communities in the process of cultural heritage assessment and conservation remains to be clarified" (World Bank Report 2009).

2.5 TRAINING AND CAPACITY DEVELOPMENT ON MPA GOVERNANCE, PARTICIPATION, EQUITY AND BENEFIT SHARING

A partnership between West Indian Ocean Marine Science Association (WIOMSA), Rhodes University in the Eastern Cape, this University and WWF Marine Programme together ensures that South Africa has been able to offer comprehensive, accredited MPA Training Courses since 2006, when the first introductory course was offered. Two different pathways operate in this regard:

1) Training for sustainable management of MPAs through the WIO. COMPAS training offered by the WIOMSA (www.wiomsa.net/wiocompas) (2014)
2) Management Training for MPAs in South Africa.

Three levels of competencies are offered, designed to meet the training needs of each participant who can select his or her needs. In total, 62 participants drawn from MPAs have been trained. In addition, a number of ad hoc training events have been held (information provided by Lawrence Sisitka, MPA Forum 2014).

Key socioeconomic content is provided in the training programmes and stakeholder engagement is a key component. Although the materials do cover

international legislation and policy, the content of CBD Programme Element Two and the SSF Guidelines do not appear to have been included to date in this training.

All of the above-mentioned conservation authorities have clear, well-articulated policy commitments towards promoting participation, equity and benefit sharing. These policies and the specific mechanisms used will be discussed in Section 3 below in the light of their contribution towards implementing the CBD PoWPA and in compliance with legislation and policy applicable to small-scale fisheries in South Africa. What is noted, however, is that despite these commitments, in many instances the *de facto* situation on the ground differs considerably from the perspective of small-scale fishing communities. In the next section three case studies highlighting various challenges facing small-scale fishing communities in relation to MPAs are presented in order to illustrate some of the ways in which these communities' needs and human rights are slipping through the MPA governance and management net.

SECTION 3

TRAPPED: SMALL-SCALE FISHING COMMUNITIES AND MPAs IN SOUTH AFRICA - CASE STUDIES FROM THE COAST

As noted in Section 1, the history of MPAs and small-scale fishing communities is closely tied to the history of the racially biased and exclusionary conservation policies of the past. Over 50 small-scale fishing communities live in, or adjacent to, MPAs. This section presents three case studies from small-scale fishing communities living in, or adjacent to, MPAs, to explore some of the challenges facing communities and conservation authorities in trying to negotiate a balance in the process of protecting marine biodiversity whilst securing the rights of these local communities in line with the objectives of the CBD PoWPA.

3.1 KOSI BAY CUSTOMARY TRAP FISHERY IN MAPUTALAND MPA[14]

3.1.1 INTRODUCTION

The Kosi Lake system lies in the far north of South Africa (26.53'44 south and 32.52'49 east), within the province of KwaZulu Natal, within the Maputaland MPA (see Figure 2). This estuarine lake system is an ecologically unique, biodiversity-rich system, comprising four inter-linked lakes; the southern most lake is a freshwater lake. This northeastern corner of the country has been settled by the Tembe-Thonga for several centuries and the lake system and adjacent coast have historically been very significant sources of food and livelihood for the communities that settled in this region (Guyout 2005, Kyle 1986; 2013).

The Thonga people of the Kosi Lakes region recall that their customary harvesting of marine resources has been practised for centuries. Their ancestors, who settled along the coastal peninsula between the lake and the sea and inland of the lakes, harvested both marine and freshwater species in the lakes, and they fished and harvested intertidal resources along the coast. In Thonga cosmology, it is believed that fish are provided for by the ancestors, and the fishing community observes several customary rituals that give thanks to the ancestors for providing this food.

[14] This case study draws on research conducted with the Kosi Bay fishing community in 2012-2013 as part of a research project conducted in partnership between the EEU at the University of Cape Town and the LRC (Sunde 2013).

Kosi fishers report that their ancestors initially used grass-woven fish funnels in the estuary and lakes, known locally as *'imimono'*. In addition, men and boys used spears called *'izinjungu*. '*Nezinjungu'* are still used today. Traditionally, the men and boys make an '*injungu'* from branches of the *umpahla* tree (coastal silver oak). A branch is shaped into a hard point. An iron rod is then inserted into the end and sharpened to a fine point. The '*injunga*' is used to spear fish inside the traps. In addition, fishers spear fish in the shallows along the edge of the lake.

Fish traps, known as *utshwayelo,* were introduced in the last century. The traps comprise guide fences that are constructed at right angles to the flow of the water and to the shoreline. These fences are crescent or hook-shaped, with the concave side facing upstream. The fish are guided into the heart-shaped enclosure, where fish are trapped either in a basket (*umono)* or in a valve-like structure (*ijele),* where they can be speared (Mountain 1990 in Mann-Lang 2000).

The fishery system on the lake now includes this centuries-old traditional trap fishery established by the Tembe-Thonga as well as a growing recreational component comprising boat-based rod-and-line angling (James et al 2001, James et al 2008).

Historically, there has been a clear gendered division of labour, although this is changing. Men traditionally weave and build the traps, check if there is any fish in the traps and spear the fish. They then call the women who carry the fish in big basins on their heads, clean the fish and carry it home—and prepare it for food or for sale.

3.1.2 GOVERNANCE AND INSTITUTIONAL ARRANGEMENTS IN MAPUTALAND MPA

The fishing community describe their rights to the marine commons as one akin to communal ownership that derives from their ancestors, from God and from their relationship to one another. Their interaction with the lakes and surrounding land has historically been located within their customary system of governance. Their rights to access and use the resources of the lakes are a function of membership of a family or clan and the relations within the community between these families.

Since the last decade of the 19th century, this customary system has interfaced with a range of statutory systems of authority at various levels, relating to the use of land, forest, water and marine resources. A system of legal pluralism has gradually evolved in this region as the State steadily introduced a range of

conservation and fisheries-management regulations, and extended its authority over the lakes and surrounding natural resources. A section of the Kosi Lake system was first proclaimed a nature reserve in 1950. In 1979, the Maputaland Reserve was proclaimed. In 1988, this area was extended and the entire Kosi Lake system was proclaimed a Nature Reserve. Kosi Bay Reserve was listed as a Ramsar site in 1992 (Kyle 1999:183). It was later promulgated as an MPA in terms of the Marine Living Resources Act of 1998, located within the larger Maputaland MPA. In 1999, the coastline between Kosi Bay in the north and Mapelane in the south was recognized as a World Heritage Site by UNESCO and renamed the Greater St Lucia Wetlands Park. The Greater St Lucia Wetlands Authority (GSLWA) was established to manage this site, in terms of the World Heritage Convention Act of 1999 (DEAT 1999). The GSLWA invited the Tembe Traditional Authority to become a member of the Board of this authority. Kosi Bay was located within this World Heritage Site and thus became subject to this authority as well (Guyot 2005). Following this, the Wetlands Authority managed the tourism, cultural heritage, socioeconomic and other development aspects of the park, whilst EKZN was responsible for managing the ecological and biodiversity component, including fisheries management. In 2008, the Greater St Lucia Wetlands Park changed its name to iSimangaliso. iSimangaliso is now the statutory authority contracted by DEA to manage the World Heritage Site, with responsibility for managing all the cultural, social and economic aspects of development and benefit sharing related to the Maputaland MPA. Community members express considerable confusion as to the array of authorities and the various apparently overlapping mandates between iSimangaliso and EKZN and their own Traditional Authority.

3.1.3 The customary system of marine resource use and governance

The Kosi Bay fishing communities have a well-articulated customary system whereby they govern and manage marine resources. The community describe a number of shared norms and rules relating to access to, ownership and use of the *utshwayelo* (fish traps). This system includes decisionmaking and dispute resolution as well as shared cultural rituals and rites that reinforce their distinctive culture and customary system. Knowledge of this customary system as well as the skills associated with fishing and harvesting, have been passed down from generation to generation and are a distinctive part of the culture of the particular Tembe-Thonga clans that live in the coastal zone, adjacent to the Kosi Lakes.

The customary system includes the following norms and rules:

- Rights to access, own and/or use a portion of the lake for *utshwayelo* are derived from membership of a shared system of customary law that is common to the families descended from the Tembe-Thonga clans who settled in the region over 600 years ago.
- The larger community comprising all of these clans hold communal ownership of the total area of the lakes.
- Families that are members of these clans hold family rights to the lake within this communal system.
- These rights are transferred within families from one generation to another through the male line.
- Individuals (usually males) within these families have individual rights, nested within a family right that, in turn, is part of the communal right.
- Only members of the families that comprise the community are permitted to own a trap.
- No outsiders may own or use a trap; however, under certain circumstances, where someone moves into the community, permission may be granted from the community committee and the Induna (the local headman) informed of this.
- An individual family can decide how they divide up their *utshwayelo* and can allocate an area for the construction of a new trap with additional baskets.
- The construction of a new *utshwayelo* must be done after discussion with the owner of the neighbouring *utshwayelo.*
- No rights to any area or *utshwayelo* may be sold.
- Rights may be leased but the original individual and his or her family retains ownership of the right.
- Where rights are leased, no payment is mandatory but cash or payment in kind may be negotiated by the individual parties concerned.
- Where there is no male within a family to inherit the ownership of the *utshwayelo,* use of the *utshwayelo* may be given to another male member of the clan or extended family but the original family retains ownership.
- In the above instance, the female partner of the original owner may assume the role of 'supervisor' of the trap and the new user may be required to provide fish to the family owning the trap.

- Where the male owner of a trap is deceased, his wife may assume control over the trap in certain circumstances and this trap may be inherited by her sons rather than being passed back to the brothers of her deceased husband.
- *Utshwayelo* may remain unused for a length of time but the area where the trap was positioned remains the property of the original owner, irrespective of the length of time it remains unused.
- A dispute is first managed at the level of the individuals impacted by the dispute. If it is not resolved, it is referred to the committee and then, in turn, to the Induna.
- A menstruating woman may not enter *utshwayelo*.

The Kosi community express a close ancestral connection with the sea. They have several sacred sites alongside the coast and the lakes, and perform a number of rituals linked to their use of marine resources. The lakes are of particular significance for traditional healers who utilize a range of resources for healing and ritual purposes.

3.1.4 CUSTOMARY DECISIONMAKING, MANAGEMENT AND PARTICIPATION

The customary system of authority, including decisionmaking and the administration of law, is vested at the local household level. There is a traditional trap owners' 'committee', known as '*isigungu*'. The committee's powers and roles are clearly defined. The local committee of trap owners maintains the customary trap system and decides where traps can be built. If someone wants to build a new trap that is not within his property he must consult the committee and inform the Induna. The committee comprises men only although they say that women users may attend meetings. The committee has the power and authority to destroy a person's trap if it has been erected illegally and the person fails to adhere to the committee's warning. Representation is based on a rotational system. The next level of authority, following that of the committee, is the Induna. If there is a conflict that the community is unable to resolve, it will be referred to the Induna.

3.1.5 STATUTORY RECOGNITION OF THE CUSTOMARY GOVERNANCE SYSTEM

Recognition of the customary fisheries system at Kosi Bay has an uneven history. In 1981, the KwaZulu Natal Nature Conservation Service began collecting data and monitoring the traditional trap fishery. At this time, the local conservation management agency recognized the traditional, indigenous customary system of fishing, despite there being no legislative provision for

such recognition, and noted that it was sustainable (Kyle 1986 in Kyle 1999). In 1987, the conservation management agency entered into a verbal agreement with the traditional authorities that they would allow them to continue managing the fishery according to their traditional system as long as this was sustainable (Rhodes, pers. comm., 2013). The customary system of management appears to have co-existed alongside a growing recreational fishery during this period in the late 1980s, despite the tensions in the area caused by the forced removal of local fishing households from the reserve as part of the conservation planning. When the MLRA was promulgated and the Maputaland MPA subsequently gazetted in terms of this legislation, the conservation management agency continued to allow the customary system to operate alongside the statutory system, despite the fact that the MLRA did not recognize and accommodate customary fishing rights and authorities.

Growing concerns regarding the sustainability of the fisheries in the Kosi Bay region in the past five years have prompted the EKZN Small-scale Fisheries Management Unit (SFMU) to shift their approach to the management of the trap fishery and to formalize the system and bring it in line with the MLRA (Rhodes, pers. comm., 2013). Effort has increased considerably over the past 30 years since the monitoring of this system began. Kyle reports that there was a substantial increase in the number of traps and baskets in the 1990s, peaking around 2001. More recently, the number has declined, and not all traps or baskets are maintained consistently. Currently, it is estimated that there are about 150 fish traps and approximately 450 baskets (Kyle 2013:69). The rising numbers of fish being caught (especially immature fish of important species) and the increasing efficiency of the traps due to changes in the traditional technology and materials used for building the traps have raised their offtake proportion and "there is now compelling evidence that overall catch rates for many species are unsustainable" (Kyle 2013:77). The need to introduce appropriate mitigation measures is now pressing. The fishing community has indicated that they would like to engage with the authorities but the implementation of the Policy on Small-scale Fisheries and, in particular, recognition of their customary rights and settlement of their land claim are key pre-requisites for any shared governance arrangements.

3.1.6 Re-casting customary marine resource use and governance within the context of the new Policy for Small-scale Fisheries in South Africa

The Policy for Small-scale Fisheries (DAFF 2012) commits to recognizing customary rights and to a community-based approach to the management of

marine resources but the development of legislative and policy mechanisms to recognize, regulate and harmonize customary law with statutory law on marine resource governance is relatively unchartered waters. CBD Articles 8j and 10c and related decisions, coupled with the Constitutional recognition of customary systems of marine resource governance, suggest that the DEA and its conservation partners, the Kosi Bay community, the WHA and the EKZN, need to develop a carefully crafted set of regulations for the protection of the marine biodiversity of this lake system and the bio-cultural diversity and cultural heritage of the Tembe-Thonga peoples.

For the Kosi Bay communities to engage effectively in discussions about how to implement the Policy on Small-scale Fisheries, it will be necessary for them to be aware of what the implications of the Constitutional recognition of customary law means for their particular system of local decisionmaking and governance of marine resources. They need to know that it recognizes their right to self-regulation; however, this regulation has to be sustainable and equitable. The measures used to define and determine 'sustainability' and 'equitable' need to be discussed with them. Communities will require resources and support for this purpose. Extensive experience in governance and management planning with Aboriginal Peoples in Australia (AIATSIS 2006) and New Zealand (Williams 2006) has highlighted the necessity of providing sufficient and appropriate support to communities to enable them to participate effectively in developing customary marine-resource regulations. Most importantly, awareness-raising processes and materials, in their mother tongue, need to help them understand that they have a right to their system of governance, equitable participation and benefit sharing in relation to the MPA, in a manner consistent with their own customary law but also consistent with the current Constitutional context and needs of society as a whole.

3.2 THE DWESA-CWEBE MPA, EASTERN CAPE[15]

3.2.1 INTRODUCTION

Dwesa-Cwebe MPA, a designated no-take MPA, is located along the Eastern Cape coast in the former Bantustan homeland of Transkei (see Figure 2). The MPA has a complex history associated with the local African residents of the area and the imposition of over a century of colonial and apartheid

[15] This case study draws in part on research conducted by Jackie Sunde as part of her PhD (Sunde 2014b). This PhD is also part of a three-year research project on the Human Dimensions of MPAs conducted by the EEU at the University of Cape Town (Sowman et al 2014b, forthcoming).

conservation and spatial planning. The coastal area, now comprising the Dwesa-Cwebe Nature Reserve and MPA, was settled by the ancestors of the current occupants during the 17th century. The sea and use of marine resources featured prominently in the cosmology and customary practices of these clans that settled in the area. They depended on a range of marine resources harvested from the shore, to supplement their livelihoods. The region was annexed by the British in 1888 and in the early 1890s, the colonial forestry administration ordered the first group of removals from the coastal forest on the grounds that the local residents were destroying these forests (Fay et al 2002). The forests adjacent to the coast were subsequently declared forest reserves but the eight communities living in, and adjacent to, the reserve retained their access to the coast and their use of marine resources, according to their customary systems of resource use.

Whilst a range of fisheries statutory regulations were introduced over the course of the 20th century, these communities remained largely untouched by these statutes due to the very isolated nature of the area. Following the establishment of the Haven Hotel in the reserve in the 1930s, next to the Mbashe River, the area became a very popular destination for white holidaymakers and recreational fishers. Residents found a ready market for fish and some other inter-tidal resources that they harvested and began selling to local tourists to provide a meagre but much needed cash income. They became increasingly dependent on marine resources in the context of apartheid restrictions and the migrant labour system. There was no competition over these resources, largely due to the very rural nature of this coastline but also due to the topography of the coastline and the rough weather conditions which meant that harvesting and fishing was not possible for many days of the year.

3.2.2 CUSTOMARY USE OF MARINE RESOURCES

A range of intertidal resources was harvested by women and girl children, including mussels, oysters, alikreukel, limpets, octopus and abalone. In response to the demand for lobster from the tourists, the residents began catching small quantities of lobster. Men traditionally fished from the shore and estuaries for a wide range of line fish. Prior to their access to fishing rods and reels, they used handlines, woven from the bark of a local indigenous forest creeper. They also speared fish in the estuaries and tidal pools. Traditional knowledge about the sea and marine resources was transmitted from generation to generation and distinguished the coastal residents from their neighbours inland who knew nothing about the sea. In the cosmology and

culture of the group, the sea was the source of life. It was God-given and was simultaneously the home of some of their ancestors (Sunde 2014a).

3.2.3 CUSTOMARY SYSTEM OF MARINE RESOURCE GOVERNANCE

The entitlement to access and use of marine resources was linked to membership of the group, and was embedded in the customary system of governance of the local clans, which, in turn, derived from their ancestors' occupation of this land. This system was governed at the local neighbourhood level where an intricate weave of social relations and obligations provided the fabric of the groups' culture and customary system. Limited competition over resources eliminated the need for elaborate rules to control the use of marine resources; however, a customary system of norms emerged with regard to the use of such resources. These related to the ritual use of the sea and marine resources as well as the norm of sharing resources amongst the group (Sunde 2014a). The coastal residents of the eight villages, loosely spread around the coastal forest reserve, harvested and fished according to the patterns of the moon, centreing their activities around the spring tides.

The fishers and harvesters perceived that there was no need for rules to conserve resources due to the belief that "the sea controls itself" and closes for harvesting regularly. A norm related to the need to only take larger organisms so that the species could reproduce prevailed. These resource-use practices were embedded in a customary system of social relations that patterned the interactions between people, providing the fabric for their culture and their system of governance (Sunde 2014a). Customary rules pertaining to access to and use of land, obligations and responsibilities to the group and processes for decisionmaking and dispute resolution provided the basis for the use of marine resources.

3.2.4 EVICTION AND THE DISPOSSESSION OF MARINE RESOURCES

In 1975, the Dwesa-Nature Reserve was declared and the reserve was subsequently fenced in the following two years. Several families were forced to move as a result of the fencing of the reserve, and restrictions were introduced on the harvesting of inter-tidal resources, effectively dispossessing many women who were the predominant harvesters of these resources. Shore-based angling was permitted under certain restrictions. The enclosure of the coastal forest restricted access to a range of forest products upon which the residents had depended for fuel, building materials, food and medicines as well as reserve grazing for their cattle. In 1992, the Dwesa-Cwebe MPA was promulgated,

including the coast adjacent to the terrestrial forest reserve, and additional restrictions on marine resources were introduced; however, fishing was still permitted in certain areas. The new spatial boundaries and restrictions, based on the high-water mark, were foreign to the local communities who considered the sea, the inter-tidal space and adjacent estuaries and coastal forest as coterminous territory belonging to them. Many residents continued to enter the area to fish and harvest resources according to their customary practices and faced arrest and prosecution from the conservation authorities as a result.

3.2.5 RECLAIMING RIGHTS TO THE GOVERNANCE, ACCESS AND USE OF MARINE RESOURCES

Following the first democratic elections in the country in 1994, the community had high hopes that their land adjacent to the coast would be returned to them and they would once again get access to the forest and marine resources they depended on. The new Constitution, introduced in 1996, provided for the restitution of land and property dispossessed due to racially based legislation and also recognized customary rights in so far as these were consistent with the Bill of Rights. The government introduced a suite of legal reforms aimed at redressing past injustices and securing equitable access to marine resources. The Land Restitution Act provided for the restitution of land and enabled communities to lodge claims for their land. Land claim negotiations with the eight communities living around the reserve who had been impacted by the establishment of the reserve began in 1994 and in 1996, the community lodged a land claim in terms of the Land Restitution Act (Fay et al 2002).

In the negotiations with the various government authorities in the years between then and the signing of the Land Claims Settlement Agreement in 2001, it was assumed by both government authorities and the communities that negotiations towards a settlement agreement and co-management of the reserve included the sustainable utilization of marine resources. The department with the national mandate for fisheries and MPA management—the DEAT—was party to these negotiations. All the documentation during the period 1995-1999 indicates that all parties agreed that the reserve should remain under conservation status but that the communities would co-manage the reserve through 'joint management committees' and get access to resources, including marine resources, on a sustainable-use basis (Palmer et al 2002, Sunde 2014a).

The statutory framework for land reform and restitution required that the communities establish a new legal entity for the purpose of holding their land and managing their resources. The communities established the Dwesa-Cwebe

Land Trust, comprising seven Communal Property Associations (CPAs) representing the villages in the land claim group. In one instance, two of the eight villages combined to form one CPA.

In July 2001, the Dwesa-Cwebe Land Trust signed a Settlement Agreement with the authorities. This agreement included several components linked to the ownership and management of assets such as the hotel and the holiday cottages that had been built on community land as well as the forest and land comprising the reserves. It also included a Community Agreement and a Management Planning Framework which related to the joint management of the reserves by the community and the provincial conservation authority for a period of 21 years, after which time the reserve management would revert to the community. These agreements outline the terms for the establishment of a Co-Management Committee (CMC) which would comprise equal community and government representation.

When they signed the Settlement Agreement, the communities assumed that they were going to get access to their land, forest and marine resources on a sustainable-utilization basis. However, just six months prior to the signing of the Settlement Agreement, in December 2000, the DEAT, one of the parties to the agreement, re-proclaimed the Dwesa-Cwebe MPA in terms of the MLRA, gazetting it as an entirely no-take MPA. There was no consultation with the community about the change in regulations. The provincial authorities responsible for managing the reserve have also subsequently indicated that they felt that they were not adequately consulted and hence they did not implement the new regulations, but continued to allow fishing in the reserve according to the earlier regulations. Thus the community entered into this new phase of governance of their land and coastline, anticipating that they would share in the joint management of the land, forest and sea through a CMC. As they were not informed about the change in regulations, little changed for the communities on the ground, and they continued to utilize marine resources, albeit intertidal harvesting was restricted through the earlier regulations.

Little progress was made in establishing a CMC and it was only in 2003 that the committee was formed and only in 2006 that the powers, authority and roles of each party were clarified. There was no shared management of the reserve and the community perceived no benefits received from the reserve (Sunde 2014a). In the interim, in 2004, four years after it was gazetted as a no-take MPA, the provincial authorities started enforcing the no-take regulations in the MPA. This brought the local community into conflict with the authorities and many residents were arrested and faced high fines and

imprisonment. The Dwesa–Cwebe Land Trust and the community leaders requested the authorities on numerous occasions during the period after the settlement to negotiate access to marine and forest resources (Sunde 2014a). In 2005, the DEAT acknowledged the need to review these no-take regulations and in the course of the following eight years, repeated its promise to review the regulations but made little substantive progress in this regard (DEAT 2005, DEAT 2006, DEAT 2008, ECPTA 2013). The CMC floundered due to conflict with the authorities and their failure to deliver on the terms of the Settlement Agreement. In turn, conflict erupted amongst the communities themselves and undermined their own co-management entity, the Land Trust.

3.2.6 CLAIMING CUSTOMARY RIGHTS TO MARINE RESOURCES

Following the complete closure of the MPA, the communities experienced increased hardship and poverty, with their safety net for their basic source of protein denied them (Sunde 2014a). Many were forced to continue to fish and harvest despite the prohibition on doing so. In 2010, three fishermen from the village of Hobeni were arrested for fishing in the MPA and entering the reserve without a permit (State *vs* Gongqose and two others 2012). They argued that they had been fishing according to their customary right and for their basic food security and sought the legal support of a human-rights NGO to defend them. The LRC defended the fishermen on the grounds of their customary rights, arguing that the Constitution recognized systems of customary law and hence the declaration of the MPA, as a no-take MPA, without their consultation or adequate compensation, was unconstitutional (State *vs* Gongqose and two others 2012). The fishers have drawn on CBD Articles 8j and 10c in calling for recognition of indigenous and local communities' roles in the protection of biodiversity and sustainable customary use of resources and the need to recognize their rights in this regard.

In his judgement on the matter, the Magistrate expressed strong criticism of the conservation authorities for their failure to recognize the cultural rights and livelihood needs of this community. He drew extensively on the South African Constitution, noting "the court cannot ignore that the purpose of this legislation was to protect and enforce the Constitutional freedom and rights to land and unrestricted practice of their customs by ordinary citizens of which the inhabitants of the Dwesa-Cwebe area are certainly part" (State *vs* Gongqose 2012b). As it was not within his powers as a Magistrate to pass judgement on the constitutional validity of the MLRA, the Magistrate was required to find the provisions of the Act in force and, therefore, to find the fishermen guilty in terms of this act; however, he noted that the

constitutional validity of the Act in this regard was highly debatable. The fishermen have launched an appeal in the High Court. Simultaneously, the communities have launched a review of the gazetting of the MPA in terms of the MLRA, arguing that the lack of consultation was unconstitutional (Gongqose and others *vs* the State 2013). This legal action has put pressure on the DEA and the DAFF, both of whom have acknowledged that there was no consultation with the communities when this MPA was declared and zoned. They have committed to review the zonation of the MPA as a result, and have instructed the contracted conservation management authority, the ECPTA, to commence consultation with the community in this regard.

3.3 THE TRADITIONAL NET FISHING COMMUNITY OF LANGEBAAN LAGOON MPA[16]

3.3.1 Introduction

Langebaan Lagoon MPA lies approximately 120 km northwest of Cape Town, along the western Atlantic coastline of South Africa (see Figure 2). The lagoon comprises a unique marine embayment. It is situated in the furthest reaches of Saldanha Bay, a deep natural harbour that creates a protective system at the entrance to the lagoon but still enables strong tidal flows to move into the depth of the lagoon. The lagoon reaches southwards for 17 km behind a narrow strip of the Atlantic coast and is approximately 4 km wide in places. It has extensive salt marshes and provides protection for a range of birdlife as well as a number of important line fish species (Attwood 2007). At the entrance to the lagoon, within the greater Saldanha Bay, lies a series of small islands inhabited by sea birds and mammals. These three islands, the Langebaan Lagoon and an adjacent strip of beach known as 16 Mile Beach comprise a complex of five MPAs that are all embedded in the West Coast National Park.

3.3.2 The establishment of the lagoon commons

Following the establishment of a Dutch settlement at the Cape in 1652, the Dutch began exploiting the marine resources of the area, using the bay and surrounds to provide the station at the Cape with fish, eggs and seabirds (Wardlaw Thompson 1913). The colonial newcomers clashed with the indigenous peoples of this area, two strong clans of Cochoqua, and it is alleged

[16] This case study draws in part on research conducted by the author as part of her PhD (Sunde 2014b) and was also part of the Human Dimensions of MPAs research project conducted by the EEU, University of Cape Town (Sowman et al 2014b, forthcoming).

that in 1674, the leader of the Cochoqua, Kees, destroyed the Dutch outpost (Horner and Wilson 2008). Subsequently, a number of farms were settled in the area and the lagoon and Saldanha Bay gained a reputation for the fine fish caught in these waters.

Records suggest that fishing became one of the few options available to freed slaves, following the emancipation from slavery and that in the mid 1800s, a rural class of poor, mixed-race landless families settled along this west coast, eking out an existence as net and handline fishers where they could get access to vacant land (van Sittert 1992). Several small fishing settlements emerged on the edge of the lagoon, comprising residents of diverse origins and nationalities who settled there and became dependent on Saldanha Bay and the lagoon for their livelihoods. Oral histories and interviews with respondents indicate that the ancestors of the majority of the Langebaan traditional fishing families worked as labourer tenants on the large farms in the district, supplementing their meagre wages with fish (Sunde 2014b).

Nearly every farm in the district had a beach-seine net, known as a 'trek' net (this name is derived from the Dutch word for 'pull') (Wardlaw Thompson 1913). The fishing families in the most upper reaches of the lagoon, in a tiny village now known as Churchaven, as well as families living on farms closer to Langebaan town, established themselves as beach-seine fishers. In addition to working collectively on a trek, many of the fishers had their own small throw-nets and also used handlines (Sunde 2014b).

In time, the beach-seine fishers evolved a system of customary rules to manage their fishing activities and to avoid conflict amongst the different trek net boats on the water (Sunde 2014b). This included a range of local customary norms and laws related to how the boats and nets established an order for who had the right to throw their nets and where, how to interact on the water, how the catch was shared amongst the crew, who was responsible for maintenance of the boats and how to manage conflict. Regular use of specific areas in the lagoon became referred to as their established customary 'trek-net grounds' and the oral histories of the Langebaan net fishing families indicate that the names of as many as 20 trek grounds were commonly known (Sunde 2014b).

The customary fishing rules that evolved were woven into the social relations of the small, close-knit fishing community that describe themselves as a 'fishing family' (Sunde 2014b). The group consisted of several key families and many fishers were related to one another in some way. Gradually, areas became associated with a particular group of users and came to be known as their

exclusive traditional fishing grounds. Traditional knowledge was passed on from generation to generation, and young children grew up with a strong identity attached to their families' interaction with the lagoon. The Langebaan fishers considered themselves the rightful users and owners of the lagoon and membership of the net fishery was limited to this group (Sunde 2014b).

3.3.3 The interface of customary and statutory regulations

In the 1890s, a group of Italian immigrant fishers arrived in the Cape with gill-nets and by the early 1900s, their presence was felt on the lagoon where they began setting their nets and competing with the local lagoon trek netters for fish (Wardlaw Thompson 1913). The local fishers complained to the authorities that the 'set' nets of the newcomers were chasing their fish. The matter was investigated and the fishery authorities noted "distinct grievances on both sides" and recommended "a demarcation of areas between the two opposing factions" (Cape Archives Pan A 120/36 Vol 1,1). Regulations that recognized the customary fishing practices of the trek netters and their 'recognized trek grounds' were thus introduced as early as 1909 with Proclamation 385 of 1909. These regulations included restrictions on which nets could be set in which section of the lagoon. A line was drawn across the lagoon and set netters were prohibited from fishing south of this line. These regulations are some of the earliest spatial restrictions used in South Africa (van Sittert 2002, Sowman et al 2011).

Over the course of the next few decades, the lagoon fisheries, comprising four settlements around the lagoon, grew steadily, with the tensions between the different gear users flaring up periodically. The authorities responded to the requests from the local fishers for assistance by introducing a series of spatial and gear-related regulations regarding netting. These regulations gave preferential rights to the local Langebaan Lagoon fishing community, recognizing their lengthy, established fishing customs. Ordinance 30/1920 Proclamation 266 of 29th December 1920 stated "seine-nets are, therefore, specifically protected in places where they are employed. The place of employment is apparently to be regulated by custom or by judgement of the owner of the seine-net. The limitation is upon the owners of staked or set-nets" (Cape Archives PAN 71 K 59/20 a). In 1921, the set netters petitioned the administration to allow them to go further south into the lagoon. The trek netters opposed this fiercely. At the time, the trek netters comprised several fisher families who were the forefathers and mothers of the current generation of fishers who use drift-nets. They submitted several memoranda to the provincial fisheries authorities petitioning the authorities against the use of

the set-nets, asserting their preferential rights as "we, the skippers and fishery owners of this portion of the Bay" (Cape Archives PAN 71 K 59/20 a). Langebaan was a coloured fishing settlement and a 1921 report states that it comprised four fishing stations, namely Churchaven, Seeuberg, Owesterval and Langebaan. There was a total of 74 coloured fishermen and seven Europeans. Trek boats dominated the fishery with a total of nine trek-net boats, nine set-nets, nine large boats and 12 smaller boats used for galjoen and harder netting (Cape Archives 1921).

Following prolonged conflict and complaints, the Magistrate of Hopefield was authorized by the Provincial Fishery Board to proceed to Langebaan and investigate the conflict. He submitted a report in which he recommended that the prohibition on sets-nets in Saldanha Bay be withdrawn with the proviso that (1) only permanent inhabitants of Langebaan and the lagoon area shall be allowed to use set-nets of any description within the prohibited area, and that (2) no net be set either in a recognized trek ground or where a boat may be lying on trek. These early statutory regulations, building on the fishers' own customary norms, laid the foundation for a norm in which the local fishers had preferential treatment, a norm which has continued until the present, and now underlies much of the conflict within the MPA and is the basis of legal action against the DEA and the management agency, SANParks (Coastal Links Langebaan and others *vs* the Minister and others 2013).

A reminder of this history of the net fisheries and the net fishing community of Langebaan highlights the distinctive set of common-property relations that have existed on the lagoon and shaped perceptions of different user groups. The last half century has witnessed a steady process of 'decommonisation' (Berkes and Nayak 2011) as the Langebaan Lagoon customary system established by the early net fishers has gradually been enclosed through various spatial regulations and the establishment of the MPA. Most significantly, there has also been a more recent shift towards the establishment of a 'recreational commons', as local municipality and the Park authorities give preferential treatment to tourism and the recreational users of the lagoon, marginalizing the traditional small-scale fishery.

At the time, in the 1930s, despite their initial resistance to the introduction of both set-nets and larger boats by outsiders, the local fishers themselves subsequently embraced the new gear and the opportunities that it presented. They evolved a multi-species, multi-gear, seasonally based system of fishing that remained firmly embedded in the tight-knit familial relationships of kin that extended along this stretch of the coast. This system persisted until the

1970s when the almost simultaneous introduction of marine conservation measures and apartheid race-based spatial planning altered the course of the coloured Langebaan net fishing community.

3.3.4 THE INTRODUCTION OF CONSERVATION AND STATUTORY FISHERIES MANAGEMENT TO THE LAGOON

Prior to the late 1960s, apart from the early restrictions designed to reduce conflict between the trek fishers and the set-net fishers, there were no fisheries management restrictions in the lagoon, and the customary fishing system developed by the forefathers of the current generation continued. In 1969, the fishers complained to the local municipal board that recreational fishers were disturbing their net fishing. In response, the Board laid a buoy across the upper reaches of the lagoon, establishing a line that would protect the traditional net fishers from the increasing number of recreational line-fishers (Ocks, pers. comm., 2011). Shortly afterwards, the lagoon was zoned by the Department of Sea Fisheries, using this line as the basis for dividing it into three zones. This included a no-fishing sanctuary zone in the upper reaches of the lagoon, beyond the zone reserved for the net fishers. In 1976, the lagoon was declared a marine reserve in terms of the Sea Fisheries Act and subsequently, in 1985, it was incorporated into the West Coast National Park. The National Parks began acquiring farm land for inclusion in the Park and purchased a number of white-owned parks adjacent to the lagoon. The Park authorities entered into agreements with the owners of these farms and the WCNP became the first contractual park in South Africa. The local fishing community were not consulted when the marine reserve was declared. Shortly after the declaration of the MPA, the fishery authority announced its intention to phase out the beach-seine fishery from the lagoon.

This simultaneous introduction of conservation and fisheries-management measures in the lagoon coincided with the introduction of apartheid spatial planning measures. The forced relocation of the coloured community from their homes adjacent to the lagoon, the eviction of fishing families from the farms that were later incorporated into the National Park, and the perceived preference given to white landowners to continue residing in the Park and fishing in restricted zones were associated with the concomitant increase in restrictive conservation measures which led to the zonation of the lagoon. The lagoon was zoned into three zones. Both line fishing and recreational fishing as well as a range of other non-consumptive uses was permitted in Zone A; Zone B was restricted for traditional net fishers; and Zone C was a no-take sanctuary area. When the National Parks Board took over the management of

the lagoon, they confirmed this zonation, introducing a set of regulations restricting fishing and motor vessels in Zone B unless in possession of a permit from Parks Board. In the late 1980s, the trek-net fishery was outlawed and fishers were forced to rely on their drift-nets to target harders only.

In 1992, following the signing of an agreement with the local land owners, the Parks Board introduced a differential set of permit regulations in which the local landowners still resident in the Park were permitted to fish in Zone B for harders using their drift-nets, but the fishers resident in Langebaan were not. The net fishers resisted these permit regulations and over time, the Park authorities permitted those traditional fishers with a history of fishing on the lagoon to continue net fishing in Zone B.

In 1998, following the promulgating of the MLRA, the DEAT took over the allocation of fishing permits. In 2000, the Langebaan Lagoon MPA was gazetted in terms of the MLRA Section 43, confirming the preferential rights granted to traditional net fishers to fish in the area known as Zone B. In 2003, however, the NEMPAA was promulgated, granting the National Parks the authority to introduce specific permit conditions and restrictions on use in certain zones; the conservation authorities used this legislation to prohibit the Langebaan net fishers from fishing in Zone B. This policy dovetailed with the DEAT policy of restricting the net fishing effort on the lagoon (DEAT 2006). The Langebaan net fishers have argued that these restrictions are discriminatory. Firstly, three white landowners who have a contract with the conservation authorities have retained the right to continue fishing in Zone B, and the traditional net fishers, who depend on the net fishery for their livelihoods, have to compete with the growing recreational sector in Zone A. The conservation authority and the Department responsible for fisheries management have argued strongly that the zonation is needed to protect key line fish and shark species that use the shallow waters of the lagoon as a nursery ground. Zone B acts an important buffer zone. However, the scientific evidence used to motivate these restrictions on the harder fishery draw largely on national-level data for harders, and is also outdated (DAFF 2012b). As the fishers were not consulted about the restrictions and the zonation, they question the legitimacy of the MPA zonation and the accuracy of the scientific data upon which decisions have been made. Ironically, whilst the WCNP management authority has implemented a project to include community members in mapping the traditional fishing sites and this forms part of the cultural heritage programme for the WCNP, this process and tool have not informed the decision-making processes regarding zonation (see map in Section 2).

3.3.5 Whose line is it anyway? Advocacy for preferential treatment for the traditional net fishing community

The Langebaan net fishing community has advocated strongly for their right to preferential treatment over the past 10 years. They cite 'tradition', 'custom' and the customary system of local fisheries management developed by their forefathers as the basis for their claims. In the absence of any real consultation that took their histories and needs seriously, and faced with their continued exclusion from their traditional fishing grounds, and increasing conflict with the recreational fishers, the Langebaan fishers, organized as a community-based network of fishers called Coastal Links Langebaan, have launched legal action against the Minister of Environmental Affairs, as the governance authority of the lagoon, the Minister of Fisheries as the authority responsible for allocating fishing rights and SANParks as the contracted management agency for the Langebaan Lagoon MPA (Coastal Links Langebaan and others *vs* the Minister of DAFF and others 2013). Represented by the LRC, the fishers argue that the permit condition that "prevents us from fishing in a part of the Langebaan Lagoon known as "Zone B" …. has serious consequences for our livelihoods, and threatens the continued existence of the custom of traditional net fishing in Langebaan. More importantly, the Condition, and/or the Decision to impose it, are irrational, unreasonable, and unfairly discriminate indirectly on the basis of race" (Coastal Links Langebaan *vs* the Minister of DAFF and others 2013).

Further, the fishers argue that it is ironic that the line that was originally drawn to protect them, is the same line "now used to keep us from our traditional fishing grounds and threatens our ability to survive. It is significant that the line was not drawn on the basis of any conservation imperative; it was drawn to solve a dispute between traditional and recreational fishers over 40 years ago" (Coastal Links and others *vs* the Minister and others 2013). The founding legal papers argue that the Minister of DAFF has acted unconstitutionally in that she should, at minimum, have considered:

- the available science pertaining to the Langebaan lagoon relevant to the specific species and net fishery;
- the socioeconomic status of the fishers impacted by the decision;
- any alternatives to a complete limitation of the right to access Zone B; and
- the applicable legal framework, including domestic and international law and policy, and, in particular, the new Policy on Small-scale Fisheries.

They argue that the zonation underpinning the MPA is not based on scientific evidence and hence it is arbitrary to continue to employ this same line in the name of 'conservation'. As such, the decision by the Minister and the harsh restrictions on the harders net fishers are unreasonable in terms of the Constitutional obligation of the Minister to seek the least restrictive limitations on their rights (Section 36 of the Constitution). The fishers also cite the Policy on Small-scale Fisheries in their argument, citing again the principle that small-scale fishers who depend on fisheries for their livelihood should be given preferential access to resources (DAFF 2012). They challenge the conservation authorities for seemingly turning a blind eye to the thousands of recreational fishers who are catching the same threatened line fish species that the MPA zonation allegedly seeks to protect. They also document the impact of the conflict with the recreational sector on their livelihoods. This litigation is ongoing.

This case study highlights the significance of history in shaping the perceptions of communities about their rights within an MPA, and the importance of conservation and other governance authorities engaging with this history when contemplating the introduction of spatial regulations and restrictions. Most importantly, it emphasizes the need for MPA planning to be based on a combination of best-available scientific evidence, together with local ecological knowledge and experience. It foregrounds issues of benefit sharing and the need to promote equity with regard to access to resources within an MPA, as well as resources in adjacent zones. Further, it highlights the obligations on conservation governance authorities to ensure that during MPA planning, they consider a range of potential measures and tools to achieve the desired vision and objectives, and select the least restrictive regulation in terms of the harm that it may do to those who depend on the resources within the MPA for their livelihoods.

SECTION 4

DISCUSSION, CONCLUSIONS AND RECOMMENDATIONS

The research conducted for this study indicates that there has been considerable progress in terms of promoting governance, participation, equity and benefit sharing within MPAs in South Africa since 2008 (Sunde and Isaacs 2008). These core elements of Programme Element Two are now standard components of conservation authorities' policies and commitments. There are several examples of best practice which highlight the creative pathways that these authorities are exploring to promote local communities' participation in, and equitable benefits from, MPAs, despite operating in an increasingly challenging social and ecological environment with extremely high levels of poverty and ever-growing climate-change risks and threats. Although an increase in overall compliance with the CBD and the South African Constitution in relation to the participation of indigenous peoples and local communities is evidenced, and authorities can report examples of benefit-sharing mechanisms, concern remains that small-scale fishing communities, as a particularly marginal sub-group of these larger communities, may be not benefiting equitably. Several key challenges and obstacles are evident in this regard.

4.1 CHALLENGES

1. The liminal policy space between land and sea—small-scale fishing communities falling through the net?

The research has highlighted the continuing impact of the legacy of apartheid spatial and conservation planning, despite strong attempts of many to be forward-looking and embrace a new conservation paradigm. The unintentional consequence of the different sectoral policies of the immediate post-apartheid period—land restitution, land reform, fisheries transformation and redistribution and biodiversity conservation—has been the fact that small-scale fishing communities' distinctive cultural, social and economic identities have fallen through the gap between these policies, largely due to the fact that mechanisms for co-operative governance are in their infancy and hence the 'silo approach' has persisted. This accounts for the neglect across the board by management authorities to become informed about the new Policy on Small-Scale Fisheries and to engage in discussions with other government departments as well as with the fishers on how this policy should articulate with MPAs. This is apparent in all three of the case studies presented in Section Three where none of the authorities involved have demonstrated their

understanding of the implications of the new policy for MPA governance and management. It would appear that they think that this policy does not apply within the protected space of MPA waters. However, even in instances where an MPA is a no-take MPA, an ecosystems approach and human-rights-based approach demands attention to the management and access rights of communities living immediately adjacent to the MPA. Further, CBD Aichi Target 11 demands an effective approach that ensures connectivity and coherence across land and seascapes, thereby emphasizing further the need for MPA managers to engage with the Policy on Small-scale Fisheries.

One of the key problems is that whilst, in principle, participation, equity and benefit sharing have been accepted and certain measures put in place to facilitate them, from the perspective of communities utilizing marine resources, the general measures put in place at Park or MPA level are insufficient to target these sub-groups in a way that will then establish a feedback loop for governance. The measures do not 'trickle down' to these communities and this is critical if the argued benefits and importance of MPAs are to be appreciated by these communities and they are enabled to become partners in conservation practice. Management authorities need to put specific measures in place to ensure that they are targeting these communities within the larger community. Targeted measures aimed at small-scale fishing communities are required in order to ensure that they are able to enjoy their human rights and contribute as leading custodians of marine biodiversity and as champions of MPAs and related area-based protection measures.

2. Fragmented, confusing and uncertain mandates for MPA governance

The fact that up until this year, MPAs have been declared under a different piece of legislation to terrestrial PAs, has meant that MPA governance remained slightly isolated from the development of thinking and approach in the mainstream PA governance arena within the DEA. Even where there was dual designation of an MPA under both MLRA and NEMPAA, there has been little cross-fertilization of ideas on Programme Element Two issues. This is evidenced by the fact that since the IUCN World Parks Congress hosted in South Africa in 2003, the DEA and its conservation partners managing terrestrial PAs have made huge strides in developing guidelines for governance and participation in PAs, in establishing a People in Parks Programme and in developing regulations to guide participation and benefit sharing. It has also initiated two METT assessments of PAs (DEA 2010; Khumalo, pers. comm., 2014). There has been a limited amount of 'spill-over' influence of these developments to MPA management in the National Parks, special nature reserves and PAs where MPAs

are adjacent to a terrestrial PA and the two are co-managed; however, it is very apparent that MPA governance has lagged far behind in general with respect to CBD PoWPA implementation. This is further evidenced by the fact that at a recent National MPA Forum, when the Director of Conservation and Biodiversity from DEA asked the MPA managers present who had heard of PoWPA, none of them had heard of it. Nor has the MPA component been included in the DEA METT assessment, to date.[17]

It is very telling that despite the fact that issues related to governance, participation, equity and benefit sharing have been discussed in detail at all the People in Parks conferences since 2004, there is very little evidence of these discussions in the MPA sector. For example, as early as 2004, the People in Parks National Conference (DEAT 2004) invited participants to make comments on the draft regulations on governance, participation, access rights and norms and standards, prior to gazetting. The comments that were submitted are extremely instructive and include, amongst other issues:

- guidance on what should be included in a community register;
- a process for the determination of the existence, nature and extent of existing rights and the desirability of allowing the creation of potential rights;
- how pre-existing rights should be included even when not recorded in a formal agreement;
- methodology and procedure for defining different types of stakeholders;
- the structures, mechanisms and manners through which the management authority will communicate with the local community;
- typology of the potential benefits for specific local communities from that national park;
- a process for the determination and feasibility of potential benefits for specific local communities;
- a statement on how such benefits will be realized, equitably distributed and regulated;
- content and process for the development of management plans; and
- development of norms, standards and indicators for these issues.

A key recommendation was that "a management authority must develop indicators and rules to measure and report annually on whether the management

[17] The Oceans and Coasts Branch is committed to including the MPA component in future METT assessments.

of a particular national park achieves its community-oriented objectives and whether it contributes to environmental justice or not" (DEAT 2004:700-72). How does one understand the fact that now, in 2014, a whole decade later, the MPA Forum is still requesting the development of indicators, norms and standards? None of this 2004 discussion appears to have filtered into the MPA sector. More recently, the 2012 People in Parks National Workshop focused on CBD PoWPA Programme Element Two on governance, participation, equity and benefit sharing specifically (DEA 2012). Yet not one of the officials interviewed referred to the theme of this conference or indicated the implications of this for the MPA sector. The research confirms, therefore, that discussions on Programme Element Two have lagged far behind South Africa's stated commitments at CBD and far behind the policy statements that now exist within all MPA management authorities.

3. Conflicting interpretations of governance, participation and equity and benefit sharing within fisheries and conservation legal and policy frameworks

One of the most urgent issues requiring attention and coherence, which appears to be a consequence of the issues discussed in Points 1 and 2 above, is the definition of, and approach to, 'community-based natural resource management' and 'co-management' across the MPAs from a NEMPAA (and hence DEA) perspective and in relation to the 'community-based approach' and 'co-management' referred to by DAFF in the Policy on Small-scale Fisheries. In this policy, co-management is defined as "a governance approach in which Government and a small-scale fishing community share the responsibility and authority for the management of a marine resource by that community" (DAFF 2012:iv). In this instance, the shared authority is clear. The policy further notes that

> *"co-management is a participative process which promotes social equity, justice and the collective governance of marine living resources. Co-management of marine resources means that affected stakeholders, especially fishers from fishing communities, are empowered to participate with Government in developing, implementing and evaluating fishery policies and management plans. Co-management requires devolution of some management decisions to the fishing communities and the inclusion of provincial and local Government. Representatives of small-scale fishing communities in a given area, together with Government, will make up the co-management committees"* (DAFF 2012:23).

This is a more expansive definition than the approach and mechanism currently embodied in the concept of Stakeholder Advisory Forums as per the NEMPAA regulations (DEAT 2005).

The type of governance arrangements in MPAs are Type A only, with some elements of Type B in a few MPAs. Yet an examination of the Settlement Agreements in several MPAs indicates that there should ideally be shared governance in these MPAs; however, in reality, the nature of the co-management that takes place is not one of shared governance—there is a level of participation in management decisions but only within a tightly constrained set of possibilities.

Most concerning is the fact that Paterson (2011) has observed that "the scope of governance options being advocated by the Government to facilitate the role of communities in PAs is becoming narrower and narrower. This is notwithstanding the prevalence of legal tools within South Africa's contemporary conservation and land-reform regimes through which a far broader array of governance options could be implemented" (Paterson 2011:270). Despite this observation, the very recent amendments to the NEMPAA to accommodate MPAs open up the possibility of a diverse set of governance types being considered in future, including shared governance, co-managed MPAs, contract MPAs and Special Management Areas and community conserved marine areas. It is hoped and anticipated that there will be increased coherence and more attention to minimum standards of governance and related policies and regulations that are already being implemented within the terrestrial PA reserves under NEMPAA, which can now be applied to MPAs in a more immediate and standardized way due to the shift from the MLRA.

Paterson (2011) has suggested that NEMPAA opens up a further range of types of governance than are currently being explored. However, in the context of the coast, and the public trust doctrine, where the coast is regarded as public property held in the custodianship of the State, the range of governance options may be more restricted. The dominant perspective that 'nobody owns the coast' prevails and hence the possibility of a community claiming coastal public property has been denied to date.

It should be noted, however, that in New Zealand, a recent ruling by the Supreme Court (NgātiApa v Attorney-General [2003] 3 NZLR 643) has led to the recognition of the pre-existing rights of Maori people to certain coastal areas and adjacent waters, and an innovative legislative compromise has been developed to enable the recognition of their ownership and access rights with the simultaneous guarantee of public-access rights (Sunde 2013). In South Africa, to date, recognition of pre-existing access rights to marine resources has not included recognition of pre-existing communal property rights, akin to ownership (Sunde 2014a). As noted earlier, none of the Land Claims submitted

by coastal communities to date have included a claim to coastal waters or marine resources therein. An exploration of the customary systems of marine tenure of several coastal communities suggests, however, that these communities have had communal property systems for generations (Sunde 2013 and Sunde 2014a). Marine resource-use practices and rights are embedded in customary systems of tenure that reflect very different notions of 'ownership,' 'rights' and 'property' (Sunde 2014a). Constitutional recognition of their customary rights may require a new approach to the statutory regulation of authority, power and rights of governance in existing MPAs (see Case Studies 1 and 2).

4. Lack of awareness of customary rights and fears regarding the recognition of these rights

The Kosi Bay and Dwesa-Cwebe case studies foreground the customary systems of governance and practices of these two coastal communities. The recent CBD COP Decision taken in India, and supported by the South African delegation, urges States to "*encourage the application of traditional knowledge and customary sustainable use in protected areas, including marine protected areas, as appropriate"* (CBD/COP/XI/DEC/14/2012). Yet, the DEA and the DAFF have systematically ignored the pleas of these local fishing communities and the advocacy interventions of NGOs requesting them to recognize customary rights where they exist and to learn from international best practice, including the CBD, as to how best to integrate customary governance and sustainable use in a way that will diversify, strengthen and enhance the overall quality of the conservation estate. Experience elsewhere has demonstrated conclusively that this is both possible and imperative for sustainable biodiversity governance (Forest Peoples Project 2010, Borrini-Feyerabend et al 2013). Yet in South Africa, conservation and fisheries-management authorities, with the exception of EKZN Wildlife, appear to have a deep-seated fear and misconception of customary rights and continue to ignore the customary practices and rights of many small-scale communities. It would appear this stems from an ignorance of these rights and the fact that authorities do not realize that recognition of customary rights in terms of the South African Constitution still enables those communities whose rights are recognized to be regulated, and they must still comply with the standards for sustainability established in line with the Bill of Rights.

It needs to be noted that there appears to be fear on the part of both the governance authorities and small-scale fishing communities. Local small-scale fishers, including those with customary rights, are, on the whole, not regarded or treated as governance allies. A century of being restricted and, in some instances, denied the right to share in the governance and benefits of the

country's natural resources has had an impact on the culture of communities, their relationship with nature and their attitude towards conservation. Contrary to the experiences of many indigenous and local communities in other countries, who have been able to give expression to their indigenous knowledge and conservation systems, many of the current generation of fishers in South Africa have not grown up in a culture of sustainable use and self-governance. Instead, in most instances, they have witnessed the unsustainable fishing practices of the apartheid days, when the bigger the fish was the better fish, evidenced in the photographs of white recreational fishermen with huge white steenbras and kob that line the walls of the hotels and tourist establishments along the South African coastline. Many have first-hand experience as crew on the industrial trawlers and have seen the scale of the exploitation of marine resources by the industrial sector in the past. Yet now they are told that there are insufficient resources and they must conserve these resources in the interest of the country as a whole. There is now a pervasive lack of trust which manifests in fear amongst many small-scale fishers that the little that they have will again be taken away from them, so they should harvest as much as possible whilst they can.

5. A failure to differentiate between governance and management

In South Africa, in the literature on and governance and administration of MPAs, there has been a tendency to refer to all governance actions under the term 'management', and not to make any distinction between governance and management. In this regard, few have asked questions about the authority, powers and roles of government in governing at different levels and scales. Most significantly, the power inherent in governance has not been questioned. This has had several important implications for policy and practice. On the one hand, it means that it is difficult to gain an accurate assessment of governance as many authorities use these terms interchangeably. On the other, the power relations and potential inequities in decision-making processes are not revealed. In addition, and most critically, it means that any systems of decisionmaking and actions in this regard taken by non-State actors towards the protection and sustainable use of marine biodiversity are thus also not considered governance as such. This, therefore, impacts the customary governance systems of many communities who live under customary law as their systems are disregarded as not contributing towards governance (Sunde 2013).

6. Inadequate attention to gender inequities and discrimination against women

There is very little attention to women's equal participation in governance and management, to gender equity, in general, and to working towards eliminating

gender discrimination. Performance on gender equity is not part of the DEA reporting template and hence is not reported on in quarterly or annual plans.

7. Insufficient information on cultural and social dimensions in certain marine spatial planning processes

The description of EBSAs and other offshore areas, whilst showing evidence of best-practice marine spatial planning, have not included appropriate social and cultural information, to date. In addition, the planning conducted towards the MPA expansion strategy has neglected to include small-scale fishing communities that will be impacted by this expansion. This is in part because of the current regulations on public participation which do not necessitate participation in the early stages of planning. However, the neglect of these issues in these early stages means that small-scale communities receive news of these plans as fait accompli, and the opportunity for their knowledge and local observations to be integrated into the actual conceptualization of the overall plan is reduced.

In conclusion, this research highlights the fact that whilst a great deal of progress has been made in working towards balancing the right to environment protected in the Constitution of South Africa with the need to respect and promote the human rights of indigenous peoples and local communities, this approach has yet be institutionalized in some key aspects. Few of the indicative actions and indicators have been achieved in any substantive way from the perspective of this particular constituency. Small-scale fishing communities are located in a liminal zone—trapped in a transitional policy zone between land and sea, terrestrial and marine environments. The policy and legal environment in which they are located is thus more complex, and they experience governance and management of PAs in distinctive ways.

4.2 RECOMMENDATIONS

1. DEA and DAFF should convene an urgent high-level meeting to develop a MoU on the articulation of the Policy on Small-scale Fisheries and the NEMPAA and MLRA should provide guidance on implementation to all MPA management authorities and fisheries authorities. Central to this MoU is the need for an assessment of the customary rights and related legal and policy requirements of small-scale fishing communities.
2. DEA and all its conservation partners, most notably SANParks, iSimangaliso, EKZN Wildlife, ECPTA and CapeNature, in the development and implementation of MPA policy and related policies

on the Expansion of Protected Areas, noting the contribution of small-scale fisheries to poverty alleviation and livelihoods, should identify small-scale fishing communities as a vulnerable constituency requiring specific, targeted measures.

3. DEA should develop Guidelines on Best Practice for participation in Marine Spatial Planning and MPAs in accordance with NEMPAA regulations, with particular attention to the need to include representatives of rights holders and stakeholders from the beginning of the planning process and to define the roles, powers and authority of these parties at different stages in the planning and management process.

4. DEA and DAFF, through a range of co-operative governance mechanisms at national, provincial and local levels, should initiate discussions on the implementation of the SSF Guidelines and the Tenure Guidelines.

5. DEA, in partnership with all conservation management agencies and community representatives, should conduct a participatory assessment of the Governance of MPAs at MPA network, agency and local MPA levels.

6. DEA should develop a local, accessible South Africa-based guide to implementing the CBD PoWPA in MPAs in South Africa in English, Xhosa, Zulu and Afrikaans.

7. Training and capacity on CBD PoWPA should be integrated into the MPA Training Programmes at a regional and national levels, and should include the capacity to develop indicators and assess Programme Element Two.

8. All parties should contribute to a DEA-led process to develop norms, standards and a set of indicators for reporting on and assessing Programme Element Two through its quarterly reporting template. This could serve as the basis for the development of community protocols.

9. DEA management contracts with WHAs and conservation authorities should include specific performance criteria related to Programme Element Two, with clearly defined indicators and reporting requirements that include regular, mandatory participatory governance assessments.

10. All MPA management authorities should take initiative in building the capacity of their staff and associated rights holders and stakeholders

with whom they interact on the CBD PoWPA and its relevance for their compliance with their existing Constitutional obligations.

11. NGOs and community-based organizations should take initiative in raising awareness of CBD PoWPA Programme Element Two amongst coastal communities and building their capacity to participate actively and effectively in the governance of MPAs.

12. All actors, including State and non-State rights holders and stakeholders, should raise awareness of the impact of the legacy of apartheid on the approach to conservation within small-scale fishing communities and within management authorities.

13. Active measures should be adopted to develop a new, human-rights-based conservation and sustainable-use paradigm in which the potential for small-scale fishing communities as leading custodians of biodiversity protection is recognized. Specific measures should be adopted to address gender discrimination and to promote the rights of women.

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Endnotes

[i] The term 'eastern seaboard' refers to the section of the coast covering the now established Eastern Cape and KwaZulu-Natal Provinces, whilst the term 'western seaboard' refers to the coastline of the Northern and Western Cape provinces as indicated in Figure 1.

Appendix :
List of persons interviewed for the research

Sl. No.	Name	Institution or conservation agency	Date and nature of interview or input
1.	Mr Xola Mkefe	DEA	Interview 31/01/2014
2.	Mr Joe Phadima	EKZN Wildlife Social Ecology Directorate	Telephonic interview 23/01/2014
3.	Ms Gillian Rhodes	EKZN Wildlife Small-scale Fisheries Unit	Telephonic interview 29/01/2014
4.	Dr Wendy Annecke	Cape Research Centre, SANParks	Electronic comments submitted 07/02/2014
5.	Mr Mbulelo Dopolo	SANParks	Electronic comments 07/02/2014
6.	Mr Pierre de Villiers	CapeNature	Interview 04/02/2014
7.	Mr Andre Riley	SANParks	Interview 13/02/2014
8.	Mr Kyle Smith	SANParks	Brief discussion 13/02/14
9.	Dr Alan Boyd	DEA: Research	Telephonic interview 04/03/2014
10.	Dr Scotty Kyle	EKZN Wildlife	Electronic comments 05/03/2014
11.	Mr Mzwai Kostauli	ECPTA	Telephonic Interview 26/03/2014
12.	Mr Caiphus Khumalo	DEA: Biodiversity and Conservation, Pretoria	Telephonic interview 04/03/2014

Notes:

1. A meeting was held with Mr John Duncan, Marine Programme Manager, WWF, to gather specific information about the WWF METT assessment.
2. The iSimangaliso Wetlands Authority, within which two MPAs are located refused to be interviewed. Nine (9) written and telephonic contacts were made with the Research Manager and subsequently the CEO and the Park Manager.

SAMUDRA Monograph

Marine Protected Areas and Small-scale Fisheries in South Africa: Promoting Governance, Participation, Equity and Benefit Sharing

This monograph studies the progress achieved by conservation partners in South Africa on the implementation of the Convention on Biological Diversity (CBD) Programme Element Two components of governance, participation, equity and benefit sharing, from the perspective of small-scale fishing communities. It explores the strategies and mechanisms used by different authorities to create the conditions whereby local communities can benefit from marine protected areas (MPAs), of which South Africa has gazetted 24, highlighting examples of best practice.

The monograph will be useful for researchers, scientists, fishworker organizations, environmentalists and anyone interested in the protection of marine biodiversity and the promotion of sustainable fisheries management.

ICSF

ICSF is an international NGO working on issues that concern fishworkers the world over. It is in status with the Economic and Social Council of the UN and is on ILO's Special List of Non-Governmental International Organizations. It also has Liaison Status with FAO. As a global network of community organizers, teachers, technicians, researchers and scientists, ICSF's activities encompass monitoring and research, exchange and training, campaigns and action, as well as communications.

ISBN 978 93 80802 30 5