

Claiming Socio-Economic Rights in Fisheries in South Africa and among the Nuu-chah-nulth First Nations on Canada's Pacific Northwest Coast

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Nuu-chah-nulth

- **Fishing people and culture; 10,000 years on west coast of Vancouver Island**
- **Rich marine aquatic ecosystem supported non-agrarian, hierarchical social structure (e.g., Chiefs, advisors, warriors, whalers, fishers) and economic trade**
- **Dispossessed from sea resources through:**
 - **Population and cultural loss through diseases introduced by Europeans**
 - **Government attempts at cultural assimilation (e.g., residential schools)**
 - **Fisheries regulations and policies to prevent or reduce indigenous participation**
 - **E.g., ban on traps and weirs, limited entry licensing at thresholds above Nuu-chah-nulth participation**





South Africa



Atlantic Ocean

Indian Ocean

-  Small-scale fishing communities
-  Marine Protected Areas

South Africa

- **Indigenous Peoples have engaged in fishing since their arrival in southern Africa in 2nd and 1st millennia BC**
- **Arrival of Dutch East India Company in Cape in 1652 led to conflicts with local Indigenous Peoples (KhoiKoi) who were expelled from the region**
- **Many freed slaves settled on west coast and engaged in fishing**
- **Along east coast, Nguni Peoples involved in diversity of livelihoods, under a customary system**
- **British supported development of fishing industry in SA since early 1900s**
- **During Colonial and Apartheid periods, traditional fishers “squeezed out” - forced into wage labour in industry**
- **Along east coast fishing continues under customary law**
- **Traditional fishers not recognised by law**



What led to the need for action?

South Africa

- **Abolition of apartheid - expectation that rights to traditional land and waters restored**
- **Marine Living Resources Act (1998) calls for sustainability, transformation, redress; yet vast majority of marine resources allocated to industrial fisheries sector**
- **Central government marine protected areas strategy excluding local harvest**

Nuu-chah-nulth

- **Community fishers excluded from access by commercial and recreational fisheries**
- **Local indigenous communities prevented from exercising management authority**
- **Largely failed modern day treaty negotiations; Canada would not include fisheries**



Strategies

- **Litigation**
- **Capacity Development and Training**
- **Stewardship and Management**
- **Negotiations**
- **Education and Awareness**
- **Asserting Rights**
- **Direct Action**
- **Allies and Partnerships**

Strategy: Asserting Rights

Nuu-chah-nulth

- **Responsibility of Ha'wiih to care for resources and people in their Ha-houlthee (territories)**
- **Challenge to get government to recognize these rights**
- **Constitution (1982) affirms rights and titles, but still up to First Nations to “prove” rights to government**

South Africa

- **Increasing awareness about rights with the advent of democracy, Constitution affirms rights**
- **Increased exposure to fishers from other Nations builds confidence to assert rights**
- **Fishers harness provisions in international instruments and agreements (FAO CoC, BC-POW)**

Strategy: Litigation

Nuu-chah-nulth

- **Seek recognition of Aboriginal Right for economic fishery**
- **2009 BC Supreme Court decision**
 - **Right to "Fish and Sell"**
 - **Right infringed by Canada**
- **2014: affirmed by Supreme Court of Canada after appeals**
- **Court ordered negotiations to establish new fisheries regime within 2½ years (by 2011)**

South Africa

- **Fishers approach NGO MDT in 2000**
- **2004 approached the Equality Court**
- **2007 EC Judgement:**
 - **Minister of Fisheries must develop a Small-Scale Fisheries Policy (within 1 year)**
 - **Must provide immediate "interim relief"**
 - **Fishers must participate in process**
- **2012 Promulgation of new SSF policy**
- **2014 New regulations for SSFs**



Strategy: Negotiation

South Africa

- Fishers and their social partners participated in policy discussions
- Served on Task Teams
- MDT, LRC and fisher reps met with govt structures throughout
- Had to balance negotiation with constant challenge (e.g. threat to go back to court due to delays)

Nuu-chah-nulth

- Engage in court ordered negotiation process in good faith to implement rights-based fisheries
- Canada: unwilling to negotiate; no mandate to regional negotiators; continue attempts to integrate NCN into existing commercial fisheries



Strategy: Education and Awareness

Nuu-chah-nulth

- **Government (all Federal levels)**
 - Extensive correspondence
 - Meetings, meetings, meetings ... structured, tiered processes
- **Third parties**
- **Internal**

Approaches:

- **Media, Facebook, consistent messaging**

South Africa

- **Government (mainly national)**
 - letters to govt and Minister
 - Meetings and roundtables
- **Establish Coastal Links a - CBO of fisher leaders across SA**
- **SA fishers (50) participate in WSSD – engage with other fishers**
- **Media interest in growing fisher social movement, stories by journalists also NGO partner**



Strategy: Capacity Development and Training

South Africa

- **NGO facilitates many workshops (all levels)**
- **Training interventions (new laws, rights, co-management)**
- **Recognition of value of LEK and its contribution to management**

Nuu-chah-nulth

- **Inter-generational knowledge transfer**
- **Education and employment opportunities**
- **Mentoring Nuu-chah-nulth into real employment**



Strategy: Stewardship and Management

Nuu-chah-nulth

- **Authority of Ha'wiih to manage resources in their territories**
- **Collaborative Management (with DFO)**
- **Unilateral management**

South Africa

- **Fishers wish to engage in co-management but little support from government**
- **On east coast, communities continued to fish in terms of customary law**



ORGANISE
ACCESS AND RIGHTS
TO THE SEA

Coast to Coast
Unite and
Fight

F.A.M.U.
AN INJURY

INDUSTRY.
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Strategy: Direct Action

South Africa

- **Several protests – outside parliament, at the Fisheries offices, and sit-ins at offices**
- **Protest fishing - organized fisheries officials invited**
- **Protest fishing – informal fishing**

Nuu-chah-nulth

- **Protest fisheries**
- **Strategic voting in 2015 Federal Election**
- **“Charge us if you dare”**



Strategy: Allies and Partnerships

Nuu-chah-nulth

- **Local governments**
- **Other First Nations in BC, Canada and Pacific NW**
- **First Nation political organizations**
- **Some parts of commercial fisheries (e.g., fishing union)**

South Africa

- **NGOs -Masifundise and LRC**
- **Other fishers in SA through Coastal Links network**
- **Global partners – WFFP, ICSF**
- **Academics and researchers – served on task teams, committees, research, monitoring**
- **Trade Unions - COSATU**



Significant Outcomes

South Africa

- **Constitution recognizes customary systems of governance**
- **Traditional Small Scale Fisheries recognized as a legal group of fishers by courts in South Africa; immediate relief provided to fisher families**
- **new Small Scale Fisheries Policy and regulations for protecting and supporting community fisheries**
 - **Increased awareness: community, government, industry, public**
 - **Lasting partnerships and alliances**

Nuu-chah-nulth

- **Aboriginal right to fish and sell recognized and affirmed; protected by Constitution**
- **Rights infringed by Canada's regulations and policies**
- **Management expertise resurgence (e.g., monitoring, decision making)**
- **Potential reconciliation settlement with Canada**



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Common Lessons from South Africa and Nuu-chah-nulth

- **The strategies and tactics are iterative, fluid and opportunistic.**
- **Multi-generational battle: must be vigilant, persistent and committed.**
- **There will be set-backs and losses.**
- **Ultimately, legal action necessary to gain recognition of rights (get good, committed, young lawyers).**
- **Communities have power; unified communities have even more power.**
- **Challenge is to give strength and power to the community voice.**

