

**A CUSTOMARY RIGHT TO FISH WHEN FISH ARE SPARSE: MANAGING
CONFLICTING CLAIMS BETWEEN CUSTOMARY RIGHTS AND
ENVIRONMENTAL RIGHTS**

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SUMMARY

This contribution considers the potential conflicts that may arise between customary rights and environmental rights in the face of dwindling marine resources. It sets the scene by reflecting on some of the common themes present in indigenous claims to marine resource by communities who were subjected to colonisation. In doing so it analyses the South African judgment, *S v Gonggose* Case No. E382/10 (unreported), which alluded to the existence of a customary right to fishing, a concept that has until now remained unexplored in South African law. This discussion is followed by a brief overview of the rapidly declining state of marine resources, worldwide and in South Africa. The note then considers the relationship between customary law and marine resources and some of the challenges in meeting rights-based customary claims to marine resources against the need to conserve a dwindling resource. It concludes by offering possibilities for reconciliation.

KEYWORDS: Custom; Customary law; Customary rights; Marine resources; Conservation; Environment.

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