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Quota discarding and distributive justice: the case of the under-10m fishing fleet in Sussex, England

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Abstract

Marine fish discarding has become a contentious environmental issue, but little attention has been paid to the moral grievances that sometimes underlie discarding practices. This article explores such a moral grievance through a case study of the under-10m fishery in Sussex, England, where discarding of cod (*Gadus morhua*) has become a highly charged issue, skippers blaming it on inadequate quota allocations. The moral claim is analysed using two conceptions of distributive justice, entitlement and desert. The conclusion reached is that the under-10m fleet's entitlement arguments are weaker than their desert arguments, but that entitlement arguments weigh more heavily with government.

1. Introduction

Discarding is the disposal of marine life, caught alongside targeted species, returned to the sea predominantly dead or dying. It is a serious problem, as a large amount of edible fish is dumped at sea every year – 7.3 million tonnes globally, according to Kelleher (2005). Much attention has been focused on public outrage at this waste of valuable protein (Clover 2005); on research into technical methods of reducing the level of unwanted catch (Kennelly 2007); on economic drivers of skippers engaged in discarding (Hatcher and Gordon 2005); and on policy initiatives to provide carrots and/or sticks to persuade skippers to adopt discard reduction practices (Catchpole and Gray 2010). There has, however, been little research into skippers' grievances against what they perceive to be unfair treatment by fisheries managers which causes discarding. Most fish is discarded because it falls below the minimum landing size (MLS); or has no market value; or holds less market value than other specimens (high grading); or exceeds the boat's monthly quota allocation. It is the last category - quota discards – that is the focus of this paper, because of the allegedly heavy level of quota discarding amongst the under-10m sector in Sussex on the southeast coast of England. The paper examines strongly held opinions on the issue of quota allocation expressed by under-10m skippers, over-10m skippers, and other stakeholders, most of which reflect two conceptions of distributive justice – entitlement and desert. Using interpretations provided by two political theorists – Nozick (1974) on entitlement and Sadurski (1985) on desert – the paper evaluates these opinions in the light of the two conceptions of justice.

In section 2, the methodology and theoretical framework of the paper are explained. Section 3 outlines the case study of the quota discarding problem in the Sussex under-10m fleet. In section 4, proposed solutions to that problem are rehearsed. Section 5 interprets the opinions expressed by fishers' and other stakeholders on the above problem and its solution in terms of two conceptions of distributive justice (entitlement and desert). Section 6 explains that an implication of the paper's main finding - that the under-10m sector's case is weaker on the criterion of entitlement – is that it is unlikely to succeed in its aim of obtaining a redistribution of its quota allocation.

2. Methodology and theoretical framework

Data for this paper is from interviews and newspaper archives. Both provided extensive statements from the main players in this controversy - skippers of under-10m and over-10m vessels, and fisheries ministers. Face-to-face interviews of twenty under-10 skippers were conducted during July-September 2009 in four of the Sussex fishing fleets at Brighton, Eastbourne, Hastings, and Rye. These interviews generated information about skippers' opinions on the extent of cod discarding in the Sussex fleets; the effects and causes of that discarding; their motives for discarding; their attitudes towards discarding; and their suggested remedies for reducing discarding levels. Newspaper archival material came mainly from *Fishing News*, the UK's premier trade newspaper for the fishing industry, which reports extensively on British fisheries. The *Fishing News* archives of weekly issues over a ten-year period (2000-2010), supplemented by Hansard reports of debates in the House of Commons, provided extensive information on the situation of the under-10m sector in the UK, including reports of statements made by major players in briefings, speeches, and meetings, and (very lively) letter pages and editorials. All data used for the paper was qualitative, analysed by means of interpretive or critical realism (Fischer 2003). This is a form of discourse analysis (Howarth and Torfing 2005), where the

aim is to get behind the overt statements made by stakeholders to ascertain what kinds of moral principles of justice are being appealed to, and to evaluate the strengths and weaknesses of those appeals.

The two most important conceptions of distributive justice were used – entitlement and desert – and two leading political theorists were chosen as guides to those conceptions: Nozick (1974) on entitlement justice, and Sadurski (1985) on desert justice. According to the entitlement conception of justice, people are entitled to keep what they have obtained, provided they do not violate the rights of others. Justice as entitlement is “an appeal to established rules or conventions which settle the matter in hand without the need to consider other morally relevant factors” (Campbell 2010: 50). According to Nozick, there are three elements in the entitlement conception of justice: acquisition, transfer, and rectification. On acquisition, people are entitled to appropriate whatever is unowned, provided others are not thereby made worse off. On transfer, people are entitled to freely exchange their holdings: “whatever arises from a just situation by just steps is itself just” (Nozick 1974: 151). On rectification, people are entitled to have unjust appropriations and transfers reversed. On the desert conception of distributive justice, Campbell (2010: 140) points out that “the idea that justice is a matter of people getting what they deserve is perhaps the most common and tenacious of justice”. The desert principle asserts that people are responsible for their actions and that it is right that they should take the consequences, good or bad, of those actions. As Sadurski (1985: 222; 116) notes, “desert is not concerned with the ‘moral worth’ of an individual, but with his socially valuable effort [which incorporates]...sacrifice, work, risk, responsibility, inconvenience”. Campbell (2010: 142; 146) agrees - “if someone chooses to perform socially useful actions, particularly if these involve the expenditure of time, effort or personal resources, then they are deserving of praise and/or reward” – and adds that desert may require redistribution of present holdings to match the ideal criteria of desert.

3. Case study: the under-10m fishery in Sussex

In the county of Sussex there are approximately 250 fishing vessels registered across 10 ports, giving employment to nearly 500 fishers. These vessels are primarily day boats (ie they set out and return on the same day), and are under 10 metres in length. The majority of them use static nets or as combination of static and mobile gear. In 2007, almost 6,000 tonnes of fish were landed at Sussex ports. The quota fish targeted are cod (*Gadus morhua*), sole (*Solea solea*), plaice (*Pleuronectes platessa*), several ray species (*Raja*), mackerel (*Scomber scombrus*), herring (*Clupea harengus*), sprat (*Sprattus sprattus*), and whiting (*Merlangius merlangus*). Certain areas within the district hold Marine Stewardship Council (MSC) accreditations for their Dover sole, herring, and mackerel fisheries (MSC 2005a; 2005b; 2009). The fleets of Brighton, Eastbourne, Hastings, and Rye (see Figure 1) were chosen for interviews because skippers in these fleets have reported acute levels of discarding. For example, one Hastings skipper stated that “Cod are like a plague out there”.

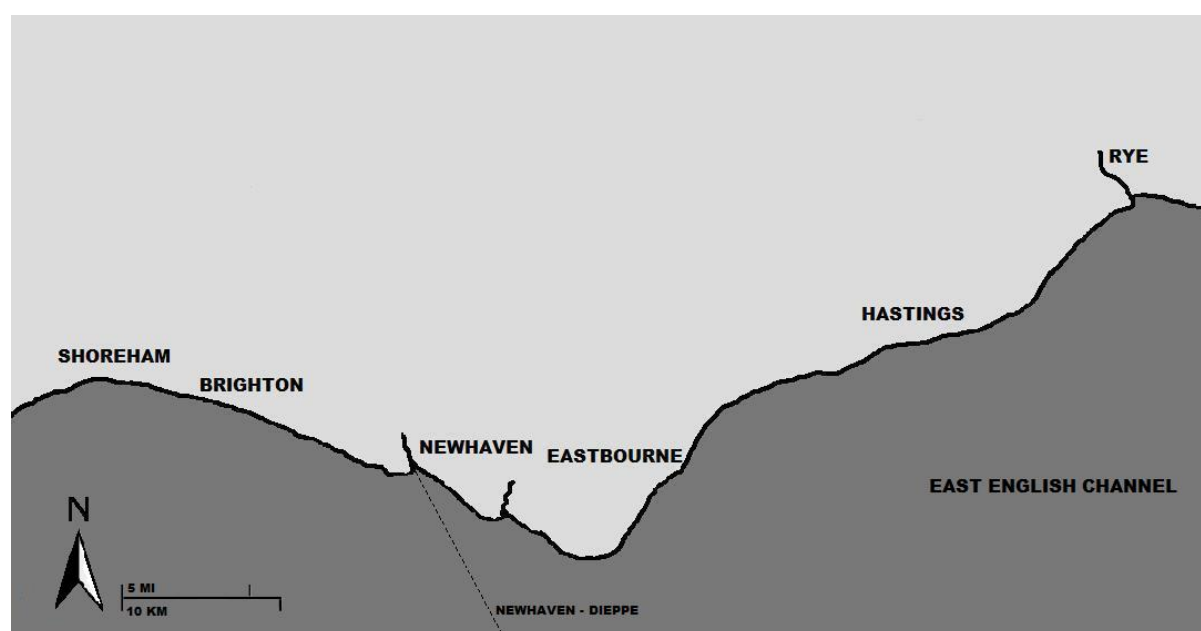


Figure 1: Map of the Sussex coastline, south east England

Skippers said that one of the effects of high discarding is marine pollution. A Brighton skipper claimed that “we’re throwing so much back the seabed stinks...it’s polluting the seabed”, and a Hastings skipper reported that cod carcasses were subsequently caught in nets and polluted the live fish. In their attempts to avoid catching cod, skippers pointed out that they targetted other stocks, such as dab (*Limanda limanda*), which then placed these other stocks under excessive pressure. Moreover, skippers held that “Cod are so abundant that they are depleting other species such as cuttlefish [*Sepia officinalis*], Dover sole, red mullet [*Mullus barbatus*], small shellfish and other small cod” (*Fishing News* 30/10/09: 8-9).

According to the skippers, insufficient quota was the main underlining cause of cod discards. An Eastbourne skipper said “It’s the quota regulations...Under a normal course of things, we don’t have...a discard problem. It is only the bloody quota system that has forced us into discarding”. A tightened winter cod quota meant skippers increasingly used small mesh nets of 90-100mm to catch Dover sole (compared to 120mm nets used for cod), creating high by-catch including cod (*Fishing News* 30/10/09: 8-9). A Hastings skipper remarked that “they force you to use smaller meshes, ’cos you can’t catch cod...so you end up catching cod...It’s a joke”.

Most fishers discarded because of fear of prosecution “We have no alternative to discard” (Hastings skipper). An Eastbourne skipper said that “You can’t land it ’cos you get a massive fine...We don’t want to discard”. Many skippers expressed ‘heartbreak’ at having to discard: “It breaks my heart...to throw dead fish back...all dead, quality fish going back for nothing” (Brighton skipper). “It’s a terrible waste” (Eastbourne skipper). Moral repugnance was a frequent response: “I think it’s absolutely disgusting...To discard 10 boxes of cod which are dead is absolutely immoral” (Hastings skipper). Some felt guilt: “I feel guilty at wasting food resources” (Eastbourne skipper). Others expressed anger and disbelief at the quota system: “There’s so much of it about. We throw back easily four tons a week, but yet we have no quota because they say we have no fish...It’s ridiculous really” (Rye skipper).

4. Suggested solutions to the discard problem

Many different suggestions for solving the cod discarding problem were put forward by both skippers interviewed and people whose opinions appeared in the columns of *Fishing News*. These solutions raise issues of distributive fairness, as we shall discuss in section 5.

The most frequently suggested solution from interviewees was simply to increase the under-10m fleet cod quota. “Give us more quota” (Brighton skipper). Several different methods of increasing the cod quota were proposed, the most fundamental being to revisit the original distribution of the cod quota between the over-10m sector and the under-10m sector made in 1989. Before 1989, quotas were attached to licences rather than to vessels, and every new fishing vessel coming into service was given a notional track record to entitle it to a share of the national quota. But after 1989, a distinction was made between the quota allocation for the over-10m sector and the quota allocation for the under-10m sector, based on their respective track records. Because the over-10m sector had logbook data and therefore evidence of their catches and landings over the previous three-year reference period, whereas the under-10m sector, which was not required to keep logbooks, had no such evidence, the distribution of the cod quota was skewed heavily in favour of the over-10m sector. The under-10m sector was allocated only 3% of the cod quota, although it employed the majority of UK fishers and had many more vessels than the over-10m sector. In 2006, the over-10m sector comprised 1,508 vessels, mostly owned by members of Producer Organisations (POs)¹ holding 97% of the national quota; while the under-10m sector comprised 4,833 vessels, holding 3% of the national quota (*Fishing News* 10/11/06: 3). Skippers in the under-10m sector have always regarded this allocation as grossly unfair, because they were being punished for not having catch and landing data which they had no legal duty to record. They complained that an educated guess could have been made by the fisheries authorities to estimate their past track records. Accordingly, they demanded a redistribution of quota.

¹ Producer Organisations (POs) are voluntary organisations that represent the majority of over-10m boats and account for about 80% of the UK quotas on managed demersal stocks. Originally established to administer the system of withdrawal prices for landed catches, POs acquired the task of sectoral quota management, which included the responsibility for distributing to their members quota annually given to the POs by the government. In the south of England, membership of POs is less common, as proportionally more over-10m skippers, and almost all under-10m skippers, choose to obtain their quotas through the non-sector, which is managed directly by the government (Crean 1998).

However, a fisheries minister, Jonathan Shaw, said he would not forcibly take quota from the PO sector: “People have quotas and I am not going to top-slice” (*Fishing News* 21/12/07: 2; cf *Fishing News* 8/2/08: 3). Such a move could face a legal challenge: “The officials say they can’t take quota back from the [over-10m] sector without risking a legal challenge so the under-10m sector must be cut to fit the quota” (*Fishing News* 16/3/07: 3).

Three other adjustments of the cod quota allocation were proposed. The first was a demand from a Brighton skipper for the return of cod quota by owners of over-10m trawlers who decommissioned their vessels, and for that relinquished quota to be redistributed to the under-10 sector. It was argued that it is legitimate to require the surrender of a public asset in return for the receipt of public funds for the decommissioning of the vessel for which the public asset (the quota) was allocated (at no charge) in the first place. Moreover, since under-10m vessel owners had to surrender their quota on decommissioning (see below), it was inequitable if over-10m vessel owners were allowed to hold on to their quota. The second proposal was to transfer unused quota from the over-10m sector to the under-10m sector: “At the end of the year, most of them haven’t even caught all their quota: why can’t they give that to the small boats?” (Hastings skipper). The argument here is that the under-10m skipper’s right to make a living trumps the over-10m skippers’ right to hold on to unused quota.

The third proposal was to use any new (ie additional) allocation of cod quota from the EU to redress the imbalance between the under-10m fleet and the over-10m fleet. This method was successfully used in 2005, with a doubling of monthly sole quotas for under-10m boats in Area VIIe (Western Channel) and the North Sea (*Fishing News* 18/2/05: 3). Again, in 2006 this method was used by the Department of Environment, Food and Rural Affairs (DEFRA) in allocating to the under-10m sector and the non-sector the extra prawn TACs agreed at the December 2005 EU Fisheries Council meeting, amounting to an extra 100t of North Sea prawns and an extra 160t of West of Scotland prawns (*Fishing News* 31/3/06: 2), despite an outcry from the over-10m sector, who argued that the existing allocation criteria should be used (*Fishing News* 31/3/06: 2). In 2009, Shaw’s successor as fisheries minister, Huw Irranca-Davies (2009a), proposed to distribute a 30% increase in the total allocation of cod for area VIIId negotiated at the 2008 EU December Council with approximately 70% going to the inshore fleet. As the MP for Hastings and Rye, Michael Foster, remarked, “The allocation appeared to mean that [the under-10m fleet’s]...demands were being recognised for the first time...While the 70:30 split was still minimal, the principle had been established” (Foster 2009). After consulting with the over-10m sector, Irranca-Davies (2009a) reversed this decision and allocated 70% of the new quota to the South West Producer Organisation, and only 30% to the under-10m sector. The minister explained his *volte face* on grounds that the over-10m sector had emphatically rejected the proposal, and good practice required that he did not alienate the producer organisations.

One further method of increasing the under-10m sector’s cod quota was leasing. In 2002, DEFRA decided to allow under-10m vessels to lease (i.e., rent) quota held by the over-10m sector (*Fishing News* 16/8/02: 1). However, quota leasing was too expensive for most under-10m skippers, as Tom Brown (Joint Secretary, Southern North Sea Inshore Fishermen’s Association) pointed out: “It’s all very well saying they’ll extend quota leasing for the inshore sector to cod, but where will people get that sort of money, even if there is any cod to lease? It costs 800 a tonne now...and will probably rise to £1000 a tonne” (*Fishing News* 3/8/07: 3). Leasing also increased high grading and therefore failed to deter discarding: “All they’re doing is encouraging even more discards because people will only save the very best fish to cover their leasing costs. It flies totally in the face of conservation” (*Fishing News* 3/8/07: 3). Moreover, the system of quota leasing raised the vexed issue of ‘slipper skippers’ or “armchair moguls”, who owned quota without going to sea, having obtained a commodity that was originally distributed free – a practice described by many under-10m skippers as “immoral” (*Fishing News* 21/4/00: 1-2). John Nichol (Committee member, National Under-Ten Fishermen’s Association (NUTFA)) said that “Quotas are a national asset and should go to active fishermen, not traders who don’t go to sea” (*Fishing News* 15/2/08: 8). Even within the over-10m sector there was unease about ‘sofa quota’. For example, George MacRae (Secretary, Scottish White Fish Producers’ Association (SWFPA)) complained that seagoing skippers were being “held to ransom” by “slipper skippers” leasing quota at inflated prices, and “This is inequitable, unfair and totally immoral. It must be stopped now” (*Fishing News* 26/9/03: 3). However, leasing quota has become such a well-established part of the fisheries management system that it is now virtually impossible to remove it.

DEFRA's preferred solution to the problem of inadequate quota for the under-10m sector was not to increase the quota to match the fleet, but to reduce the size of the fleet to match its quota. DEFRA proposed two measures to achieve such a fleet reduction – decommissioning; and two-tier licensing. On decommissioning, DEFRA announced in 2008 the provision of £5m for decommissioning under-10m vessels, targeting the 'super under-10s' or high-tech boats that caught the most fish (DEFRA 2008). Owners of decommissioned boats would have to surrender their licences and their quota allocations which would be returned to the under-10m sector quota pool for redistribution to the remaining vessel owners. However, the decommissioning scheme was criticised for being under-funded (£5m would only decommission about 50 vessels, which would result in a miniscule increase in quota allocations: one estimate (*Fishing News* 5/6/09: 4) was from 50kg to 55kg per month of cod quota in area VIIId); discriminatory (its eligibility criteria was arbitrary); and unfair (it required quota surrender by decommissioned under-10m vessels, but not by decommissioned over-10m vessels).

On two-tier licensing, DEFRA (2008) proposed to split the under-10 metre licence into two categories: (1) a full licence for boats actively targeting quota species - eligibility for which was recorded landings of all quota stocks exceeding 300kg in any consecutive period between July 2006 and January 2008 – which would entitle vessels to catch all quota stocks up to the catch limits; and (2) a limited licence for the remaining boats – whose recorded landings of all quota stocks did not exceed 300kg in any consecutive period between July 2006 and January 2008 – which would entitle vessels to land only up to a total of 300kg a year of any combination of quota stocks (DEFRA 2008). This measure was designed to prevent the gap left by decommissioned vessels from being filled up by relatively inactive vessels being brought into active service. However, the two-tier licensing scheme met with fierce opposition from the fishing industry. According to Dave Cuthbert (Co-Chairman, New Under-10 Fishermen's Association (NUTFA) at a meeting in September 2008, NUTFA, National Federation of Fishermen's Organisations (NFFO), PO leaders and local representatives "all stressed that licence capping was unfair, unjust, highly discriminatory and would destroy the fabric of the under-10m fleet" (*Fishing News* 26/9/08: 3). The view of the meeting was that under-10m fishers who had bought full licences had a right to keep them – "The legal principle of 'legitimate expectation' that is applied in respect of over-10m quota holders should apply equally to under-10 licence holders" (*Fishing News* 26/9/08: 3). Owners of limited licences stood to lose thousands of pounds overnight, and one of them, David Platt of Portsmouth, argued that fishers should be given compensation for the lost value of their licences (*Fishing News* 29/2/08: 3). NFFO (2008) described the two-tier licence policy as "rough justice for the under 10s", in that the reference period for catch records was very short and arbitrary, and it penalised skippers who may well have been pursuing non-target species to take the pressure off quota species – the environmentally responsible behaviour that DEFRA should be encouraging, not punishing by confining them to a "derisory 'hobby' level" of quota. Moreover, the effect of having a second class licence which confined the holder to 300kg of fish per year would be to increase high grading to maximise the value of the 300kg, and this would mean increased rates of discarding – the very opposite of DEFRA's aim in introducing the two-tier licence scheme.²

5. Discussion

Underlying the arguments used by the under-10m fleet to justify an increased allocation of cod quota, are two conceptions of distributive justice – entitlement and desert – the meanings of which have been explained in section 2.

5.1. Justice as entitlement

There are many appeals made by the under-10m sector to the entitlement conception of justice in seeking resolution of their grievance over their quota allocation. The most important of these appeals centres on the issue of the original acquisition of quotas, claiming that the original 97% quota allocation to the over-10m sector left the under-10m skippers worse off than they were before the

²In the event, many skippers who were refused the full licence, simply transferred their licences to the Welsh or Scottish authorities, which restored to them to their full licences, since neither area recognises the two-tier system (*Fishing News* 13/3/09: 2). An editorial in *Fishing News* (13/3/09: 2) commented: "Like so much else in fisheries management, the law of unintended effects has come into play. And also, like so much else, it is the result of hastily introduced legislation in response to a rapidly developing crisis that ignored the industry's views – which DEFRA sought through a so-called consultation".

allocation, which constitutes a perceived injustice that requires rectification. Tom Brown said that “the present quota system is deeply flawed by the unfair way in which quota track record was allowed to be created in the first place” (*Fishing News* 25/1/08: 4). The under-10 fleet argued that although under the *letter* of the law, it may not have been entitled to a bigger share of the original quota because it did not have the paperwork to prove its track record of past fishing catches, according to the *spirit* of the law, it is entitled to a bigger share of the quota because it did in fact land a significant amount of fish during the reference period. Nick Prust (under-10m vessel owner) explained that “Where we in the under-10 sector have really lost out is that someone, somewhere dreamed up figures of catches landed from the under-10 fleet, which as we now know were inaccurate” (*Fishing News* 30/1/09: 9). Dr Stephen Ladyman (Labour MP for South Thanet), in a fisheries debate in the House of Commons described the distribution of the quota between the two sectors as “arbitrary” (Ladyman 2007). Richard Benyon (Conservative shadow fisheries minister) said that the share-out between the two sectors was “completely disproportionate and haphazard” (*Fishing News* 11/12/09: 10).

However, the over-10m fleet argued that under the rules, it was entitled to retain its historical allocation. Even an under-10m skipper (Nick Prust, Chairman, South West Inshore Fishermen’s Association – SWIPA) acknowledged that at the time when the quota allocation between the over-10m and the under-10m fleets was made, the only reliable figures came from the over-10m sector: “after all, their allocations are based on landings statistics that have a far firmer foundation than those of the under-10m fleet” (*Fishing News* 29/9/06: 4). It would, therefore, be unjust to forcibly take quota from fishers who had legitimately acquired it, often at considerable financial cost. Jim Portus (Chairman, UK Association of Fish Producers’ Organisations (UKAFPO) stated that the POs “won’t support any move to reallocate or redistribute quota”, characterising such a move as “robbing Peter to pay Paul” (*Fishing News* 16/11/07: 20)³. Bertie Armstrong said “the quotas are managed within a framework agreed with the industry, and the government can’t simply ignore that agreement when it is convenient...The fact is that the cake is too small, but that doesn’t mean that DEFRA and the Scottish Executive can use the excuse that the quotas are ‘a national asset’ to breach the current system. They can’t just say to the under-10s, ‘we didn’t give you enough quota in the past, so now we’re going to give you some more’” (*Fishing News* 11/5/07: 2). George MacRae argued that the government

“allowed trading in quota to grow and develop over many years. Quotas, fishing licences, and indeed days at sea, have acquired significant commercial value, with quotas being used as security for bank borrowing with the tacit and even expressed support of the UK government...the top slicing of quota entitlement already allocated elsewhere to try to temporarily to resolve major problems of the under-10m fleet...flies in the face of government support for legitimately allocated quota being used not only as fishing entitlement but as security for investment in new vessels etc...government cannot prejudice the legitimate entitlement of existing quota allocation. Many fishermen have borrowed monies to purchase quota entitlement and indeed continue to repay a capital interest on that borrowing...If the government...takes quota from legitimate quota entitlement holders, to redistribute it elsewhere, it could well leave itself open to a legal challenge in the UK and European courts on the basis that the quota management process has been applied with the tacit/express support of government” (*Fishing News* 23/11/07: 7).

Andrew Oliver (head of sea fisheries and marine environmental law at Hull solicitors, Andrew M Jackson) confirmed that the government would face a tough legal challenge if it removed quota from the over-10m sector:

“Many quota holders...have not only quota holding as a result of their track records, but also as a result of quota trading...many...have acquired it from a third party...Such quota has been obtained at considerable cost and quite often as a result of bank borrowing. Whilst many banks know the official position, they do nevertheless lend monies using the quota as security. All of this trading has been with the tacit, if not formal consent and encouragement of fisheries departments...Indeed...decommissioning rounds have allowed fishermen to retain and trade their quota whilst decommissioning their vessels...Although the official position of DEFRA remains that there is no title to quota (or indeed licences), and that it remains a

³ To which Dave Cuthbert retorted, “As for robbing Peter to pay Paul, there are those that would argue that Peter robbed Paul in the first place” (*Fishing News* 30/11/07: 4).

national resource, the legal position may be quite different. This is due to a legal concept known as 'legitimate expectation'. Legitimate expectation is a principle derived from EU Law which, since the late 1960s, has become an increasing part of UK law. It is generally used in situations where a substantive advantage or benefit has been obtained by a citizen, which it is deemed it is unfair or unreasonable to justifiably then deny them...a legitimate expectation will now arise where a public body has made clear and unambiguous representations upon which it is reasonable for a citizen to rely, provided such representations are not inconsistent with statute...Clearly, if rights to quotas were withdrawn as a result of a redistribution, that would result in prejudice to quota holders in terms of their own quota holding, but also in terms of their business plans and their ability to make repayments to the banks. The banks would also suffer prejudice where they have taken security over quota...[So] any redistribution of quota could well lead to a breach of a quota owner's legitimate expectations and the very real possibility that any redistribution could be challenged in the courts by way of Judicial Review" (Oliver 2007).

There is also a theoretical difficulty with the principle of rectification. As Campbell (2010: 61) points out, "In the actual world there can scarcely be any property that has not been acquired without a degree of Nozickean injustice, and it seems...impossible to go back to the beginning and work out the original rightful owners of holdings and discount all involuntary transfers". On this count, the under-10m cod quota allocation could be judged to be impossible to rectify since the passage of time (more than 20 years) means that, for example, many affected players are now dead, and therefore the injustice of their historical entitlement (or the loss of entitlement for unknown persons to whom they would have transferred their holdings) is now unrectifiable.

Subsequent demands by the under-10m fleet for alternative forms of redress have met with similar arguments of entitlement injustice from the over-10m sector. For example, Dave Cuthbert demanded the surrender of quota by over-10m vessels when they are decommissioned to be reallocated to the under-10m sector, arguing that over-10m vessel "owners must not be allowed to hold on to the quota", and that their surrendered quota would "give the government a chance to rectify the imbalance of quota" by redistributing it to the under-10m sector (*Fishing News* 15/8/08: 8). It is worth noting that many members of the over-10m fleet also wanted the quota of decommissioned over-10m vessels to be surrendered, though for redistribution within the over-10m fleet not to the under-10m fleet. As we saw in section 4, the over-10m sector was strongly opposed to slipper skippers. George MacRae reported that "the Association feels that quota should be held by or made available to skippers going to sea rather than them having to lease or purchase quota from 'slipper skipper' at uneconomic prices" (*Fishing News* 14/2/03: 7). But the idea of transferring any quota that was surrendered on decommissioning by an over-10m vessel and redistributed to the under-10m sector was anathema to over-10m skippers. Over-10m skippers pointed out that a decommissioned vessel may be of relatively little worth compared with the market value of the quota attached to it, so unless the government bought back the quota in addition to paying decommission money for the vessel, quotas should be retained by the owners. For the government's part, the fisheries minister at the time, Ben Bradshaw, stated that "The quota is not ours to take back. Quotas are set and they are owned by the skippers of the vessels, who can transfer them to another boat. We are not able to take that quota back", adding that if the quota were decommissioned, "it would cost us a lot more" (*Fishing News* 30/3/07: 3). George MacRae said that "The Government has so far refused to pay for quota, saying it was given away for nothing in the first instance. They also say that even if they did purchase and redistribute quota, they could be paying for it again if any vessel that received all or part of the decommissioned quota was then decommissioned in the future" (*Fishing News* 14/2/03: 7). Hamish Morrison (then Chief Executive, SFF) added that "the government just will not buy fish – end of story. They have said from day one that under no circumstances will they pay money for track record" (*Fishing News* 15/6/01: 3). So while the government denies that quota holders have a cast-iron legal right to their quota, it accepts that they have a quasi-legal right to them.

On demand for surrender of unused quota from the under-10m sector, the over-10m skippers argued that whether or not they chose to use up all their annual quotas was a commercial decision, and in no way undermined their moral entitlement to hold on to any unused quota for following years. Bertie Armstrong explained that "The fact is that there was a surplus last year because people are working sensibly and trying to work within their quota and with the system. They want to stay legal and plan and invest for the future by building new boats, but they can't do that if they don't know what the government is going to do from one minute to the next. They must be able to depend on the

administrations to manage the system within the agreed rules. It's no answer to the problem to have an uncontrolled sector being supplied with quota from a sector that's doing its best to live with its quotas" (*Fishing News* 11/5/07: 2). On the demand that any new quota should be distributed in favour of the under-10m sector to offset the original maldistribution of quota, the over-10m sector argued that all new quota should be distributed using the original allocatory keys because that is the basis of stability for the whole system of UK fisheries management.

Comparing the entitlement arguments put forward, respectively, by the under-10m and over-10m sectors, the latter appear stronger than the former. The claim of 'legitimate expectation' which is the centrepiece of the over-10m fleet's case for leaving the quota allocation unchanged, is a much weightier entitlement argument than is the under-10m fleet's complaint that the allocation violated its rights and made it worse off than before, and that its lack of landing data should have been discounted when the original quota allocation was made. Distributive rules must be founded on a sounder basis than guesswork. Ironically, the strength of the 'legitimate expectation' argument was attested by the under-10m sector itself in its rejection of the government's two-tier licensing policy. Here, the under-10m fleet deployed the same argument of legitimate expectation (ie quasi-legal entitlement) that the over-10m fleet had deployed against quota re-allocation. Under-10m fishers who had bought full licences claimed that they had a right to keep them – "The legal principle of 'legitimate expectation' that is applied in respect of over-10m quota holders should apply equally to under-10 licence holders" (*Fishing News* 26/9/08: 3).

5.2 Justice as desert

The under-10m fleet appealed to the desert conception of justice in the cod quota allocation controversy, by highlighting, first, lack of desert in the system of quota leasing; second, environmental credentials of the under-10m sector, and third, its vital contribution to fisheries-dependent communities. On the lack of desert in the system of quota leasing, the under-10m fleet pointed out that slipper skippers had done nothing to deserve the rent they obtained for their quota, whereas the active skippers who leased the quota risked life and limb to pay off that rent: they were the people who truly deserved to own the quota if anyone did. Derek McIver (under-10m skipper, Strathcarron) said that "We are now in the sick situation where more money can be made by speculators leasing quotas to fishermen, than can be made by the fishermen who risk their lives at sea on a daily basis" (*Fishing News* 18/2/00: 8). Moreover, active skippers did not deserve to be faced with the cost of leasing quota that was so expensive it threatened to bankrupt them. The under-10m fleet suffered much more hardship than did the over-10m fleet from quota leasing because the smaller scale of its operations meant it found it much more difficult to absorb leasing charges ⁴.

On its environmental record, the under-10m fleet argued that it has a better record of environmental stewardship than the over-10m fleet. Dave Cuthbert declared that "small-scale fisheries...are, as has been well documented, environmentally and eco-friendly, have low impact on stocks, employ more people and have a very small carbon footprint" (*Fishing News* 20/11/09: 4). He claimed that "A large proportion of the under-10 fleet are static gear fishermen and given the correct amount of quota would have little or no discards, as their gear is very selective" (*Fishing News* 20/11/09: 4). Rob Penfold (Brixham under-10m skipper) claimed that a CEFAS scientist who observed a typical wreck-netting trip on his boat was "astounded" at the almost zero level of discards: "we are the most 'environmentally plus' sector of the UK whitefish fleet but we are now forced to tie up while the over-10m fleet, by far the biggest catchers, can continue fishing" (*Fishing News* 11/5/07: 3). A Rye skipper declared that "We fish pretty clean. We fish as clean as we can within the quota. Can't get much cleaner...The only way more would be if they changed the quota then we could reduce it [discarding] more". Moreover, the Hastings fleet have MSC accreditation for the Dover sole, herring and mackerel fisheries to validate their environmental credentials (MSC 2005a; MSC 2005b; MSC 2009; *Fishing News* 14/10/05: 20). Grace (*Guardian-online* 26/11/09) refers to "several sustainable fisheries around the British isles, most notably the Dover sole and mackerel boats that operate out of Hastings, which was described by the MSC as 'the most perfect fishery in the world'". However, its environmental credentials were somewhat tarnished by the fact that, in the days when it was lightly regulated, some of

⁴ Peter Caunter (Harwich under-10m netter) complained that "With sole quota costing around £5000-£6000 a tonne, an under-10m sole boat would need to spend about £100,000 to be able to fish legally, which is obviously out of the question" (*Fishing News* 25/2/05: 6).

the vessels of the under-10m sector – especially the so-called ‘super under-10s’ or ‘rule-beaters’ - used to take a vast amount of fish out of the stock (*Fishing News* 1/6/07: 9; 10/4/09: 18; 20/4/07: 8).

On its contribution to fisheries-dependent communities, the under-10m sector’s self-professed importance has been repeatedly authenticated by the government. For example, Huw Irranca-Davies (2009a) stated that “the under-10 metre fleet is an economically, culturally and socially vital part of the life of the UK, in terms not only of coastal communities but the fabric of this island nation...I am utterly committed to seeing it not simply eke along but thrive and have a very long-term viable future”, and that “In all aspects of our work...we always reach out to the under-10 metre sector. It is a vital part of our communities and our economy” (Irranca-Davies 2009b). The Conservative shadow fisheries minister – Richard Benyon – pointed out that 51% of the UK catch is landed in three ports, and 49% is landed in 280 ports, and affirmed that “I want to make sure that those 280 ports remain viable, and that the people who support the fishing industry in those communities can have an industry of which they can be proud” (*Fishing News* 11/12/09: 10).

Moreover, the under-10m fleet is not claiming a disproportionately large reward as its due desert: its request is for a relatively small amount of quota to be transferred from the over-10m fleet. Reducing its share from 97% to 92% would cause only a small loss to that fleet, whereas the transfer of that 5% to the under-10m fleet would cause a considerable improvement in the viability of that fleet. As Michael Foster argued: “A doubling of the quota available to the under 10-metre sector would make little difference to the over 10-metre industry, but it would be a life-saving change for the under 10-metre fleet” (Foster 2009)⁵.

Comparing the desert arguments of the under-10m and over-10m sectors, the former are stronger. The ecological footprint of the under-10m fleet is considerably lighter than that of the over-10m fleet, notwithstanding the poor environmental record until 2007 of the super under-10m vessels; the slipper skipper effect was much more harmful to the under-10m fleet than to the over-10m fleet; and the under-10m fleet’s contribution to small fisheries-dependent communities is much greater than that of the over-10m fleet.

5.3 Entitlement trumps desert in the echelons of power

In the above discussion, it has been argued that the under-10m fleet’s appeal to distributive justice for a re-allocation of its quota is more well-founded on the desert criterion than it is on the entitlement criterion. Whether this means that it has a superior moral case to that of the over-10m fleet depends on whether we regard desert as a superior moral criterion to that of entitlement, which is a deep and complicated ethical issue that cannot be explored here (Campbell 2010). What can be discussed here is the more practical and pressing political issue of whether government regards desert as a more compelling claim than entitlement. The answer is that for three reasons, government is more likely to favour the argument of entitlement over the argument of desert. First, the government is anxious to avoid any legal action from the over-10m sector which could result in its paying out heavy compensation for confiscated quota entitlements. Both fisheries ministers and legal opinion acknowledge that in court, the over-10m sector’s entitlement claim is likely to triumph over the under-10m sector’s entitlement claim, and the court is unlikely to be swayed by arguments of desert⁶.

Second, the government is predisposed to favour the over-10m sector rather than the under-10m sector, partly because the over-10m sector has more economic muscle and therefore more political clout than has the under-10m sector. Michael Foster (2009) claimed that “the Department is still in the clutches of the big boys who run the producer organisations, and is incapable of breaking out of their control” (though he argued that “If fairness so demands, it is for the Government to exercise their discretion without fear of producer organisations taking the huff”). It is also because the government (in line with the aims of the EU Commission) appears to want to reduce the size of the under-10m fleet to bring it under central control. Symes and Phillipson (2009: 4) speculate that “a reduction in the overall size of the industry and the elimination of smaller, less profitable enterprises are integral to the reform agenda

⁵ Tom Brown (Secretary, Thanet Fishermen’s Association) said that “The UK fishing industry now comprises the needy and the greedy” (*Fishing News* 19/10/07: 4).

⁶ Though Clive Mills (West Mersea skipper/owner) asked: “Is it right that the government should be frightened to take away the quota, a national asset, from the non-active people for fear of litigation?” (*Fishing News* 9/11/07: 4).

for a leaner, more easily managed fisheries sector”. Clive Mills (*Fishing News* 1/9/06: 20) claimed that DEFRA wants a smaller under-10 fleet: “They are trying to put us out of business to fit in with their plan for a small industry with just a few boats...They want to trap us into a system that suits them. The quota system is only there to get rid of fishermen by economic pressures”. Dave Cuthbert asserted that “There are...over 3000 under-10m vessels in England and DEFRA wants to reduce that number to around 800 by the cheapest means possible” (*Fishing News* 26/9/09: 3). Many under-10m skippers see the hand of the EU behind the government as a crucial factor. For example, Lockley reported that in October 2009, “Delegates from across Europe attending a two-day workshop in Brussels...said that EU fisheries policy discriminates unfairly against small-scale fisheries and fishers” (*Fishing News* 9/10/09: 6). Brian O’Reardon, Secretary of the International Collective in Support of Fishworkers which organised the workshop, referred to “the CFP’s bias towards the larger-scale sectors, and the myopia at national, regional and European level towards the small-scale sector” (*Fishing News* 9/10/09: 6). Daryll Godbold (Thames Estuary under-10m skipper) said “The truth is that Brussels just wants to squeeze the inshore fishermen out of business” (*Fishing News* 27/8/04: 5)⁷.

Third, for many years, the government (again in line with the EU Commission) has expressed support for the introduction of ITQs, and many under-10m skippers see in the government’s role in the quota allocation controversy the neo-liberal agenda of the Prime Minister’s Strategy Unit report in 2004 (*Net Benefits*) which recommended the introduction of ITQs into the pelagic sector initially, and eventually across the board (PMSU 2004). Dave Pessell sees DEFRA’s strategy towards the under-10m fleet as divide-and-rule to weaken the sector in order to facilitate the introduction of ITQs: “It is interesting that DEFRA has already offered the first of its usual cherries by permitting the under-10s the right to lease fish. Divide and conquer is the name of the game and the right to purchase quota will inevitably follow” (*Fishing News* 23/11/07: 2).

6. Conclusion

In investigating the problem of discarding of cod in the Sussex under-10m fleet, this paper has traced the root of the problem to the controversial allocation of the cod quota between the under-10m fleet and the over-10m fleet. Analysis of the deep-seated grievance expressed by under-10m skippers against what they perceived to be unfair treatment in this initial allocation has shown its foundation to lie in two principles of distributive justice – entitlement and desert. On the criterion of entitlement, the under-10m fleet’s case was found to be weaker than that of the over-10m fleet; on the criterion of desert, the under-10m fleet’s case was found to be stronger than that of the over-10m fleet. However, the government was more sympathetic to the entitlement argument than it was to the desert argument because it was more likely to prevail in the courts, and the government was politically pre-disposed to favour the over-10m sector, because that sector wielded more power than did the under-10m sector; the under-10m sector needed rationalising to bring it under central control; and its perceived bloated inefficiency stood in the way of the neo-liberal agenda of ITQs. So although on the quota allocation issue, the under-10m sector may occupy the moral high ground on the criterion of desert, the over-10m sector occupies the legal high ground on the criterion of entitlement, in addition to the political high ground on the criterion of economic hegemony.

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⁷ Though the EU’s official policy was to support the inshore sector, as expressed in the CFP 2009 Green Paper: “It is essential...to secure a future for coastal, small-scale and recreational fishermen...There is a legitimate social objective in trying to protect the most fragile coastal communities from this trend [capacity reduction]” (*Fishing News* 22/5/09: 16).

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