

Fisheries law

Full of loopholes

Without a purposeful public debate, the proposed new fisheries law for Argentina will get nowhere

At a time when Congress is in the process of approving a new Fisheries Law, there is a disturbing lack of meaningful public debate on important aspects of this law, in particular with regard to the call for a change in the fishery regime and the introduction of Individual Transferable Quotas (ITQs) for vessels and species.

After the changes in the Fisheries Sub-secretariat, the new officials now attribute the near collapse of the resource to what is called the 'Olympic model' of fishery exploitation. This elegant way of dealing with the problem avoids both personal and political responsibility by blaming the previous resource regime, described as a common property and unrestricted access regime, where each fisherman or boatowner tried to maximize his catch, while observing no restrictions.

In their view, the answer lies in replacing this model with another, which divides the resources species-wise into 'private quotas' for each vessel. In theory, this mechanism will cause quota owners to take responsibility for conservation and will enable them to plan their annual activities better. Moreover, each quota has an exchange value with a market price, and this will add to the value of the fishery enterprise.

However, in other countries, like Iceland and the US, ITQs have already been shown to increase the concentration of ownership of fisheries capital in the hands of the owners of freezer and factory ships.

Worse still, they hasten the process of social disintegration, causing unemployment and marginalization. Because of this, fishing nations like

Norway are establishing various mechanisms to protect small- and medium-scale fisheries against the incursions of the owners of large trawlers.

In the latest draft of the Fisheries Law approved by a majority of the deputies from the Committee of Maritime Interest, there is passing reference to implementing a system of ITQs. However, it provides no details of how this is to be done, leaving the future Federal Fisheries Council (CFP) to work them out.

The lack of political will in Congress to address the central issue of the 'new fisheries model', delegating the task to other officials, contrasts with the detailed legislation passed by the parliaments of other countries.

CeDePesca has publicly expressed concern over the process of structural change being imposed on Argentinean fisheries. It is a process where a fleet of factory vessels, now accounting for 60 per cent of the catch, is displacing the traditional fresh-fish sector comprising boats supplying shore-based factories. Furthermore, it has shown that, rather than being brought about by a natural process of investment in fishing capital, it is the Executive Authority of the Secretariat for Agriculture, Livestock, Fisheries and food, that has forced these changes through a series of resolutions and practical measures, particularly over the last six years.

Signs of conflict

Today, the clearest signs of the conflict between the two fleets can be seen in the reported landings of hake (*Merluza argentina* or *M. hubbsi*) which have exceeded the sustainable limit by 180,000 tonnes. While the fresh-fish fleet has maintained its historic catch levels below

300,000 tonnes, in six years, the freezer vessels have increased their catches to around 300,000 tonnes, breaching both legal and biological limits.

Faced With this situation, there are only two solutions: either to fix quota levels or allocate allowable catches based on the landings of recent years. This would consolidate the position achieved by the (factory) freezer fleet and gravely affect the shore-based processing industry. Alternatively, the historic track record of the fresh-fish fleet could be taken into account and quotas allocated to the freezer fleet in line with their catches in 1990.

The creation of such an ITQ system, which allocates quotas on a proportional basis without checks and balances, is the most complex and roundabout way of consolidating the positions of the trawler owners belonging to CAPECA (Consortium of High Seas Freezer and Factory Vessel Owners), and is a springboard for them to continue increasing their control over the fishery resources.

In a dispatch from Reykjavik, Iceland, dated 20 July, the Associated Press correspondent Bryan Brumley noted that the population of the small fishing town of Sudureyri had decreased from 500 to 300, following the imposition of the ITQ system because, according to a fisherman named Jonsson, catches were being

concentrated in the hands of the owners of large vessels.

“The large operators,” the report continued, “are buying up the quotas of small fishermen and transferring them to factory vessels which process the catch at sea, forcing the closure of shore-based factories. Clearly, the sale of quotas is threatening the traditional Icelandic fishing family,” claimed Jonsson.

In its report entitled ‘ITQs and Privatizing the Oceans’, Greenpeace USA comments that “ITQs are a way of institutionalizing the ongoing process of concentration, rewarding those with the greatest capital assets and the largest fleets. Conglomerates like Tyson Seafoods or RGI (owners of American Seafoods) would be able to get the largest share (of quotas) through their vessels’ recent track records. They would also be in a position to buy additional quota, removing the allocation process from public control and leaving the forces of the market to decide who fishes.”

Government view

In the April 1994 edition of *Fishing News International*, a Namibian government official expressed a similar view: “With transferable quotas, established businesses with the strongest financial bases, the easiest access to capital and the greatest administrative experience are likely to find it easier to accumulate

quotas." "In fact," according to the article, "in some regions and amongst some populations the greatest limitation to applying ITQs more widely is the clear tendency for quota accumulation and (negative) socioeconomic impacts due to quota losses."

With this in mind," the official was quoted as explaining, "we have studied some of the mechanisms which have been tried in the US and Iceland to reduce the socioeconomic impact of transferability by placing restrictions on who can exchange quotas.

As far as we can see, the final result for the North American swordfish and halibut fisheries is so complex that all the benefits of transferability have been erased. For these reasons, in Namibia, we have introduced a system which can be described as Individual Non-Transferable Quotas. FAO and World Bank reports also raise doubts about the appropriateness of this system for developing countries."

At the risk of using too many examples, we have tried to demonstrate clearly that the draft fishery Law's passing reference to the ITQ system is an inadmissible act of tokenism. That being so, we hope that there is still time to implement a legally binding regime of resource conservation which will contribute to alleviating

today's biological and socioeconomic crisis without making it worse.

In this regard, several systems have been proposed, one of which consists of ring-fencing the historic catch levels of the fresh-fish fleet, and introducing ITQs for catches above these levels.

Even though the importance of artisanal fisheries is widely recognized and is acknowledged in several international treaties and conventions, in our country artisanal fisheries have no legal status, and neither are they mentioned in the draft fisheries law.

Artisanal fishers are neither owners nor workers: they are artisans in their own right. As artisans, they do not work for profit in the strict sense, but rather for subsistence. Given their subsistence way of life and low potential earnings, they require a special status.

There are many national and international programmes which aim to develop and improve artisanal fisheries. Of particular note is Article 6.18 of the FAO Code of Conduct for Responsible Fisheries, which highlights the important contribution of small-scale and artisanal fisheries to employment, income and food security.

Just livelihood

It also recommends that States should protect the rights of fishworkers to a just

and secure livelihood. Quota allocation does not alter the fact that fisheries resources are a national asset. Fishery resources remain renewable only if extraction rates are rigidly kept within sustainable limits. For this reason, participatory fisheries management is developing as a generally recognized practice worldwide.

Fisheries committees, councils and other bodies have been constituted as genuine democratic institutions, through which the various actors can achieve consensus and place restrictions on some gaining advantages over others, and sharing responsibility for conserving resources.

In the draft law under discussion, there are two forums for participation: the Federal Fisheries Council (CFP) and the Advisory Committee. The former comprises the new Fisheries Sub-secretary (a new post, which may one day evolve into that of an Ocean's Minister), four representatives of PEN (the National Executive Council), and one representative from each maritime province.

It is clear that this organization, which is supposed to play an important role as a counterpart to the Executive Authority of the Secretariat for Agriculture, Livestock, Fisheries and Food, is made up exclusively of members with executive powers, but has no established links with the Regional Councils and Provincial Fisheries Committees.

In its turn, the Advisory Committee of this body will comprise trade union and industry representatives, according to a ruling made by the CFP itself. However, there is no legal obligation for the Secretariat or the CFP to follow their recommendations.

We do not understand why there is still such a deeply embedded fear in our society over the active participation of social and economic stakeholders in managing areas where they compete. Why not set up a monitoring committee or even a Federal Council with these actors, to make recommendations, control policy implementation and to seriously involve its members in management?

Why not establish clear guidelines for the election of members of this committee? Why not involve NGOs like Greenpeace and CeDePesca who have shown that they have an important contribution to make in the area of fisheries? Why not establish the link now between the Provincial Committees and the Councils that are being set up?

Such a genuine network of linkages, which functions in countries like Chile, Iceland and the US, is the best guarantee against *ad hoc* resource management. It is also the best guarantee for legal stability that we can offer.

At the same time, it will provide a mechanism to ensure that no one 'appropriates' the fisheries policy, compromising the present and future economy and associated employment.

The draft law under discussion also prevents INIDEP (the National Institute for Fisheries Research and Development) from publishing statistics or data not previously submitted to the Secretariat.

In fact, information on resources owned by every Argentinean should be published, and the law should oblige the Executive Authority to publish it within 24 hours. We are not, of course, talking about preliminary reports, but, in general,

CeDePesca

Recently established in Mar del Plate, CeDePesca is an NGO whose aim is to lobby for socially equitable and sustainable fisheries. Its main work is the production and dissemination of information that advances this aim. It conducts research and Undertakes public awareness-raising campaigns aimed at achieving a balance in the fishery debate, emphasizing the Importance of the women and men who derive their livelihoods from fisheries activities.

The only condition required to become a member of CeDePesca is a sharing of the concerns on which the organization is based. Currently, CeDePesca is undertaking a campaign to preserve tin fresh-fish fishing fleet's historic quota, while advocating a legally binding quota allocation system which protects them.



all the statistics being produced on fisheries and the information coming from INIDEP's studies should be made available for public debate in time, and while it is still relevant.

We desperately need a new fisheries law to replace the vague legislation that we currently have. However, it is such an important and delicate subject that it is worthwhile waiting a little bit longer so that, through public debate, we can enrich its content and prevent arbitrary and spurious pressures. ¶

This article, written by Ernesto Godelman, Chairman, CeDePesca, Mar del Plata, was translated from the Spanish by Brian O' Riordan