



**Rights Based Management and Small Scale
Fisheries in the EU:
Human Rights Versus Property Rights**

A LIFE Position Paper on ITQs

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Summary

This paper sets out the LIFE position on Individual Transferable Quotas (ITQs). The Common Fisheries Policy (CFP) leaves open the possibility for EU Member States (MS) to establish systems of transferable fishing rights, and implementing the discard ban has rekindled the debate about introducing such rights. ITQs have caused no end of controversy in the EU small-scale and coastal fisheries (SSCF) sector and it is essential that we confront and examine this approach to allocating fishing rights, given the risk that they may make a comeback in the EU. ITQs are often put in place with the stated purpose of reducing overcapacity and improving economic efficiency, but the failure to consider equity along with other human rights aspects (civil and political, social, economic and cultural) of fishing communities has meant that ITQs have disadvantaged SSCF and prejudiced their ability to enjoy their human rights. In this context, and given the extensive locally significant economic, cultural, social and environmental benefits delivered by the SSCF, it is vital to critically analyse any EU or Member State proposal for introducing ITQs against both intended and unintended harmful consequences that may result regarding SSCF, and to ensure that provisions that mitigate against such harmful consequences are included in any initiative.

There are many claims about the benefits of applying clearly defined individual rights (such as ITQs) to fisheries, and it is the aim of this position paper to demystify the issues: to clearly define what is meant by ITQs; to assess the claims made in support of them; to provide a clear set of design principles if ITQs are to be instated; and to propose alternatives to ITQs that would be compatible with a viable SSCF sector.

Where they have been imposed around the world the experiences have been consistent: ITQs have led to loss of employment, concentration of ownership, and increased social and economic costs for SSCF. For these reasons, and many others provided below, LIFE opposes the introduction of ITQs. In this paper, we conclude that many of the purported benefits of ITQs are hypothetical, false, ideologically motivated, or exaggerated, or all of these. ITQs do not improve sustainability and stewardship and only improve efficiency in a narrow economic sense, that does not take account of the wider social and cultural value of small-scale coastal fishing. A key purpose of this paper is also to highlight the impacts that ITQ systems have had on SSCF fishers around the world, to reference those findings, and to link these negative outcomes to the objectives of fisheries management in Europe, most notably Article 17 of the Common Fisheries Policy, which proposes the inclusion of social and environmental criteria in the allocation of fishing opportunities such as quota in the absence of transferrable fishing rights.

Context

Obligatory transferable fishing concessions (TFCs) were initially proposed by the Commission during the last CFP reform. However, their proposal was rejected by Member States (MS), who also rejected the idea of differentiated management measures for small and large scale fisheries. The proposal for adequate safeguard measures to be in place in such a compulsory TFC scheme to ensure that the industry behaved responsibly was also rejected.

As a consequence, the reformed CFP has left open the opportunity for MS to institute transferable fishing rights systems, without establishing the necessary safeguard measures to ensure responsible behaviour of the industry, or protecting small-scale fisheries from the perverse effects of ITQs. For example, the preamble (point 42) states that MS “should be able to introduce a system of transferable

fishing concessions”, and defines TFCs as “revocable user entitlement... which the holder may transfer”. Article 16 and 17, which demand that the Commission be informed about allocation mechanisms for fishing opportunities and for transparent and objective criteria to be used to allocate fishing opportunities, are subordinate to the use of TFCs.

Although ITQs, like TFCs may be revocable user entitlements in principle, in practice this may be difficult to enforce. Any government attempting to revoke such tradeable rights would most likely face court action, and potentially huge claims for compensation.

This apparent contradiction between Articles 16 and 17 is less than helpful but should be viewed against the increasing evidence that implementing what amounts to a giving away for free of a public resource has negative consequences for fishers large and small, as well as often vulnerable coastal communities.

It is therefore with some concern to LIFE that the Swedish government is proposing to introduce an ITQ system from January 1 2017 in its Baltic and North Sea demersal fisheries. It is reported that small scale coastal fishing in the Baltic is to be exempted, and that measures will be included to protect small scale coastal fisheries. However, much depends on whether or not there is a fair division of quota between fleet segments at the outset.

Introduction to Rights Based Management

Rights-based fisheries management (RBM) is a fisheries management tool. RBM systems allocate a secure right to a certain volume of catch, to use a certain amount of fishing effort, or to access certain fishing grounds, generally to deal with overcapacity and/or overfishing within a fishery. Some RBM systems grant the holder of the right a fixed amount of the catch of a particular fish stock, and the ability to sell, trade or lease out that right to others. RBM approaches, of which individual transferable quotas are one form, are frequently given credit for successfully reducing capacity and achieving other management objectives, despite the coincident introduction of scientifically set catch limits and more efficient and effective regulation and enforcement underpinning these successes. This conflation often leads to the wrong conclusions being drawn, often by vested interests, which focus on the introduction of ownership of access to the resource rather than effective management and regulation.

Given the possibility of poor or negative outcomes in RBM schemes, especially, but not necessarily exclusively for small-scale fishers and wider Society, they need to be applied with considerable caution. There are important trade-offs in any RBM scheme, therefore good system design that supports SSCF, described later in this paper, is absolutely essential where RBM provides the effective basis for fisheries management.

On the basis of the above, LIFE rejects the use of RBM systems that don't incorporate specific safeguard measures for small scale fisheries. Rather LIFE calls for a human rights based approach to fisheries management as opposed to a property rights based approach. The incorporation of human rights principles into fisheries management not only avoids the negative outcomes of resource privatisation but also delivers a far fairer and more equitable solution, not least with regard to SSCF communities, which are too often marginalized in fisheries management and policy decision taking processes.

An Overview of RBM Systems including ITQs

Individual transferable rights are one form of RBM, but they are not the only form. Below we provide an overview of other forms of RBM.

Individual Quotas (IQ) – IQs are associated with vessel licenses or vessel ownership, and are generally allocated on the basis of historic track records. IQs may or may not be transferable independently of the vessel or its license (i.e. IQs are generally transferred, if at all, with sale or scrapping of the vessel). In the EU, quota swaps between Producer Organisations (POs) are permitted, and there may be informal, unregulated IQ markets (such as in the UK).

Catch shares – Essentially another form of individual quota, where fishers are given a long-term and exclusive share of the available fishing opportunities or TAC. Catch shares can be held at different levels (community, organization, company, individual) and can provide a right to a certain catch tonnage, amount of effort or to a share of an area (see TURFs below). Most catch share systems use individual quotas (IQs) or individual transferable quotas (ITQs). Most EU member states currently have catch shares systems in place, even if they are not described as such.

Community Quotas (CQ) – These are like individual quotas but allocated to a fisher group (a fisheries association, PO or port). It is up to the collective unit how the quota is allocated to and used by its members, and to ensure compliance with the catch tonnage allocated, albeit that this form of allocation is often overseen by government quota managers.

Individual Effort Quota (IEQ) - When individual fishers receive a long-term effort share (this may be in the form of HP, kws, units of net / line, days at sea, or a mixture of these) they can be considered a form of RBM if they grant fishers an annual allowance for effort (capacity x fishing days). In some cases these rights may be transferable (ITEQ).

Territorial Use-Rights for Fisheries (TURF) – TURFs are user-rights that come in the form of a defined territory / geographic area, which is allocated to, or claimed by a user group (fishing community, company, organization, group of vessel owners etc.). TURFs provide exclusive access to harvesting fish or shellfish within that area to a defined group of fishers. TURFs are considered a form of RBM because fishers have a long-term exclusive right to access the fishery. TURFs are physical, geographical and non-transferrable; they may also be time bound or seasonal.

Limited Licensing (LL) - LL limits the number of vessels in the fishery, and is usually applied in conjunction with technical and effort controls on capacity, gear types, spatial limits and target stocks within license conditions.

Individual Transferable Quotas (ITQ's) – ITQs are yet another form of IQ or 'catch share', where fishers receive an **individual and exclusive right/share** of fishing access (eg. catch quota) that can be **traded** (sold or leased). Historically, the initial allocation of ITQs is based on the track records of qualifying vessels. Like IQs, ITQs are revocable by the state in principle, although this may be difficult in practice, and they may be allocated for relatively long periods, or even indefinitely. Due to their long term allocation and tradability, ITQs are seen as a kind of privatization of fishing rights [and are almost exclusively considered as such by beneficiaries]. The ability of governments to revoke ITQs may also be challenged by ITQ holders and by the banks, who may regard them as private property rights.

Impact of ITQs on Small-Scale Coastal Fisheries (SSCF)

ITQ systems are usually introduced in a context of overcapacity, a race-to-fish, or poor economic performance. Economic objectives to make the fleet more competitive and balanced in relation to available fishing opportunities mean social objectives are often an afterthought. The effects of ITQs on SSCF needs to be seen in this context.

An ITQ system imposes market incentives on fishers as competing producers. More profitable fishers use their capital to expand by buying more quota and unprofitable fishers sell theirs (and possibly leave the fishery or switch to non-quota species).

ITQs have the following impacts on the SSCF:

- **Increased costs to obtain fishing rights put pressure on SSCF** - Fishers without sufficient quota to match their fishing catches have to buy or lease quota, but buying is often not an option for SSCF (less capital and access to finance). The costs of leasing are frequently prohibitive and ITQs can also result in greater administrative costs for fishers.
- **Quota consolidation by larger operators takes place**- Larger operators buy up additional quota whilst others sell theirs, which increases quota concentration and inequality. Recent studies concerning quota ownership in Iceland, New Zealand, and Malta all confirm this assertion. Additionally, larger scale operators sometimes purchase quota as a way of reducing tax liabilities.
- **'Slipper Skippers' / 'Quota barons' / 'Sea Lords' emerge** - Some of those who have ITQs decide to leave the industry and make an income from leasing out their quota and as quota has become commodified, some see it as an investment opportunity – lucrative options for the quota holders but costly for SSCF and other fishers reliant on leasing. This practice also creates a gap between ownership of the resource and those who fish the resource and are connected to coastal communities.
- **Vertical integration and merging of fishing companies takes place**- Companies are incentivised to merge and integrate to pool their quotas. This concentrates market power amongst big operators, reducing access for SSCF.
- **Increased barrier for new entrants** - In addition to license and vessel costs, new fishers have to buy or lease quota in order to fish in most cases. This makes it harder for new fishers to join the SSCF fleet.

[NB: the final two bullet points above increase demand and therefore the cost of leasing or buying quota. This has been and will continue to be exacerbated by the implementation of the Landings Obligation and the need for fishers to have sufficient quota to cover not only target species but also those that may “choke” fishing effort].

These impacts often lead to secondary unintended changes:

- **Small-scale fishers come to rely more and more on non-quota species** - When leasing or buying quota becomes unaffordable SSCF become confined to non-quota species¹⁴ which concentrates effort and can put extra pressure on data deficient stocks. It can also cause market gluts and the associated depression of fish prices.
- **Many small-scale fishers leave the industry**- Capacity reduction is a clear outcome of ITQ systems but SSCF are disproportionately affected.
- **Smaller ports close and landings are concentrated at larger ports** - As fishing rights are concentrated and SSC fishers leave the industry, many small ports become unviable which affects smaller coastal communities where fishing is the primary economic activity. Once port infrastructure is lost, ports don't come back again.
- **Negative social and environmental externalities may be amplified**- ITQs (and economic efficiency) are blind to both the social impact to coastal communities and the environmental impact of moving towards more destructive gear types. Whole communities are lost as quota is consolidated elsewhere.

Because of these impacts on SSCF, we propose the use of **alternatives to ITQs** for small scale fisheries, where quota is kept in national ownership; quota for the SSCF is pooled and this pool is ring-fenced with provisions to facilitate future access for young fishers into the fishery; this quota should not be transferrable and the initial allocation should be criteria-based in line with Article 17 of the CFP.

Good design features of RBM systems

If RBM is to be used, it needs to be designed very carefully to ensure the protection of SSCF rights. It is an absolute necessity for there to be representation of SSCF at all stages of the design process if the system is to deliver equitable outcomes for fishers and coastal communities.

In particular, we call for the following features to be integral in any RBM system:

- **Public control:** Although quotas can be a long-term and secure privilege, ultimate ownership has to be retained by the Member State which has a genuine ability to revoke it under certain circumstances and without compensation. Temporal stipulations or contractual time-bound clauses must be included in the first instance.
- **Equitable initial allocation:** SSCF are disadvantaged from the start through inequitable quota distribution, if they were not legally obliged to have track records, or if the reference period for catch records is set over periods which put them at a disadvantage. Quota reallocation to right historic wrongs is needed.
- **A separately controlled SSCF quota pool:** To achieve wider social and environmental objectives, an adequate proportion of the national quota needs to be set aside for SSCF, allocated using performance-related criteria (CFP Article 17) and enabling access for new entrants into the fishery.

And for ITQ systems in particular:

- **Restrictions on ownership and concentration must be included:** Only active fishers should be permitted to hold quota, with limits set on the amount of quota any individual or enterprise may hold. Quota ownership needs to be capped to prevent the appearance of 'slipper skippers' or 'quota barons'.
- **Separate markets for separate fleets by design:** SSCF quota should be completely separate or ring-fenced. This is to prevent quota leaving the SSCF and its concentration by others, to the detriment of small coastal fishing communities.

Conclusions

Calls for implementing ITQs in some EU Member States do not sufficiently take into account the perverse outcomes that ITQs have. Evidence from numerous studies shows a range of negative impacts associated with ITQs, especially for the SSCF.

- ITQs often make access to the fishery more difficult for SSCF, particularly when their initial quota allocation has been restrictive; ITQs also prevent access for new entrants; result in concentration of wealth and influence as well as inequality and social divides within fishing communities.
- It is questionable whether efficiency improvements and capacity reduction can best be achieved through shedding SSCF fishers. SSCF generally have very low capacity and catch a very small percentage of the national quota.
- ITQs can negatively impact SSCF by concentrating fishing activity around larger fishing ports.

- ITQs come with big risks, especially when badly designed (or created by default or deregulation– e.g. in the UK).
- ITQs are a system based on an economic logic that does not take into account wider impacts and different forms of value. It is these wider forms of value which (in addition to food provision) the SSCF provides to coastal communities.
- It is true that ITQ systems can vary greatly in practice and in many cases contain safeguards to mitigate some of their negative impacts. Despite these safeguards, it is rare to find an ITQ system that has not seriously disadvantaged SSCF in some way, or where safeguards have been eroded over time.
- ITQs undermine the heritage rights of SSCF and the maintenance of fishing and non-fishing related employment, knowledge, skills and tradition in small coastal communities.

LIFE position statement on ITQs

The Low Impact Fishers of Europe (LIFE) reject Individual Transferable Quotas (ITQs) as an integral component of EU fisheries policies and management, because of the disproportionately negative impact they have on small scale coastal fishers and fishing communities.

Alternative forms of allocating fishing opportunities can deliver social, environmental and economic benefits without jeopardising the survival of the small scale fleet and the wider value they provide to Society.

Alternatives include: pooling quota in SSCF Producer Organisations, Fishers Co-Ops or other collective forms of organisation that can provide the necessary security and equity of access to quota for members; setting aside a share of national quota to re-allocate according to social, environmental and economic criteria (according to Article 17 of the CFP). Member States can then ensure that the SSCF survives and thrives according to the objectives of the CFP (Article 2.1, 2.5.f), 2.5. i)); this pooled quota, held collectively, with appropriate allocation criteria, can also be used to ensure new entrants into the SSC fishery, guaranteeing a future for young fishers and the SSCF itself; a quota pool should also be put in place for special allocations to maintain a diverse and sustainable SSCF fleet.

It is essential that quota allocation is criteria based (Article 17 of the CFP) and not only based on sometimes dubious catch histories. Giving environmental and social criteria priority over catch history will also mean a shift towards lower impact, higher community value fisheries.

Most importantly - fish should remain a public resource, and access to fish stocks managed and regulated by the Government. Privatisation of the access rights to fisheries resources is unacceptable and not in line with the public interest, with the interests of our members or of coastal communities.

Where ITQs are imposed upon us, we demand that: adequate safeguards are put in place to ensure that only active fishers are able to hold ITQs; that genuine limits on the concentration of ITQs are set; that sufficient and equitable amounts of non-transferable quota are set aside and ring fenced for small scale fishers, a proportion of which is reserved to ensure young fishers can enter the industry.

ITQ Briefing Sheet for LIFE members

Purported benefits of ITQs

- **Efficiency** – Usually a narrow definition of economic or technical efficiency that does not take external costs into account (such as environmental impact). Economic efficiency may work against the achievement of lower ecological impact or local employment generation.
- **Profitability** – ITQs usually improve profitability for vessels that remain in the fleet, but many fishers will leave as quota is consolidated, and quota leasing may prove prohibitively expensive for non-quota owning vessels and new entrants. Another perverse effect of ITQs is the tendency for larger scale operators, focused on economic efficiency, to use crews from developing and other non EU countries at the expense of local labour and labour standards.
- **Improved Stewardship** – Unproven. Often conflated when there is a TAC based on good science and enforcement, which are the real determinants of sustainable fishing.
- **Sustainability (selectivity/discards)** – No conclusive evidence. High-grading and/or under-reporting may increase under ITQs.
- **Capacity reduction** – Yes, but this is an objective with trade-offs as well. Capacity reduction has a disproportionate impact on SSCF, with resultant significant negative social and economic effects on coastal communities.
- **Win-Win** – Environmental benefits are questionable. Economic benefits may be at the expense of communities that lose out. The third, social dimension of sustainability should not be overlooked. Inequality may increase as SSCF have restricted access to finance and their capital/ running costs increase (to purchase or lease quota) , putting them at a disadvantage relative to larger scale operators or companies.
- **Better planning** – This is possible without an ITQ system.
- **Just outcomes** – Markets are not value-free. There are also externalities and market failures through power and wealth imbalances.

The impact of ITQs on Small-Scale Fisheries

An ITQ system imposes market incentives on fishers as competing producers. Fishers that are the most profitable can use profits to expand their operations by buying more quotas whilst unprofitable fishers are forced to sell theirs. Operators and outside investors may accumulate ITQs and lease out quota to fishers who cannot afford to buy quotas themselves.

These changes have the following consequences:

- Increased costs to obtain fishing rights puts financial and operational safety pressures on SSCF with the potential to increase financial (including of bankruptcy) and health and safety risks. Quota consolidation by larger operators drives power imbalances
- ‘Slipper Skippers’ and ‘Sea Lords’ drive inequality in the fishing industry and increase costs for those who have to buy or lease quotas.
- Vertical integration and merging of fishing companies creates power imbalances
- Increased barrier to entry for new fishers means that current industry age profile is increasing

These impacts then often lead to the following secondary changes:

- Small-scale fishers are forced to concentrate on non-quota species, which can lead to overfishing, and may cause fish prices to drop as markets are flooded by ‘gluts’ in particular non-TAC landings)
- A disproportionate number of small-scale fishers leave the industry for economic reasons created primarily through inequitable allocation and lack of access, although their fishing practises are low impact and sustainable

- Smaller ports close and landings are concentrated at larger ports, which has an impact on coastal and rural communities.
- Negative social and environmental impacts may increase.

Conclusion

ITQs are a system based on an economic logic that does not take into account wider impacts and different forms of value. They make access to fisheries more difficult for small-scale fishers, prevent access for new fishers, result in economic consolidation and drive inequality, and negatively impact small coastal communities.