ENTITLEMENTS TO MARINE LIVING RESOURCES—
COMMENTARY ON RICHARD BARNES

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The amount of research underlying this report is truly impressive. However, one cannot help thinking that it is largely misplaced. In my view, the concept of ‘property rights’ is not a useful way to approach the increasingly serious problem of over-exploitation and even depletion of marine living resources on the high seas. Conceptually, fisheries resources on the high seas belong collectively to the international community. States have the right for their nationals to fish on the high seas, but they also have the responsibility to conserve and manage those fisheries by controlling their nationals and by cooperating with other states to ensure that the fisheries are exploited sustainably. Many States, perhaps most, have not fulfilled their responsibilities, with the catastrophic consequences we see today. Some scientists have predicted that, if drastic measures are not taken, all the world’s fisheries will collapse by 2050.¹ The rapidly deteriorating condition of international fisheries must be addressed with utmost urgency.

The granting of property rights over fish, or individual transferable quotas (ITQs) to fishing vessels has been proposed as a solution to this problem. ITQs have been used, with mixed results, in a few jurisdictions. Yet, even within national jurisdiction, where a coastal State theoretically has absolute control over fishing, certain grave limitations of this ‘tool’ have been observed. Economists theorise that if individual fishers, companies or vessels are given ‘property rights’ over a certain amount of fish, or percentage of fishing opportunities in a certain area, they will have an interest in ensuring that the stock remains healthy and will fish in a sustainable manner. There is little evidence that this is the case.

Two sources of over-fishing are over-capacity (too many boats chasing too few fish) and the use of an ‘Olympic fishery’ approach. An Olympic fishery is a race among fishing vessels to catch as many fish as possible before the catch limit is reached. An authority will set a total allowable catch (TAC), and

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a possibly unlimited\textsuperscript{2} number of boats rush out to take as many fish as possible until the authority calls a halt to the fishing, on the basis that the reported catch has reached the TAC. Economists argue that giving a limited number of vessels an absolute right to take a certain number of fish (individual quotas) will eliminate over-fishing. The fishing boats will take the authorised amount of fish and then stop. They will do so, because they ‘own’ (have a property right in) their quotas and will wish to ensure that there is no over-fishing, so that they can continue to fish their quotas the following year(s). At least, that is the theory.

However, the reality is quite different and rather more complex. Giving a limited number of ships a right to take a specific amount of fish each can certainly help to reduce over-capacity as well as to reduce the amount of fish taken by legally licensed vessels, provided that they do not over-fish their quotas. However, this measure is not a panacea and in reality may not prevent over-exploitation or even depletion of the fishery. There are a number of defects in the ITQ system and a considerable number of problems causing the depletion of international fisheries are not even addressed. Furthermore, the idea that economists have the solution to every problem is an idealistic fantasy. Economists are not the solution; most often, they are the problem, as evinced by the current global economic crisis. Real life is more complicated and short-sighted, and fishermen find it difficult to accept that the conservation of fisheries is in their best interests.

The first problem not addressed by the ITQ system is the setting of the TACs above the limits recommended by scientists. The main source of over-exploitation is the politicians’ propensity to ignore scientific advice and to set TACs that are far too high. This happens regularly every year in many parts of the world, despite abundant evidence that the result will be a disaster. For example, every year the EU fisheries ministers adopt TACs that are higher than those advised by scientists and the European Commission, not only for European fisheries, but also for those abroad regulated by regional fisheries management organisations (RFMOs). Therefore, even with individual quotas and if all fishermen kept to their quotas, over-fishing would result. Politicians adopt these disastrous decisions because of pressure from fishermen who focus only on the current year’s fishing.

Second, even with ITQs, there would still be a problem of abuse. Many people abuse and over-use their own property. During the negotiations for the

\textsuperscript{2} Under some regimes, for example the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the number of vessels may also be limited, if only due to administrative requirements (information provided by E.J. Molenaar).