POOR QUOTA MANAGEMENT DECIMATING COASTAL LIVELIHOODS

BLUE MARINE FOUNDATION – LEGAL UNIT

BLUE MARINE FOUNDATION

Poor quota management decimating coastal livelihoods

Quota can be a highly effective environmental tool for sustainably fishing stocks, but environmental tools work most effectively when they have social licence. Blue Marine has a key concern arising from research conducted in both the UK and around the world, that a poorly constructed quota market can have adverse consequences on fishing communities themselves and therefore perverse consequences on the ground. Environmental legislation is only effective if it supports long term stability in decision-making.

Fishing opportunities in the United Kingdom have long been a hotly contested issue. In the wake of Brexit, British fishers are facing up to the realities of new political, regulatory, and logistical challenges, as well as mismanaged environmental capital. Decades of overfishing have made the situation critical, given that both stocks and the livelihoods of small-scale fishers[1] are now so fragile.

In order to survey the current landscape, this review examines material from a variety of sources worldwide (fisheries bodies, fishing industry organisations, governments, judiciary, academia, environmental groups, European Commission, European Court of Auditors), as well as stakeholder interviews and a targeted data sample from the UK fixed quota allocation register and related public financial declarations.

[1]For a comprehensive exploration of this ill-defined term and small-scale fisheries' prospects and potential global contribution, see Smith H and Basurto X, "Defining Small-Scale Fisheries and Examining the Role of Science in Shaping Perceptions of Who and What Counts: A Systematic Review" (2019) 6 Frontiers in Marine Science 236.

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VOICES FROM THE FISHING INDUSTRY

RESPONSIBLE AND SUSTAINABLE CO-GOVERNANCE

The National Federation of Fishermen's Organisations (NFFO) asserts that the **fishing industry needs "to have the maturity to understand that environmentalists and fishers ultimately have the same goals** and that the future lies with co-management".[2] The Scottish Fishermen's Organisation "recognises that fishing sustainably is vital to the future of the fishing industry";[3] and the Scottish Pelagic Fishermen's Organisation "is committed to supporting the sustainable fishing of pelagic stocks"[4].

The participative governance of marine resources is the subject of a report by the Low Impact Fishers of Europe which demonstrates a strong willingness by fishing communities to move to co-management arrangements[5]. Seafish, a public body which has the aim of supporting the seafood industry, notes that "responsible seafood production supports the livelihoods of fishing and coastal communities and respects basic human rights" and affirms that "sustainability is about meeting the needs of the present without compromising the ability of future generations to meet their own needs".[6]

POST-BREXIT DISILLUSIONMENT RIFE

An NFFO report entitled 'Brexit Balance Sheet' holds that loss to the UK fleet by 2026 would be £300 million, as against the £148 million benefit claimed by the government upon negotiating the Trade and Cooperation Agreement (TCA); and it lists major concerns such as costs of red tape, obstacles to trade, loss of the "Hague preference" and priority access to certain fisheries, failures to reach deals with other countries, and the terms of the TCA itself.[7] In addition, despite sovereignty narrative, EU vessels continue to fish English waters for non-quota stocks.[8]

One of the largest players on the UK market, a foreign-owned firm known as 'UK Fisheries' with profits of £7.7 million and assets of £166 million,[9] volubly deplores reductions in quota since Brexit, blaming the withdrawal from the EU for job cuts which halved its workforce;[10] while a skipper who voted for Brexit laments *"We were promised: We will take back control of our waters; we will set our quotas," "It's been a total con."* [11, 12]

The Scottish Fishermen's Organisation "recognises that fishing sustainably is vital to the future of the fishing industry"[3]

A PERFECT STORM AND NO UMBRELLA

According to a senior representative of UK small-scale fishers, fewer than 10 years ago the main concern for the membership of the organisation for which he provides support was a lack of available quota. Now, however, he estimates take-up of quota at 50%: "***we are not even catching what we have quota for***". Climate change, the cost of renting quota controlled by market dominators, Brexit-related extra costs and bureaucratic burden, and the aftermath of Covid-19, all add up to a perfect storm. Without meaningful and robust support from Government and stringent measures to restore stocks for the long term, he maintains that the UK small-scale sector will imminently end up as little more than a 'picture-postcard fleet'.

Economic and social data on jobs, financial performance, vessels, and catches are collected annually from the UK commercial fishing fleet by Seafish.[13] The latest survey, completed in late August 2023, shows that the **number of jobs** (full-time equivalent) reported **fell from 8,935 in 2016 to 6,557 in 2022 (a fall of over a quarter).** The overall number of vessels fell by more than 12% in the same period.

[2] https://www.nffo.org.uk/lawyers-boulders-and-money-a-future-in-which-fisheries-policy-is-driven-by-vigilantes-and-litigation

[3] https://www.scottishfishermen.co.uk/sustainability

[4] https://scottishpelagic.co.uk/sustainable-fisheries

[5] Guerin B and Cavallé M, "On the Road to Participative Governance of Marine Resources" (Low Impact Fishers of Europe (LIFE) 2022)

[6] https://www.seafish.org/responsible-sourcing/understanding-sustainability-and-responsible-seafood-sourcing

[x8] Are we witnessing the end game of the under ten metre and non sector coastal fleet? Letter from NUTFA to DEFRA (7 October 2019); https://fishingnews.co.uk/news/call-to-cancel-channel-fly-dragger-licences. See also APPG on Fisheries, "Brexit: Voices of the Fishing Industry" (All Party Parliamentary Group on Fisheries)

[9] Although nominally registered in England & Wales, the firm is ultimately controlled and owned by an Icelander resident in the Netherlands. Figures are taken from the latest accounts submitted to Companies House as at 14/09/2023.

[10] https://www.theguardian.com/business/2023/jul/22/we-are-at-50-of-the-quota-we-had-boss-of-uks-last-long-range-trawler-rues-squandered-brexit-hopes

[11] https://www.politico.eu/article/brexit-fisheries-uk-industry-betrayal/

[12] For a far more comprehensive overview of Brexit rhetoric and realities than space allows here, see Stewart BD and others, "The Brexit Deal and UK Fisheries—Has Reality Matched the Rhetoric?" (2022) 21 Maritime Studies 1

[13] https://www.seafish.org/insight-and-research/fishing-data-and-insight Seafish notes that a number of confidentiality rules are applied to the data, and that involvement in the annual survey is voluntary. Financial data is extracted from vessel accounts completed for Seafish (Moran-Quintana M, Motova A and Witteveen A, "UK Economic Fleet Estimates and Fleet Enquiry Tool – Methodology Report.Pdf" (Seafish 2020)) rather than from tax authority submissions as is the case for the FQA register.

REVIEW OF RESEARCH ON ILL-DISCIPLINED FISHERIES MARKET OPERATION

MARKET DOMINATION AT THE EXPENSE OF FAIR COMPETITION

At the macro-economic level, the contraction in the coastal workforce appears to have fallen unequally across the sector[14]: while the numbers of fishers are decreasing, there is an increase in the extraction of profits from those outside the sector. Concentration of beneficial ownership in the fishing sector as well as complexity and non-transparency in quota allocation are the subjects of an in-depth report by the European Commission Directorate-General for Maritime Affairs and Fisheries. Mergers and acquisitions, involving *inter alia* private equity firms, are analysed in nine extensive case studies, one of which qualifies the operations of Cornelis Vrolijk Holding BV, one of the most substantial owners of UK quota, as: *"a distinctive pattern of acquisition of fleets of vessels"* focused on a particular species, "*with* ***substantial investment in developing such fleets to be able to dominate the fishery***".[15] Overall conclusions of a number of case studies in the same report point to "a clear pattern" of ownership and fishing companies with **ultimate beneficiaries outside the sector.**

A second report, this time by the Fisheries Committee (PECH) of the European Parliament[16], delves into the "corporate structure" of the EU seafood industry in 23 coastal countries including the United Kingdom. The report foregrounds prime concerns based on "equity and social justice" noting that "potential gains in efficiency" are outweighed by social and other costs including "the ***decline in independent fishermen and the disruption to coastal communities*** because of lost revenues and jobs".

In the same vein, the European competition authority points to a shrimp cartel case involving several countries which took the form of a range of informal bilateral contacts, and concerned "purchase prices from fishermen, conduct towards other traders on the market, market sharing, and prices charged to specific important customers that often set the benchmark price for other customers"; fines in the case totalled more than €29 million.[17]

[14]For an in-depth analysis of the UK's system of fishing opportunities the broad lines of which have not evolved substantially since published, see Chapter 16, Carpenter G and Kleinjans R, "Who Gets to Fish?" (2017).

[15]European Commission Directorate-General for Maritime Affairs and Fisheries, "Study On Ownership and Exclusive Rights of Fisheries Means of Production" (2019)

[16]European Parliament PECH, "Seafood Industry Integration in All EU Member States with a Coastline" (2019)

[17]https://competition-cases.ec.europa.eu/cases/AT.39633; https://ec.europa.eu/commission/presscorner/detail/en/IP_13_1175

POWER AND CONTROL IN THE HANDS OF FEW

Both of the studies discussed on page 6 (totalling more than 500 pages) include detailed profiling of market dominators. This theme was further explored by the environmental activist group Greenpeace in a 2018 investigation which found that "a tiny minority of wealthy families control huge swathes of fishing rights to the detriment of local, low-impact, fishermen".[18] This is echoed in a UK Parliament report on fisheries statistics which states that "***over two thirds of the UK's fishing quotas are controlled by 25 companies***".[19] It is important to recognise that **those fishing rights (owned by the public) are allocated free of charge to this wealthy few** by the UK authorities.[20]

Regarding the UK the PECH report notes the **complexity of identifying ultimate owners of quota** due to (i) a multiplicity of subsidiaries (ii) no information on subsidiaries (iii) partnership agreements and minority shareholdings (iv) informal agreements, and, importantly, (v) highlights the fact that some companies have their own producers' organisation. Key findings include: **13 UK companies hold 60% of quota**; non-structural vertical integration is common; as is non-structural horizontal integration through quota trade, quota leasing, and quota swapping.

The European Court of Auditors carried out an audit specifically based on the fact that "***many stocks are still overfished, so continued efforts are necessary to manage fisheries effectively***", examining four countries including Scotland, focused on whether effective control systems were in place to report accurately on fleets.[21] The auditors regretted a lack of transparency which "makes it difficult for Member States to know the actual beneficiaries of fishing opportunities and therefore to assess any potential adverse impact on the environment and local economies, and take the necessary corrective measures where appropriate", and furthermore "***increases the risk that specific interests of certain economic operators are favoured at the expense of others***". Additionally, there was a concern that where producer organisations managed quota distribution, it was not always known which criteria were used to distribute the quotas to each of the beneficiaries. In that context it is very difficult to identify whether there has been any public benefit from freely allocating quota, particularly since the costs of regulating the fishing sector are drawn from general taxation, so the sector, unusually, does not directly contribute to the costs of its management.[22]

[18]The report is not in the public domain, but a press release outlined key findings: https://www.greenpeace.org.uk/news/uncovered-rich-list-codfathers-dominating-uks-fishing-industry

[19]Uberoi E and others, "UK Fisheries Statistics" (House of Commons Library 2022)

[20]Appleby, T, "Privatising fishing rights: The way to a fisheries wonderland?" (2013) Public Law 481

[21]European Court of Auditors, "EU Fisheries Controls: More Efforts Needed" (2017)

[22]Carvalho N and others, "Profitability and Management Costs in the EU Northeast Atlantic Fisheries" (2021) 123 Marine Policy 104281

In preparing this report, we also wanted to have a sense of whether the situation revealed by the 2018 Greenpeace investigation in particular had evolved, especially given the intervening Brexit. Rather than seeking to duplicate the methodology, we elected to use a targeted or purposive sampling method,[23] selecting the top 50 in terms of quota units. The authors accessed the UK Government's FQA (Fixed Quota Allocation) Register which lists FQA units held for each vessel licence alongside the holder name (individual or company), subject to the Register Disclaimer which covers, in particular, the lack of oversight of quota swapping, sale, leasing and rental. The data was downloaded as a single dataset as at 2 July 2023 and combined with data publicly available from Companies House, a public service through which financial accounts filed, directors, and 'persons with significant control' (beneficial owners) can be searched.

First and foremost, it is important to note that holding quota does not correlate in a simple manner with income - there are manifold intermediaries and variables, all the more so for the largest quota holders. Accounts filed with the UK's Companies House as required for tax purposes may relate to corporate entities with multiple activities including logistics or financial trading, and quota rental/leasing/sale is not a separate accounting item. Accounts for fishing companies are often unaudited, and financial instruments not disclosed. Many of the companies opt not to provide income statements (no profit or turnover stated). The largest players are complex entities: **Andrew Marr International Limited (audited turnover £836 million[24], for example, has at least 88 subsidiaries, while J. & J. Denholm Limited (audited turnover £457 million[25]) has 62 subsidiaries.**

Despite the above, the concentration of control was evident from our research: **directors recur** across different companies; there are a **small number of ultimate owners with deep and far-ranging power**; a multiplicity of **intermeshed subsidiaries and interrelated 'parent'/(cross-) holding companies** and joint ventures. The biggest companies are surprisingly opaque from an accounting perspective. There are **overlaps between producer organisations and private companies** (e.g., Interfish, Lunar, Klondyke).

The **lack of transparency is glaringly obvious**, and the authors are not aware of any attempts by the UK authorities to unpick the accounting knots and identify who are the real beneficiaries of the current approach and so inform its fisheries planning and fisheries management systems.[26] The laissez-faire procedure for delegated quota distribution only accentuates this lack of scrutiny.

The biggest companies are surprisingly opaque from an accounting perspective.

[23]As per the guidance issued by the Financial Action Task Force (FATF), e.g. FATF, "Operational Issues: Financial Investigations Guidance" (Financial Action Task Force (FATF) / OECD 2012).

[24]Year ended 31/3/2022, last available figures at time of writing

[25]Year ended 31/12/2021, last available figures at time of writing

[26]It would also appear that concentration of quota holdings has increased in the last five years, but we await with interest the next Greenpeace findings for confirmation, as their investigation covers the whole FQA dataset rather than a targeted sample.

CASE STUDY

In the current market, Mackerel is a very valuable fishery for the UK (around £226 million landing value per year). It is also a very good example of concentration of market players.

98% of WS Mackerel FQA units are held by **25 companies** which are themselves owned by a small group of families whose family members are directors of several of those companies at the same time.

THE ENVIRONMENTAL AND SOCIAL COST OF SECTOR CONCENTRATION – INSIGHTS FROM A KINDRED SECTOR

In order to provide insights into the market concentrations described in the previous sections, we can turn to other sectors, in particular that of agriculture. The potential consequences of growing corporate concentration and power in the global food system have been examined extensively by Clapp, who advocates a range of measures "to ensure that corporate concentration and power do not undermine key goals for food systems, such as equitable livelihoods, sustainability and broad-based participation in food system governance" and to **prevent damage to the environment and the undermining of small-scale producers.**[27] She further warns of the under-researched effects of financial investment in the agri-food industry (analogous to the financial interests in quota trading and fishing company ownership), which subverts competition and undermines broader social goals in order to achieve the overarching aim of higher returns for shareholders.[28]

[27]Clapp, J. The problem with growing corporate concentration and power in the global food system. Nat Food 2, 404–408 (2021).

[28]Clapp, J. The rise of financial investment and common ownership in global agrifood firms, Review of International Political Economy, 26:4, 604-629 (2019).

AFFLUENCE OF LARGE PLAYERS AND FOREIGN ACCESS & OWNERSHIP NOT SUPPRESSED BY BREXIT

A few examples must suffice in terms of the significant pay-outs made to a small number of individuals: Klondyke Fishing Company Limited paid **£16 million in dividends** to its nine directors out of a turnover of £40 million (year-end June 2022); Serene Fishing Company Limited paid **£5.6 million in dividends** on turnover of £12.7 million (year-end 30/6/2022); and Lunar Fishing Company Limited achieved a **profit before taxation of £23 million** (year-end 31/12/2021).

In a current and ongoing Scottish court case[29], a judicial review has been brought seeking to prevent an alteration to conditions on sea fishing licences by which a genuine economic link had to be established either by landing fish into UK ports; employing crew normally resident in the UK; or making expenditure in the UK. During the proceedings, detailed in Lord Ericht's Opinion of December 2022, it was revealed that in the pelagic fishing fleet "operating **profits are high for example 40%**", and that "turnover for each of the 20 large vessels in the Scottish pelagic fishing fleet is in the range of £5m to £15m each year"; and the judge also refers to "**supernormal profits**".

Meanwhile, in terms of foreign ownership, at odds with the UK Government policy expressed on economic benefit to the nation, our examination of the FQA register shows that at least **78% of Welsh quota is held by Spanish nationals resident in Spain**, while over **44% of English quota** is held on a single vessel by a Dutch family-owned firm led by a **Dutch national resident in the Netherlands**; and over **10% of UK quota is held by an Icelandic beneficial owner resident in Holland.**

Ongoing access by large and powerful foreign-owned vessels – such as the FV Margiris, a supertrawler under a Lithuanian flag – to UK waters without discernible action on the part of the Government, is also a hot topic and sparks the outrage of many fishing organisations and conservationists.

78%

OF WELSH QUOTA IS HELD BY SPANISH NATIONALS RESIDENT IN SPAIN

44%

OF ENGLISH QUOTA IS HELD ON A SINGLE VESSEL BY A DUTCH FAMILY-OWNED FIRM LED BY A DUTCH NATIONAL RESIDENT IN THE NETHERLANDS

[29] *Scottish Fishermen's Organisation Ltd and another for judicial review of a decision of the Scottish Ministers* [2023] ScotCS CSOH_2 (23 December 2022)

FINDINGS ON QUOTA SYSTEMS FROM OTHER JURISDICTIONS

In this section we turn to other countries around the world to gain insights into how quota is managed elsewhere and to highlight best and worst practice, in order to learn lessons which could be applied to the UK context.

OUTWARD FLIGHT OF WEALTH

In British Colombia the biggest impact "by far, has been the **rise of the investor class,** which was non-existent in 1991 and owned 43% of the halibut quota in 2016"; "Investors represent the flight of wealth **out of the fishery and out of fishery-dependent coastal communities,** which raises questions about whether ITQs [individual transferable quotas], particularly those without ownership restrictions or mechanisms to support new entrants, are appropriate for a fishery that is intended to support a strong fishing fleet and adjacent coastal communities."[30] This outward flight of wealth is also reflected in Belgium, Denmark and, clearly, the UK.

[30] Edwards DN and Pinkerton E, "Rise of the Investor Class in the British Columbia Pacific Halibut Fishery" (2019) 109 Marine Policy 103676

MISUSE OF MARKET POWER AND BARRIERS TO ENTRY

In Iceland, "the collateral the Icelandic banks acquired in fishing rights (ITQs) was crucial in the speculation that eventually caused the collapse of the Icelandic economy. […] This speculative bubble reflected the willingness of the banks to offer loans for quota acquisitions in the industry, rather than the real value of the fishing rights."[31]

An Australian Government Inquiry into the quota system led to Senate Committee Report 2022: "Evidence suggests there may be unintended consequences of the quota system, including concerns around **increasing aggregation of quota by large entities,** vertical integration leading to the potential for **misuse of market power** and/or price fixing, and **barriers to entry** for those wanting to get into the industry. Industry members are also concerned about an increase in **non-fishing investors and foreign ownership** of Australian fishing quota". The Inquiry recommends "provision of better and more transparent information around quota holdings".[32]

QUOTA ALLOCATION BASED ON FOSTERING COMMUNITIES

In South African large pelagics fishery, **local economic development and job creation are taken into consideration when allocating fishing opportunities.**[33] In August 2022, a judicial review of the High Court of South Africa concerning the fishing rights allocation process and its outcomes, led to the previous four-year process being reinitiated from scratch because communities had not been fairly treated.[34] While in Namibia, "the government rents quota shares to individuals or companies for set periods of time, with lower quota fees offered to vessels carrying high percentages of Namibian crew".[35]

CO-MANAGEMENT AND TRANSPARENCY

A co-management system in the Netherlands has been lauded as preventing free transferability and providing monitoring of quota use,[36] while in France, after consultation with fishermen in all regions, freely transferable quota was rejected in favour of regional organisations allocating and managing quota transfer, along with the proviso that quota had to remain within that region.[37]

[31]Pinkerton E, "Hegemony and Resistance: Disturbing Patterns and Hopeful Signs in the Impact of Neoliberal Policies on Small-Scale Fisheries around the World" (2017) 80 Marine Policy 1

[32]Senate, "Fisheries Quota System" (Commonwealth of Australia 2022)

[33]Tokunaga K, Kerr LA and Pershing AJ, "Implications of Fisheries Allocation Policy on Anticipated Climate Change Impacts" (2023) 148 Marine Policy 105402

[34]Department of Forestry, Fisheries & the Environment, Republic of South Africa website

[35]Pinkerton (ibid. p. 4)

[36]Hoefnagel E and Vos B de, "Social and Economic Consequences of 40 Years of Dutch Quota Management" (2017) 80 Marine Policy 81

[37]Pinkerton (ibid., citing Frangoudes and Bellanger 2017, our emphasis in bold)

TIME-LIMITED QUOTA ALLOCATION

In New Zealand, a review following 30 years of quota management concludes "While the **granting of ITQs in perpetuity to the commercial sector** was seen as the kingpin of the QMS [quota management system], […] this has also **turned out to be the largest liability"**[38]. In Chile, annual auctions of fishing entitlements go alongside gradual reversion to the State. In the Falkland Islands, a British Overseas Territory and therefore operating a UK-based legal regime, quota has been consented for 25-year periods, subject to eligibility criteria: majority ownership of the 'qualifying company' that will undertake the fishing, and an approved action plan based on sustainable management, healthy oceans, care for the environment, safe working conditions, and caring for the community.[39]

In Chile, annual auctions of fishing entitlements go alongside gradual reversion to the State.

[38]Hersoug B, "'After All These Years' – New Zealand's Quota Management System at the Crossroads" (2018) 92 Marine Policy 101

[39]Falkland Islands Fisheries (Conservation and Management) (Amendment) Ordinance 2021; Falkland Islands Fisheries (Action Plans) Regulations 2021.

AN EXCESS OF NON-INTERVENTION: GOVERNMENT INDIFFERENTLY HANDING OVER MARKET CONTROL

PASSIVELY TOLERATING HUMAN RIGHTS ABUSE

As the small-scale fisher from a UK coastal community finds themselves excluded from quota and even from employment, so migrant workers are being drawn into situations where they can earn next to nothing and be forced to live in squalid on-vessel quarters. The issue of human rights abuse of migrant workers in the fishing sector has become an extremely pressing concern in the last few years, and their number is significant. From press reporting of Scottish fishing employers, ***"almost a fifth of fishermen working in Scotland come from outside the European Economic Area"***.[40] A House of Commons briefing confirms that the "UK fishing fleet relies heavily on foreign crew. In one survey carried out in 2021, ***over a third (36%) of workers were foreign nationals, and 61% for Northern Irish vessels."***[41]

The issue of human rights abuse of migrant workers in the fishing sector has become an extremely pressing concern in the last few years

36%

OF UK WORKERS WERE FOREIGN NATIONALS[41]

61%

FOR NORTHERN IRISH VESSELS[41]

[40] https://www.pressandjournal.co.uk/fp/politics/scottish-politics/5613664/fishing-visa-changes

[41] McKinney C and Meade L, "Government Policy on Visas for Foreign Workers on Inshore Fishing Vessels" (House of Commons Library 2023). It is also worth noting that "while owners and skippers in the sample were overwhelmingly British, a majority of deckhands were from countries such as the Philippines, Ghana and Latvia".

Until recently these workers were employed solely using 'transit visas'.[42] The International Transport Workers' Federation (ITF)[43] points out that a transit visa "only gives a fisher the right to work on one particular vessel" and "effectively **wipes out their right to withdraw their labour** or go to work for a different employer", and is frequently used for coercion and control, citing National Crime Agency reports which provide evidence of minimum wages rarely being met and even, in extreme cases "**some fishers earn as little as £100 for ten weeks' work**".[44] Interviews with migrants working in the Irish and UK fishing industries bring to light a predominance of extremely long working hours, very low wages and withheld payment, with only very few rest days or breaks, as well as intimidation and abuse, and veiled threats of deportation.[45] Safety is also a serious issue, as exemplified in the box above right.

> Mr X, a non-EEA fisherman, was fishing for scallops off the Scottish coast when he had an accident that left him disabled for life. Mr X said that before the incident he sometimes **worked for 24 hours with no sleep, on a schedule that meant he only left the boat for two hours a week.**[46] (our anonymisation)

It is more than surprising that despite widespread police investigations and reporting by mainstream media (BBC, *The Times, The Independent, The Guardian*) as well as local and industry media, dating back as far as **2014**, not to mention the numerous reports referenced above, the **UK authorities have failed to take action on the serious human rights abuse** in the exploitation of migrant crew.

The UK authorities have failed to take action on the serious human rights abuse in the exploitation of migrant crew.

[42]Although a 'skilled worker' visa has been introduced for deckhands, it does not yet appear to have had a positive effect on three-tier treatment by employers which differentiates migrants from British workers and EU workers with settled status.

[43]The ITF brings together trade unions and workers' networks from 147 countries.

[44]International Transport Workers Federation, "A One Way Ticket to Labour Exploitation: How Transit Visa Loopholes Are Being Used to Exploit Migrant Fishers on UK Fishing Vessels" (International Transport Workers' Federation 2022)

[45]Nuad O, "Experiences of Non EEA Workers in the Irish Fishing Industry" (Maynooth University Department of Law 2021); MRCI, "Left High and Dry: The Exploitation of Migrant Workers in the Irish Fishing Industry" (Migrant Rights Centre Ireland 2017); Sparks J, "Letting Exploitation off the hooK? Evidencing Labour Abuses in UK Fishing" (University of Nottingham Rights Lab 2022).

[46]Josephine Moulds, Migrant workers used as forced labour on Scottish fishing fleet, charity claims, The Times (London), November 15, 2017 Wednesday, available at https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5PYJ-R4H1-JBVM-Y026-00000-00&context=1519360.

[47]DEFRA, "White Paper: Sustainable Fisheries for Future Generations" (2018)

[48]Oceana, "Taking Stock: The State of UK Fish Populations 2023" (Oceana 2023)

MARINE ENVIRONMENTAL PRIORITY BRUSHED ASIDE IN PRACTICE

In January 2018, the UK Government announced its 25 Year Environment Plan, which included a Chapter entitled 'Securing clean, healthy, productive and biologically diverse seas and oceans', comprising only two overarching measures: "Implement a sustainable fisheries policy as we leave the Common Fisheries Policy", and "Achieve good environmental status of our seas". In July that year, a White Paper entitled 'Sustainable fisheries for future generations' set out "Defra's future fisheries policy".[47]

The culmination of these environmental policy statements came in the Fisheries Act 2020, which sets out eight Fisheries Objectives, six of which relate to environmental criteria:

> (1) The fisheries objectives are— (a) the sustainability objective, (b) the precautionary objective, (c) the ecosystem objective, (d) the scientific evidence objective, (e) the bycatch objective, (f) the equal access objective, (g) the national benefit objective, and (h) the climate change objective.

Despite all this rhetoric, scientific advice on sustainable catch limits continues to be ignored, year on year, by the UK Government, and a recent in-depth report informs us that, in 2023:

"over a third of the 104 stocks analysed are being overfished and a quarter have been depleted to critically low sizes, according to the latest scientific assessments. **Of the 'top 10' stocks on which the UK fishing industry relies, half are overfished or their stock size is at a critically low level."**[48]

SOCIO-ECONOMIC BENEFIT PRINCIPLE MISCONSTRUED

The first fisheries objective of the Fisheries Act 2020 states:

The "sustainability objective" is that—

(a) fish and aquaculture activities are—

(i) environmentally sustainable in the long term, and

(ii) **managed so as to achieve economic, social and employment benefits** and contribute to the availability of food supplies, and

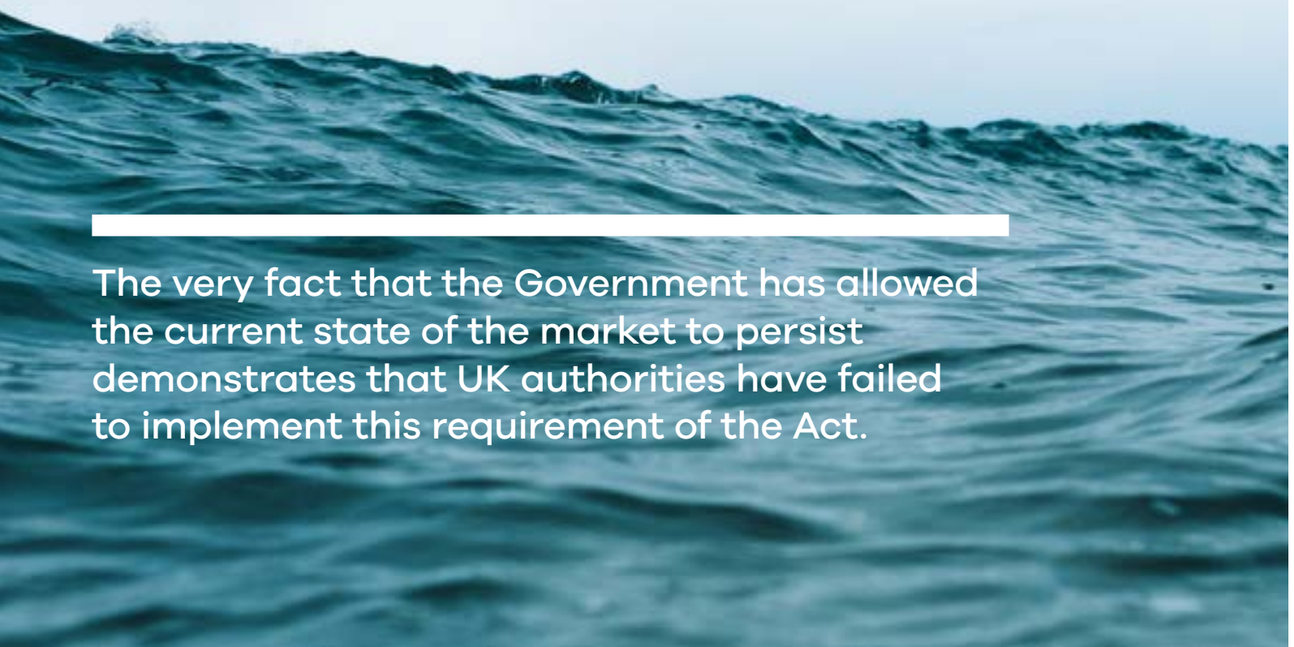
(b) the fishing capacity of fleets is such that fleets are economically viable but do not overexploit marine stocks.

The seventh fisheries objective of the Fisheries Act 2020, on national benefit, states:

"The "national benefit objective" is that fishing activities of UK **fishing boats bring social or economic benefits** to the United Kingdom or any part of the United Kingdom.

The very fact that the Government has allowed the current state of the market to persist (widespread extraction of profit by foreign interests; continued concentration of ownership; loss of jobs in coastal communities; unacceptable employment conditions for overseas workers) demonstrates that UK authorities have failed to implement this requirement of the Act – in both social and economic terms. This would appear to be a case of 'trickle-up economics': the rich are getting richer and the poor in rural communities are losing their jobs only to be replaced by foreign workers, some of which endure appalling pay and conditions.

Instead of considered policy, the UK is single-mindedly pursuing an 'economic link' aim, without any measures to ascertain genuine ultimate ownership of companies or ultimate beneficiaries of quota units. **This is a fig leaf to cover a gross lack of real economic and social policy.**



The very fact that the Government has allowed the current state of the market to persist demonstrates that UK authorities have failed to implement this requirement of the Act.

UK QUOTA MARKET – THE ELEPHANT IN THE ROOM STANDING ON THIN AIR

From its inception, the UK quota market has been poorly constructed – developing under "**piecemeal and confused** administration", "on an *ad hoc* basis", where "fundamental terms that should have been defined *ab initio* were left to develop with **no proper deliberation** or legal counsel".[49] Not only that, the **safeguarding of communities** targeted by fisheries management measures was almost entirely **neglected.** Indeed, George Eustice, the then Fisheries Minister, refers to the "injustice of the FQA system" in a reply to a Parliamentary Committee.[50]

Furthermore, it has been left to the judiciary to clarify to market stakeholders their legal positions. As remarked by a High Court judge, **trading in quota is "built very much of sand**", as "no-one can own the fish of the sea", and "there can be no property right in fish until they are caught".[51] Yet UK authorities continue to maintain that the fishery is a public asset.[52] The fishery cannot be both publicly and privately owned at the same time.

At no stage has the UK Government formally awarded legal entitlement to quota to beneficiaries through a tender process, through sale or auction, or by any other normal and established procedure for the disposal of public assets. **The only interpretation that can be placed on the current arrangements is that successive governments are allowing the UK's fishery to be squatted.**

UNLAWFUL DELEGATION OF POWERS

Powers to distribute the insubstantial quota entitlements described above are handled in a chain. At its apex is the Secretary of State for the Environment, Food and Rural Affairs. Then come the four fisheries authorities – one in each of the devolved administrations (England, Wales, Scotland and Northern Ireland). Under these authorities come producer organisations (now called 'sectoral groups'), and finally quota holders that may be fishing companies (large dominators or small firms) or individual seafaring fishers. The process of quota distribution takes place annually. Fairly intricate rules for how the distribution is to take place are set out in Quota Management Rules issued from time to time by the four fisheries authorities. Various pieces of primary legislation, retained EU law, statutory instruments and non-statutory documents come into play, but there is no discernible statutory origin for the original delegation of powers to distribute quota. Indeed a senior fishing sector representative interviewed expressed his amazement to the authors that this absence of legal basis had not thus far been the subject of a legal challenge. **UK authorities have never been expressly granted the right powers by Parliament to manage the UK fisheries, so instead have made it up as they go along. That is not how public administration is supposed to work.**

[49] Appleby T, Cardwell E and Pettipher J, "Fishing Rights, Property Rights, Human Rights: The Problem of Legal Lock-in in UK Fisheries" (2018) 6 Elem Sci Anth 40

[50] https://publications.parliament.uk/pa/cm201719/cmselect/cmenvfru/1722/172206.htm

[51] *R (UKAFPO) v Secretary of State for Environment, Food and Rural Affairs* [2013] EWHC 1959 (Admin)

[52] https://hansard.parliament.uk/lords/2020-06-22/debates/2DAA98C2-AE48-4A86-B30F-B2855A9652A3/FisheriesBill#contribution-F5F554C9-FEFD-4EBD-9DE6-2D1B6CBEA97F

CONCLUSIONS

This review has highlighted serious fisheries market dysfunctions such as unlawful privatisation, market dominance, and overallocation of the fishery resource. Despite Brexit promises, the market favours foreign entities and obscure beneficial owners. This grey control is also highly unfavourable to the public purse, the individual British taxpayer and ultimately coastal communities..

To end as we began, environmentalists and fishers certainly do have the same goals – the long-term survival of healthy and plentiful seas and oceans.

The dysfunctional market disadvantages, to the point of exclusion, small-scale fishers and new entrants who want to take up fishing as a career, despite stated policy drives[53] to stimulate coastal communities. As exhorted in its report on financial resilience by Seafarers UK regarding future fisheries policy:

Current and past allocation of fishing opportunities has resulted in the consolidation into relatively few, often remote and corporate hands. Bearing in mind that the fish in the sea is a public resource then **consideration should be given to managing access to that resource to supply not only food, but also a living for the many, rather than a fortune for the few.** The alternative, proven in examples across the world, is that the decline of coastal communities, with its resultant increasing levels of deprivation, continues.[54]

The UK Government's failings encompass lack of financial scrutiny across the board, lack of an effective and transparent regulatory environment, woefully inadequate protection of a public asset, and manifestly insufficient regard for scientific advice on overfishing, not to mention unconscionable inaction over human rights abuse. No meaningful attempts have been made to learn lessons from other jurisdictions where best practice now routinely includes taking into consideration criteria truly reflecting the three dimensions of sustainable development – the economic, social and environmental: sustainably managed fishery, healthy oceans, the environment, protecting people, and caring for the community.[55]

Part of the role played by the Blue Marine Foundation as a public-interest NGO is to ensure that marine environmental legislation is effectively applied to underpin a fair, accessible, stable and sustainable market. In the current UK context this involves quota and access to the UK's fishing rights, and Blue Marine is currently engaging with the UK fisheries authorities to ensure that the market is inclusive and supportive of coastal communities.

[53]See Barton C and others, "The Future of Coastal Communities" (UK Parliament House of Commons Library 2022): in case readers are tempted to discount this as a marginal problem, the research points out that **10.3 and 10.4 million people in England live in coastal communities, representing approximately 18.5% of the UK population, and in Scotland the figure rises to 41%.**

[54]Seafarers UK, "Fishing Without a Safety Net" (2020)

[55]https://sdgs.un.org/2030agenda

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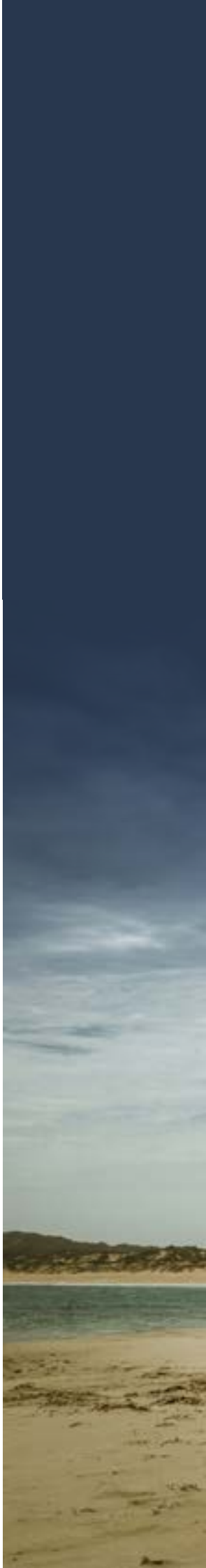

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Published October 2023