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**Co-management of resources and Conflict Management:  
the case of the Fishermen's Confreries in Catalonia.**

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**Abstract**

One of the most outstanding characteristics of the traditional fishing organizations on the Catalan littoral, the Fishermen's Confreries, has always been their capacity for handling the great majority of the conflicts which arise within their territorial limits. However, at present, with the de-centralization of power resulting from the creation of the autonomous Catalan State, this capacity for conflict management is being severely limited, although the Confreries still maintain a relevant role in the marshalling of the sector, due to the status given to them by the fact that they are public law institutions. This allows them to act alongside the State as co-managers of all fishing activity within the bounds of their respective territorial limits.

In this paper an attempt is made to show both the ways in which the regimes of appropriation of resources are changing, and the ways of solving the conflicts which these changes are causing. To this end, we shall take as a reference the concepts of operative and property rights through collective election, as defined by Schlager and Ostrom, in order to see how and why, due to the changes mentioned above, a re-definition of the role of fishermen's organizations on the Catalan littoral is currently being produced, provoking an increase in the protagonism of the State to the detriment of the Confreries.

To do this, we shall briefly outline some of the most significant conflicts that presently exist concerning fishing activity on the Catalan Mediterranean littoral, exposing the different arguments given by each side in order to defend their rights. Through these, we shall see how the concepts of resources and areas of collective appropriation are being re-defined. We shall then describe, for each of the conflicts chosen, the kind of solutions arrived at, and the actors who intervene in the search for these solutions, with the ultimate aim of demonstrating that, despite this apparently unfavourable situation, the Confreries continue to be the only organizations with sufficient legitimacy to deal with the majority of conflicts arising within their territorial limits, sharing with the State the greater part of the responsibility for management of resources and fishing activity.

In Catalonia, as in the majority of Mediterranean coast countries, human presence in the maritime zones close to the littoral was, until recently, limited fundamentally to the

presence of fishermen, who, through their productive-extractive activities, have steadily appropriated both formally and symbolically this maritime space, to the extent where they have become its "only" occupiers. Historically, the fishing communities of Catalonia have appropriated formally and symbolically this maritime space through long processes of interaction with society in general, and with the ecosystem in which they lived. It is the multiform character of the appropriation of maritime space which must be borne in mind when making any analysis of the management system, and, more specifically, of the conflicts which have arisen and still arise owing to this appropriation of maritime space.

But this process of formal appropriation of maritime-fishing territory in Catalonia has not always occurred in the same way, since it has evolved according to the social, political, or economic circumstances of each historical period. For example, initially, Roman law considered maritime-fishing territory to be *res nullius*, or "property owned by no one". Then, throughout the Middle Ages, the parts of this territory adjacent to the land territories of feudal lords or of monasteries became a *dominium* to be governed by them (Collet, 1987). Thus they could be considered "property owned and defended by privates in a feudal regime". With the appearance of the Fishermen's Guilds, these areas, with the corresponding access to, and appropriation of, resources from them, became *res communes*, which could be defined as "property owned and defended by a community of resource users". At present, within the concept of a modern State, access and appropriation have become *res publica*, or "property owned by a State", which is the basis for the current juridical concepts of jurisdictional waters, territorial waters, exclusive economic zones, licences, TACs, Quotas, etc., which only have legal justification within the context of a State.

Yet the fact that in each historical period a formal mode of appropriation of maritime-fishing space can be identified does not mean that this formal mode of appropriation has always coincided with reality concerning the ways in which the fishing communities appropriated this space and the resources contained therein. The proof of this resides in the series of conflicts which have always arisen between both these forms of appropriation, the formal and the real, as well as the solutions which have, of necessity, been provided in the face of this situation.

This is because the laws and regulations formally promulgated by the powers-that-be are one thing, and the set of rules devised and put into practice by the fishermen themselves to

regulate their activity are quite another. Therefore the mere existence of laws does not mean that they are always complied with, since to become rules, these laws and regulations must be applied, and for these rules to be effective, they must be accepted as legitimate by the fishermen. This is what has always occurred and continues to occur to this day in the different ambits of fishing activity in Catalonia, where certain of the rules applied to fishing do not coincide with the laws governing this activity. This creates a borderline juridical area between what should be done and what, in fact, is really done.

However, this situation of "juridical ambiguity" should not be seen as a mere flouting of the laws, but rather as a manifestation of the difficult balance which is achieved daily between legality and legitimacy, in a context in which the traditional associations of fishermen, the Confreries, play a determining role alongside the State in the establishing and maintaining of the system of appropriation of space and of maritime-fishing resources.

It is in this context that the principal characteristics of the Catalan fishermen's Confreries must be borne in mind: they are organizations with a double status. On the one hand, they are institutions constituted and protected by the State, and on the other they are organizations legitimized by the whole of the community of fishermen. This double status is what makes it possible for them to be the only organizations with the capacity for dealing successfully with the greater part of the conflicts relative to the appropriation of maritime-fishing areas arising within their territorial boundaries. However, due to the changes being produced in the forms of occupation of these areas, as well as the changes in the State political context, the role of the Confreries is changing considerably with relation to their effective capacity for solving the new problems posed by this situation, with the increase of State protagonism to the detriment of the Confreries.

The Confreries are Public Law corporations. This means that they are under the auspices of the State regarding their internal structure and their functioning. They each have their own exclusive maritime jurisdiction (in Catalonia there are 30 Confreries whose jurisdictions cover the whole of the Catalan littoral, some 550 kilometres), and act as the only representative organizations of the fishing sector against State administration (Alegret, 1988).

The Confreries possess a corporative structure, whose organs of government are formed by equal representations of workers and shipowners (ibid, 1990). These act simultaneously as organs of consultation and as collaborators with the administration for all matters

concerning fishing activity (Ibid, s.f.). In this way the Confreries are institutions of vital importance for the functioning of the system of appropriation since they -and not individuals or groups- are the only ones who hold the property rights over fishing resources. To sum up, the Confreries are the only organizations simultaneously recognized by both the State and the community for the exercising of property rights over fishing resources, as well as establishing the rules by which fishing activity is organised within their respective jurisdictional limits.

If we take as a reference the distinction between rights and rules and consider rights to be the authorised actions which allow fishermen to obtain their catches of fish (property rights), and consider rules to be the prescriptions which create the authorizations allowing the fishermen to carry out their activity in accordance with these rights (Schlager and Ostrom, 1992:251), we shall be able to understand better the double source of legitimacy and legality of the Confreries, as well as the complexity of the conflicts which arise due to this situation.

In Catalonia the Confreries -not their membres- maintain some kind of property rights over the resources, while certain specific rules establish the requisites which the members of the Confreries must comply with in order to be able to exercise those rights. For this reason, the most frequent conflicts which the Confreries have to deal with are concerned fundamentally with the exercising of these property rights, whether they be property rights at operative level or collective decision property rights (Ibid., 250).

In sea-fishing in Catalonia the members of the Confreries acquire the operative rights of access and extraction (fishing) due to the fact that they belong to a Confrerie and carry out their activities in an authorised vessel, whether this authority come from the State, which awards fishing licences ("despachos"), or whether it come from the Confrerie, which authorises a member to have his logistical base, from which he carries out his activities, within the area governed by the Confrerie. For this reason, all vessels for which a fishing licence is required must offer proof of membership of a Confrerie, which presupposes that the Confrerie must accept this vessel within its demarcation.

It is in this way that, because they belong to a Confrerie, all the vessels and the people connected with them, obtain the right of access to the fishing grounds, and the right of extraction of resources, always according to the norms determined by each Confrerie, either unilaterally or in collusion with the State.

From an operative perspective, the principal characteristic of the system of control of fishing activity in the Spanish Mediterranean is that it is realized fundamentally upon fishing effort, distinguishing itself in this way from the system employed in European Community Atlantic waters, where control of fishing activity is carried out through the control of the catch. This distinguishing point relative to fishing rights at operative level presupposes that the fishermen and their vessels have, indirectly, limited access to fishing grounds because of time limitations and other kinds of control, whilst they have freedom to extract all the product that they can in their periods of access to these fishing grounds. However, in order to see with greater precision the reach of the property rights which the Confreries possess, and the conflicts which derive from this, it is necessary to analyse these rights from the perspective of collective decision property rights, as defined by Schlager & Ostrom regarding rights of management, exclusion, and alienation (Ibid, 1992:251).

The application of these collective selection property rights in Catalonia take the form of a series of rules which the Confreries establish through internal agreements or at the level of their Federations. Dependent upon the importance of these agreements, the State may sanction them, either at the Confreries' behest, or directly, in the form of laws, decrees, or writs.

### Collective Management Rights

This right authorises its possessors to establish, at operative level, rights of access and extraction in order to regulate the use of resources. In this way, the subjects possessing these management rights have the authority to determine the ways in which access to the fishing grounds is effected, as well as the way in which, and the time at which, the extraction of resources may be carried out.

In the case of sea fishing in Catalonia, management rights are *de facto* rights possessed by the Confreries through State delegation, and take the form of shared rights (Co-management rights). The main rules which make up these rights are those related to the regulation of fishing effort, either through control of fishing time allowed or through control of access to the fishing grounds.

The principal rules relating to the control of fishing time are those which state:

- port entry and exit times for vessels according to fleets,
- weekly rest days for each fleet,
- the order of product sale for each vessel in the daily auction,
- turns of early arrival at port of certain vessels,
- length of time and extent of seasonal biological breaks for the protection of resources,
- length of time and extent of periods of inactivity in order to protect prices.

While in the case of spatial control the principal rules are those which state:

- the jurisdictional limits of each Confrerie,
- the boundaries between fishing zones of the different fleets.

The process of elaboration, application, and conformation to, this type of rules generates a plethora of conflicts, for which the Confreries also search for, and find, solutions. However, the fundamental element permitting the maintaining of these rules is the type of co-management which is established between the Confreries and the State. The principle which defines this relation may be defined as follows: The Confreries, making use of their collective selection property rights which the State recognizes in awarding them the status of public law institutions, work out and establish a set of rules through which they organize fishing activity in their respective zones, while some of these rules, dependent upon their importance, are promulgated, *a posteriori*, by the State in the form of laws, decrees, or writs.

This principle of juridical co-responsibility functions quite well in the ambit of management rights, since it is in the interests of the State that it be the Confreries which resolve between themselves the problems resulting from the elaboration and application of these rules. For this reason, the State gives the Confreries a part of the management rights, while reserving for itself the other part, as well as the other two rights, those of exclusion and alienation.

The conflicts associated to the elaboration and application of the rules (timetables, fishing days, order of sale, rest periods, etc.), are, in principle, nothing more than conflicts habitual to any process of internal organization of institutions with representation for divergent or opposite interests, such as, for instance, trawling fleets and artisanal fisheries, or the fishermen and the shipowners. This kind of conflicts has historically been resolved from within the Confreries themselves or their Federations, almost always through the mediation

of the president of the Confrerie (the "Patrón Mayor") who has acted as arbitrator or "good man and true". However, at present the solution for some of these conflicts must be sought in other areas, outside the ambit of the Confreries, which provokes the loss of power and legitimacy of these associations with the resulting increase of State protagonism. This is the case, for example, of the agreements relative to the weekly fishing days or of the vessels' port exit and entry times.

Traditionally fishing timetables and days of work were not regulated as they are nowadays. These timetables were established freely by the fishermen themselves according to the kind of activity and to the fishing ground they had decided to go to. However, faced with the necessity to limit fishing effort, the Confreries themselves established a series of internal agreements in order to regulate the fishing hours of each fleet. The first conflicts arose when the State, despite these agreements, tried to unify the timetables, making them the same for all the Confreries. The Confreries, of course, opposed this attempted imposition of general criteria which would render worthless their local agreements, and consequently, would diminish the legitimacy of the Confreries themselves, but had to accept some general norms, consisting of limiting the trawling fleets to a daily maximum of twelve hours out of port. The Confreries reserved the right to determine the specifics, such as the actual hours of entry/exit, and the right to a possible reduction of this timetable. This has now resulted, in some Confreries, in the establishing of summer and winter timetables, with daily periods of between 10 and 12 hours out of port, exit times of 6 or 7 a.m., and return times of 6 or 7 p.m. at the latest, according to each Confreries.

However, at the present time, due to the exhaustion of traditional fishing grounds, many trawling and purse seine vessels are obliged to travel long distances from their home port in search of new fishing areas, such as, for example, the Golfo de León opposite French territorial waters.

Given that in order to reach these more distant areas, more travelling time is needed than is at present authorised, at first it was decided to modify the present timetable, in certain special cases, for vessels from ports in the north of Catalonia, in order to make it possible for these to reach their fishing grounds. The trawling fleet is therefore allowed to leave port two days per week at 2,00 a.m., with the condition that they may only fish in those distant fishing grounds and that they must return to port at the same time as all other vessels.

The application of these measures, however, is generating a series of conflicts. The other Confreries are claiming equality of opportunity as regards entry/exit times, and they are also demanding the rigorous application of the rules agreed to by all the Confreries, and are beginning to demand State intervention in order to force compliance with current agreements.

Something similar is also happening with the purse-seine fleet with relation to the port exit timetable. For these vessels the problem is not access to fishing grounds further away, but the fact of starting as early as possible their fishing activity, so that, in this way, they can return as early as possible to port and carry out the sale of their catch in the early stages of the auctions, because this is when the prices are usually at their highest. In this case also some Confreries, incapable of imposing through their own authority this timetable (leaving port at 10 or 11 p.m. according to the time of year; or at 8 p.m. for those vessels travelling to the Golfo de León), are beginning to demand from the State the rigorous application of these agreements with the consequent loss of legitimacy and power which this implies.

It is in this way that the Confreries, despite maintaining co-management rights, are beginning to have problems regarding the solution of the new kinds of conflict which are arising, especially in the areas of temporal and spatial limitations specified in their federative-level agreements, and are handing over protagonism to the State, which is the body which must intervene in these conflicts.

### **The right of exclusion**

Exclusion is the right to determine who has right of access, and the way in which this right may be transferred to others. This means that whoever has this right at his disposal can determine the conditions with which each individual or group must comply in order to be able to accede to resources, as well as the type of vessel which can have access to these resources.

In the case of sea fishing in Catalonia, the right of exclusion is also a right which the State possesses, and of which it gives a part to the Confreries. The State controls directly the right of access for both people and vessels, as it is the State which decides who may be a sailor and fisherman, as well as who has authority to use a fishing vessel. The Confreries share with the State a part of this right of exclusion, having the capacity to determine who



may be members of their Confrerie and which vessels may have their home port within the Confrerie's area of influence. Both these conditions must be fulfilled in order to carry out fishing activity with full rights.

The assignation of a home port to a vessel by a Confrerie must be seen as State recognition of a Confrerie's possession of right of exclusion. This right of exclusion is only partially exercised by a Confrerie, however, and depends upon certain factors such as: whether or not the shipowner making the application is a member of the local community, and the type of fishing activity the vessel will perform. It also depends upon the number of vessels already based with that Confrerie, and the physical and material limitations of each Confrerie to be able to offer its services simultaneously to a fixed number of associates. However, the recent norms governing the freezing of fishing effort existent in Spain since 1987, which demand that for the construction every new vessel, an equal tonnage of shipping must be broken up, have limited the exercise of the Confreries' right regarding designation of home port, since newly-built vessels usually replace old vessels which had their place in that Confrerie and do not, therefore, make for any increase in fishing effort. The result is that this right is now reserved only for cases of changes in home port, to which the Confreries apply very diverse, although always tendentially restrictive, criteria.

One of the most significant conflicts produced in recent years in Catalonia is that regarding one concrete aspect of this necessary designation of home ports by the Confreries. It is the conflict posed by some vessels belonging to the purse-seine fleets from the south of Catalonia, Murcia, Andalusia and the Basque country which, during the summer months, and for several reasons, have begun to fish in the north of Catalonia and in the Golfo de León, for small pelagic species as the sardine and european anchovy.

In order to do this they needed to be able to use as a temporary base the ports in the north of Catalonia for revictualling and general supplies, for unloading and sale of their catch, and for rest. This itinerant mode of fishing is possible since access to these resources is free to all vessels of the purse-seine fleet in all Spanish waters, due to the migratory nature of the fish they catch.

The reaction of the Confreries in the northern part of Catalonia, who played host to these vessels for several years, was ambiguous, according to the context surrounding the presence of these vessels. On the one hand they were willing to accept on a temporary basis a limited number of vessels in their Confreries, since in this way they increased the

sales volume of their fish markets, which thus increased the Confreries' income. However, the fact of accepting the presence of vessels from other Confreries in their jurisdictional areas meant an explicit acceptance of the increase in fishing effort carried out within their territorial space, with the consequent conflicts between local and visiting fishermen that this entailed.

The capability of the Confreries for finding a solution to this conflict was greatly limited by its double role of institutions in co-operation with the administration, and, at the same time, as organizations representing the interests of the fishermen. On the one hand, the Confreries could not refuse the presence of other Confreries' vessels within their territorial areas because Spanish fishing legislation allows purse-seine vessels to move freely throughout the whole of the nation's territorial waters. On the other hand, they could not abandon the interests of their own members by allowing the arrival *en masse* of outsiders' vessels who had come to fish "their" waters, since that obviously led to an increase in the number of conflicts, and the de-legitimization of the Confreries as the only representatives of local fishing interests.

The solution adopted, after long dispute and much conflict, was, once again, a solution imposed by the State, which re-defined implicitly the concept of property rights and stipulated the number of vessels to which each of the affected Confreries had to provide from then on with temporary bases, thus seriously affecting the right of exclusion which each Confrerie had held since its foundation and upon which was based an important part of its legitimacy and power.

### **The right of alienation**

Alienation is the right to sell or to transfer one or both of the rights of management and exclusion (Ibid). This right permits its owner to transfer all, or part of, his property rights to other individuals.

In the case of sea fishing in Catalonia, the right of alienation is held exclusively by the State, which applies this right within its jurisdictional limits by means of the legislation relative to territorial waters, which in the Mediterranean is limited to a mere 12 miles. The State is the only authority with power to grant shipowners their fishing licences (*despachos*),

to grant fishermen their embarcation permits, to give individuals their licences for all forms of angling and underwater fishing, to grant licences for the collection of coral, to authorise the setting up and running of aquicultural installations, etc. In this sense, the Confreries have no kind of alienation rights and possess only the rights of management and of exclusion, which they share to a greater or lesser extent with the State. Therefore, between the State and the Confreries there is, at present, no conflict concerning this right.

However, the right of alienation, held and applied by the central government in the name of the State, began in 1982 to be questioned in Catalonia, initially as a result of the first transfer of competence from the central government to the Catalan government in matters of sea fishing (R.D. (Royal Decree) 1965/82); and later as a result of the second transfer, concerning the co-ordination of the fishing sector (R.D. 665/1984). Resulting from these transfers a conflict arose between the autonomous Catalan government and the central Spanish government regarding the jurisdiction and the areas of competence corresponding to each in the new political and legal order, and, more specifically, in relation to the rights of alienation.

This conflict began when, after the central government formally transferred authority in matters of sea fishing to the autonomous government of Catalonia, the latter began to grant licences for the extraction of marine resources as coral, or to authorise the occupation of marine areas for aquiculture, as well as promulgating the first measures for the co-ordination of fishing activity. The central government began to denounce these activities, bringing about a protracted and far-reaching juridical-political legal battle.

The principal problem had its roots in the fact that the autonomous government of Catalonia considered the right of alienation to be a matter exclusively of its own competence, whereas the central government recognised this competence only in the case of inner waters, as is stipulated in the Constitution (articles 148.1.11 and 149.1.19), as well as in the Statute of the Autonomy of Catalonia (article 9.17). Both sides appealed to the Constitutional Tribunal, which provided the legal solution to this conflict by interpreting the property rights in the following terms, as resumed in Sentence 44/1992:

In accordance with Sentences 56/1989 and 147/1991 of the Constitutional Tribunal, "sea fishing" must be considered exclusive competence of the State outside inner waters, that is, the norms referring to the resources and zones which may be fished (depths, fishing grounds, distances, quotas), to the periods in which fishing may take place (close seasons, timetables), and to the way and means of carrying out extractive activity in the sea (types of gear, methods of fishing). On the other hand, the "co-ordination of the fishing sector", a phrase referring to the regulation of the economic/productive fishing sector in all aspects other than direct extractive activity, such as the organization of the sector; including the determination of who may directly participate in fishing activity and its organizational form; consequently, included under the auspices of this phrase is the authority concerning the

professional conditions of the fishermen, and other subjects related with the sector, such as boat/ship-builders, official registers, fishermen's Confreries, fish markets, and others similar, must be considered a matter of shared competence, through the employment of the technique consisting of the establishment of basic guidelines by the State, and the legislative development and its execution carried out by the Autonomous Community of Catalonia. Obviously, exclusive autonomic competence is recognised for the fishing of inner waters, shellfish farming, and aquiculture, and remains outside this theoretical definition.

In this way a conflict which had raged over several years was formally brought to a close. From the point of view of the Confreries, however, no definitive solution has yet been found, since, as a consequence of this conflict the Confreries' right of co-management has been seriously affected, with State protagonism increasing to the detriment of the legitimacy and capacity for representation of the Confreries.

## **Conclusion**

The conflicts deriving from the evolution of property rights in sea fishing in Catalonia, as a consequence of the process of creation of a new de-centralised political order, are causing the fishermen's Confreries to lose an important part of the power and the legitimacy which they possessed in the past. This loss of influence is increasing as the problems which arise affect a greater geographical area, which makes it more difficult to use the traditional methods of conflict management within each Confrerie, or within their federations. All this is provoking the increase of political-type solutions imposed by the State, to the detriment of the community-type solutions characteristic of the Confreries; there is also being produced a re-definition of property rights, in which the Confreries, which still maintain a certain level of shared participation in the management rights of fishing resources, are being forced to look on helplessly as their level of participation in the right of exclusion gradually diminishes, whereas the right of alienation is exclusive to the State.

However, despite this apparently unfavourable situation, the Confreries continue to be the only organizations with sufficient legitimacy to solve the majority of the conflicts which arise within their territorial boundaries, sharing with the State the responsibility for the management of resources and of fishing activity.

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