

Social Justice and the Florida Net Ban Controversy

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Abstract:

In a general election in November of 1994 the Florida electorate voted in favor of a referendum limiting marine net fishing in state waters. This amendment to Florida's constitution represents a resource allocation decision made by the people that is somewhat unprecedented due to its major environmental and human impacts. This paper focuses on the events surrounding what is now commonly known as the Florida "net ban" issue from a social justice perspective. The two main components of social justice, procedural and distributive, are considered from the viewpoint of commercial fishermen who were directly affected by the net ban controversy. Florida's commercial fishermen held strong feelings that they were victims of injustice even prior to the net ban. Their comments and behaviors indicated feelings of procedural injustice and decremental deprivation. After the net ban these pre-existing feelings were intensified and other negative feelings related to inequity may have also developed. The case study also brought attention to features of agency allocation systems and referendum allocation processes that lead to injustices. When responsibility and control over resource allocation is diffuse and the system for passing regulations is subject to lengthy delays, social justice becomes an even more difficult goal to achieve. In both agency allocation processes and referendum processes rules that are designed to enhance procedural justice may not always fulfill this objective in real case situations. Referendum processes present unique social justice dilemmas. The accuracy and completeness of information made available to the voters can be highly variable. Florida's commercial fishermen felt they could not trust the resource agency nor the voters to treat them fairly. Attempts to correct injustices caused by a referendum decision can result in a chain reaction of "justice balancing" which often compounds feelings of injustice. In Florida, resource agencies, law enforcement officials, judges, politicians, commercial and recreational fishermen were all involved in this post net ban attempt to restore justice.

Keywords: distributive justice, Florida net ban, procedural justice, referendum, resource allocation, social justice,

Introduction

Allocation issues regarding shared, common natural resources are often highly contentious, emotionally charged, and multi-dimensional. Resource management plans need to incorporate as much information as necessary to adequately address all the human dimension (e.g. economic, ecological, sociological, political, judicial, psychological) impacts such allocation decisions may trigger. Inadequate information in any one of these areas can result in general dissatisfaction and feelings of unfairness among affected stakeholder groups. Management agencies often find themselves in the unenviable position of having to consider their actions both in terms of the health and sustainability of the resource and, just as importantly, the overall satisfaction level of stakeholders. A fundamental goal of any resource allocation decision should be to minimize perceived bias or injustice by stakeholders with regard to the allocator, the allocation process, and the final outcome. Knowledge of what people consider to be “just” or “fair”, and how these notions influence their thoughts, feelings, and behaviors can help managers develop specific objectives toward achieving this goal. Social justice is an area of study within the discipline of social psychology that specifically addresses questions of “fairness” regarding issues of allocation (Tyler et al. 1997). The field of social justice is built around four interconnected concepts: 1) relative deprivation – the judgement that one is worse off compared to some standard, 2) distributive justice – the fairness of the actual distribution of resources , 3) procedural justice – the fairness of the decision making process that leads to resource distribution , and 4) retributive justice – how people react to rule breaking and the penalties imposed on violators (Tyler et al. 1997). While these concepts are distinct, it is important to understand how they relate to each other in terms of people’s attitudinal dispositions, psychological, and behavioral responses to particular outcomes.

The amount of control, authority, and political power a resource management agency has been given may be a determining factor in the success of that agency in minimizing social justice related conflicts. An agency may be limited in its ability to restore justice or prevent injustices if it is lacking the necessary authority or control to do so. An agency that has both the flexibility and adaptability to improve procedural justice aspects may be lacking the authority to assure that resources get distributed fairly . Likewise, an agency that has legislative authority over the distribution of a resource, but must strictly adhere to a rigid decision-making process that is inherently unfair, is limited in its ability to reduce procedural injustices. To measure an agency’s control over resource allocation it is important to consider not only that agency’s ability to set rules but also the degree of exclusivity that agency has as allocator of the resource. The more agencies that have rule-making authority over a particular resource the less control each individual agency has over the fate of that resource. Similarly in states with referendum balloting, control over resource allocation can be taken away from government agencies

altogether and placed in the hands of voters. This relinquishing of power by an agency to the people can result in a significant shift in the balance of justice (procedural, distributive, and retributive).

It has been shown that people's evaluations of the fairness of decision-making procedures have an influence on their reactions to the outcomes of those procedures that is distinct from the reactions to outcomes themselves (Thibaut and Walker 1975). Folger (1977) suggests that procedural and distributive justice are independent in the sense that an unfair procedure may produce a fair outcome and a fair procedure might produce an unfair outcome. Are procedural and distributive justice always exclusively independent or is it possible to have a situation where tradeoffs must be made between the two? Consider the following scenarios: 1) a single all powerful agency has total authority, answers to no one, and makes no attempt to include stakeholders in the process or 2) an agency that cannot finalize decisions without approval and feedback from other agencies and ruling bodies, must hold public hearings to include all stakeholders in the process, and whose decisions are often delayed in the courts by drawn out appeals. Most would agree that from a procedural justice standpoint the second scenario would be rated as more fair. However, in terms of the fairness of the actual distribution of the resource, it is less obvious which scenario would produce the favored result.

The element of time is often a critical consideration in natural resource decision making. The consequences of waiting too long to implement protective measures can significantly delay resource recovery and possibly cause irreversible damage. Both of these outcomes can result in strong, lingering feelings of injustice. The ability to pass timely regulations is particularly important in fisheries management. There are numerous examples of fish stocks that have collapsed because management waited too long to intervene with regulatory controls. Often the management agency is at the mercy of a political and judicial system (scenario # 2 above) which not only reduces its effectiveness in protecting the resource but also diminishes public trust in its ability to do so. In such cases interested stakeholder groups may take the situation into their own hands by whatever means available to them. This was the case in Florida where a referendum limiting use of commercial fishing nets not only changed Florida's state constitution but also the way many people think about fisheries management in this country. Clearly, when resource allocation is decided through referendum, the implications for social justice will be radically different than when allocation is under government agency control.

The events leading up to the referendum vote and the ramifications that followed (and continue today) are numerous and complex. This paper focuses on the events surrounding what is now commonly known as the Florida net ban issue from a social justice perspective. The two main components of social justice, procedural and distributive, are considered from the viewpoint of Florida's inshore commercial fishermen who were directly affected by the net ban controversy.

Background

Florida is one of only 18 states where a referendum process can be used to make changes in the state constitution. In a general election in November of 1994 the Florida electorate voted on a referendum item to limit marine net fishing in state waters. The result was 2,876,091 to 1,135,110 in favor of this proposed constitutional amendment (Grimes 1996). The public's clear dissatisfaction with Florida's marine resource management process and growing concern over dramatic fish stock declines were compelling arguments for voting in favor of the net ban. The amendment prohibited all gill nets, monofilament material, nets over 500 square feet, more than two nets from a vessel, and possession of mullet and a gill net on the same vessel (Florida Constitution Article X Section 16). These prohibitions, which took effect on July 1, 1995, resulted in a major reallocation of the state's nearshore fisheries in favor of recreational "hook and line" anglers.

The net ban amendment represents a resource allocation decision made by the people that is somewhat unprecedented due to its major environmental and human impacts. This event was seen by many as a "dramatic and nontraditional" exercise in fisheries management (Marston 1997). The message voiced by voters was loud and clear and can be interpreted as a turning point in natural resource management. For many, it represented both a flexing of the political power of recreational groups, and also a growing public concern for marine conservation. The net ban controversy has been the subject of numerous court cases, law review articles, state agency reports, national media coverage, public speeches, a master's thesis, and even a fictional novel.

Traditional Marine Fisheries Management in Florida

Management of Florida's multi-billion dollar marine resources is a politically complex system. Prior to 1983 marine resource regulations could be implemented by the Department of Natural Resources or the Legislature (Marston and Nelson 1994). The Florida Marine Fisheries Commission (MFC) was created in 1983 out of criticism that the previous system of management was ineffective. MFC has full rulemaking authority over marine life which includes the power to manage a species for future generations and to protect and recover marine resources primarily through fishery management plans. The Department of Environmental Protection assists in this process by collecting and analyzing scientific data for management purposes and by providing marine law enforcement of MFC regulations. MFC regulations must be approved by the Governor and elected Cabinet members. It is at this stage of the process (Governor and Cabinet approval) that political considerations and implications often take precedence over scientific goals such as maximum sustainable yield and resource conservation (Martin 1997). If a rule makes it through this stage it will often be taken to court where it is subjected to a lengthy appeals process. The Florida Administrative Procedure Act provides liberal access to administrative appeals to anyone objecting to state agency rules (Marston 1997). The combination of legal and political reviews on any decision involving marine resources makes for a procedurally slow and inefficient system. Lobbyists and constituency groups take full advantage of this cumbersome process by becoming skilled in delay tactics that can postpone harvest controls for months or even years.

In a report that came out just weeks after the net ban vote, the MFC made a point of clearly documenting numerous attempts their agency had made to control commercial harvest in the previous decade. Virtually every proposed rule was met with opposition and legal action from the industry or was rejected by the Governor or Cabinet. In 1991 the Organized Fishermen of Florida (OFF), representing commercial fishing interests, successfully challenged a ruling by the Florida Marine Fisheries Commission (MFC) that would have extended closure periods during the roe mullet harvest season. In 1992 recreational fishing groups lobbied the state legislature to introduce a net ban bill. This bill was also discarded after extensive lobbying by OFF.

While the MFC has had its share of defeats in attempting to enact commercial fisheries regulations they have not been completely unsuccessful. The MFC was successful in obtaining game fish status for red drum, thus outlawing all commercial harvest for this highly marketable species. Smith and Jepson (1993) report that Florida's commercial fishermen "have been limited by a plethora of regulations restricting their fishing gear, when and where they can fish, and who is allowed to fish". However, few of these regulations had any affect on the mullet harvest which became a critical issue for supporting the ban. Mullet are almost entirely a commercial fishery but ecologically they play an important role in the food chain. Mullet are valuable to commercial fishermen for their roe which commands a high price in Asian markets. Most scientific data suggest that heavy and prolonged fishing pressure on spawning females due to management failure to pass protective measures contributed to the decline of this fish stock (Marston 1997).

Social Justice And The Florida net ban

Given the problems with marine resource management in Florida prior to the net ban it would not be surprising to find feelings of injustice and unfairness among the affected stakeholders. The net ban vote and the events that followed were indicative of such feelings and provoked even more extreme reactions. When the Chairman of an agency (MFC) with rulemaking authority over a multi-billion dollar resource is quoted as saying "our resource management procedures and processes are severely flawed" (Marston 1997) it sends a strong message that even the appointed decision-makers do not believe that justice is being served by the system. Such a message can seriously undermine the general public's confidence and trust in the ability of management to allocate in a fair, unbiased, and justice conscious manner.

The field of justice psychology emphasizes the subjective nature of what we believe to be right or wrong (Tyler et al. 1997). Judgements of justice will vary among groups and individuals depending on factors relating to the issue at hand and on people's values, beliefs and principles of justice. We would expect this to be the case with the Florida net ban issue when comparing commercial fishermen, recreational fishing groups, and the general voting public. While this paper focuses on commercial fishermen's attitudes and perceptions of justice related to marine resource management in Florida this does not imply that other stakeholder's opinions are any less important.

While social justice theory can be used to understand the justice implications of a specific decision, it can also be viewed from a broader perspective as the general attitude an individual or group has formulated about an allocator based on multiple experiences. The group-value model proposed by Lind and Tyler (1988) views procedural justice as a long-term, on-going social relationship between resource user and resource manager. Likewise, attitudes regarding distributive justice can also be examined as an on-going, developmental process. For example, a person may hold a favorable view of a particular resource allocation outcome but may still harbor feelings of distributive injustice from previous less favorable outcomes. The two main components of social justice research, procedural justice and distributive justice, will be examined in terms of 1) the long-term relationship (1983-1994) between commercial fishermen and the Marine Fisheries Commission prior to the net ban vote, and 2) the social justice ramifications as a direct result of the referendum vote.

Procedural Justice Prior to the Net ban

Procedural justice theory is founded on the belief that people are concerned with the process through which outcomes are distributed (Tyler et al. 1997). Several studies have outlined criteria or weighting factors that can be used to qualitatively assess different aspects of procedural justice (Daigle et al. 1996). Measures related to consistency, bias reduction, accuracy, appeal opportunity, honesty, representation, and trust have all been connected to procedural justice. Some of these criteria relate more directly to the decision maker while others have more to do with the process itself. For example, opportunities of representation through public hearings and opportunities to appeal decisions are often mandated as part of the process. This would suggest that at least some aspects of procedural justice (or injustice) may be objective and are inherently part of the allocation system in place. However, to the extent that individual perceptions of such things as bias, accuracy, or honesty can differ, there may also be a strong subjective component to what constitutes procedural justice.

The Florida system of marine resource management provides ample opportunities to all affected parties to appeal decisions and voice opinions. Mandatory public hearings are held to solicit feedback on proposed management plans and appeals are liberally granted. Also, since all rules must be approved by the Governor and Cabinet lobbyists are provided additional opportunities to be heard. However, while these procedural characteristics may, in theory, be associated with procedural justice it is important to consider how they affect the overall process in actual practice. While stakeholder participation and frequent appeals might be viewed objectively as having a positive effect on procedural justice, they can turn into drawbacks if they delay the entire process either inadvertently or intentionally. Such was the case with management of Florida's mullet fishery where proposed regulations were subjected to months of public hearings followed by months and even years of legal and political delaying tactics (Marston 1997). Recreational fishing groups could make the claim that such tactics were interfering with procedural justice. However, from the perspective of Florida's commercial fishermen who benefited from such delays, these characteristics of the process may have been viewed as fair.

The fact that commercial fishermen figured out ways to use the process to their advantage does not necessarily mean they believed the system was procedurally just overall. In fact, the opposite appears to be true if we consider the long-term, on-going social relationship between commercial fishermen and MFC. The group-value model proposed by Lind and Tyler (1988) focuses on three criteria that influence procedural justice fairness: 1) the neutrality of the decision making procedure ; 2) trust in the third party; 3) evidence of social standing. In terms of neutrality, commercial fishermen see the MFC as being on the side of recreational fishing groups. They point to the designation of red drum as a game species as one example of a decision based on political interests and liaisons, and not on biological and economic evidence (Smith and Jepson 1993). In general, commercial fishermen do not trust the MFC to treat them in a fair and reasonable way. They are also skeptical of the biological data and scientific models used by MFC stock assessment biologists which often conflict with their own local knowledge and understanding of stock dynamics (Smith and Jepson 1993).

When commercial fishermen talk about the MFC there is an us versus them mentality that comes through as little science versus big science, blue collar versus white collar, reality versus theory, and common sense versus educated (Smith and Jepson 1993). This would suggest that commercial fishermen feel they are being treated unfairly due, in part, to their low social standing compared to recreational fishermen. Previous studies have shown that commercial fishermen's position in the class structure has put them at a disadvantage and made them ineffective in the political process (Durrenberger 1990; Meltzoff 1989; Soden 1989). Also, a large part of Florida's inshore commercial catch feeds lower income urban blacks. Commercial fishermen argue that the needs and preferences of these consumer's are also disregarded, partly as a result of their low social status (Smith and Jepson 1993).

Therefore, while one might point to commercial lobbyist's success in preventing regulatory actions as evidence of a process that benefited commercial fishermen, there is more compelling evidence to suggest that commercial fishermen believed the entire system to be procedurally unjust. Furthermore, commercial fishermen might make the argument that had the system been more procedurally just they would not have had to suffer the financial and emotional costs of fighting to restore justice through extensive lobbying or drawn out court battles.

Procedural Justice and the Referendum

Following the passage of the Limiting Marine Net Fishing amendment outraged commercial fishermen protested that their rights to due process and equal protection under the United States Constitution were violated (Martin 1997). Although it is radically different from the government agency allocation process, the referendum is still a systematic process with clearly defined rules and regulations that must be followed. While some of these rules are specifically intended to ensure procedural justice it is important to examine how well they do at achieving this goal. As discussed above, process requirements designed to improve procedural justice on paper (e.g. public hearings and appeals) do not always work that way in real world situations.

In Florida, the citizen ballot initiative process is intentionally designed to be a restrictive method for amending the constitution. Strict rules govern the petition process and initiatives are limited to a single subject (Martin 1997). To get an initiative considered for ballot inclusion requires obtaining signatures from eight percent of voters statewide and at least eight percent of voters in at least half of the congressional districts (Florida Constitution Article XI Section 3). Before it goes on the ballot an initiative must be publicized, filed with the secretary of state, and reviewed by Florida's Supreme Court. To meet with Supreme Court approval a proposed amendment must have a clear, unambiguous title and summary, and address a single subject (Martin 1997).

In the case of the net ban initiative, the Supreme Court ruled that these two criteria were met. However, Martin (1997) points out that approval of the title/summary and single subject requirements is merely an opinion of the technical quality of the initiative, not an endorsement of its constitutionality. Furthermore, he suggests that the initiative was vulnerable to attack had commercial fishermen chosen to contest it. Martin states that the term "Limiting" in the title (Limiting Marine Net Fishing) was both ambiguous and misleading to voters. He claims that this term concealed the fact that the initiative was actually designed to "ban" not "limit" the use of nets. Martin also suggests that the amendment contained multiple subjects since it banned several net types and protected both finfish and shellfish. Despite this vulnerability, when the Supreme Court issued an order permitting interested parties to file briefs, commercial fishermen did not respond. This was perhaps the only chance commercial fishermen were given to voice opinions and concerns prior to the vote. Commercial fishermen were not well organized to fight net ban proponents in what must have seemed like a losing battle. Any protests challenging the constitutionality or the exact wording of the amendment had to wait until after it had been voted on and was already in the constitution.

After the net ban vote commercial fishermen made several attempts to restore justice in the courts. In June of 1995 several last-minute lawsuits were filed by commercial fishermen in an attempt to halt enforcement. All of these attempts were rejected in county courts and the net ban law took effect as scheduled on July 1, 1995. After the net ban went into effect commercial fishermen made several legal challenges to the exact wording and specifications of the amendment. In one particular case (DEP v. Millender 1996) over a controversial net measurement, the Florida Supreme Court ruled in favor of a commercial fishermen's assertion that his net was under 500 square feet. This ruling came despite state law enforcement and Florida Conservation Association claims that his net exceeded 500 square feet. In another case a Gulf County judge ruled in favor of a commercial fishermen who was using a modified tarp-like net in place of a gillnet stating: "Nothing which is not clearly described in the constitutional provision may be read into it" (from Sargeant March 1996). In December 1997, over two years after the ban took effect, a Wakula County judge imposed a temporary injunction preventing the state from enforcing the gill net prohibition. Therefore, commercial fisherman were successful in finding loopholes in the law and many of their legal challenges were upheld in court.

The opportunity to appeal allocation decisions is an important component of procedural justice. While these opportunities were available to commercial fishermen through the legal system they did not come without a price. The time, energy and costs associated with drawn out legal battles are often prohibitive and there is no

guaranteed payoff in the end. Successful legal challenges by commercial fishermen also provoked counteractions by angry net ban proponents who felt that the voters voice was being ignored. Following the court ruling that tarp nets were legal, Governor Chiles and the Cabinet, under pressure from MFC and recreational fishing groups, passed a 90-day emergency ruling banning tarp nets. Nearly two years after the net ban took effect twin bills were introduced in Florida's Senate and House of Representatives designed to "put teeth" into the net ban rule. These bills came in direct response to "loopholes" that weakened the amendment's intent and to numerous violations by commercial fishermen.

Another important criteria of procedural justice is the potential for modification or reversal of decisions. As mentioned above, decisions can be modified or reversed by the courts at several stages. However, unless it is proven unconstitutional by the courts, a Florida constitutional amendment has a higher status than other legal rulings. Justice Parker Lee McDonald of the Florida Supreme Court, wrote the following in favor of limiting the subject matter of constitutional amendments: "By transcending time and changing political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values" (from Martin 1997). Constitutional amendments are generally associated with permanence and stability. Justice McDonald indicated that the net ban amendment was more appropriate as a statutory law which could be easily amended and adapted to meet the political, economic, and social changes of society.

To place the referendum process in a procedural justice framework we can view commercial fishermen and recreational interest groups as the competing resource user's and the Florida voting public as the third party resource allocator. Again, considering the group-value model we can look at commercial fishermen's perceptions of neutrality, trust, and social standing aimed this time at Florida's voters instead of the MFC. While many fisheries allocation issues turn into battles between recreational and commercial groups, this one was presented to Florida's voting public as an overall environmental and conservation issue (Grimes 1996). The tremendous support generated by environmental groups and citizen groups was reflected in the polls as 72% voted in favor of the net ban. However, it should be noted that the amendment was initiated by the Florida Conservation Association (FCA), a group headed by prominent sports fisherman (and editor of Florida Sportsman Magazine) Karl Wickstrom. Recreational and commercial fishing groups had been at odds in Florida for many years prior to the net ban. Whether this was or was not intended as a conservation issue, the political connections and financial backing of powerful recreational fishing organizations were a necessary driving force behind it. Also, just prior to the vote there were over four million recreational anglers in Florida compared to only 16,000 commercial net fishers. In terms of sheer numbers net ban proponents held a tremendous advantage in getting petition signatures and referendum votes.

Commercial fishermen's distrust of voters ability to act as unbiased, fair, and reasonable decision makers was connected to beliefs that voters were misinformed by recreational interest groups and the news media. Commercial fishermen complained that recreational organizations disguised their own interests by using conservation terminology to sway public opinion in favor of the net ban (Smith and Jepson 1993). They claimed that the public had been misinformed about the degree of environmental destruction associated with inshore

commercial fishing and that consumer benefits of local fishing were under-valued. The news media also jumped on the anti-netting bandwagon as many outdoor sports columnists condemned the allegedly destructive, unethical practices of commercial netters. The following passage from the Tampa Tribune just days before the vote is typical of the news media's treatment of commercial fishermen: "... if the amendment passes, the message also will be loud and clear – the majority of Floridians will have decided that scarce fish stocks should not be allocated for profit to a few who own nets, but instead belong to all of the people of the state" (Sargeant 1994).

Before the net ban vote many commercial fishermen still had faith in the public's ability to see through the "deceptive tactics" provided that the "truth" was revealed to them. However, ultimately the forces working against commercial fishermen proved too formidable to reverse public opinion. The Florida Conservation Association even called upon General Norman Schwartzkopf to "rally the troops" during the petition signing phase of this operation (Martin 1997)). Leventhal (1980) found that setting of ground rules concerning the availability of information about an allocation and the way information is gathered are important components of procedural justice. With a referendum decided allocation the accuracy and completeness of information available to voters and methods by which voters gather information can be highly variable.

As discussed above, commercial fishermen believed that unfair treatment by the MFC was evidence that they were regarded as having low social standing. It is likely that they would also attribute unfair treatment by the voting public as evidence of social standing prejudice. When considering the influence social standing has on procedural justice it is important to differentiate between perceived social standing and perceived economic standing. In order to rally voters against inshore netting, net ban advocates depicted commercial fishermen as unethical, greedy, manipulative profiteers. Therefore, the public's perception of commercial fishermen's economic standing was probably high. However, in terms of education level, cultural beliefs, and morals the public, in general, probably considered commercial fishermen to be of lower standing. This perceived disparity between economic and social standing may have further incensed the public thus reducing their ability to act as neutral third-party allocators.

Distributive Justice

The relationship between distributive justice, relative deprivation, and equity theory is unclear in the literature. Tyler et al. (1997) suggests that relative deprivation was the first "wave" in the field of social justice, followed by distributive justice which included the concept of equity. Crosby and Gonzalez-Intal (1984) view relative deprivation as a state experienced by the victim of inequity. Loomis and Ditton (1993) state that equity theory and relative deprivation are the two major components of distributive justice. This third approach will be used here since it has been proven as an effective method to study distributive justice in marine fisheries management.

Relative deprivation is a judgement that one is worse off compared to some standard. Individual comparisons, group comparisons, and comparisons with oneself at other points in time (temporal comparisons) can

all lead to relative deprivation under the right conditions (Tyler et al. 1997). Florida's commercial fishermen view themselves as self-righteous, just individuals who greatly value their independence and are not likely to have a group mentality (Smith and Jepson 1993). Given these personality traits they are more likely to make comparisons to their own situation at different points in time than to other fishermen. Also since fishing is so much a part of their culture and heritage it is not likely that commercial fishermen would make comparisons to any other profession. According to Crosby (1976) there are five psychological preconditions of relative deprivation. Individuals are relatively deprived if they: 1) want X, 2) see that another possesses X, 3) feel that they deserve X, 4) think it is feasible to obtain X, and 5) lack a sense of responsibility for failure to possess X. If we define "X" as the unrestricted freedom to harvest fish it is clear that commercial fishermen meet these pre-conditions. In condition #2 the other person could be themselves 20 years ago or their fathers. As pressure to limit commercial fishing grew in the decade prior to the net ban, commercial fishermen were probably experiencing what is termed decremental deprivation. This is defined as the discrepancy that occurs when peoples expectations remain constant but their capabilities to meet those expectations begin to fall (Tyler et al. 1997). The following quotes from commercial fishermen support the theory that decremental deprivation was experienced.

Before net ban:

"To me it is depressing, because you get to looking at yourself and you are forty-two years old and (have) no other way to make a living You know in a matter of two more years they are going to have more laws on you. What can you do? You can't get a job nowhere." (from Smith and Jepson 1993)

After net ban:

"My great-grandad, grandad, dad, me, my son. That's five generations (of fishermen). This is the last one". (from Bergstrom 1996)

"They've sentenced us to poverty, and I've got four young'uns to feed. They're going to sit there with the National Guard and watch us starve to death". (from Willon 1995)

These quotes express the general sense of uncertainty that most commercial fishermen held about their future income earning potential. They also express feelings of hopelessness, depression, anger and resentment that are closely linked to the state of relative deprivation. Prior to the net ban many commercial fishermen felt that they were being over-regulated by the MFC and that management's approach was "shortsighted and ill-conceived" (Smith and Jepson 1993). These feelings highlight the subjective nature of relative deprivation especially considering MFC's history of failed attempts to regulate commercial netting. However, while commercial fishermen had some success in staving off harvest controls prior to the net ban the constant fight to protect their way of life had taken its toll both financially and emotionally (Smith and Jepson 1993). One fisherman's wife was quoted as saying: "You talk about hatred trying to rise up in you. When you see these people trying to put you out of business like they have done us" (from Smith and Jepson 1993). According to commercial fishermen, for many years prior to the net ban they had been the target of constant attacks and unfair treatment by the news media and special interest recreational groups (Smith and Jepson 1993). Their concerns (prior to the November 1994 vote) about being forced out of a traditional way of life turned into real fears once the net ban ruling passed.

According to equity theory, a “fair” or equitable relationship is one where the ratio of one person’s outcomes to inputs is equal to the ratio of another person’s outcomes to inputs (Crosby and Gonzalez-Intal 1984). The following formula should be balanced for equity to exist:

$$\frac{\text{Outcomes of Person A}}{\text{Inputs of Person A}} = \frac{\text{Outcomes of Person B}}{\text{Inputs of Person B}}$$

When ratios are unequal the person with the lower ratio may view the relationship as inequitable. This can lead to both feelings of distress and the desire to restore equity. Unlike decremental (relative) deprivation, where individuals make comparisons between their own situation at different periods of time, equity theory involves a more direct comparison with another person.

Comparisons between commercial fishermen and recreational anglers are problematic from an equity theory standpoint for several reasons. Firstly, an individual commercial fishermen’s inputs (boats, nets, fishing gear, etc.) and outputs (fish harvested) will both be significantly larger than the inputs and outputs of an individual recreational angler. While equity theory is only concerned with the ratio, and average ratios can be computed for each group, it still may be difficult for an individual commercial fishermen to conceptualize this comparison in order to decide if the situation is equitable. Another problem is that these two groups may disagree on what kinds of rewards, contributions and investments should be considered and what values to assign them (Loomis and Ditton 1993). Florida’s commercial fishermen would argue that years of fishing knowledge, culture and tradition are substantial investments which should be compensated in terms of profits. However, convincing the public that these are legitimate inputs and placing a quantitative value on them is difficult to do. Also, since commercial fishermen and recreational anglers do not always receive the same units of output, comparisons are made more difficult. For example, much of the controversy leading to the net ban vote surrounded the depletion of striped mullet stocks. Striped mullet is almost exclusively a commercial species that makes up a large portion of commercial fishermen’s outcomes. Striped mullet are important to recreational anglers from an ecological standpoint because they provide a forage base for many recreationally caught species. A direct comparison between the “outcome” value of a harvested striped mullet for a commercial fishermen and the value of a free-swimming mullet for a recreational angler would not be easy.

In general, prior to the net ban Florida’s commercial fishermen were more upset about regulations that restricted their fishing activity than the lack of recreational fishing regulations (Smith and Jepson 1993). This is an important distinction because it suggests that commercial fishermen were less concerned with equity comparisons to recreational anglers and more concerned with being able to fish in their traditional way (see decremental deprivation above). Exceptions to this might be the designation of gamefish status to certain species (red drum, spotted seatrout) which outlawed all commercial harvest. Clearly, commercial fishermen could claim that this distribution was inequitable since their ratio of outcomes to inputs for these species became zero. However, if equity is determined cumulatively (i.e. total outcomes over total inputs) the equitability of a particular regulation must be viewed in the context of all regulations affecting this ratio. Before the net ban recreational fishing groups were probably more distressed over their perceived inequitable relationship with commercial

fishermen than visa-versa. This may also be related to the fact that the recreational fishery has grown at a much faster rate than the commercial fishery during the past fifty years. Also, Florida is one of the few states with a recreational saltwater fishing license. With this growth in numbers, economic expenditures, and license generated revenue, recreational fishing groups expected a bigger share of the outcomes at the expense of commercial fishermen.

One way to relieve the distress caused by inequity is to force the other person to leave the field (Loomis and Ditton 1993). With the referendum initiative recreational fishing groups were essentially trying to maximize their outcomes by forcing Florida's inshore commercial fishermen to stop fishing. Often an attempt by one group to alleviate inequity by maximizing their own outcome does not produce a balanced equity ratio. Instead, as in this case, it shifts the feelings of distress created by inequity to the other group in the relationship (i.e. commercial fishermen). After the net ban the distress level experienced by commercial fishermen due to an inequitable relationship was rather high. From their perspective five generations of "inputs" in the form of tangible and intangible investments into fishing could no longer be converted to positive outcomes.

Management Actions

When a government agency is charged with allocating a resource the specific steps it must take and policymaking rules it must adhere to are typically well defined. Such actions are either mandated by law or are just generally accepted by an organization as standard operating procedure. For example, development of fishery management plans in Florida involves standard protocol which includes internal reviews, interagency approvals, informing and educating stakeholders, public hearings, and plan revisions. However, when a referendum initiative is proposed to reallocate those same resources the role of the resource steward becomes considerably more ambiguous. In such situations both the processes by which decisions get made and the final outcomes may be very different than when the agency is determining policy. Even though the resource agency can not directly control the outcome of a referendum initiative, its actions, reactions, and non-actions can still have social justice ramifications.

Prior to the referendum initiative MFC made several unsuccessful attempts to control commercial harvest. Many of the proposed regulations on mullet harvest were rejected by the Governor and Cabinet who consistently sided with commercial interests (Grimes 1996). Had any of these proposed regulations been approved it is likely that the net ban movement would never have been started. While MFC was fully aware of the need to limit inshore commercial netting they would never have proposed or condoned such drastic restrictions as called for in the net ban law. It is interesting to note that shortly after the Florida vote legislatures in Mississippi, Alabama, and Louisiana were quick to enact new netting restrictions in their state waters (Marston 1997).

Once the referendum initiative had gained some momentum there is no indication that MFC took an official stand on the issue or made any effort to educate voters. Therefore, the information voters were exposed to came mostly from biased sources. Many voters may have come to their own conclusion that since MFC tried to

restrict commercial netting on numerous occasions the agency supported the net ban. There is also indication that many people voted in favor of the net ban as a protest vote aimed at the entire system of marine resource management in Florida (Grimes 1996).

Following the vote measures were taken by MFC, the Florida Legislature, Governor Chiles, and the Cabinet designed to balance out some of the injustices caused by the net ban. MFC prepared a 140-page report outlining anticipated impacts of the amendment and proposed management strategies. The report recommended to the Legislature that the recreational license exemption for state shore mode anglers be eliminated. Therefore, MFC felt that if recreational angler outcomes were to increase as a result of the net ban their inputs should increase as well. The report also proposed several strategies to alleviate financial and emotional burdens of commercial netters. In response to these recommendations the Legislature drafted a proposal which included a net buy-back program, job training, and lost wage compensation. The total estimated cost for these programs was approximately \$70-80 million (Associated Press Report 1995).

These programs which were designed to assist victims of the net ban were not completely well received. For many commercial fishermen, who take great pride in their work, no other occupation would be acceptable (Smith and Jepson 1993). Commercial fishermen were insulted by management's failure to recognize the true value of fishing as an entire way of life and not just a job. Adding to this insult was a state booklet titled "A Guide for Coping with the Net Ban" which contained suggestions such as don't stand in front of an open refrigerator, delay vacations, and let your hair grow long to save money on haircuts (Crumpacker 1996). The net buy-back program, which had promised to pay fishermen a third the value for their illegal nets, was under-funded and the money ran out before all fishermen were paid. Commercial fishermen also made the claim that they should have been compensated for boats, engines, and other equipment made useless by the net ban. Commercial fishermen's record of net ban related violations is further evidence of their dissatisfaction with government efforts to restore justice following the net ban. The Florida Marine Patrol reported an average of one net ban related citation per day, every day for the first 18 months that the rule was in effect (Sargeant December 1996). Commercial fishermen's attitudes toward MFC assistance and government compensation after the net ban vote can be summarized as "too little too late".

Feelings of injustice by commercial fishermen were further heightened as a result of political and management actions intended to appease the overwhelming majority (72%) of voters who approved the net ban. In November of 1995 Governor Chiles and Florida's Cabinet, on advice from MFC, passed a ruling to prohibit fish trawls in state waters. In February of 1996 the Florida Marine Patrol started a program called "Coastwatch" which trained private citizens with boats to find and report net ban violators (Associated Press Report 1996). Such a program could likely intensify existing animosity between commercial and recreational groups. It could also reconfirm commercial fishermen's contentions that management and recreational fishermen were working together towards the same common goal of eliminating commercial fishing. In November of 1996 a 90-day emergency rule banning tarp nets went into effect. MFC advised the Governor and Cabinet to time this rule to coincide with the mullet spawning season thus preventing commercial fishermen from harvesting valuable mullet

roe. In another controversial decision MFC voted to ban commercial fishing at night in the mullet abundant Punta Gorda Canals (Davis 1997). These canals which had been off limits to all commercial harvest prior to the net ban, were re-opened in 1997 after a court ruling that the previous moratorium was unconstitutional. Thus while some efforts were made to help commercial fishermen and their families make it through the period following the net ban, the will of powerful recreational fishing groups and nearly three million voters could not be ignored by the political system.

Discussion

Florida's commercial fishermen held strong feelings that they were victims of injustice even prior to the net ban. Their comments and behaviors indicated that feelings of procedural injustice and decremental deprivation were both present. After the net ban these pre-existing feelings were intensified and other negative feelings related to inequity may have also developed. Examining the social justice environment and specific management actions (or in-actions) that contributed to these feelings may help reduce feeling of injustice in future allocation issues.

Many people believe that the net ban referendum could have been avoided had management taken appropriate preventative action. However, due to serious problems with Florida's system for marine resource management this was not possible. While democracy is based on a system of "checks and balances" if control over a resource is too dispersed a balance of power may hinder attempts to balance scales of justice. Attempts by a group or ruling body to tip the scales of justice in one direction are often countered with opposing strategies by another group to tip the scales in the other direction resulting in a chain reaction of "justice balancing". There are examples of this throughout the Florida net ban case. Each attempt to restore justice may also result in more feelings of injustice from opposing groups. If social justice is viewed as a long-term relationship between resource user and resource manager then the cumulative effects of felt injustice must be considered. The ability of an agency to act quickly and decisively is also important in reducing injustice. The saying "justice delayed is justice denied" is appropriate in many natural resource allocation issues. Every 20 years Florida's Constitutional Revision Commission recommends to the voters needed modifications of the Constitution (Martin 1997). In the fall of 1998 this Commission is considering proposing an entirely new system of management of Florida's marine resources. This would involve creation of a new agency with complete responsibility for management, science and enforcement, eliminating political approval for rules, and modifying the appeals process to reduce delays.

However, even if this new and improved system of management is adopted, Florida still has to deal with the possibility of future referendum initiatives regarding marine resources. As seen in this case, referendum decided allocations can lead to extreme feelings of injustice. The net ban controversy raises some broader philosophical and political questions regarding the appropriateness of the referendum process in general. Whether or not a referendum process can or should be held up to the same justice standards as an agency allocation process is also a question subject to debate. Steps can be taken to limit the subject matter or make the referendum process

more restrictive in order to reduce injustices. The net ban referendum initiative could possibly have been rejected had commercial fishermen responded to the Florida Supreme Court's call for appeals. However, if the referendum did not meet the legal requirements should the responsibility of determining this be placed on commercial fishermen or on the judicial system. Commercial fishermen disputed various aspects of the net ban amendment in court cases after it went into effect. While they were victorious on several occasions does this represent procedural justice? Had the amendment's language not been so confusing and ambiguous the need to fight such battles in court would have been avoided. While the ability to appeal decisions is an important component of procedural justice most people would prefer not to go to court to restore justice. This is especially true if people believe that the need to appeal a decision was caused by procedural injustices prior to the decision being made.

In the Florida net ban case, the influence which powerful special interest groups, non-profit organizations, and the media had on the public was a major determinant in the outcome. If people are expected to make educated, unbiased decisions they need to have accurate, unbiased information. This is critical in terms of achieving both procedural and distributive justice. This raises the question: Is it the resource agency's responsibility, as an unbiased third-party, to educate voters on referendum items? This could be politically risky since the ability to inform while remaining completely neutral on such controversial issues may be difficult. Furthermore, the consequences of showing any bias could be politically catastrophic for a resource agency. When the net ban referendum initiative was introduced Florida's Marine Fisheries Commission had already lost much of the public's trust and confidence. By this point it was probably too late for MFC to educate voters or to convince them that agency controls on commercial netting were on the way.

After a referendum, management and politicians may find themselves in a difficult situation. On the one hand they may feel obligated to balance out any injustices caused by the voter decided allocation. However, this could be politically damaging if such action is seen as contradicting the will of the majority of voters in any way. Some politicians may view a referendum allocation decision as an opportunity to gain voter support by introducing bills that compliment or strengthen the voter approved constitutional amendment. Therefore, while the referendum itself can have major distributive justice impact, the political significance of such a vote can also have ramifications for future distributive outcomes.

The notions of "right and wrong", "fair and unfair", or "just and unjust" can be viewed in many different ways. Economists, anthropologists, sociologists, and political scientists may each have a different interpretation of these notions as they relate to a particular issue. Likewise, the different players directly involved in an issue (stakeholder groups, resource agencies, politicians, judges) may also have conflicting opinions regarding these concepts. Given the subjective and diverse nature of what constitutes "justice" any attempt to balance this multitude of opinions and definitions into a scientific formula would be problematic. Throughout history philosophers and theologians have tried to define justice in universal terms. While common elements may be found between cultures and societies, justice is still fundamentally an idea that exists within the minds of all individuals (Tyler et al. 1997). This does not mean that we should give up on trying to achieve justice altogether.

Instead we need to focus our attention on the members of society who feel they are being treated unfairly and determine what conditions led to those feelings. In other words, it may be easier to identify injustice than to define “justice”. Although we may be able to identify the causes of injustice this does not imply that it can be completely eliminated. However, through careful analysis of intricate case studies such as the Florida net ban from a social justice perspective, we may be able improve on our ability to reduce injustices in future resource allocation issues.

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Appendix I. Timeline of important events surrounding the Florida net ban issue.

DATE	EVENT
1991	Organized Fishermen of Florida (OFF), representing commercial fishing interest, successfully challenge a ruling by the Florida Marine Fisheries Commission (MFC) that would have extended closure periods during the roe mullet harvest season.
Spring 1992	Recreational fishing groups lobby state legislature to introduce net ban bill. This bill was “tabled” after extensive lobbying by OFF.
November 1992	At a Florida Conservation Association (FCA) banquet Gen. Norman Schwartzkopf states the following with regards to getting petition signatures for the net ban initiative: “You need 400,000 signatures? I can get them in a week.”
June 1993	Florida Supreme Court rules the proposed net ban amendment satisfies the ballot title, summary and single subject requirement. No parties filed briefs in opposition to this proposed ballot initiative
November 1994	“Net-ban” proposal becomes part of Florida’s Constitution as 72% vote in favor.
November 1994	MFC prepares 140-page report outlining anticipated impacts of “net-ban” law and strategies to alleviate financial and emotional burdens of those affected.
February 1995	Legislature drafts proposal to help commercial fishermen affected by net ban rule. Programs include a net buy-back (est. cost \$40 million) , job training (est. cost \$10 million), and lost wage compensation (est. cost \$20-30 million).
June 1995	Volley of last-minute legal actions to halt net ban are filed by commercial organizations. All attempts rejected by county courts. Some go to state appellate courts
July 1, 1995	net ban goes into effect prohibiting use of gill nets and nets over 500 square feet in inshore Florida waters.
July 6, 1995	Shortly after net ban takes effect noticeable price increases are seen Florida fish markets for mullet and other inexpensive bottom fish.
July 24, 1995	Net buy-back program goes into effect but only \$7 million is available for now. Gov. Chiles says another \$13 million will be available by August.
July 1995	State Department of Labor opens assistance centers in 23 coastal counties to help commercial fishermen.
November 1995	Gov. Chiles and Florida Cabinet vote on measure to prohibit fish trawls in state waters on advice from MFC.
January 18, 1996	Supreme Court of Florida rules in favor of commercial fishermen on the legality of a modified shrimp trawl net that FCA and the state claimed exceeded 500 square feet. Ambiguity in law

	regarding net measurement is the main source of controversy.
February 18 1996	Florida Marine Patrol reports issuing 135 citations for illegal gill netting during roe mullet season. Loopholes in the law, light penalties, and not enough agents seen as obstacles to enforcing net ban law.
February 26, 1996	Florida Marine Patrol start program called "Coastwatch" which trains private citizens with boats to find and report net ban violators.
April 1996	Historical fiction novel by Randy White titled "Captiva" about the human conflict surrounding the net ban controversy is released.
May 1996	Some fisherman buy their nets back from the state at a fraction of the cost they sold them for just months prior. Fisherman must sign affidavit not to use nets illegally.

DATE	EVENT
July 1996	Report shows the number of active commercial fishermen in Florida has declined from 13,817 to 11,139 one year after the net ban took effect.
August 1996	Gulf County judge dismissed test case of fishermen using an adaptive tarp-like net stating: "Nothing which is not clearly described in the constitutional provision may be read into it".
November 1996	Governor and Cabinet, upon recommendation from MFC, pass a 90-day emergency rule banning the use of tarp nets. Rule dates coincide with mullet winter-spawning season.
December 1996	An attorney representing commercial fishermen makes claim that amendment was discriminatory. Case to be reviewed in Florida Supreme Court.
December 1996	Florida Marine Patrol reports an average of one net ban related citation per day, every day since rule went into effect. Enforcement inadequate to keep up with violations.
May 1997	State senator Latvala and Representative Safley introduce bills to put "teeth" into the net ban rule. Proposes that all gear must be approved by MFC before use and tougher penalties for violators.
December 1997	Wakula County judge imposes temporary injunction preventing state from enforcing the gill net prohibition (nets still must be less than 500 square feet).
December 1997	FMC votes to ban commercial mullet fishing in Punta Gorda Canals at night during the winter. The canals, which had been off limits to any harvest, were re-opened in 1997 after a court ruling that the previous moratorium was unconstitutional. The night-fishing ban was therefore intended as a compromise position.