2014 International Law Student Mediation Tournament

Final Round

**General Information for Both Parties and the Mediators**

**Fishing War**

The [English Channel](http://en.wikipedia.org/wiki/English_Channel) scallop fishing dispute, also titled the Scallop War or guerre de la coquille, occurred recently between British and French fishermen 24 kilometers (15 mi) off the coast of [Le Havre](http://en.wikipedia.org/wiki/Le_Havre), [France](http://en.wikipedia.org/wiki/France). The dispute arose because of a difference in fishing restrictions between the two countries. British [scallop](http://en.wikipedia.org/wiki/Scallop) fishers are allowed to fish for scallops all year round, whilst French scallop fishers are not permitted to fish between 15 May and 1 October each year.

Approximately 40 French fishing boats surrounded 5 British fishing boats and, according to the British fishermen, tried to slam into the British boats as well as throw rocks and nets to try and damage the propellers and engines. The French had previously fired flares and rocks at the British boats. The French are furious that “British intruders” have been fishing for the lucrative mollusk in the Baie de Seine, off the coast of Normandy. French fishermen claim that their action was in response to the British boats being inside the [European Union](http://en.wikipedia.org/wiki/European_Union)'s [Common Fisheries Policy](http://en.wikipedia.org/wiki/Common_Fisheries_Policy) 19 kilometres (12 mi) fishing exclusion zone; British fishermen deny that they were within the exclusion zone; they are adamant they were at least 15 miles offshore — which still falls within French territorial waters – when they were attacked.

British fishermen requested protection from the [Royal Navy](http://en.wikipedia.org/wiki/Royal_Navy). The Royal Navy announced that it had no plans to deploy ships from the [Fishery Protection Squadron](http://en.wikipedia.org/wiki/Fishery_Protection_Squadron), instead relying on French authorities to keep the dispute from escalating. A seven-hour stand-off followed, with the French leaving only when a French police boat and a naval vessel, the Pruviere, arrived at the request of the British Government. The dispute now threatens to escalate into a full-scale “scallop war”, with some militant French trawlermen saying they will blockade British ports and ferries and target British exports of scallops if they don’t get their way.

Tension remains high among British fishermen working the English Channel following the attack. “Their boats appeared in a line along the horizon and proceeded to surround me and about half a dozen other British trawlers,” said Mr. Bailey, a Jersey-born fisherman who has spent his entire life at sea. “Suddenly they started pelting us with iron bars, rocks and firing flares at us. We had to take refuge in the wheelhouse. It was pretty nasty stuff.” “It’s just plain wrong,” he said, from the wheelhouse of his 50ft trawler, which sails 18 hours out of Brixham to reach the Baie de Seine scallop beds. “The French lads are fishermen like us, and we respect the fact they are trying to make a living, but attacking our boys like that is not on. It’s not the way to go about settling your disputes.”

Pete McLeod’s trawler, the Danielle, had a lucky escape, pulling into harbour the day before the attack to offload its scallops. “It’s a form of piracy to surround a boat and stop it from going about its lawful business,” said Mr McLeod, 53, whose boat is laid up in Brixham for maintenance. “And that’s what the French did. We understand they are trying to protect their livelihood, but we are abiding by the rules and they should let us get on with it.”

Andy Scott, of Scott Trawlers in Dumfries, Scotland, had to call Marine Scotland for help when one of his skippers telephoned to say his crew were under attack. The crew of the vessel were forced to hide in the wheelhouse as rocks and iron bars were thrown. He said: ‘The skipper was very concerned for his safety and the safety of the crew. They were really helpless. ‘I could hear on the telephone the rocks and bricks raining down on the wheelhouse window.

To complicate matters, the French are demanding a ban on all fishing in the Baie de Seine in order to replenish its stock of fish and scallops. They had imposed a voluntary ban on fishing through the summer and were angry the British boats had not done the same, claiming that their actions were putting stocks of scallops at risk of overfishing.

But the British fishermen would already appear to be operating under far stricter limits than those imposed on the French.

While the British fleet is restricted to 3.3 million “kilowatt” days at sea — the measurement of the boats’ fishing capacity — the French are allowed 7.7  million days, although they use only a quarter of their actual capacity. The limits mean the British scallop boats can sail only 36 days in the current October to December quarter.

Matters came to a head in Paris, where eight British and 12 French representatives of the trawler owners gathered to thrash out a deal.

The British offered to stay out of the Baie de Seine for up to eight weeks during the summer in return for access to one million kW days of the unused French quota. All but one of the French representatives were in agreement, but the objection of one representative from Brittany, who speaks for six per cent of French scallopers, was enough to scupper the deal. Brittany’s fishermen were concerned the British boats would head west and start competing with them. As a result, the status quo prevailed and the British carried on working the Baie de Seine.

The dispute is replete with ironies. Not only is much of the British haul of scallops exported back to the French and Spanish markets, after being processed by UK wholesalers, but Brixham’s new, £20 million fish market was part-funded by the EU’s member states, including France. Scallops worth more than £70 million are exported from Britain every year, bringing a welcome injection of cash into fishing ports.

Claude Milliner, a French scallop trader at Port en Bessin, said: ‘Our government is doing nothing to protect us from the British intruders who are pillaging our livelihood.

'We will not hesitate to call out 250 boats or more. Our fellow trawlermen at the other ports are with us. Our battle is their battle. ‘This situation is going to end badly. We have had enough. We will do what it takes to win the war. ‘We have enough boats along the Channel coast to cause disruption by blocking the ferries. We don’t want to but if we have to, we will.’

French fishermen have previously proved true to their word when they have threatened a blockade in the Channel. In 1996, trawlermen sailed dozens of boats into the harbour mouth at the cross-channel port of Calais, roped themselves together and blocked its entrance. They delayed tens of thousands of passengers and hundreds of lorries for two days before the government gave into their demands for European Union benefits.

This year rumours of a bumper year of scallops reached UK ports in September. Within days a dozen British boats were in international waters off the Normandy coasts. By the time the French set sail on October 1, they had missed out on weeks of rich pickings.

The French concede that the British are acting lawfully. But they believe it is unfair that UK boats can steam across the Channel to pick the best scallops while they can only watch.

The Gallic authorities say the closed scallop season prevents over-fishing and allows the scallops to spawn in peace.  But Dr Ewan Bell of the British government-funded Centre for Environment, Fisheries & Aqua-culture Science, said: ‘As far as I’m aware there is no particular scientific justification for that closed season. There are peaks in their spawning but you can find spawning scallops all year round.’

Jim Portus, of the South Western Fish Producers Organisation, says the French closed season is a marketing ploy that owes more to protecting prices than protecting fish.

‘It’s an arbitrary season,’ he said. ‘We can only assume that it ensures the market is concentrated into the seven months of open season so they get a better price.’

Scallops are not endangered and there are no fixed EU quotas restricting the size of the catches. But to prevent over-fishing, fishermen must follow complex rules covering the size of equipment, the type of dredgers, the size of scallops they can harvest and how many days they spend at sea each year. Each EU nation may dredge for scallops in its own coastal waters and in any international waters. But nations may set their own restrictions.  Just as the French have a closed summer season off Normandy, British boats are banned from fishing for scallops in the Irish Sea from June to the end of October.  And just as UK fishermen can ignore the French restrictions, there is nothing to stop a French boat looking for scallops in the summer off the coast of Wales. In practice, they rarely bother because travelling so far is uneconomical.

The parties have agreed to mediation to try to work out a plan for avoiding such incidents in the future. Scallop fishermen from both countries have designated representatives to conduct the discussions.

[Note: This is a real-life dispute; the above facts are a compilation of online news reports. For purposes of the competition, you are to assume that the status of the dispute is as described above. If anything has happened since the events described above, you may consider it in formulating suggestions for resolution, but you may not treat it as having happened.]

2014 International Law Student Mediation Tournament

Final Round

**CONFIDENTIAL INFORMATION FOR FRENCH FISHERMEN**

The representative of the French fishermen at the mediation has full authority to settle within the below described instructions.

The French fishermen want the British fishermen to agree to a shorter season in the Baie de Seine. In return, they will agree to allow British fishermen to use some of the French unused fishing days. The previous near-agreement is a good guideline for this mediation. The French fishermen want as large a commitment as they can get in terms of the ban on fishing in the Baie de Seine. Perhaps the British fishermen can agree to a longer ban for at least the next couple of years, then a shorter one in the future? The agreement to allow the British fishermen to use unused French days should be commensurate with the length of the ban agreed to. The fishermen from Brittany would also like assurances that the British fishermen will not invade their territory during the time of the ban.

The French fishermen want assurances that the British fishermen will respect the EU exclusion zone. For the most part this is not a problem, and it’s unclear whether the zone was actually violated in the incident that started this “war,” but it would just be good to have everyone on record as respecting the rules. The French fishermen will make the same commitment.

The French fishermen would also like to create some sort of dispute resolution mechanism to avoid these kinds of incidents in the future. If fishermen on either side feel they have a legitimate complaint, there should be a peaceful way to seek redress. Hopefully the parties can come up with an approach to allow hearings or discussions that will feel fair to everyone.

The French representative is authorized to assure the British fishermen that the French Navy will act to protect all fishermen engaging in lawful activity. The French representative is also authorized to assure the British fishermen that future attacks of the sort described in the general information will not happen again so long as the British comply with the agreement.

2014 International Law Student Mediation Tournament

Final Round

**CONFIDENTIAL INFORMATION FOR ENGLISH FISHERMAN**

The British representative of the fishermen at the mediation has full authority to settle within the below described instructions. The primary objective of the British fishermen is to get assurances that such an incident will not happen again. And that the French authorities will act to protect all fishermen engaging in lawful activity. Is the French representative prepared and authorized to provide such assurances?

The British fishermen are willing to agree to a shorter season, to give up some of their summer fishing time in the Baie de Seine, if they can get an agreement to use some of the French fishermen’s unused fishing days. The previous near-agreement is a good guideline for this mediation. The British fishermen want as large a commitment as they can get in terms of the number of unused days they can fish. The British fishermen might be willing to agree to a longer ban on fishing in the Baie de Seine for at least the next couple of years, then perhaps a shorter one in the future? The agreement on the length of the ban on fishing in the Baie de Seine should be commensurate with the amount of unused French fishing days the British can fish. If the agreement is satisfactory, the British fishermen will agree not to invade the fishing territory in Brittany.

The British fishermen are adamant that they have never violated the EU exclusion zone, and they are happy to promise that they will continue to respect the rules, so long as the French fishermen will do the same.

The British fishermen would also like to create some sort of dispute resolution mechanism to avoid these kinds of incidents in the future. If fishermen on either side feel they have a legitimate complaint, there should be a peaceful way to seek redress. Hopefully the parties can come up with an approach to allow hearings or discussions that will feel fair to everyone.