

Alternative Marine Resource Conflict Management through Social Norms, Exclusive Fishing Rights, and Territoriality

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Introduction

The period of the late 1960's and 1970's in the United States is characterized by the passing of major federal environmental legislation. Congressional acts such as National Environmental Protection Act (NEPA), Magnuson Fishery Conservation and Management Act, Endangered Species Act, Clean Air Act, and Clean Water Act were initiated as a result of increased environmental awareness. Such wide ranging, environmentally ambitious laws provided private citizens and environmental groups the legal standing necessary to bring suit against corporations and government agencies that were out of compliance. Many corporations also sought judicial review of agency actions and agency interpretations of environmental statutes. Thus, the past 30 years have also been characterized by a significant increase in the number of lawsuits involving environmental issues. This trend is symptomatic of a society that has become increasingly litigious in all areas of conflict (e.g. family, personal injury, discrimination etc.). Increased litigation in our society has had the negative effects of both overburdening the courts and costing the parties involved (agencies, NGO's, individuals,

and corporations) exorbitant legal fees and considerable amounts of time.

Due, in part, to the drawbacks of litigation, in recent years potential litigants have begun searching for other ways to settle disputes. In 1990, Congress enacted the Administrative Dispute Resolution Act as an attempt to get agencies to use alternative methods (i.e. not litigation) to resolve conflicts (WWW Citation: Why Use ADR Instead of Litigation?). Alternative Dispute Resolution (ADR) is a collective name for a variety of joint problem-solving techniques used to resolve conflicts. The fact that these approaches are labeled “alternative” suggests that most Americans view ADR, unlike our legal system, as being outside traditional or conventional institutions. Therefore, proposed use of ADR and subsequent outcomes are likely to be met, initially, with skepticism and doubt.

Proponents of ADR techniques point to their numerous advantages including time and monetary savings, flexibility of outcomes, and long-term relationship building potential. Their goal is to make ADR more mainstream in our society, ultimately to the point that it is no longer considered an “alternative” approach but rather becomes a more integral part of our culture. However, the traditional approach of turning to the judicial system to resolve conflicts may be so deeply rooted in our history, beliefs and values that such a change is not likely to happen overnight.

Many countries throughout the world are not as litigiously minded as the U.S. In modern Japan, social pressure and cultural norms help maintain the country’s ancient tradition of conflict resolution through informal interpersonal communication, consensus building, and third-party mediation or conciliation as necessary (Ruddle 1987). Thus, the same techniques that are considered “alternative” in the U.S. are an important part of traditional time-honored conflict resolution processes in Japanese society. Since

World War II, changes in the Japanese way of life have brought more litigation in Japan as well (Ruddle 1987). However, the increase in lawsuits is nowhere near that experienced in the U.S., and traditional Japanese social and cultural values that discourage legal action are still highly regarded.

This paper focuses on the Japanese approach to natural resource conflict management. In particular, it looks at the Japanese coastal fisheries rights system. By studying a culture with a long history of “alternative” dispute resolution it may be possible to gain insights into the question of whether ADR can gain popularity in the U.S. and produce a shift in our litigious way of thinking.

Finally, we turn our attention to a subculture in the U.S., which, in some ways, mimics the Japanese fisheries rights system. The lobster communities of Maine have, over several generations, developed an intricate system of resource conflict management through territoriality, social hierarchies, and kinship (Acheson 1988). The government sanctioned Japanese fishing rights system and the non-government sanctioned Maine lobster “gang” system are two examples of communal property arrangements (Taylor 1988). Examining the similarities and differences between these two cultures may help us better understand the factors necessary for successful implementation of a non-judicial based system of conflict management.

Japanese System of Fishing Rights

The predominant feature that distinguishes management of coastal fishing grounds in Japan from those in the U.S. is the concept of sea ownership. Japan has a history of granting exclusive fishing rights that dates back to the eleventh century (Ruddle 1987). The feudal period (1603-1867) created a system of strictly controlled, well-defined property rights that extended into the sea for coastal villages (Ruddle 1987). Fishing grounds were considered common property for all residents of designated “fishing” villages to exploit and manage communally. Some areas called “iriai” were shared fishing grounds among nearby villages where each village specialized in a different fishing gear or target species (Ruddle 1987). The specifics of the Japanese sea rights system that evolved during feudal times are very intricate and complex and beyond the scope of this paper.

Although feudal order ended in the late 19th century, since then Japanese government has revived this ancient system of fishing rights. Modern Japanese fisheries management is based on the Fishery Laws (1901 and 1949) and the Fisheries Cooperative Association (FCA) Law of 1948. FCA’s were established to better define coastal fishing grounds rights of feudal times and to coordinate their use among fishing villages. In addition to using the time-honored system of fishing rights, participants in Japan’s coastal fisheries today are also utilizing the same techniques of conflict management and resolution of the Edo period (Ruddle 1987).

Conflict Management in a Japanese Fishing Village

To understand how conflict management works in Japan it is important to examine the social and cultural values that influence how conflict is perceived and how it should be resolved. Japanese social behavior is strongly influenced by the desire for community harmony and social acceptance and is more driven toward group orientation rather than individual orientation. Peer pressure within one's group is strong and egocentric or disharmonious behavior can result in community disapproval, lowered social status, and even social ostracization (Ruddle 1987). Interpersonal behavior in Japanese culture is characterized by face to face contact, prolonged discussions, consensus building, and the development and nurturing of long-term relationships.

While litigation is an option that has been exercised in Japan more frequently since 1945 (Ruddle 1987), it is clearly not the preferred way to resolve disputes. The Japanese pay more adherence to the "spirit" of the law rather than the "letter" of the law which is so familiar to lawyers and judges. A fundamental principle guiding Japanese behavior in conflict resolution is that the law must be applied flexibly and account for local conditions (Ruddle 1987). Fishing regulations are written in general terms and are intentionally ambiguous, leaving much room for interpretation and flexibility on a case by case basis (Ruddle 1987). In 1970 Japan passed the Dispute Law to uphold these ideals and preserve the traditions of extra-judicial methods of dispute resolution. The Dispute Law modernized the three traditional methods of dispute settlement: mediation, conciliation, and arbitration. In addition, unwritten laws of conduct among fishermen are still respected and culturally binding in many ways.

Japanese fishermen use a combination of both informal and formal methods to manage conflicts. On the water, fishermen minimize conflicts by respecting the "first-comer rights" to

a fishing spot and by avoidance techniques. Small scale conflicts, interpersonal disputes, and intra-village problems that do arise are generally resolved informally by FCA members. This type of resolution tends to be highly personal and might include time-honored customs, local social sanctions, or the advice of a respected local fisherman (Ruddle 1987). Protracted and open discussion to achieve mutually acceptable consensus is viewed as essential. Decisions are reinforced through peer group pressure and social sanctions. As the level of conflict rises (e.g. inter-village conflict) processes for resolution become more formal but the cultural influence to keep negotiations personal remains. Such conflicts call for higher-level government involvement than the FCA such as Prefectural Fisheries Office or the The Ministry of Fisheries. These more formal solutions still involve mediation, flexibility and compromise and may seem rather informal when compared to conflict resolution in other cultures.

Judicial solutions are rarely sought to problems between fishing groups in Japan. Inter-sectoral conflicts between fishing villages and other sectors of society are more likely to end up in court than conflicts within the fishing industry. In one famous case involving mercury poisoning (minamata), victims from fishing villages chose to sue the liable parties after considering the use of mediation. Not surprisingly, the goals of harmony, community integrity, and mutual concession become less important factors when your adversary is a large corporation guilty of endangering human health.

Territoriality and Conflict Management: The Maine Lobster Fishery

The lobster fishery in Maine is another example of a communal property arrangement that has extended from land to the ocean. This de facto ownership of fishing grounds has resulted through many generations of territorial behavior by close-knit groups of lobstermen. These groups, sometimes referred to as “harbor gangs”, claim and defend fishing areas through intimidation tactics and vandalism of intruders fishing gear (Acheson 1988). Similar to the Japanese fishing village, social relationships and kinship are extremely important to the functioning and survival of Maine lobster communities. The reputation of one’s family is used to judge the character of the individual and members of established families have a clear edge in interpersonal dealings. Membership into the community by outsiders is virtually impossible since it involves long-term residence and an understanding of the local code of conduct that few outsiders grasp. This exclusion of outsiders is not just aimed at fishing rights but extends to other facets including politics, employment, business, and social situations.

Unwritten rules and social hierarchies affect interpersonal behavior among fishermen within a harbor gang, both on and off the water. Well-respected, highly skilled lobstermen from established, reputable families are called hiliners (Acheson 1988). These successful fishermen usually have established locations for placement of their lobster traps that are known and respected by other members. Hiliners are also more likely to be community leaders and event organizers than their less knowledgeable fishing counterparts. When conflicts arise their opinions and positions are likely to carry more weight than those of other community members.

Although lobster gang members will help each other and share information, the connection between fishing skill and social status also makes them very competitive. The escalation of fishing effort (in number of traps set) is one potential negative result of intra-

gang competition. To counter this, there is significant peer pressure against setting too many traps and appearing greedy or selfish. Too much financial success by any individual lobsterman is viewed by the community as egocentric. As in the Japanese fishing village, such behavior is socially unacceptable and can result in lowered status. The ideal fisher does not need an excessive number of traps because his knowledge of trap placement is enough to earn a respectable living.

Lobster gangs also control catch and effort by consensual agreement on season opening and closing dates and by marking and releasing breeding stock female lobsters. In general, Maine lobstermen comply with state conservation laws, register their boats, and buy required licenses. Tampering with an “intruders” gear is viewed by gang members as a standard part of the social organization of the industry, not as an act of defiance or disregard for societal rules.

Conclusion

Both systems of conflict management explored here rely on human territorial functioning. Territorial functioning encompasses a class of environment-behavior transactions dealing with issues of personal and group identity, cohesiveness, control, access, and ecological management (Taylor 1988). In the absence of established territories (either formal or informal), open access resources are susceptible to the commons dilemma (Hardin 1968). Commons dilemmas are resource situations where there are conflicts between individual and collective rationality and between short-term and long-term gains (Taylor 1988). Although their methods are illegal, by defending territories lobster gangs may be acting more rationally

in the long-term conservation of the resource than the fishermen whose trap lines they cut. Through cooperative strategies grounded in tradition and kinship, lobster gangs successfully practice sound ecological management of a resource that defines their way of life. Similarly, Japan's exclusive fishing rights function to prevent the numerous conflicts that can arise as a common access resource becomes depleted.

With technological advances in fishing gear and external negative effects (e.g. pollution, inter-community disputes) communal property rights systems may still need cooperation from higher levels of government for optimal resource management. This cooperation can take the form of standardized fishing regulations, mediation of inter-community conflicts, regulations on other industries affecting the resource, or sharing scientific information.

Japanese fishing villages and Maine lobster communities also share common features related to social behavior. These include community cohesiveness, exclusion of outsiders, respect for traditional values, complex codes of behavior, social hierarchies and pecking orders, intolerance of egocentricity and strong kin ties. In both Japan and the U.S., near-shore small vessel fishing operations are symbolic of traditional, antiquated lifestyles in rapidly advancing, technology-based, urban societies. With the loss of small, close-knit community living, it might be expected that the social systems for conflict management developed in such settings over many centuries will be lost as well. Judging by the number of lawsuits and lawyers this seems to have occurred more quickly in the U.S. than Japan. Significant cultural differences, established prior to the paralleled urbanization/technology boom in Japan and the U.S., still exist between these two modern societies.

Two fundamental principles that drive the conflict management systems presented here

are sea tenure and communal property management. In Japan the concept of sea tenure dates back hundreds of years and is as natural to the Japanese as land ownership is to Americans. To many Americans, the ocean represents one of the last symbols of freedom and access to it should be free to all. As evidence of this, numerous attempts by state agencies in the northeast to impose a saltwater fishing license have been rejected due to voter disapproval. The second principle of communal property management (of land and sea holdings) is also a time-honored Japanese tradition. The U.S. does not have this tradition of structured communal property rights arrangements, although isolated examples can be found (communes, food co-ops, town commons in colonial New England).

The Japanese fishing village code of social behavior and conflict management resulted from four centuries of a communal sea tenure way of life. This unique code, developed from within mainstream feudal Japanese society, still symbolizes many of the cultural and social values held by modern Japanese. While the lobster gangs of Maine exhibit similar behavioral characteristics and social interactions, their code of behavior seems to have arisen not from within mainstream society but more in response to a changing society. As previously mentioned, the benefits of communal property arrangements and sea tenure are foreign to many Americans. Lobster gang territoriality, and the myriad social interactions that facilitate it, grew out of necessity to protect a traditional way of life from a world becoming increasingly crowded, individualistic, nihilistic and recreationally-minded.

The two systems of communal fishing rights compared here are by no means perfect. Both struggle to achieve sustainable resource equilibrium through a combination of local and higher agency level rules and regulations. However, when we compare the relative success of these systems with that of “open access” fisheries management systems the results favor the

former. Whether a government sanctioned communal fishing rights system can be implemented in the U.S. similar to Japan is another question. Ruddle (1987) suggests that transferring the Japanese system to the U.S. might be impossible given the social, political, and economic realities involved. Some combination of the Japanese rights system and traditional U.S. fishery management may be more realistic considering the differences between the two cultures. Given the U.S. history of overfishing, collapsing fish stocks, user conflicts, and law suits, it is clearly time for a new approach.

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World-Wide Web Resources

Why Use ADR Instead of Litigation? (Owner unknown)

<http://www.attny.com/gcin/gci04982.html>