

Customary Law and Lore of the Sea

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Despite a spate of publications over the last decade there is still a relative lack of social science material concerning small-scale fishermen, particularly compared with the large literature on agricultural societies. Further, most such studies of fishermen concern their activities on land and not at sea! Partly this stems from methodological and operational problems inherent in studying fishing communities. In developing countries it also results from giving top priority to the agricultural sector.

This relative paucity of in-depth research on fishing communities is a serious knowledge gap, particularly since the declaration of 200-mile jurisdictional limits under the Law of the Sea. In the rush to exploit national advantages mandated under the Law it is likely that governments, in their ignorance of true

conditions and lack of empathy with fishing communities, will bargain away the patrimony of the small-scale fisherman to obtain favorable conditions in other areas.

Customary sea tenure together with traditional knowledge of marine resources and its application to their management is one important focus that has emerged in the still small literature on maritime anthropology. The ways in which fishermen perceive, define, delimit, "own" and defend their rights to inshore fishing grounds or their sea tenure constitute one of the most significant "discoveries" in this relatively new field.

Sea tenure and marine resource management is nothing new to fishermen, since, although it assumes many different guises, the functioning of at least minimal concepts of ownership is a near universal

phenomenon in a wide range of societies that depend on the natural resources of inshore waters. Systems of sea tenure range from the ownership of specific sites by individuals, families, clans or other extended kin groups, through rural and urban peasant populations, to the complex legal constructs of societies as diverse as Japan and the USA. Mixtures of ownership types are also common.

On the whole, the tenurial rights of fishermen to the resource areas that they exploit and to the resources themselves are still not well known, and a comprehensive methodology for examining and evaluating them is still lacking. Hitherto, understanding of traditional systems of inshore sea tenure was hampered by the dominant western theories whereby marine resources are regarded as the epitome of a common property natural

resource, since no single user has the exclusive rights to them and others cannot be prevented from capturing them. From this, it is postulated, fishermen's competitive behavior arises, since it is in the best interests of the individual to exploit the fishery to his maximum capacity. Thus, in neo-classical economic terms, overfishing, overcapitalization and the eventual decline of the resource are inevitable outcomes.

Although plausible in deeper and more distant waters, the concept of an "open sea" becomes far less tenable in the relatively limited space available to small-scale, inshore fishermen, since, in reality, such areas represent a physical and biological transition zone between "ownable



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property" (land) on the one hand, and on the other a medium that inherently cannot be owned (distant marine waters). Further, the sociological and economic contexts in which such inshore fishermen operate also render the free access concept less tenable. In the first place, inshore fishing communities in many parts of the tropics are small and, not uncommonly, both physically distant and socially removed from the larger society. More often than not they are composed of kin groups, clansmen and the like who must seek a livelihood in part from a restricted geographical area and from a potentially vulnerable resource.

At first sight to most westerners sea tenure would appear to be a contradiction in terms, since ownership of marine space or schools of migratory fish, for example, is inherently difficult and as such not embraced by conventional scientific and legal conceptions of what is "ownable". Thus it came as something of a surprise to western fisheries administrators searching for a means to limit entry to fisheries to discover, and possibly find a blueprint in, a rather large number of western and non-western societies that have some form of proprietary rights to places where fish habitually congregate. Whereas in some societies fishery resources are a common property resource in the true sense of the term, there is now widespread evidence that in many societies access rights to fish are controlled and fishing territories are not available to all. It is now widely appreciated that fishermen claim specific observable territories which can be defined by visual triangulation, landmarks, underwater topography, and such surface "seamarks" as the color of

water, wave patterns and other natural phenomena. Use rights may be granted to certain locations, specific seasons, particular species or specific gear. Other forms of sea tenure are less concrete but nevertheless functionally effective, and include such concepts as exclusion mechanisms and first-comer's rights.

Traditional sea tenure is largely unwritten, informal, illicit or covert yet binding on social behavior. Certain systems of traditional law prevented overfishing and promoted resource conservation by limiting access to a particular fishing ground or by enforcing temporal restrictions of various kinds. These limited-entry systems are akin to the socially selective licensing programs that fishery administrators in many countries are just now striving to design or implement.

All the fanfare that accompanied the passage of the Law of the Sea and the enforcement of extended maritime jurisdiction—international and national systems of sea tenure, respectively—which signalled the end of the common-property concept of ocean resources, has further obscured the pre-existing "Fishermen's Law of the Sea," or traditional sea tenure. Implementation of the new legislation is having a major impact on inshore waters worldwide. Lawmakers in many countries are now considering major policy decisions that will determine the allocation of fishing rights. Any such legislation must take into account and evaluate the modern usefulness of pre-existing and time-honored systems of sea tenure. But because of major misconceptions about the nature of small-scale fishermen, reinforced by weaknesses in the scientific literature, the future of the tenurial status of

traditional small-scale fishermen is in jeopardy worldwide.

In some areas, sea tenure systems are fast disappearing under the pressures on the world's nearshore waters and fisheries. If not intensively studied soon the opportunity to examine on a worldwide comparative basis a phenomenon that is still scarcely known will be irretrievably lost.

It is now being increasingly asked if the norms and institutions developed by systems of traditional sea tenure to control access and fishing procedures could form a practical basis for planning resource management elsewhere. This question still cannot be answered since comparative information on sea tenure and territoriality has never been presented and evaluated in a way that would be useful to fisheries planners. The importance of studying traditional systems of sea tenure is to enable policymakers and planners to make better informed choices and to avoid repetition of past and often needless and tragic failures. Such research is obviously an interdisciplinary task and must, at the very least, embrace both the anthropological and biological approaches.

A synthesis of the published and unpublished literature on traditional management and knowledge of coastal systems, including sea tenure, is being undertaken by an IABO (International Association for Biological Oceanography)-UNESCO project, chaired by the author of this paper. The conservation aspects of such systems are being examined by an IUCN project under the Commission on Ecology. Readers with an interest in and/or materials on traditional systems and their management are urged to correspond with the author in order that the results of those projects can be made as comprehensive as possible. ●

Further Reading

- Johannes, R.E. 1978. Traditional marine conservation methods in Oceania and their demise. *Ann. Rev. Ecol. System.* 9: 349-364.
- Ruddle, K. and T. Akimichi, editors. 1984. *Maritime institutions in the western Pacific.* National Museum of Ethnology, Osaka.
- Ruddle, K. and R.E. Johannes, editors. 1985. *The traditional knowledge and management of coastal systems in Asia and the Pacific.* UNESCO, Jakarta.