Title	Fishery resource management and environmental preservation - institutional Comparison between United States and Japan
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Citation	Proceedings of The Second SEASTAR2000 Workshop (2001): 33-38
Issue Date	2001
URL	http://hdl.handle.net/2433/44182
Right	
Type	Conference Paper
Textversion	publisher

FISHERY RESOURCE MANAGEMENT AND ENVIRONMENTAL PRESERVATION – INSTITUTIONAL COMPARISON BETWEEN UNITED STATES AND JAPAN

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INTRODUCTION

Today, we would like to present institutional analyses of U.S.A. and Japan comparing the Fishery Rights, Fishery Resource Management, and Environmental Preservation Systems. Actually, the U.S.'s institutions for the fishery resources or natural environment are very unique. So, we think it is very important to understand the characteristics of the U.S. legal systems in order to achieve constructive discussions about the sea turtle preservations.

SECTION 1: COMPARISONS OF FISHERY INSTITUTIONS BETWEEN U.S. AND JAPAN

Section 1 presents comparisons of fishery institutions. To begin with, we would like to introduce brief overviews of fishery rights systems in both U.S.A. and Japan. And then, compare two systems, and thirdly compare the fishery resource management systems.

In case of U.S.A., the fishery institution is deeply influenced by the British one. According to the Common Law of England, tidal waters where the tide influences are treated as arms of the sea. The tidal waters and the sea are treated as the public waters. The benefits of fishery in those areas are supposed to be common to all the citizens. Therefore, basically every citizen has common right of fishing on the sea and the navigable waters.

In U.S. the same logics are expended to the non-tidal waters like big rivers, that is, navigable waters. Fishing on the sea and navigable waters is basically under the Open Access regime for American citizens. But, since mid 90s, as you may know, the TAC system was introduced to some of ocean fisheries like halibut, Sable Fish, Lobster, Pollock, Coral, Wreckfish, Red Snapper, and so on. It is understood as a kind of entrance limitation systems through fishery licenses, and therefore means a big change in the philosophy of natural resource use in the U.S.

On the other hand, on some rivers or lakes categorized as non-navigable waters, exclusive fishery rights prohibit fishery operations by third parties. These exclusive rights of fishing are incident to the owners of the land over which the water passes (riparian rights).

Next, let's turn our attention to Japan. In Japan, almost no commercial fishery can be operated without fishery rights or licenses. The fishing rights are entitled by governors of the waters under their jurisdiction. But the governors have to hear the proposals and advice from the Fishery Adjustment Commissions (FAC) beforehand. FAC are mainly composed of local fishermen. Therefore, as far as the institutional system is concerned, we can say that the fishery adjustment commissions and the local fishermen as the members play the main role in Japanese fishery rights system. And basically the same is true for the fishing license permission procedures.

Now, we would like to compare the fishery rights systems in U.S. and Japan (Fig. 1a). There are two things to be pointed out. The first thing is that in U.S., as we mentioned earlier, basically every citizen has a right to conduct commercial fisheries on the sea, while in Japan almost no commercial fisheries can be operated without permissions. However, in U.S., fishery operations at lakes or rivers are restrained by fishery rights. Secondly, the characteristics of fishery rights in U.S. and Japan differ considerably. The American fishery rights are not restricted right like Japanese ones. The meaning is as follows. In the Japanese system, fishery rights are restricted and specified in many ways that is, specified by fishing areas, target species, fishing seasons, gears of catching or farming, and so on. The purpose of these specifications is to maximize fishery productivity with multi layers utilization. On the other hand, in America, only the fishing areas specify the fishery rights, and which are incident to the lands ownerships.

Then, what differences are there in terms of fishery resource management systems? We think there is a huge difference between the U.S. and Japan (Fig. 1b). In the Japanese system, the fishery adjustment commissions are the main actors in fishery resource management, which means, the fishery adjustment commissions are controlling the fishing capacity and its allocation of each area, through the proposals and advice to the governors. The point is that, basically the local fishermen, as members of FAC, are conducting the resource management.

In America, on the other hand, fishery resource management is fundamentally an obligation of the government, not the fishermen. This is the essential difference between Japanese resource management systems. This American relationship between citizens' rights and government's obligation is called "the Public Trust Doctrine". Interesting thing is that this doctrine is applied not only to the Fishery Resource Management, but also to the Environmental issues. So, we would like to introduce the ideas and logics of

Public Trust Doctrine in the following section.

SECTION 2: PUBLIC TRUST DOCTRINE AND CLASS ACTION

In this section, the Idea of Public Trust Doctrine is summarized, and then, two important precedents and a characteristic feature of American lawsuit system, called Class Action System, will be presented.

Section 2.1: The Fundamental Idea of Public Trust Doctrine

The origin of Public Trust Doctrine is the British traditional idea relating to the natural resource use. That is, "certain interests and rights in some natural resources are so important to every citizen that they must be preserved and protected for the public as a whole. These resources are to be available to the public free of private uses and are to be held in trust by the government, for the benefit of the public (Campbell 1994). Roughly speaking, the word "Trust" means legal relationship between profit takers (beneficiaries) and property keepers (trustees), in our case, citizens and the government. The trusted property is, in our case, the natural resources including fishery resources and endangered species like sea turtles. So, we can say Public Trust Doctrine is a trust between citizens and the government relating to the natural resources. Therefore, the government "must" protect the natural resources against losses, dissipations, or overfishings (Fig. 1c).

Now, we've briefly looked into the idea of Public Trust Doctrine, but what happened if the government failed to protect the natural resources? In such cases, American citizens, as the beneficiaries, are able to accuse the government in a law court.

Section 2.2: Two Important Precedents of Public Trust Doctrine

In order to explain the Public Trust Doctrine in action, we would like to introduce two important precedents.

1) The Mono Lake Case (Anonymous 1983)

The first precedent is the Mono Lake Case, which is a dispute between water resource use and environmental preservation in California. The Mono Lake is the second largest lake in California, locating at the east of Sierra Nevada Mountains. In 1940, in order to cope with the rapid increase in the population, the City of Los Angels bought the water rights of four livers that flow to the Mono Lake. Then, the amount of the water taken from the liver was so large, that the Mono Lake began to shrink very rapidly. According to the documents submitted to the court, the surface area of the lake in 1979 was about 60 square miles while it had been 85 in 1940. Therefore, NGOs like National Audubon Society and Shierra Club accused the City of Los Angeles in the law court. They claimed such decrease in the amount of water caused serious damages to the

environment, biodiversity and the value as a recreational place for citizens. In 1983, the Supreme Court decided that the intake of water by the City of Los Angels were guilty, because it had not taken reasonable care to protect the natural environment, and which violated the Public Trust Doctrine.

2) The Terrico Dam Case (Anonymous 1978)

The Second example of Public Trust Doctrine in use is relating to United States' "Endangered Species Act (ESA)". In order to protect Snail Darter habitats, construction of a dam at the Tennessee Valley, which was nearly finished, was suspended according to Endangered Species Act Section 7. This case is called the Tellico Dam Case. Actually 78 million dollars had already been invested, and the dam had finished about 80% of its construction process.

Section 2.3: Class Action

Then, as the final analysis in our presentation, we would like to show a distinctive feature of the U.S.'s lawsuit system. This is very important, and we think actually this system defines the scope of NGOs activities in a society. It is about the prerequisites for a plaintiff to associational standings. In other words, the necessary conditions for an organization to stand as a plaintiff. Suppose that if a law relating to natural resource preservation includes some articles that specify the obligations of the government, that alone is not enough to bring an accusation against the government. You also need special and professional knowledge to prove the bad effect to the natural environment, and you also need funds to pursue the trial. If you are a millionaire, you can hire many professional researchers and lawyers. Otherwise, the law would be next to nothing.

In America, so called the Class Action System solves these difficulties. According to an U.S. Supreme Court decision (Anonymous 1977) following 3 conditions are sufficient for "an organization" to bring suit on behalf of its members.

1) Its members would otherwise have standing to sue in their own right;

2) The interests it seeks to protect are germane to the organization's purpose; and

3) Neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Actually, these conditions are, and especially the 3rd condition is, very easy to meet compared to the Japanese system. Therefore, organizations like Environmental NGOs can easily stand to lawsuit on behalf of their members.

In addition, the sizes of environmental NGOs in U.S. are far bigger than Japanese ones. For example, National Audubon has 6hundred thousand members, WWF USA has 1.2 million, Green Peace USA has 4 million members, while Japanese biggest NGO has about 50 thousand (WWF Japan, Wild Bird Society of Japan). Therefore, American environmental NGOs' financial powers are huge, and they have a lot of

professional staffs to investigate the cases.

To sum up, we would like to summarize the Ideas and Logics of American Environmental Preservation. The Class Action System enables American NGOs to bring lawsuit, and the Public Trust Doctrine enables NGOs to win the trials many times, and these achievements attract more members and donations, and which bring NGOs the more powers and abilities (Fig. 1d).

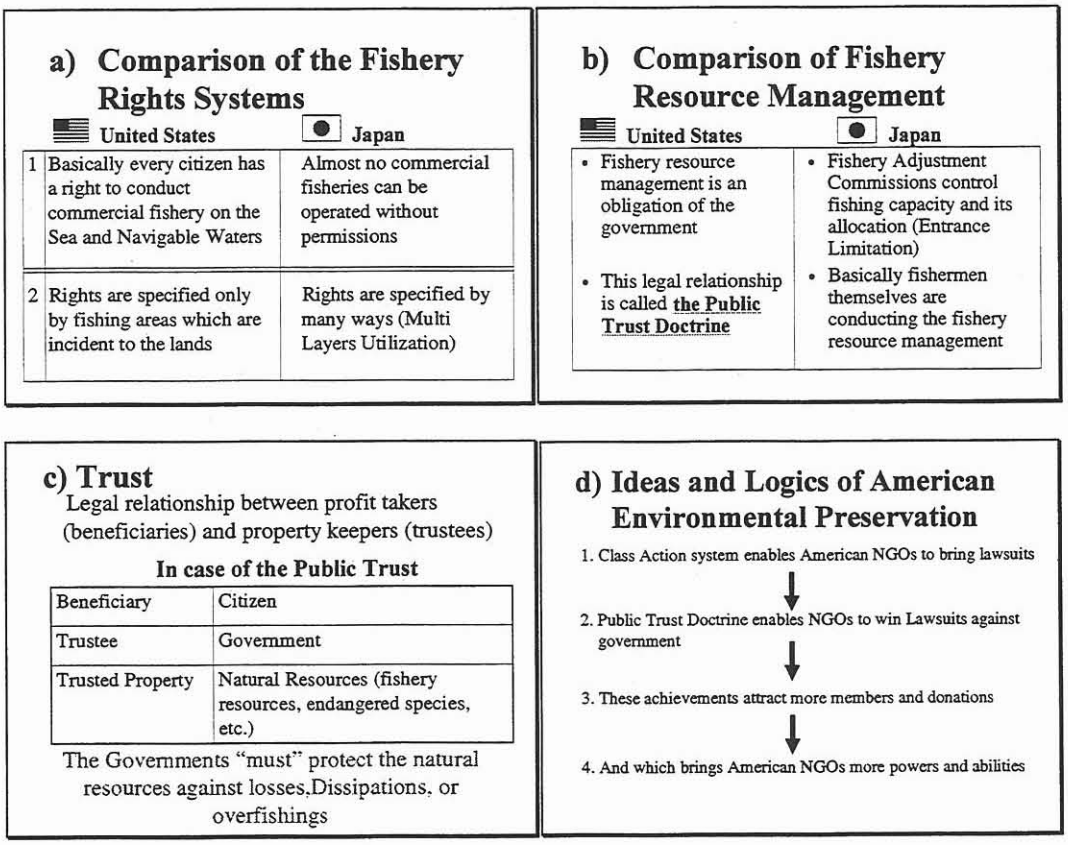

Figure 1. Comparison of fisheries right systems (a), Comparison of fishery resource management (b), Trust (c), and Ideas & logics of American environmental preservation (d).

3: FUTURE RESEARCH PLANS

Finally, let me present our future plans. The next step is to include ASEAN countries' institutions into our analysis, and make it more comprehensive one. Then, we would like to show the economic influence of TED by using the econometric and statistical methods. The results will be presented at the next workshop of SEASTAT.

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