

Fishery Commons in Japan:

Their Legal Framework and Recent Crises

By
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Abstract:

Coastal fisheries in Japan is very unique in the world in the sense that its major part has been managed by fishery cooperative associations (FCAs) of local nature. Each FCA has its own rule of harvest times (seasons, days, or hours of operation), mesh sizes of fishing nets, and others for sustainable yields. At the same time, each FCA is entitled with fishery rights of various nature over specific sea (or freshwater) surfaces. Such fishery rights are deemed to be real rights under the Fishery Act. Hence, each FCA can be considered as a common, which we call a fishery common in this paper. The purpose of this paper is then three folds.

Firstly, the paper describes the history and present of such fishery commons in view of the old and current Fishery Acts of Japan. Legal structure of multi-level fishery resources governance is analyzed.

Secondly, the paper points out the recent trend of weakening of FCAs by various reasons such as a nationwide policy of merging small, local FCAs into a large, prefectural FCA, politico-economic pressure on small FCAs to abandon fishery rights for industrial development (e.g., nuclear power plants construction) in coastal areas, conflict between traditional fishing activities of FCA members and new marine leisure of urban populace, and others.

. Thirdly, the paper proposes possible directions of re-strengthening local FCAs from the viewpoint of environmental governance. An example of such direction has already been seen in the recently arisen rural-urban linkage in the form of participation of urban consumers in tree planting activities of FCA members to propagate *uo-tsuki-rin* (fish breeding forest).

Keywords: Fishery Cooperative Association; Fishery Commons; Japan; Fishery Act; Multi-level Resources Governance

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Introduction

Surrounded by the seas all sides, Japan has been and is a fishing nation. coastal, offshore and far seas fisheries together have supported a significant part of the nation's diet. There used to be an abundance of freshwater fish and shellfish as well, though not much now. Behind vigorous fishing activities in many areas of the modern Japan, lied a well thought out legal structure of multi-level fisheries resources governance, which Makino and Matsuda (2005) call "co-management."

After briefly describing the history of fisheries in Japan, this paper examines such a structure. Such governance structure has served, in some ways, for the sustainable use of marine and freshwater resources. But many problems have been arising. In the 1960s and 1970s, far seas fisheries were growing together with the trend of rapid economic growth. But in 1977, the Japanese government introduced the 200 nautical mile exclusive economic zone (EEZ) system in concert with the world trend. The coastal fishery then became important more than ever before. But water pollution together with many construction projects in the coastal areas has been intensified.

Fisheries Agency of Japan (2008) describes the difficult situation of fisheries in such a way that ".....fishery production has declined due to such factors as a slump in resource levels and a decline in overseas fishing grounds for Japan. Japan's fishery production structure has also grown more vulnerable on a decline in the number of fishery workers, their aging, and deterioration of fishery business management. The portion of fishery products provided through the market has declined on the upstream sector's growing leadership in pricing of fishery products and an increase in fishery product imports. At the same time, we now see the emergence of such problems as the falling sales competitiveness of domestic fishery products, consumers' shift away from fish, and a slump in fish prices."

By describing the legal structure of multi-level resources governance, the paper analyzes the strength and weakness of fisheries activities in the contemporary Japan. The importance of community-based fishery management will be emphasized.

Section 1. A Brief Outlook at History of Fisheries and Fishery Laws in Japan

In Japan, people have customarily used local lands and sea—and the resources found in these places—communally since ancient times. In Japan, it was during the early modern times (1603-1867) that this custom was first clearly established as an institution. The judicial summary from that period titled *Ritsuryo Youryaku*, edited by Ujinaga in 1741, includes regulations of *sanya-kaisen iriai* (Ishii 1939, pp. 311-312), where *sanya-kaisen* literally means mountains, grasslands, seas and rivers. They were the rules to be observed

to avoid disputes relating to the common use of such spaces by members of local communities. As of the common use of seas, Ritsuryo Youryaku has the phrase, “coastal fishery, according to terrestrial division; offshore fishery, iriai.” In other words, fishing was exclusively reserved for local fishers in coastal sea areas, and common of piscary (iriai fishery rights) was ensured on the offshore sea in those days.

In the modern Japan since the Meiji Restoration of 1868, the common use of terrestrial natural resources by members of a local community is legally recognized as iriai right (right of common) in Civil Code. The judicial origin of this right can be traced back to the iriai custom practiced since early modern times, which alternatively called the Edo period. The iriai right includes the one that implies collective ownership that have the nature of land ownership itself (Article 263) and the one of collective use with the nature of usufruct that does not (Article 294), and both are considered real rights under the Civil Code. Real rights are strong rights in the sense that they accompany the right to claim return when an object in question is taken away, and the right to demand the removal of obstruction when the function or benefits of the object is obstructed or its obstruction is deemed imminent. In this way, real rights are very powerful rights, and this is one reason the iriai right has been attracting attention in recent years for its potential role in environmental protection.

Some Japanese laws outside the Civil Code stipulate real rights that correspond to commons; they also stipulate, or refer to, rights and customs that are not real rights but correspond to commons. As we will show it hereafter, some parts of the fishery act have such stipulations of real rights.

However, the path to the establishment of this kind of community-based understanding of fisheries was not easy. In December 1875, the Meiji government declared the national ownership of the sea surface (Governmental Decree No. 195). This caused great confusion nationwide, and the government was forced to reverse this decision within a year. Finally arriving at the conclusion that it was reasonable to govern fisheries in accordance with local customs practiced since ancient times, the Meiji government issued regulations for fishery cooperatives in 1886. Accordingly, fishers across the country were required to form their own fishery cooperatives. They were then turned into units for fishing ground division and operating rules, which they would establish on their own. Order and stability in the fisheries industry were thus secured.

Still, disputes erupted here and there, due to unclear fishing ground divisions and other reasons, prompting the national government to develop a well-defined legal system for fishing. In 1901, Japan’s first fishery act passed the Imperial Parliament and took effect in the following year. According to the Fisheries Law Study Group (2005, p. 2), the act was

“instituted in consideration of traditional customs, included provisions on directives, fishery cooperatives, aquacultural cooperatives, petitions, administrative actions, punishments, etc. with respect to applicable water surfaces, fishery rights, fishing ground beacons, protection of aquatic life and fishery control and thus established the foundation of Japan’s fishery system.”

The Fishery Act described above is known as the “Fishery Act of Meiji 23 (1890).” This act was eventually found to have many aspects that no longer suited the changes of the times, including its excessive emphasis on the maintenance of old customs and restriction on economic activities by fishery cooperatives. The law was therefore entirely revised and reenacted in 1910. The law, generally known as the “Meiji Fishery Act” in the fishery community, features total revisions particularly in the following aspects: (1) fishing rights, (2) fishing licenses and (3) fishery associations (for details, see Akimichi and Ruddle 1984, p. 49).

As fishing rights, the act defined (i) fixed gear fishing rights, (ii) demarcated fishing rights, (iii) special fishing rights and (iv) exclusive fishing rights. The fixed gear (i) and demarcated (ii) fishing rights concerned fishery in the forms indicated by their appellations. Fishers engaged in these forms of fishing were required to obtain licenses from competent administrative authorities. The specialized fishing rights (iii) designated dragnet fishing with a fixed base, for which licenses issued by the competent minister in charge must be obtained, and operation was governed by ministerial directives.

As for exclusive fishing rights (iv), these guaranteed the right to fish on a fixed sea surface in forms other than those of (i), (ii) and (iii). This can be considered as marine iriai right. It can be granted solely to fishery associations, whose members exercise the right. Exclusive fishing rights contained the common-of-piscary right that fishery associations were able to obtain either through their observance of traditional customs or by a new rule-setting act (contract). In his *Bukken-ho Ron* (Theory of Real Rights Law) of 1932, Bunjiro Ishida explains as follows: “The common-of-piscary right is a real right that enables a person to enter another person’s exclusive fishing ground to catch aquatic animals and plants. For the common-of-piscary right to be established, another person’s exclusive fishing rights must exist. In this practice, inhabitants of a locality or members of a fishing association pay fixed fees and enter another person’s or group’s exclusive fishing ground to fish alongside of this other party. Therefore, this practice is similar to that of iriai between an estate-owning village and another village, and the common-of-piscary right is a solidly legally established right, that is, iriai which does not imply collective ownership” (Ishida 1932, 529).

After Japan’s defeat in World War II, measures were taken, partly through intervention

by the General Headquarters of the Allied Forces (GHQ), to democratize Japan's fisheries, which was characterized by the excessively powerful position of fishing boat and equipment owners and other problems. Consequently, two new laws were established: One was Fisheries Industry Cooperative Association Act (Act No. 242 of 1948) and another was Fishery Act (Act No. 267 of December 15, 1949). The act of 1949 later came to be known as the Showa Fishery Act. This act has the following four main characteristics in comparison with the Meiji Fishery Act:

- (1) The provisions pertinent to fishery associations were removed from the former Fishery Act and compiled into the Fisheries Industry Cooperative Association Act of 1948. Former fishery associations were dissolved and were transformed into fishery cooperative associations under this new act.
- (2) Common of piscary right, previously recognized only as part of dedicated fishing rights, is also recognized as part of demarcated fishing rights.
- (3) The right to practice the form of fishing which involves free movement of fishermen carrying fishing apparatus within a fishing area to catch floating fish, could have been recognized as part of common fishing rights under the Showa Fishery Act because it was recognized as a form of dedicated fishing under the Meiji Fishery Act. However, this practice is defined as free fishing under the Showa Act, as a solution to the problem of excessive bloc segmentation of fishing grounds attributable to exclusive fishing rights.
- (4) The common of piscary right based on customs and recognized under the Meiji Fishery Act was abolished; instead, the common of piscary right was entirely based on rule-setting acts (contracts) under the Showa Act.

Section 2. Structure of Multi-level Fishery Resources Governance

Table 1 summarizes the institutional structure of fisheries under the Showa Fishery Act. Among different categories of fishery operations in Table 1, free fishery and fisheries with fishery rights are operated mostly in coastal seas and some in offshore. Governor licensed fisheries mostly are of offshore operation. Minister licensed fisheries are operated in far seas, in some cases outside the EEZ of Japan.

Free Fishery

There is no legally established right to conduct free fishing mainly in the form of single-hook fishing, which has only a slight negative environmental impact. Nevertheless, if this is practiced over a long period of time, a real right can be established for this form of fishing (Hamamoto et al 1996). For this reason, it should be noted that free fishing

potentially is also an important part of marine commons.

Fisheries with Fishery Rights

Article 6, Item (1) defines a fishery right: In this Act, "a fishery right" refers to a fixed gear fishery right, a demarcated fishery right or a common fishery right. Characteristics of fishery operations with fishery rights which have the nature of commons will be described in detail in Section 3.

Governor Licensed Fisheries

This category of fisheries are divided into two sub categories: general governor licensed fisheries and legal governor licensed fisheries. Kaneda (2005, pp. 197-198) explains each in the following manner:

(1) General Governor Licensed Fishery

“This is the fishery licensed by a prefectural governor according to the prefectural regulations which are authorized by the Fishery Act and the Fisheries Resources Protection Act.” Along with the designated fishery, recognized fishery (which we will explain later) and the fishery with fishery rights, many types of fisheries in the contemporary Japan come under this category. “Typical ones are small scale purse seine fishery, boat seine fishery, off-shore boat seine fishery, gillnet fishery, scoop net fishery, diving fishery with equipment, fishery with float device aggregate fish, beach seine fishery, and pot fishery.”

(2) Legal Governor Licensed Fishery

If a governor of some prefecture “overissues licenses of certain type of fishery at discretion, the adverse impact on the resources may affect the fishermen not only of the own prefecture but of other adjacent prefectures as well. The operation of this type of fishery may cause severe conflict with similar operation in neighboring prefectures “by involving other fishing ground due to its excessive operation.” But “this type of fisheries is of comparatively local operation so that it is proper for the prefectural governor to make judgment as to whom the license should be granted according to the local situation.” Another aspect of this type of fishery is that, “since the number of licenses to be issued is numerous, it is difficult for the national government to handle them.” At the same time, “the Minister of Agriculture, Forestry and Fisheries needs to be able to regulate, in a unified manner, the maximum number of licensed vessels for each prefecture, vessel type that can be licensed, and limit of horse power and so forth.”

Keneda (2005, p. 198) then explains that the following four types of fisheries have been defined as legal governor licensed fishery.

- a. Medium-scale purse seine fishery which uses a vessel over 5 gross tons and less than 40 gross tons.
- b. Small-scale trawl fishery which uses a powered vessel of less than 15 gross tons.
- c. Seto Inland Sea boat seine fishery which uses a powered vessel of over 5 gross tons in the the Seto Inland Sea.
- d. Small-scale salmon drift gillnet fishery which uses a powered vessel of less than 30 gross tons.

Minister Licensed Fisheries

This type of fishery has three sub types: (1) minister reported fishery, (2) minister recognized fishery, and (3) minister designated fishery. Their operations are mostly offshore or far seas. The followings are the characteristics of each fishery.

(1) Reported fishery

This type of fishery is stipulated by Chapter 4 of Ministerial Order on the Regulations of Recognized and Other Fisheries (Ministerial Order No. 54, 1994, Ministry of Agriculture, Forestry and Fisheries). More concretely, it consists of:

- (i) Marlin and others drift gill net fishery
- (ii) Coastal tuna long line fishery
- (iii) Small scale squid angling fishery
- (iv) Fishery in tentatively set coastal sea areas.

(2) Recognized fishery

This type of fishery consists of:

- (1) Snow crab fishery
- (2) East China Sea marlin and other drift gill net fishery
- (3) East China Sea long line fishery
- (4) Atlantic long line and other fishery
- (5) Pacific bottom gill net and other fishery

(3) Designated fisheries

This type of fishery is stipulated by Ministerial Order No. 5, January 22, 1963; Amendment No. 91, December 14, 2006, Ministry of Agriculture, Forestry and Fisheries.

According to Kaneda (2005, p. 197), designated fishery is the type of fishery which satisfies the following three conditions:

- a. It is the fishery operated by vessels.
- b. It is necessary to take restrictive measures for the purpose of propagation and conservation of fishery resources or fishery adjustment in connection with fishermen and fishing vessels.
- c. It is deemed proper to take such measures in view of the intergovernmental agreements, location of fishing grounds and some other reasons.

Concrete forms of designated fishery is as follows:

- (1) Offshore trawl fishery (Article 29)
- (2) Large trawl fishery in Yellow Sea and East China Sea (Article 30)
- (3) Large and medium scale purse seine fishery (Articles 31(2) and 33)
- (4) Large scale whaling (Articles 34-40)
- (5) Small scale whaling (Articles 41-45)
- (6) Mother ship scale whaling (Articles 46-55)
- (7) Pelagic skipjack and tuna fishery (Articles 56-60(3))
- (8) Adjacent sea skipjack and tuna fishery (Articles 61 and 62)
- (9) Medium scale salmon drift net fishery (Articles 63-66)
- (10) Northern Pacific saury fishery (Articles 67 and 68)
- (11) Sea of Japan red snow crab fishery (Articles 69-71)
- (13) Squid angling fishery Article 72

Section 3. The Nature of Commons in Fisheries with Fishery Rights

The Showa Fishery Act characterizes fishing rights (defined in Article 6) and common-of-piscary right (defined in Article 7) as follows:

Article 23. Any fishery right shall be deemed to be a real right and the provisions concerning land shall apply with necessary modifications thereto.

Article 43. A common-of-piscary right shall be deemed to be a real right.

These stipulations are essential to sustain coastal fisheries in Japan (refer to Arnason 2007). Compared with Ishida's description of the characteristics of the pre-war

common-of-piscary right already quoted above, it can be said that the Showa Fishery Act basically retains the same characteristics of the common-of-piscary right and, in addition, defines it clearly as a real right.

As the row headed by “fishery with fishery right” in Table 1 shows, fishing operations in today’s Japan fall either one in the four categories: fixed gear fishery, demarcated fishery, common fishery, and fishery with common of piscary. Since such rights are real rights, they are similar to iriai rights on land, a certain types of fisheries with fishery rights, common fishing rights and common-of-piscary right I particular, can be indeed called “marine iriai” rights, and sea areas where these rights are exercised can be called “fishery commons” or “marine commons”. Characteristics of each type of fishery is as follows.

Fixed Gear Fishery

The "fixed gear fishery" refers to a fishery operated with fixed gear, which falls under any of the following items.

(i) A fishery in which the deepest water depth at the place where the body of a fishing net is fixed is 27 meters (15 meters in Okinawa Prefecture) or more at the time of the highest sea level (excluding the fishery using a pound net with some cube-shaped bags in the Seto Inland Sea (the Seto Inland Sea provided in paragraph (2), Article 110) and the fishery using a fixed shore trap net with a pocket and the fishery using a pound net with some cube-shaped bags in the Mutsu Bay (the sea surrounded by the straight line between Yakeyamazaki, Aomori Prefecture and the lighthouse at Cape Myojingasaki, Aomori Prefecture and by the shore).

(ii) A fishery for catching mainly salmon in Hokkaido.

Demarcated fishery

The "demarcated fishery" refers to a fishery which falls under any of the following items.

(i) Class 1 demarcated fishery: An aquaculture business operated with stones, roof tiles, bamboos, trees, laid in a certain region

(ii) Class 2 demarcated fishery: An aquaculture business operated in a certain region surrounded by earth, stones, bamboos, trees.

(iii) Class 3 demarcated fishery: An aquaculture business operated in a certain region, other than those prescribed in the preceding two items

Common fishery

The "common fishery" refers to a fishery operated in certain commonly utilized waters, which falls under any of the following items.

(i) Class 1 common fishery: A fishery for purposing at algae, shellfishes, or other stationary aquatic animals designated by the Agriculture, Forestry and Fisheries Minister.

(ii) Class 2 common fishery: A fishery operated with a fishing nets or gear (including brush weir or fish pound) laid stationary, other than the fixed fishery and the fishery prescribed in item (v)

(iii) Class 3 common fishery: Long-haul seine fishery, rowboat dragline fishery, boat seine fishery (excluding the fishery using a powered fishing boat), domesticated fishery or artificial bank fishery (excluding the fishery prescribed in item (i)), other than the fishery prescribed in item (v)

(iv) Class 4 common fishery: Fishery of fishing at a special sea area where a certain type of fish gathers together in a specific season or boat fishery using birds as a guide, other than the fishery prescribed in the following item

(v) Class 5 common fishery: A fishery operated on inland waters (excluding the lakes and marshes designated by the Agriculture, Forestry and Fisheries Minister) or on the sea equivalent to the lakes and marshes designated by the Agriculture, Forestry and Fisheries Minister, other than the fishery prescribed in item (i)

Common of piscary

Article 7 of Fishery Act states: In this Act, "a piscary" refers to the right of operating the whole or a part of the fishery covered by another person's common fishery right or by the demarcated fishery right for a bamboo-installed aquaculture business, algae aquaculture business, suspension-type aquaculture business (which refers to a business of suspending aquatic animals, operated with ropes, steel wires, or the like kept hanging; excluding the pearl aquaculture business), fish pen aquaculture business (which refers to a business of culturing aquatic animals using net creels or other creels), or shellfish aquaculture business as a class 3 demarcated fishery (hereinafter referred to as "the specific demarcated fishery right"), in the fishing ground pertaining to the fishery right, based on the act of establishment.

Section 4. Examples of Case Studies

A recent trend of fisheries in Japan is of weakening of FCAs by various reasons such as a nationwide policy of merging small, local FCAs into a large, prefectural FCA,

politico-economic pressure on small FCAs to abandon fishery rights for industrial development (e.g., nuclear power plants construction) in coastal areas, conflict between traditional fishing activities of FCA members and new marine leisure of urban populace, and others.

The strenuous effort of fishers of Iwajima branch of Yamaguchi Prefectural FCA against the nuclear power plants construction plan by Chugoku Electric Company has been continuing since 1982 until today. They rejected to receive compensation money from the company for the abandonment of common fishery right to live on fisheries and agriculture (Murota 2008; Miwa (2009) and others).

While the administrative pressure is for mergers of small FCAs into larger unit, the Minato FCA in Kyotango City rejected to become a part of much larger Kyoto Prefectural FCA to maintain its autonomy.

A possible direction of re-strengthening local FCAs from the viewpoint of environmental governance has already been seen in the recently arisen rural-urban linkage in the form of participation of urban consumers in tree planting activities of FCA members to propagate *uo-tsuki-rin* (fish breeding forest).

In 1988, women's movement of planting trees began in Hokkaido to gather fish. In Bekkai Town facing the Sea of Okhotsk, fisher's wives also started tree planting in the same year. Notsuke FCA purchased of forest land in 1989, and afforestation activities in the coastal area have become active. Intercooperative business partnership was signed between the Notsuke FCA and the Tokyo metropolitan consumers cooperative association named Palsystem in 1999. In 2001, consumers started tree planting together with the women of Notsuke FCA. Brief history of such new wave is seen in Chapter 5 of Mitsumata, et al. (2008). For the ecological significance of fish breeding forest, refer to Murota (2004).

Concluding Remarks

Fisheries Agency (2008) states: "In order to improve the capacity to supply domestic fishery products, Japan should develop fishery resources and a rich marine environment to nurture them, a vigorous work environment where undertakers of fisheries and sound fishery operators are trained and secured, a system where fishery products are processed and efficiently distributed according to consumer needs, and technologies supporting each of these.

It is important to step up these measures to enhance fisheries to secure the stable supply of fishery products."

In order to realize such goals, community-based commons approach to coastal fisheries

(Arnason 2007; Nakayama 1997; Yamamoto 1995, 1996; Schmidt 2003) must be strengthened in many ways. At the same time, cooperation between fishers and consumers can bring about a fruitful future toward sustainable fisheries. A new interpretation of multi-level fishery resources governance is worth being formulated further.

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Table 1: Structure of Multi-level Fishery Resources Governance in Japan

Institutional Category		Applied law or provision	License or permit provider	
Free fishery		None (but to follow local rules)	none	
Fishery with Fishery Right	Fixed Gear Fishery		Prefectural Governor	
	Demarcated Fishery (DF)	Class 1 DF		Article 6 of Fishery Act
		Class 2 DF		
		Class 3 DF		
		Special DF		Article 7 of Fishery Act
Common Fishery (CF)	Class 1 CF Class 2 CF Class 3 CF Class 4 CF Class 5 CF	Article 6 of Fishery Act		
	Common of Piscary	Article 7 of Fishery Act	See Note 1 below	
Governor Licensed Fishery	General Governor Licensed Fishery		Prefectural Governor	
	Legal Governor Licensed Fishery			Article 66, Section 2 of Fishery Act
Minister Licensed Fishery	Reported Fishery		Minister of Agriculture, Forestry and Fishery	
	Recognized Fishery		Minister of Agriculture, Forestry and Fishery	
	Designated Fishery			

Source¹¹ This table is created by the author based on the information in Fishery Act Study Group (2005), Commentarial of the Fishery Act, Tokyo: Jiji Tsushin Sha, p.22.

Note 1: Either by the acts established between fisheries cooperative associations or by adjudication of the Sea-area Fisheries Adjustment Commission.

Note 2: Article 1, Paragraph 3 of the Ministerial Ordinance on the Regulations of Recognized Fisheries and others.

Note 3: Cabinet Order of Regulating Designated Fishery based on Article 52, Paragraph 1 of the Fishery Act.

Note 4: Article 1, Paragraph 2 of the Ministerial Ordinance on the Regulations of Recognized Fishery and others.

