

Common Fishery Right and Coastal Fisheries Management in Japan

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Abstract

According to the 1949 (Showa 24) Fisheries Law (the current law), Japanese fisheries management can be classified into two main types. One is the fishery right system which applies to coastal and inland waters. The other is the fishery permit system which applies to offshore and distant waters. Common fishery right is granted to Fishermen's Cooperative Associations (FCAs) or to federations of FCAs, which then establish the Exercise Regulations For Fishery Right in respect of that right. Common Fishery is operated under the regulations to ensure resource conservation and rational utilization of the fishing grounds. This paper discusses the importance of common fishery right for coastal fisheries management.

The objective of the 1949 (Showa 24) Fisheries Law (the current law) is to establish the fundamental system relative to fisheries production, to promote productivity and democratization of fisheries by overall exploitation of the waters through fisheries adjustment organizations whose principal constituents are fisheries operators and fisheries employees (Art. 1 of the Law)¹⁾.

According to the law, Japanese fisheries management can be classified into two main types. One is the fishery right system which applies to coastal and inland waters. The other is the fishery permit system which applies to offshore and distant waters. Common fishery right is granted to Fishermen's Cooperative Associations (FCAs) or to federations of FCAs. FCAs, to whom common fishery right has been granted, establish the Exercise Regulations For Fishery Right in respect of it. Common fishery right is operated under the regulations to ensure resource conservation and rational utilization of the fishing grounds²⁾. This paper discusses the importance of common fishery right for coastal fisheries management by surveying some articles of the 1949 Fisheries Law and the 1948 (Showa 23) Fisheries

Cooperative Association Law (the current law).

The System of Granting Fishery Right in the 1949 Fisheries Law

Any person who intends to have a fishery right created shall file an application for the grant with the Governor of the Metropolis, Hokkaido or Prefecture therefor (Art. 10 of the Law).

Grant contents and others are previously determined. When deemed necessary to make grant to the fisheries constituting any fishery right for all-out exploitation of fisheries and for maintaining and developing the fishing production capacity of the waters under his jurisdiction, and any grant of such fisheries deemed not to impede the adjustment of fisheries and other public interests, upon hearing the opinion of the Sea-area Fishery Adjustment Commission thereupon, the Governor shall determine the type of fisheries, location and area of fishing grounds, fishing season, other particulars of grant, prearranged date of grant, period of time of application, and the local district (which means a district wherein the fishing ground of that particular

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fishery deemed to be affiliated, as judged from its natural, social and economical conditions) with respect to fixed-net fishery and demarcated fishery, and determine the district concerned with respect to common fishery (Art. 11 Par. 1 of the Law). Although there is no clear definition of the district concerned in the Law, the definition of the district concerned is basically the same as that of the local district³⁾. Such determination of grant contents and others is referred to as "the fishing ground utilization plan" (*Gyoyo-keikaku*)⁴⁾. In case the Governor has determined the particulars of grant, etc., he shall give public notice thereof (Art. 11 Par. 5 of the Law). No fishery right shall be granted in case of any application whose contents are different from the particulars given in the public notice in accordance with the provision of Art. 11 Par. 5 [Art. 13 Par. 1 Item (2) of the Law].

No fishery right shall be granted in case the applicant has not the eligibility prescribed in Art. 14 [Art. 13 Par. 1 Item (1) of the Law]. Any fishery right shall be granted according to the order of priority (Art. 15 of the Law). The order of priority is prescribed in Articles 16 to 19 of the Law.

In case the application for grant mentioned in Art. 10 has been filed, the Governor shall hear the opinion of the Sea-area Fishery Adjustment Commission (Art. 12 of the Law).

Common Fishery Right in the 1949 Fisheries Law

Definitions

"Fishery" (*Gyogyo*) as used in the Law means an industry which carries on gathering, taking or culturing of aquatic animals and plants (Art. 2 Par. 1). A "fishery operator" (*Gyogyo sha*) means a person who operates fishery; and a "fishery employee" (*Gyogyo jujisha*) means a person who engages in gathering, taking or culturing of aquatic animals and plants in behalf of a fishery operator (Art. 2 Par. 2).

"Fishery right" as used in the Law implies fixed-net fishery right, demarcated fishery right and common fishery right (Art. 6 Par. 1). "Fixed-net fishery right" means a right to operate fixed-net

fishery; "demarcated fishery right" means a right to operate demarcated fishery; "common fishery right" means a right to operate common fishery (Art. 6 Par. 2).

"Fixed-net fishery" means the specified fishery which is operated through fixing gears (Art. 6 Par. 3), or a large scale fixed-net fishery.

"Demarcated fishery" means the fishery which includes specified culture industries (Art. 6 Par. 4).

"Common fishery" means fishery which is operated through common use of specified waters and whose contents are specified as follows (Art. 6 Par. 5):

(1) Type 1 common fishery: Fisheries operated to gather or take seaweeds, shellfishes or stationary aquatic animals as designated by the competent Minister.

(2) Type 2 common fishery: Fisheries operated through submerging net gears (including pound weir) not to be moved, and which are other than fixed-net fishery and the fishery specified in Item (5).

(3) Type 3 common fishery: Beach seine (*Jibiki-ami*) fishery, beach seine fishery by scaring fishes (*Jikogi-ami* fishery), manual boat trawl fishery (*Funabiki-ami* fishery), angling by aid of baiting (*Kaitsuke* fishery) or fishery by means of shelters (*Tsukiiso* fishery) [excluding the fishery specified in Item (1)], which are other than those specified in Item (5).

(4) Type 4 common fishery: Wintering mullet fishery (*Yoriuo* fishery) or red sea-bream fishery with sandlance by boat (*Toritsuki-kogitsuri* fishery), which is other than those specified in the following item.

(5) Type 5 common fishery: Fishery operated in inland waters (excluding those lakes designated by the competent Minister) or in the waters corresponding to lakes as designated by the competent Minister, and which is other than those specified in Item (1).

Eligibility and Priority Order in Grant of Common Fishery Right

With regard to the grant for any common fishery, any FCA having the whole or part of the area concerned as prescribed in Art. 11 as its area or any

Federation of FCAs which is composed of the former (excluding the FCA or the Federation of FCAs prescribed in the proviso to Par. 2) shall be eligible when it comes under the following items (Art. 14 Par. 8 of the Law):

(1) Any FCA in which the number of the households of its members who reside in the area concerned and operate coastal fisheries for more than ninety days during a year is more than two-thirds of the number of the households of those people who operate coastal fisheries for more than ninety days during a year residing in that area concerned.

(2) In case of a joint application for grant by two or more FCAs, any FCAs in which the whole number of the households of their members who reside in the area concerned and operate coastal fisheries for more than ninety days during a year is more than two-thirds of the number of the households of those people who operate coastal fisheries for more than ninety days a year residing in that area concerned.

Based on Art. 14 Par. 8 of the Law, one FCA or one Federation of FCAs or one group of them is decided to be eligible. Therefore the Law has no provision for priority order in grant of common fishery right⁵⁾.

Right of Operating Common Fishery of FCAs' Members

Members of a FCA (only those who are fishery operators or fishery employees) who have the qualifications prescribed in the Exercise Regulations for Fishery Right established by the FCA or Federation of FCAs of whom that FCA is a member association in respect of the common fishery right owned by them, shall have the right of operating fishery within the scope of the common fishery right owned by the FCA or the Federation of FCAs (Art. 8 Par. 1 of the Law).

The Exercise Regulations for Fishery Right shall include provisions for the matters relating to qualifications for the persons who own the right of operating fishery, the area and period where and when the fishery is to be operated, the fishing method, and other matters to be observed (Art. 8 Par. 2 of the Law).

The Exercise Regulations for Fishery Right shall take effect only through the authorization of the Governor (Art. 8 Par. 4 of the Law).

Legal Character of Common Fishery Right

Any fishery right shall be conclusively presumed to be a real right (*Bukken*) and the provisions concerning land shall be applied with necessary modifications thereto (Art. 23 Par. 1 of the Law). As any fishery right shall be conclusively presumed to be a real right, the owner of the right has a claim based on a real right (*Bukkenteki-seikyuken*). The right of operating common fishery by members of FCAs is also a real right, and the owner of the right has a claim based on a real right because the right comes from common fishery right⁶⁾.

The real right nature of fishery right is, however, largely restricted. No fishery right shall be made the object of removal except in case of succession or amalgamation of juridical persons (Art. 26 Par. 1 of the Law). But, with regard to the removal of any fixed-net fishery right or demarcated fishery right, this shall not apply in some cases (Art. 26 the proviso to Par. 1). Any fixed-net fishery right and some demarcated fishery rights shall be made the object of Lien and Hypothec on some conditions (Art. 23 Par. 2, Art. 24 of the Law). No fishery right shall be the object of any lease (Art. 30 of the Law).

These restrictions come from the fact that the fishery is operated in waters which are subject to public use⁷⁾ (cf. Art. 3, 4 and 73 of the Law) or the fact that fishery rights are granted according to eligibility and priority order⁸⁾.

With regard to the term of continuance of fishery rights, the term of the common fishery right shall be for a period of ten years, the term of the fixed-net fishery right shall be for five years, and the term of the demarcated fishery right shall be for ten years or five years (Art. 21 Par. 1 of the Law). The term of fishery rights is prescribed for the purpose of reviewing the use of fishing ground according to changes in sea and fishing conditions, the progress of technology, and the like⁹⁾.

FCAs as Managers of Common Fishery Right

FCAs are established according to 1948 Fisheries Cooperative Association Law. This law aims to advance the national economy by increasing fisheries productivity and improving the economic and social status of fishermen and fisheries products processors through the development of fisheries cooperative associations (Art. 1 of the Law). This Law was based on "cooperative association principles". "Fishermen" as used in this Law mean individuals who operate fishery, and employees who engage in gathering, taking or culturing of aquatic animals and plants in behalf of fishery operators; and "Fisheries Products Processors" mean individuals who operate fisheries products processing (Art. 10 Par. 2 of the Law).

The main kinds of business of FCAs are economic activities and management of common fishery right, etc. (Art. 11 of the Law). The economic activities are sale of catches and other products produced by their members, supplying necessary goods for the business or living of their members, extending loans to their members regarding their business or living expenses, and so on. The management of common fishery right is one of the "activities contributing to propagation and conservation of aquatic animals and plants, management of fisheries resources and exploitation of fishing grounds" [Art. 11 Par. 1 Item (6) of the Law]. The terms of "management of fisheries resources" in this paragraph, were added in the revised law of 1993 to promote the "Fisheries Controlled for Resource Management" (*Shigen-Kanri-Gata-Gyogyo*).

Persons who are qualified for the membership in local FCAs shall be as follows (Art. 18 Par. 1 of the Law):

(1) Fishermen who have their own residence within the jurisdictional area of the association and operate or are engaged in fisheries for over a period from 90 to 120 days in a year which will be determined by the articles of incorporation;

(2) Fishermen's Production Associations which have their residence or places of business within the

jurisdictional area of the association;

(3) Juridical persons (excluding the FCA and Fishermen's Production Association) which have their residence or places of business within the jurisdictional area of the association and operate fishery with less than 300 regular employees and with fishing vessels whose total gross tonnage does not exceed from 1,500 tons to 3,000 tons which will be determined by the articles of incorporation. [Fishing vessels are those prescribed in Art. 2 Par. 1 of the Fishing Vessel Law (Law No. 178 of 1950)].

During the Edo Period (1603-1867), a fishing village community was the manager of the fishing ground adjacent to the community. The community managed the fishing ground, and the members engaged in fishery following the community rules. In this case, the community had a fishery right which was a kind of "right of common" (*Iriai-ken*).

The fishery right of the fishing village community was transferred to Exclusive Fishery Right (*Sen-yogyoken*) of the 1901 (Meiji 34) Fisheries Law and the 1910 (Meiji 43) Fisheries Law.

The business of Fishermen's Associations (FAs) in the 1901 Fisheries Law was only management of Exclusive Fishery Right. The business of FAs in the 1910 Fisheries Law was management of Exclusive Fishery Right and economic activities.

Exclusive Fishery Right in the 1901 Fisheries Law and the 1910 Fisheries Law was transferred to Common Fishery Right in the 1949 Fisheries Law.

Common Fishery Right and Coastal Fisheries Management

Common fishery right has replaced Exclusive Fishery Right in the 1910 Fisheries Law. Common fishery right is the right which comes from a kind of "right of common" in the fishing ground adjacent to the fishing village community. The 1949 Fisheries Law, which is the modern law, has tried to translate the traditional "right of common" into the modern common fishery right. The community's management right of the fishing ground has been translated into FCAs' common fishery right, and the members'

use right of the fishing ground has been translated into right of operating common fishery of FCAs' members.

In the Eighth Fishery Census of Japan (1988), attention was paid to the organizations which could be organs for promoting the "Fisheries Controlled for Resource Management", and a new survey was conducted to identify the organizations as "Fisheries Management Organizations" (FMOs) and clarifying their actual conditions¹⁰. FMO means a set of fishery operating units which share a fishing ground or adopt the same type of fishery. It is an organization which manages fishery resources, the fishing grounds and catches following certain rules¹¹.

As a result of the survey, it was confirmed that 1,339 FMOs existed in districts corresponding to about 40% of all the fishery districts (2,217 districts). Ninety percent of those organizations had relations with the FCA in the fishery districts concerned¹². "Fishery district" means a district set by the Ministry of Agriculture, Forestry and Fisheries, based on the commonness of socioeconomic activities of fishery in relation to the utilization of the fishing ground centering on common fishery right¹³. In the district, fishery is done under the common conditions in the area of a city, ward, town or village.

The fisheries which were covered by the fisheries management include shell gathering (37%), gill net (21%), small size trawl (14%), etc., that is, most of them were concerned with settling fishes and shellfishes or the fisheries, the resources of which are feared to be affected by uncontrolled fishing efforts¹⁴. The fishery which is concerned with settling fishes and shellfishes, is type 1 common fishery. Among common fishery rights, the type 1 common fishery right is the most traditional one.

The 1988 Fishery Census proved that 1,004 (75%) of 1,339 FMOs were developed pertaining to fishery right based fisheries, and that 939 (70.1%) were established, based on common fishery right. This figure reflects the central position of fishery rights, especially common fishery right in the overall management schemes¹⁵.

One thousand three hundred and thirty-three FMOs(99%) conducted management of catch. Some

kinds of controls are used for the purpose of managing catch. The controls are classified into two types. One is the legal control, and the other is the self-imposed control. The legal controls are composed of the Exercise Regulations for Fishery Right and other laws. The self-imposed controls mean the controls that are imposed to themselves and exceed legal controls¹⁶. Nine hundred and sixty-four FMOs used the Exercise Regulations for Fishery Right. Three hundred and seventy-nine FMOs used other laws. One thousand two hundred and fifty-six FMOs used only self-imposed controls. One thousand fifty-nine FMOs used both self-imposed controls and legal controls¹⁷.

Common fishery right is very important to coastal fisheries management in Japan surrounded by fishing grounds of common fishery right, especially of type 1. Therefore common fishery right contributes to preservation of coastal sishing grounds and the coastal environment, and to development of sishing villages.

Notes and References

- 1) This paper is a revised version of the paper presented at RCSSL95 (1995 Annual Meeting, Research Committee on Sociology of Law, International Sociological Association), August 1-4, 1995, Tokyo. For the purpose of translating the 1949 Fisheries Law and the 1948 Fisheries Cooperative Association Law into English, the following English translations of the laws have been referred to. Y. Tawara (1987): "Major Fisheries Legislations of Japan", reprinted from the original translation of Fisheries Agency, Ministry of Agriculture, Forestry and Fisheries, Japan, Kanagawa International Fisheries Training Center, JICA, Kanagawa; (1984a): "The Fisheries Law", Zengyoren, Tokyo; (1984b): "The Fisheries Co-operative Association Law", Zengyoren, Tokyo.
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