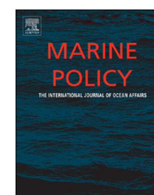
Marine Policy 74 (2016) 68–76

Contents lists available at ScienceDirect

Marine Policy

journal homepage: www.elsevier.com/locate/marpol



Recommendations for marine herring policy change in Canada: Aligning with Indigenous legal and inherent rights

Suzanne von der Porten [a,b,*], Dana Lepofsky [b,c], Deborah McGregor [d], Jennifer Silver [e]

[a] *Faculty of Environment, Simon Fraser University, 8888 University Drive, Burnaby, B.C., Canada V5A 1S6*
[b] *Hakai Institute, PO Box 309, Heriot Bay, BC, Canada V0P 1H0*
[c] *Department of Archaeology, Simon Fraser University, 8888 University Drive, Burnaby, B.C., Canada V5A 1S6*
[d] *Faculty of Environmental Studies, York University, 4700 Keele St, Toronto, ON, Canada M3J 1P3*
[e] *Department of Geography, University of Guelph, 50 Stone Rd E, Guelph, ON, Canada N1G 2W1*

A R T I C L E I N F O

Article history:
Received 29 March 2016
Received in revised form
31 August 2016
Accepted 2 September 2016
Available online 15 September 2016

Keywords:
Marine policy
Herring
Indigenous peoples
First Nations
Marine resources
Environmental governance

A B S T R A C T

The time of Indigenous "inclusion" into state-led marine policy making is ending. Indigenous peoples are increasingly asserting their rights to *primary* roles in policy- and decision-making that affect their traditional homelands, freshwater bodies and oceans. Pacific herring governance is an important illustration of how coastal Indigenous nations, are reasserting legal and inherent rights to fisheries governance. Based in the empirical setting of British Columbia, Canada, this research examines (1) pressures for change to federal herring policy in the context of Indigenous rights and self-determination, and (2) the compatibility of Canadian federal marine policies with Indigenous herring governance. Findings suggest that Canada has an opportunity to implement new and strategic policy alternatives on herring that: better reflect emergent legal precedents; accommodates gains in Indigenous influence over decision-making; and supports the self-determination goals of coastal Indigenous nations. Given the context of fisheries uncertainty and a clear need to address Indigenous legal and inherent rights, Canada has an opportunity to position itself as a global leader in marine policy to reflect Indigenous inherent and legal rights.

© 2016 Elsevier Ltd. All rights reserved.

1. Introduction

> "The literature connecting Canada's Indigenous peoples to …its strategic prospects on the global stage, has yet to be written…. For now, the contours of the norms for this new dance are being drawn faster on the ground than the pens of intellectuals and the rhetoric of the political classes can bear. But mentalities will soon shift, as the opportunities will prove overwhelming, just as failure to seize them will, for Canada, prove overwhelmingly painful." [1]
>
> "We have attempted to work with government and others to conserve herring stocks. But for far too long catch levels were too high, fleets became increasingly efficient, and government officials were reluctant to take painful but necessary steps to sustain and rebuild populations." [2]

State-based marine policy and management have entered a new era in which Indigenous peoples are again playing a central, rather than secondary or tokenistic, role in the governance of marine resources. In a broader movement toward self-determination and survival [3], there are examples globally where Indigenous coastal peoples have made some gains toward again managing the marine resources within their traditional homelands. Affirmed by the United Nations Declaration on the Rights of Indigenous Peoples [4] (UNDRIP), coastal Indigenous nations[1] have continued to assert both their legal and inherent rights to fisheries and ocean resources, including the associated management and policy. For example, in 2008, the High Court of Australia [5] overruled the authority of the Federal Government to grant access rights to the inter-tidal zone in Blue Mud Bay, Australia, in favor of the exclusive right of Indigenous owners of the ocean area and the marine property within it [6]. In Vanuatu, Indigenous peoples have

* Corresponding author at: Faculty of Environment, Simon Fraser University, 8888 University Drive, Burnaby, B.C., Canada V5A 1S6.
E-mail addresses: suevonderporten@sfu.ca (S. von der Porten), dlepofsk@sfu.ca (D. Lepofsky), dmcgregor@osgoode.yorku.ca (D. McGregor), j.silver@uoguelph.ca (J. Silver).

[1] The term "Indigenous coastal nations" is used in this paper to refer to Indigenous peoples, tribes, or nations from coastal territories which they have traditionally owned, occupied or otherwise used or acquired. The term Indigenous is the preferred term used in this paper. The term Aboriginal, which includes First Nations, Métis, and Inuit peoples, is also used here when referencing the Canadian legal context.

http://dx.doi.org/10.1016/j.marpol.2016.09.007
0308-597X/© 2016 Elsevier Ltd. All rights reserved.

gained state recognition of customary marine tenure systems which allow them to again control activities in marine areas of their traditional homelands [7,8]. In New Zealand, Maori pressure on the National Government resulted in the Settlement Act guaranteeing the Maori fishing quotas, Maori seats on fisheries statutory bodies, and customary fishing rights [9].

Canada is similarly notable in terms of Indigenous gains in rights to and control over traditional homelands and marine resources. From a legal standpoint, the Tsilhqot'in decision [10] made by the Supreme Court in favor of the non-coastal Tsilhqot'in Nation denotes observable success in the broader Indigenous struggle to re-establish rights. Considered by legal observers to be the "most important Supreme Court ruling on aboriginal rights in Canadian history" [10], arguably "in the world" [11], the decision granted title to the Indigenous nation of 1700 square kilometers of land within their traditional territory. This case was built upon the precedents of previous rights cases in Canada, including those pertaining to the Aboriginal fishing rights and coastal ancestral lands (e.g., R. v. Sparrow [1990]; R. v. Van der Peet ([1996] 2S.C.R. 507; R. v. Gladstone, [1996] 2S.C.R. 723). Since 2013, coastal Indigenous nations in British Columbia (BC), the focus of this paper, have gained a series of further fishing rights through the courts: In January 2014, five Nuu-chah-nuulth Nations were affirmed the aboriginal right to fish and sell any species of fish ([2013] BCCA 30). A month later the Nuu-chah-nuulth Tribal Council won an injunction ([2014] FC 197) which prohibited the DFO from opening a commercial roe herring (*Clupea pallasii*) fishery in the waters of their asserted traditional territory. Finally, during the commercial fishery the following year, the Council of the Haida Nation won an injunction ([2015] FC 290) to halt the commercial herring roe fishery in Haida Gwaii. In concert, the court rulings in favor of Indigenous nations signify mounting pressure on how marine resources are and will be managed in the context of Indigenous traditional territories.

The achievements in the Canadian courts are only one way in which coastal Indigenous nations are reasserting legal and inherent rights to marine resources. On the west coast of Canada, First Nations are challenging federal management authority on policy and management, demanding recognition as the stewards of their lands and resources, and demanding a fair share in harvesting rights [12]. Beyond just the interest in marine resources, these demands are emblematic of a broader global phenomenon of Indigenous struggles being pursued by Indigenous nations to reinstate self-determination, as well as inherent and legal rights to traditional homelands and resources [4,13–15]. This paper examines this broader phenomenon of Indigenous self-determination in the context of the Canadian Pacific herring fishery. This paper is based on empirical research investigating the pressure being applied by BC coastal Indigenous nations for changes to federal administration of the herring fishery policy and management.

Under the *Fisheries Act*[2] [16], the Canadian Department of Fisheries and Oceans (DFO) asserts authority over all fisheries and issuance of fishing licences in Canada. The Dominion of Canada first formally asserted this authority on the Pacific coast of Canada in 1871 as BC joined the Canadian confederation. The colonization of the west coast by the British Crown in the early 1800s, displaced and marginalized Indigenous coastal peoples from their traditional homelands and ocean fishing grounds [17,18]. Displacement and marginalization of Indigenous coastal peoples from their herring fishing grounds was largely a result of purposeful action by the Canadian state to curtail Indigenous access to herring spawn harvest and trade through (1) the creation of an "Indian food fishery" [19], (2) the implementation of a reserve system for Indigenous peoples which effectively displaced their former ways of living on the land and sea, and (3) the alienation of coastal land parcels for newcomers [17]. These actions to displace and marginalize Indigenous peoples by the Canadian state were intensified by the devastating residential school system established for Indigenous peoples in Canada. From the late 1800s through the late 1900s, residential schools in BC removed Indigenous children from their families in an effort to extinguish their culture, traditions and language [20]. This systematic exclusion from fisheries resources and oppression of Indigenous coastal peoples reduced opportunities for Indigenous coastal peoples to harvest herring and undertake cultural, political, and economic practices related to that fishery [21,22]. Since herring for food, oil, bait, and spawn[3] have long played a crucial role in Indigenous livelihoods on the Pacific coast for food, trade, ceremonial and social traditions [9,23], this colonial legacy has been damaging to the livelihoods of coastal peoples whose way of life has depended on herring and herring spawn for millennia [23,24].

Today the Canadian Government continues to act with little deference to the rights and governance authority of coastal Indigenous nations to herring. For example, in both 2014 and 2015, former Canadian DFO Minister Shea overruled formal requests made by three coastal Indigenous nations in BC for the herring fishery to remain closed [25–27], and instead authorized the opening of the commercial herring fishery. The reaction of these three Indigenous nations (Haida, Nuu-chah-nuulth, and Heiltsuk (Fig. 1)) to these openings have been embedded in broader actions of Indigenous self-determination.[4] These nations have found legal and other means to halt or minimize the opening of the herring fishery in their respective territories. Outside of the courts, the Council of the Haida Nation circumvented the DFO's decision in 2014 by negotiating directly and privately with commercial herring fishermen to stay out of Haida waters [28]. These coastal Indigenous nations, along with the Kitasoo/Xai'Xais, have further asserted their inherent rights and responsibility to herring governance through a formal *Herring Declaration of Solidarity of B.C. First Nations* which affirms their inherent rights to manage their sea resources [29]. Inherent rights imply Indigenous rights (including those to herring) that exist outside of colonial legal processes, and that precede and were not dissolved by colonization [30]. Consequently, the dominant role played by the DFO in herring governance, coupled with the historical and ongoing commercial-scale herring harvest occurring in Indigenous traditional territories, plays a major role in driving coastal Indigenous nations in BC to protect herring and their long-standing relationship to herring.

In a bid to regain a more primary role in herring governance and policy-making, coastal Indigenous nations in BC are increasingly finding ways to mitigate the dominant roles of DFO and the commercial herring industry. Driven in part by a need to change dominant federal fisheries policies which do not reflect Indigenous values [31], coastal Indigenous nations are applying a variety of tools and strategies to force change (Author, in review). These circumstances of increased pressure for a change to policy and

[2] In addition to the *Fisheries Act* legislation, a number of regulations also affect the herring fishery and licencing, e.g., *Fishery (General) Regulations* SOR/93-53, *Aboriginal Communal Fishing Licences Regulations* SOR/93–332, *Pacific Fishery Regulations* SOR/93-54, and *Pacific Fishery Management Area Regulation* 2007 SOR 2007/77.

[3] Herring spawn on kelp (SOK) is the term that describes the fishery where herring eggs are collected from kelp (or boughs) after herring have spawned. It is a traditional harvest of Indigenous coastal nations [48].

[4] This paper focuses on actions of self-determination and resistance that occurred during the field research. However, Indigenous resistances have been occurring since contact. For a timeline of the interaction between DFO and Indigenous peoples of the BC central coast over herring, see Gauvreau 2015.

Download English Version:

https://daneshyari.com/en/article/5118184

Download Persian Version:

https://daneshyari.com/article/5118184

Daneshyari.com