Marine Policy 43 (2014) 217–225

Contents lists available at ScienceDirect

Marine Policy

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

The legal, regulatory, and institutional evolution of fishing cooperatives in Alaska and the West Coast of the United States

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ARTICLE INFO

Article history:
Received 5 April 2013
Received in revised form
4 June 2013
Accepted 7 June 2013
Available online 26 July 2013

Keywords:
Fishing cooperatives
Co-management
Coordination and cooperation
Alaska fisheries
Institutional economics
Legal and regulatory constraints

ABSTRACT

Between 1997 and 2011, fishing cooperatives on the West Coast of the U.S. and Alaska grew to cover almost 60% of U.S. West Coast and Alaska commercial fisheries. In those fisheries, cooperatives now manage capacity reduction and harvest limit compliance internally, transforming the way harvest limits are met—but not how they are set. Economic and regulatory incentives, both positive and negative, explain variations in cooperative structures and functions, particularly the level of participation, number of cooperatives within a fishery, and a shift in emphasis over time from internal quota setting and trading to managing non-target prohibited species avoidance. Ecological limits, which have generally been effective at sustaining fisheries on the Pacific coast, are still exogenous to cooperative management. Cooperatives commonly share information to avoid bycatch, but only coordinate harvests of target species to a very limited degree. Whether cooperatives evolve from effectively meeting external targets to either participating in the setting of limits (co-management) or moving beyond quota management into revenue sharing and coordinated fishing will depend on whether legal institutions and political objectives also evolve to allow new contractual and institutional arrangements.

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1. Introduction

Farmers and fishermen have long understood that their livelihoods are determined to a large degree by harvest risks and market uncertainties outside of their control, and have formed cooperative associations to ameliorate those risks and uncertainties. The most successful fishing cooperatives "develop a wide variety of norms and institutions to share risks, establish de facto property rights over fish, reduce competition, ensure markets, gain access to information about locations of fish stocks, and so on" [1] p. 288]. These tasks are difficult under any circumstances, and legal constraints add another layer of complexity. The Fishermen's Collective Marketing Act (FCMA) of 1934 has been interpreted to allow cooperatives to add value to or collectively market products since its inception, but early on, some courts held that the antitrust law exemption within the FCMA did not extend to boycotts or strikes undertaken to raise ex-vessel prices [2]. In some cases, even limiting supply for reasons broader than merely increasing price was determined to be beyond the FCMA's protection. For example, in the 1950s a Texas shrimpers union that protected juvenile shrimp by setting minimum size limits (which also successfully raised dock prices) was found to be in violation of antitrust legislation [3]. It has been argued that the union's involvement was a deciding factor in the case, and that a non-union cooperative could have legitimately restricted supply under the FCMA [4]. Nevertheless, the Texas shrimpers case and other similar rulings, combined with severe penalties for antitrust violations, had a chilling effect on the ability of fishing cooperatives to reduce competition on the water [5].

Over time, courts began to interpret the FCMA, and the Capper-Volstead Act governing agricultural cooperatives, more liberally. When the Washington Crab Association beached their boats until their price was met by processors in 1964, an administrative decision by the Federal Trade Commission found nothing wrong with such limits on production because of the protections afforded by the FCMA [6]. To date there has been no definitive law or ruling on how or when fishing cooperatives may limit supply, but the FTC interpretation has grown stronger in recent years with the federally sanctioned growth in importance of fishing cooperatives in Alaska and the West Coast. To what extent these new institutions will be able to redefine competitive and cooperative relationships, remains an open question, which will depend on the evolution of both the economics of cooperative fishing and the external legal and regulatory constraints.

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http://dx.doi.org/10.1016/j.marpol.2013.06.006

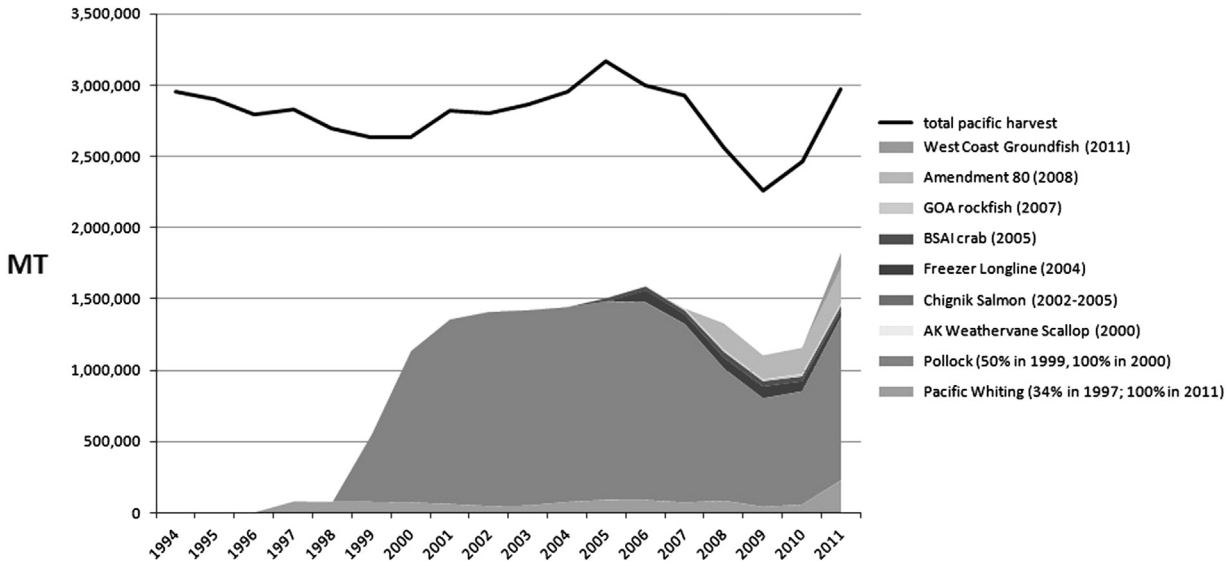

Fig. 1. Cooperative managed fisheries production by metric ton [15–23].

As FCMA law was evolving, so too were the theoretical arguments for defining access and harvest rights in fisheries, first by economists in the 1950s [7,8] and then famously in the late 1960s by Garret Hardin's argument that open access to valuable resources led to a "tragedy of the commons" [9]. By the 1980s, the notion of improving fisheries management by defining harvest rights in fisheries had strengthened to the point that both Iceland and New Zealand created widespread individual tradable quota (ITQ) regimes. ITQs defined fishery access rights and shares of the total allowable catch, and were allocated to individuals based on catch history. Associations of quota owners rapidly formed in both countries. In Iceland, two harvesting associations formed to lobby for either maintaining or re-allocating harvest shares based on boat size. Quota owning associations in New Zealand, on the other hand, formed around target species and undertook a broader range of activities, in some cases even coordinating fishing effort and directly influencing harvest limits by contributing scientific data, analysis, and risk assessments to stock assessment models [10,11]. In the United States, catch share systems, which include both individual and sector (group) allocations (shares of the total allowable catch), have gradually gained momentum since the early 1990s.

The first fisheries managed by tradable quotas in the United States were the Mid-Atlantic surf clam and ocean quahog fishery (1990), a small wreckfish fishery in the South Atlantic (1992), and the Alaska halibut and sablefish fisheries (1995). Each fishery suffered from overcapitalization and the race to fish, and each saw a dramatic drop in the number of active fishing vessels under ITQs (also commonly referred to as IFQ - individual fishing quotas). While reducing fishing capacity was an explicit goal, its effect on crew jobs, fishing communities and fish processors resulted in a political backlash. In the lead up to 1996 re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act (which defines federal fishing policy), the Alaskan pollock fleet's efforts to obtain tradable fishing quotas in the legislation were resisted by processors who had been disadvantaged by the ITQ in halibut, and politically powerful Alaskan politicians who believed most of the economic gains would accrue to Washington state, where much of the North Pacific fishing fleet was based [12,2,13]. In the end, Congress not only refused to extend ITQs to the pollock fishery, it imposed a moratorium on any new quota programs until in the year 2000, later extended until late 2002.

Despite the moratorium, Francis Christy noted in 1996 that the evidence in favor of harvest rights was so strong that that their eventual adoption was "inexorable" [14]. In 1997, just 1 year later, the four owners of vessels in the catcher–processor sector of the Pacific whiting fishery formed the first modern fishing cooperative in the U.S. to address overcapitalization within their sector. The approach they adopted as an experimental effort has now grown to directly or indirectly govern almost 60% of the commercial catch of Alaska and the Pacific.

2. Fishing cooperatives in Alaska and the West Coast: 1997–2012

Since 1997, the proportion of the total allowable catch (TAC) in the fisheries of the West Coast of the United States harvested by cooperatives and other catch share arrangements has risen from 0% to almost 60% (Fig. 1). Cooperatives have formed in the Pacific whiting, Alaska pollock, Alaska crab, and the mixed stock groundfish fisheries off Alaska and the Pacific Coast. Each cooperative has formed within a harvesting sector composed of catcher–processors or catcher vessels (which either deliver to motherships or shoreside processors). In some cases, notably for inshore pollock, Bering Sea and Aleutian Islands (BSAI) crab, and Gulf of Alaska (GOA) rockfish, multiple cooperatives have formed within sectors.

Cooperatives form when a group of vessels or quota owners reach a contractual agreement to share resources, rules, and enforcement mechanisms. Cooperatives may manage internal quota allocations and transfers, negotiate prices with processors, manage bycatch and sideboard limits, and/or create risk pools to mitigate prohibited species catch (PSC) restrictions. The size and scope of cooperatives are largely determined by the legal, social, and economic hurdles to reaching agreements, described by institutional economists as transaction costs [25,26]. Aggregating information and managing cooperative operations on a day-to-day basis are other examples of transaction costs [27]. Factors such as a large or heterogeneous number of participants raise transaction costs (make agreement more difficult); sector allocations (reducing heterogeneity) and at-sea processing (where harvesting and processing occur within the same organization) reduce them. Measuring true transaction costs is notoriously difficult, but by taking a broad view of cooperative formation over time (Table 1), patterns of likely sources of transaction costs and shifting rationales for cooperative formation and function emerge.

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