Chapter 8

Legal Systems and Coastal Management

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Surrounded by excellent conditions where warm currents and cold currents intermingle to form sea zones with abundant productive capacity, the aggressive utilization of these resources by fishery operators has helped Japan’s fishery industry achieve a level of growth and development unlike anywhere else in the world, and the industry has fulfilled an important role as provider of vital animal protein for the nation’s people. However, with the advent of the 200 nautical mile economic zone era, the industry faces a drastic reduction in the size of its overseas fishing areas. At the same time it is confronted with a variety of other issues, including a declining level of resources in the seas surrounding Japan, a deterioration in fisheries operation, declining numbers and increasing age of fishery employees, and many others.

The Japanese government believes that there are currently five fundamental issues facing Japan’s fisheries. These are: (1) continued high level of utilization of Japan’s coastal waters; (2) readiness to supply domestically-produced seafood which meets the needs of consumers; (3) thorough management and efficient utilization of marinelife resources, with consideration for the environment as well; (4) quick re-establishment of strong and solid fisheries management; and (5) creation of an attractive sphere of settlement with fisheries as a nucleus.

Of these issues, the continued high level of utilization of Japan’s coastal waters requires that people act not only to protect the environments of fishing areas, but to also promote the implementation and establishment of fisheries oriented resource management. This management should be designed to maintain and restore marine resources, such as bottom fish, which are highly demanded by Japanese consumers but are diminishing in numbers. Moreover, people are required to promote to implement and expand fisheries which use artificial methods to produce and cultivate resources.

Due to the following characteristics, the fisheries industry requires particularly strict resource management. Because production in the fisheries industry involves primarily the harvesting of wild animal life, the quality and volume of production is limited by the natural properties and numbers of the fish and other resources. Furthermore, because the locations or conditions of the fish’s habitats often change, a more stable and higher level of production is obtained by sharing as broad an area of fishing waters as possible. However, because the principle of “no owner” applies, many fishing boats often enter the same waters and compete for the limited number of fish there.
Once fishing activity exceeds a certain level, any increase in the level of activity results in a reduction in the volume of fish harvested. Since it is ideal to keep fishing activity at its optimum level and thereby harvest the largest possible volume of fish, regulations concerning this optimum level of fishing activity are enforced. These regulations also act to promote the reproduction of these resources. This is what is meant by fisheries oriented resource management. However, fisheries oriented resource management involves not only passive regulations, but also active measures such as human intervention in certain areas in order to increase biological production.

Production and cultivation fisheries, on the other hand, are intended to increase resources. This involves cultivating, raising, and then releasing marine resources, as well as creating suitable habitats for them. Of these activities, fish farming, which involves raising and releasing fish and other marine resources, requires restrictions on harvesting and other forms of resource protection management after the release of the resources in order to be effective. For this reason, fisheries oriented resource management and fish farming are very closely related to one another.

We turn next to the issue of thorough management and efficient utilization of marine life resources, with consideration for the environment as well. This is emphasized from the perspective of protecting wildlife and the marine ecosystem, and stems from the increased public concern for protecting the global environment. The Japanese government, in an attempt to achieve harmony with the environment, is stressing the importance of practicing responsible fisheries activity founded on appropriate conservation measures which are based on scientific knowledge and objective facts. This is in keeping with the ideology of continued resource development as agreed upon at UNCED. However, this issue is important not only from the perspective of protecting the global environment. It is also extremely important in terms of protecting fishing waters in order to increase fishery production capacity, as well as ensure that safe marine products are produced and supplied to consumers.

What types of laws and regulations are in place to bring about the realization of these issues, that is, the continued high level of utilization of Japan’s coastal waters, the thorough management and efficient utilization of marine life resources, and the preservation of the fishing environment?

Due to the differences in their objectives and the government agencies which have jurisdiction over them, the laws and regulations concerning these issues are divided into two groups—those related to environmental protection, and those related to the fisheries industry. After presenting a brief synopsis of these various laws and regulations, we will examine them from the perspective of these issues. Finally, we will attempt to provide some suggestions regarding how such laws should be used to ensure proper coastal management in the future.

LEGAL SYSTEMS RELATED TO FISHERIES MANAGEMENT

The primary components of the legal system relating to the continuous high level of utilization of water areas are set forth in the Fisheries Resources Protection Act (Law No. 313, 1951), the Coastal Fishing Ground Improvement and Development
Act (Law No. 49, 1974), and the Marine Fishery Resources Development Promotion Act (Law No. 60, 1971). However, the content of these laws is very closely related to the other systems established by various other laws in an effort to promote the development of fishery production.

Laws relating to fisheries can be divided into two major types. The first type is comprised of laws which set forth restrictive measures from the standpoint of establishing a system of waters use. The principal laws in this category are the Fisheries Act (Law No. 267, 1949) and the Fisheries Resources Protection Act. The other type includes laws that are based on the Coastal Fisheries etc. Promotion Act (Law No. 165, 1963). These laws set incentives and encouragement from the standpoint of fisheries promotion. The Coastal Fishing Ground Improvement and Development Act, the Marine Fishery Resources Development Promotion Act, the Fisheries Co-operative Association Act (Law No. 242, 1948), and others are included in this group.

We will first present an overview of how these laws organize the use of waters by fisheries. We will then clarify what types of promotional measures are afforded the fisheries industry based on these laws, and how the laws concerning the continuous high level of utilization of water areas are positioned among them.

Waters use system

Fishery rights

Waters subject to public use, along with the connecting incorporated waters (public waters), can be categorized as high seas, territorial seas, and inland waters (rivers, lakes, marshes, etc.). The Fisheries Act sets forth the legal statutes regarding fisheries production, based on the assumption that the same principle of fishery freedom is applicable to all of these waters. In other words, the law establishes systems regarding the fishery rights and fishery police (permission) which act to restrict this principle, with the intention of promoting the comprehensive use of waters, expanding the productivity of fisheries, and at the same time providing for democratization of the fisheries industry. Comprehensive use of waters is promoted through the operation of the fishery adjustment organization which is comprised primarily of fishery operators (persons who own fisheries) and fishery employees (persons employed by fishery operators for the purpose of culturing or harvesting aquatic plants and animals) (Article 1).

“Fishery rights” consist of fixed net fishery rights, rights of demarcated fisheries, and common fishery rights. These three types of fishery rights are classified according to the type of fishery (the harvesting and culturing of aquatic plants and animals). “Fixed net fishery rights” are recognized for fisheries which operate with fixed fishing equipment. “Rights of demarcated fisheries” are recognized for three types of fisheries engaged in the business of culturing within a specific area. “Common fishery rights” are recognized for five types of fisheries engaged in the common use of specific waters (Article 6). Fixed net fisheries and demarcated fisheries are not allowed to operate unless they are based on fishery rights or common-of-piscary rights discussed later (Article 9).
Fishery rights are primarily established in ocean waters. However, the common fishery right that applies to type 5 common fisheries is the one example of a fishery right that is primarily concerned with inland water fisheries. As such it includes special provisions (Articles 127–132) to accommodate the unique characteristics of inland water fisheries. Thus for the most part, in contrast to the fishery rights of many leading western nations which are focused principally on inland waters, Japanese fishery rights are oriented toward ocean waters. This is because fishing in coastal waters is abundant and highly valued, and thus, it has long been the customary practice to recognize these rights.

Prefectural governors establish fishery rights through the use of charters in accordance with fishing ground planning which sets forth the types of fisheries, the location of fishing grounds, fishing seasons, and so on (Articles 10 and 11). Charters are only issued to qualified applicants. Common fishery rights are accorded only to Fisheries Co-operative Associations and Federations of Fishery Cooperatives which meet specific requirements (Article 14). On the other hand, regarding fixed net fishery rights and rights of demarcated fisheries, other corporations and individuals are also qualified, and the issuance or refusal of charters is determined in accordance with the legal order of priority (Articles 15–19). For example, fishery operators and fishery employees are given priority. Certain rights of demarcated fisheries are chartered with the top priority given to Fisheries Co-operative Associations and Federations of Fishery Cooperatives. While the general rule is that only independent business owners are chartered, common fishery rights and certain rights of demarcated fisheries are granted to non-independent Fisheries Co-operative Associations and Federations of Fishery Cooperatives as well. Type 5 common fishery rights for inland waters apply to the cultivation of aquatic plant and animal life in inland waters, and in the event that the recipient of the charter fails to culture aquatic plant and animal life in those inland waters, the charter will be revoked (Article 127).

Fisheries Co-operative Associations and Federations of Fishery Cooperatives may obtain, in whole or in part, the right to conduct fishing operations in the fishing grounds specified in another party’s common fishery rights or certain rights of demarcated fisheries, so long as an act of creation is consummated with the said party. This is called a “common of piscary right” (Articles 7 and 42.2).

Furthermore, fishery operators and fishery employees who satisfy specific qualifications and who are members of Fisheries Co-operative Associations are granted the “right to engage in fishery activity” within the scope of the certain rights of demarcated fisheries, common fishery rights, and common-of-piscary rights held by Fisheries Co-operative Associations and Federation of Fishery Cooperatives. The said qualifications are established through resolutions adopted by the general boards of the Fisheries Co-operative Association or Federation of Fishery Cooperatives, and are set forth in the exercise regulation for fishery rights or the exercise regulation for common-of-piscary rights which are put into effect through the approval of the prefectural governor (Article 8).

Common fishery rights, and rights of demarcated fisheries which cover pearl culturing and large-scale fish culturing, have a duration of ten years. All other fishery rights have a duration of five years, and common-of-piscary rights, unless otherwise
stipulated, have a duration which is the same as the fishery right that is the object of the common-of-piscary right (Articles 21 and 46).

Fishery rights and common-of-piscary rights are recognized as real rights (Article 23 paragraph 1, Article 43 paragraph 1). However, with the exception of inheritance and mergers of corporations, the general rule is that fishery rights cannot be transferred, their use as collateral is subject to restrictions, and they may not be leased to others (Articles 23–26 and 30). Common-of-piscary rights cannot be transferred, mortgaged and leased other than to be obtained through transfer or mergers between corporations (Article 43 paragraph 2).

When the prefectural governor recognizes the need for the adjustment of fisheries, or other actions for the public good, he may limit or attach conditions to fishery rights. In such cases, or when the owner of a fishery right is found to be in violation of legal provisions relating to fisheries, the governor may order the revision, revocation, or suspension of the fishery right (Articles 34 and 39). If fishery operations have been suspended for a specific period of time, the fishery right may be revoked, and if the owner of a fishery right no longer meets the qualifications for being chartered, the fishery right must be revoked (Articles 37 and 38).

*Approved fisheries*

All long-distance fisheries and offshore fisheries on which uniform restrictions are applicable because of inter-governmental agreements, fishing grounds etc. are designated by cabinet order, and as such, each vessel must be approved by the competent cabinet minister (Article 52).

Further, in order to facilitate fishing patrols or other adjustments of fisheries, the competent minister and the prefectural governor may establish the necessary ministerial orders or regulations. These include restrictions or prohibitions regarding the harvesting and processing of aquatic plants and animals, fishing boats and equipment, the number and qualifications of fishery operators, and so on (Article 65 paragraph 1). Certain types of fisheries are required permission for each vessel by the prefectural governor (Article 66 paragraph 1). The competent minister and the prefectural governor may require also other fisheries to obtain their permissions based on ministerial orders or regulations.

Construction of fishing vessels is regulated by the Fishing Boat Act (Law No. 178, 1950). When it is recognized that fisheries adjustment or the public good in general requires that the construction of fishing vessels be adjusted, the Minister of Agriculture, Forestry and Fisheries shall establish standards, by area or classification, regarding the number of power vessels, limits on gross tonnage, and performance (Article 3). Those wishing to build powered fishing boats must obtain permission from the Minister of Agriculture, Forestry and Fisheries or the prefectural governor (Article 3.2). If a vessel is not listed in the fishery boat register kept by the prefectural governor, that vessel cannot be used as a fishery boat (Article 9). On the other hand, a system is in place whereby the Minister of Agriculture, Forestry and Fisheries will accept requests to perform inspections on, design and test fishing boats (Articles 22, 25 and 26).

To maintain order in Japanese fisheries, there are special regulations regarding foreign vessels. Japan’s territorial seas extend 12 nautical miles from its coast
(Territorial Sea Act (Law No. 30, 1977), Article 1), and these territorial seas, along with inland waters, constitute Japanese waters. The Act Concerning the Regulation of Foreigner’s Fishery (Law No. 60, 1967) prohibits foreign fishing vessels from operating a fishery or from harvesting aquatic plants and animals in Japanese waters (Article 3). Furthermore, in order to avoid assisting foreign fishing vessels in fishery activities outside of Japanese waters, the law also makes it necessary for foreign fishing vessels to obtain permission from the Minister of Agriculture, Forestry and Fisheries before calling on Japanese ports, except when necessary to avoid disaster at sea, to unload a catch shipped from abroad and certain other conditions (Article 4). In addition, the law also prohibits foreign fishing vessels from transshipment, loading, or unloading their catch or any products derived from such (Article 6).

Finally, in order to promote the proper preservation and maintenance of fishery resources, the Temporary Measures Act for Fishery Zone (Law No. 31, 1977) establishes Japanese jurisdiction over fisheries and the harvest of aquatic plants and animals in fishery waters within 200 nautical miles of the Japanese coast (Articles 2–4), and provides that foreigners may not operate a fishery or harvest aquatic plants and animals within such fishery waters without permission from the Minister of Agriculture, Forestry and Fisheries (Articles 5–11).

**Fishery adjustment organization**

Sea-area Fishery Adjustment Commissions have been established as fishery adjustment organizations for each sea area set forth by the competent minister, United Sea-area Fishery Adjustment Commissions have been established for the Seto Inland Sea, the Genkai Sea, the Ariakekai Sea, and for special purposes as needed. In each prefecture, Inland Waters Fishery Ground Administration Commissions have been established for each prefecture (the Fisheries Act, Articles 84, 105, 109 and 130).

Sea-area Fishery Adjustment Commissions are comprised of 15 fisherman commissioners who are elected by fishermen who reside or work in the relevant coastal area, along with four academic commissioners and two public interest commissioners who are appointed by the prefectural governor (Articles 85 and 86). The United Sea-area Fishery Adjustment Commissions consist mainly of commissioners chosen from the Sea-area Fishery Adjustment Commissions, with additional academic commissioners appointed by the prefectural governor or the competent minister as needed (Articles 106 and 109). Members of Inland Waters Fishery Ground Administration Commissions are appointed by the prefectural governor from among representative fishery operators, representative aquatic plant and animal harvesters, and academic persons (Article 131).

When determining or amending a fishing ground plan, or conducting any important administrative disposition concerning the chartering, revision, restriction, revocation, etc. of fishery rights, the prefectural governor must consider the views of the Sea-area Fishery Adjustment Commission. In this regard, the Sea-area Fishery Adjustment Commission has the right to hold public hearings, gather opinions from concerned parties, and express opinions or present requests to the prefectural governor (Articles 11–14, 22, 24, 26, 34 and 36–40). From the standpoint of making comprehensive use of the entire sea area, the Sea-area Fishery Adjustment Com-
mission and the United Sea-area Fishery Adjustment Commission have several powers to ensure the breeding and protection of aquatic animals and plants, the proper use of fishery rights and common-of-piscary rights, prevention and resolution of disputes related to the use of fishing grounds, and any other matters of fisheries adjustment. These include the ability to place prohibitions or limitations regarding the harvesting of aquatic plants and animals, place limitations regarding the number of fishery operators or the use of fishing grounds, as well as other necessary measures. Any parties who fail to obey such instructions may be ordered by the prefectural governor to comply (Article 67).

**Protection and culture of fishery resources**

The Fisheries Resources Protection Act establishes a system for the protection and culture of fishery resources (Articles 4–28), the details of which are set forth below, together with a survey system for fishery resources (Articles 29 and 30), and a government assistance system (Article 31).

First, the Minister of Agriculture, Forestry and Fisheries and the prefectural governor may, in order to protect and culture aquatic plants and animals, establish a number of necessary regulations or ministerial orders. They include the limitation or prohibition of certain types of fishing boats and equipment, the gathering, selling, possessing, or transplanting of aquatic plants and animals, the leakage or discarding of toxic substances or other forms of water pollution, and the harvesting or removal of items necessary for the protection and cultivation of aquatic plants and animals (Article 4 paragraph 1), and may also require permission for certain types of fisheries. Fishing methods which utilize explosives or poisonous substances are prohibited (Articles 5 and 6). With regard to fisheries which require the permission of the Minister of Agriculture, Forestry and Fisheries except designated fisheries, the Minister may establish limits on the number of fishing vessels and annual catch limits (Articles 9 and 13).

Second, a system has been established whereby water areas suitable for the spawning of aquatic animals, and for the growth of fry and seedlings, are designated as protected areas. Through this system measures necessary to protect those aquatic plants and animals are taken (Article 14). The general procedure for the designation of protective areas is as follows: after consulting with the Sea-area Fishery Adjustment Commission or the Inland Waters Fishery Ground Administration Commission, the prefectural governor then submits an application to the Minister of Agriculture, Forestry and Fisheries, who in turn makes the designation in accordance with the criteria established by the Minister (Article 15). This criteria was revised in 1993 in order to allow not only those waters which are suitable for the breeding and rearing of aquatic plants and animals to be designated as protected areas, but also to allow areas that are home to aquatic plants and animals in danger of extermination to be designated as such.

Administration of protected areas is, in general, overseen by the prefectural governor based on the administrative plan (Article 16). In order to undertake construction work that involves reclamation, dredging, or changing the water level or flow within protected areas, the contractor must receive permission from or consult with the person in charge of the administration of the protected area (Article 18).
Third, in order to increase the population of salmon and trout, the Minister of Agriculture, Forestry and Fisheries annually establishes plans detailing where and in what numbers fish are to be stocked, and then conducts artificial hatching and liberation according to those plans (Article 20). A portion of the costs for these activities may be assigned to the beneficiaries (Article 21).

The owner or possessor of a structure built in a water area in the path of anadromous fish, must manage the structure in such a manner that it does not obstruct the path of the anadromous fish. The Minister of Agriculture, Forestry and Fisheries and the prefectural governor may order the relevant party to conduct the proper management (Article 22). The Minister of Agriculture, Forestry and Fisheries may limit or prohibit the construction of, or order the removal of, any structure which may hinder the path of anadromous fish, or the Minister may order the construction of alternative accommodations for the anadromous fish (Articles 23 and 24). The harvesting of salmon from inland waters is prohibited, except by persons who have obtained fishery charters or other forms of permission (Article 25).

Fourth, dealers who produce or gather the seedlings and juveniles of aquatic plants and animals for the purpose of selling such, must notify the Minister of Agriculture, Forestry and Fisheries of their intent (Article 27). The Minister of Agriculture, Forestry and Fisheries may provide necessary instruction to such dealers concerning the production and distribution of such products (Article 28).

**Fishery promotion**

**Policies**

The Coastal Fishery etc. Promotion Act sets forth the policies which are adopted by national and local governments in order to promote the development of fisheries by coastal and other small-scale fishery operators as well as to elevate the status of fishery employees (Article 1).

Taking into consideration the wide range of natural, economic, and social conditions of the specific region, national and local governments must comprehensively adopt necessary policies regarding 1) maintenance and increase of fishery resources, 2) productivity improvement, 3) modernization of business management, 4) rationalization of distribution, increased processing and demand, and stabilization of prices of marine products, 5) promotion of marine product exports, 6) regulation of imports, 7) stabilization of prices and rationalization of production and distribution of fishery supplies, 8) removal of obstructions to reproduction and stabilization of management, 9) training and retention of employees, 10) improvement of employment structure, and 11) improvement of coastal fishery employee welfare (Articles 3 and 4). The national government must establish the legislative and financial measures necessary to implement these policies, and it must strive to ensure that these measures are funded smoothly and properly (Article 5). In implementing these policies, the national and local government functions in the capacity of fostering the voluntary efforts of fishery employees and fishery organizations (Article 6). The national government is required to submit an annual report concerning fisheries to the Diet (Article 7).
In particular, the national government takes steps to provide the necessary advice and support in order to efficiently and comprehensively undertake structural improvement projects for coastal fisheries with the purpose of bringing about conversion to highly productive fisheries, the improvement of fishing ground utilization, the maintenance and development of a production base (e.g. construction of underwater reefs and development of cultured fishing grounds), and so on. Furthermore, with regard to small fisheries which require promotion, the national government provides individual fishery operators and fishery organizations with necessary advice, guidance, and mediation in securing funds (Articles 8 and 9). Finally, the national government is also required to adopt measures to increase the number and quality of surveys and research projects related to coastal fisheries etc., boost the productivity of fisheries, modernize business management, and improve the lifestyles of fishery employees (Articles 10 and 11).

**Fisheries oriented resource management**

In order to promote the rationalization of marine fishery resource development and utilization in coastal sea areas, the following policies (Article 1) are set forth in the Marine Fishery Resources Development Promotion Act.

First, the Minister of Agriculture, Forestry and Fisheries establishes a basic policy (Article 3). In line with this basic policy, the prefectures may designate, where appropriate, certain coastal sea areas as Coastal Fishery Resources Development Areas. If such a designation is made, the prefecture must establish a development plan designed to increase fishery production and promote the breeding and cultivation of aquatic plants and animals in the area (Articles 5 and 7). Any party intending to alter the form or nature of the ocean floor, or perform other specified acts within the development area, must inform the prefectural governor of such intent. At that time, the prefectural governor may provide that party with recommendations necessary to enable the successful completion of the development plan (Article 8). Both the national and prefectural governments strive to implement water pollution prevention measures, provide the support necessary to accomplish the development plans, and to implement marine fishery resource development promotion measures (Article 11). For sea areas outside of such development areas but which are highly utilized fishing grounds and have been designated by cabinet order as sea areas which occupy an important status in terms of fishery production, any party intending to engage in the excavation of the ocean floor or other specified activities must report such intention to the prefectural governor or the Minister of Agriculture, Forestry and Fisheries. That party may be required to accept recommendations necessary to preserve the area’s use as a fishing ground (Article 12).

Next, in order to promote more rational utilization of marine resources within specific sea areas, organizations of fishery operators and individual fishery operators often form agreements regarding the voluntary management of marine resources. If such a resource management agreement is found by the administrative government agencies (prefectural governor or the Minister of Agriculture, Forestry and Fisheries) to correspond with the basic policy described above, or is otherwise suitable, it will have the following legal ramifications. Parties to the agreement may seek mediation by the administrative agencies in order to obtain participation in the agreement by
fishery operator organizations or non-participating fishery operators. If a Fisheries Co-operative Association which is a party to such an agreement amends its memorandum of association, exercise regulation for fishery rights, or exercise regulation for common-of-piscary rights at its general meeting in order to comply with the details of the agreement, resolutions may be conducted in a special manner which respects the will of the association members directly concerned with the agreement. If the participants to an agreement constitute at least two-thirds of the total number of parties which utilize the resources covered by the agreement within the sea area covered by the agreement, and at the same time meet specific standards, the participants to the agreement may request that the prefectural governor the Minister of Agriculture, Forestry and Fisheries implement limitations on the harvesting of aquatic plant and animals, or other measures deemed necessary in order to accomplish the goals of the agreement (Articles 12.2–12.6).

The Japan Marine Fishery Resource Research Center was established through joint funding by the government and other parties in order to perform surveys and collect and provide information and data necessary to promote more rational utilization and development of marine fishery resources (Articles 13–16).

_Improvement and development of coastal fishing grounds, and fish farming_

In order to promote the improvement and development of coastal fishing grounds, which are the foundation of coastal fisheries, the Coastal Fishing Ground Improvement and Development Act sets forth the following policies (Article 1).

Based on the plan established by the Minister of Agriculture, Forestry and Fisheries, the national government must adopt measures necessary for implementation of projects to improve and develop coastal fishing grounds (Articles 2–5). Such projects are carried out to strengthen and cultivate populations of aquatic plants and animals, and include construction of underwater reefs, installation of breakwater facilities, dredging, and removal of sediments in order to restore an area’s function as a coastal fishing ground.

The Minister of Agriculture, Forestry and Fisheries establishes basic policies concerning the production and release of juveniles of aquatic animals and also the cultivation of aquatic animals (Article 6). The prefectures may establish basic plans, in harmony with these basic policies, concerning farming fisheries (Article 7.2). When a Fisheries Co-operative Association or a Federation of Fisheries Cooperatives intends to undertake a project involving the stocking and cultivation of a particular marine animal (special aquatic animals cultivation project), they must specify the area of the cultivation waters and the rules of use for that area. These specifications must be in agreement with the details of the basic plan. They must also obtain the approval of the prefectural governor, properly execute the project, and provide association members with necessary guidance (Articles 8–14). The prefectural governor may designate one and only one corporation to implement a project involving the stocking of marine animals, verifying the economic benefits in terms of increased fishery production through the population increase of the stocked marine animals, and then diffusing those results to the Fisheries Co-operative Associations etc. (release effect demonstration project). The designated corporation must draft a plan, the contents of which are to correspond with the contents of the
basic plan, and then, after obtaining the approval of the prefectural governor, properly and reliably implement the project (Articles 15–23).

Occasionally Fisheries Co-operative Associations or Federations of Fisheries Cooperatives, along with sport fishing guides or sport fishermen associations, may conclude agreements for the purpose of securing a stable use relationship in a particular fishing ground (exclusive of inland waters). In order to obtain compliance, they may execute an agreement that provides guidance to the members of each of the associations. In the event that one party fails to accept the other party’s proposal to hold negotiations in order to conclude such an agreement, the prefectural governor may accept the application of the proposing party, and recommend to the other party that they comply with the proposal to conduct negotiations (Article 24). After the parties to a fishing ground use agreement have reported the details of the agreement to the prefectural governor, the parties may request mediation by the prefectural governor in the event that disputes arise between the two parties concerning observance of the agreement (Article 26).

**Fisheries co-operative associations**

The Fisheries Co-operative Association Act establishes the legal relationships concerning basic matters such as organization, business and management with regard to Fisheries Co-operative Associations, which play a major role in both water use systems and promoting fisheries.

Fisheries Co-operative Associations offer credit services such as making loans and accepting deposits, supplying personal and business supplies, transporting, processing, storing, or selling the products of association members, conducting mutual aid projects, welfare projects, and education/information projects. They may also engage in providing “facilities for the protection and cultivation of marine plants and animals, facilities for the management of fishery resources, and other facilities related to the use of fishing grounds”, and providing services related to “anchorage, docking, underwater reefs, and other equipment and facilities required by member fisheries” (Article 11). Further, an association which meets specific conditions may, with the written agreement of two-thirds of the association’s members, operate its own fishery (Article 17). Any association that conducts activities related to the management of marine resources may, for the purpose of properly managing the methods, period, and other specifics concerning the harvesting of aquatic plants and animals, establish resource management rules which association members must honor. However, establishment of these rules requires the written agreement of at least two-thirds of the association members who operate the relevant fisheries, a resolution at the general meeting of the association, and the permission of the administrative government agencies (Article 15.2).

The qualifications for membership in a Fisheries Co-operative Association (Article 18) are as follows. There are three kinds of parties eligible for membership in associations related to coastal fisheries. The first are individuals who reside within the geographic boundaries of the association and who operator are employed by a fishery for a number of days each year which exceeds the minimum requirement of between 90 and 120 days as set forth in the memorandum of association. The second are fisheries production co-operatives which are located within the geographic
boundaries of the association. The third are corporations engaged in fisheries activities which maintain an office or other place of business within the association’s geographic boundaries, so long as the number of employees does not exceed 300 and the combined gross tonnage of the corporation’s fishing boats does not exceed the weight limit established by the memorandum of association, which must be between 1,500 and 3,000 tons. Parties eligible for membership in associations related to inland fisheries include individuals who reside within the geographic boundaries of the association and who operate or are employed by a fishery for a number of days each year which exceeds the minimum requirement of between 30 and 90 days as set forth in the memorandum of association, or who are engaged in the harvesting or cultivation of aquatic plants and animals in rivers for a number of days which exceeds the same minimum requirement. Membership in Fisheries Co-operative Associations may be limited to fishery operators or specific types of fishery operators.

A Fisheries Co-operative Association may designate the following parties as meeting the qualifications for membership in the association through the inclusion of the relevant provisions in its memorandum of association. This may include fishermen who do not qualify as full members according to the qualifications described above, persons who reside in the same household with a member, fishery companies/marine product processing companies/sport fishing boat operators which reside or conduct business within the geographical boundaries of the association, and other associations whose boundaries overlap, either in whole or in part, the geographical boundaries of the association. Those parties granted membership in this way are called associate members.

An association may not deny membership to any party who satisfies the stated requirements for membership, and members are allowed to withdraw from their membership in the association at any time (Articles 25 and 26).

The Fishery Production Adjustment Co-operative Act (Law No. 128, 1961) allows smaller fishery operators to establish Fishery Production Adjustment Cooperatives as organizations which voluntarily adjust the production activities of specific fisheries involved in mass catching. These co-operatives implement restrictions regarding the harvesting, transport, and unloading of aquatic animals, provide various forms of information, and conclude association agreements with parties who have business relationships with association members. When necessary, the national government may take measures to supplement such voluntary adjustments (Articles 1, 10, 19 and 69).

Other fishery promotion measures

The Minister of Agriculture, Forestry and Fisheries is in charge of establishing fishing port improvement plans. Based on these plans, the national government, local governments and Fisheries Co-operative Associations establish fishing port mending plans and carry out projects aimed at maintaining fishing ports or preventing pollution. The cabinet earmarks a budget for funds necessary to implement these projects each fiscal year, to the extent which the country’s finances will bear (Fishing Port Act (Law No. 137, 1950), Articles 4 and 17–19). The local governments which manage fishing ports establish fishing port management rules, and are responsible for properly maintaining, protecting, and operating the fishing ports according to
these rules (Articles 25 and 26). Any party wishing to dispose of fishing port facilities or conduct certain activities in the sea area or vacant public lands located in the area of a fishing port must first obtain permission from the Minister of Agriculture, Forestry and Fisheries (Articles 37 and 39).

Smaller fishery operators who face difficulty in maintaining their fishery businesses can receive urgently needed financing to rebuild their businesses. In addition, structural improvement projects are specially promoted for fisheries engaged in certain types of business activities (Fishery Reconstruction Improvement Special Measures Act (Law No. 43, 1976)).

Fishery operators or marine product processors that require long-term, low-interest financing in order to upgrade their capital equipment or otherwise modernize their businesses can obtain loans from the Agriculture, Forestry and Fisheries Finance Corporation, which is funded by the government’s financial investments funds (Agriculture, Forestry and Fisheries Finance Corporation Act (Law No. 355, 1952)). Further, in order to make funds from Fisheries Co-operative Associations and the Central Cooperative Bank for Agriculture and Forestry more easily accessible, the national government either assists the prefecture in supplementing interest, or else supplements interest directly (Fishery Modernization Fund Aid Act (Law No. 52, 1969)).

When prefectures loan funds to coastal fishery employees for the purpose of improving their business, operating conditions, and lifestyles, or to train and secure the necessary personnel to perform fishery work, the national government provides the prefectures with any necessary support (Coastal Fishery Improvement Fund Aid Act (Law No. 25, 1979)). For smaller fishery operators who have obtained loans from financial institutions, there is a program whereby the Fishery Credit Fund Cooperation will guarantee the loan, as well as a program whereby the Agriculture, Forestry and Fisheries Credit Fund will provide insurance on that guarantee (Medium and Small Fishery Loan Guarantee Act (Law No. 346, 1952)).

If smaller fishery operators suffer losses or damage to their fisheries due to unusual events or unforeseeable accidents, there is a fishery accident compensation program whereby the government and fishery mutual aid organizations, which are based on smaller fishery operators’ cooperatives, will provide compensation for such losses (Fishery Accident Compensation Act (Law No. 158, 1964)). There is also a program under which operators can receive compensation for unexpected expenses or damages through unforeseeable accidents concerning fishing boats (Fishing Vessel Damage Etc. Compensation Act (Law No. 28, 1952)).

LEGAL SYSTEMS RELATED TO ENVIRONMENTAL PRESERVATION

The Environment Basic Act (Law No. 91, 1993), which sets forth the basic provisions of measures concerning the preservation of the environment, states the fundamental philosophy as follows: the environment must be preserved properly so that both current and future generations are able to enjoy the benefits of a healthy and bountiful environment, and so that the environment, which is the foundation for the continuation of the human race, will be maintained. Preservation of the environment
must be carried out on the principles of structuring a society which can consistently grow and develop while achieving safe economic development which has minimal impact on the environment, and increasing scientific knowledge in order to prevent hindrances to preserving the environment. Furthermore, protection of the global environment must be aggressively pursued through international cooperation (Articles 3–5). Based on this philosophy, policies related to environmental preservation must be enacted and implemented on the tenets of maintaining the natural components of the environment in a good condition, ensuring the diversity of life, systematically preserving a diverse natural environment in accordance with natural and social conditions, and ensuring that all humans have ample contact with nature (Article 14).

The environment basic plan based on this law and established by the government for the purpose of promoting comprehensive and systematic programs and policies (Article 15) comprises several topics. The first is the comprehensive promotion of measures to preserve the water environment, such as reducing the environmental load at all stages of water use, and protecting the ecosystems of water areas, in order to ensure that the load on the environment does not exceed the cleansing capacity of the natural water circulation process. The second involves adopting strategies and organized cooperation to stop sea pollution, and promoting a series of measures to properly protect the exquisite nature found in sea areas, maintain the environmental preservation capabilities of tidelands and sea weed beds, and utilize coastal areas as places where humans can freely interact with nature. Finally, within the fisheries industry, the plan promotes production and cultivation fisheries and constructive fisheries oriented resource management to manage, maintain, and continuously utilize aquatic resources, and at the same time strive to protect tidelands, sea weed beds, and other vital fishery areas.

In the following pages we present an overview of the legal systems which form the basis for measures concerning the preservation of waters, the natural environment of coastal areas, and fishery areas.

Preservation of water quality

The national government is required to establish environmental quality standards to maintain water quality, as well as comprehensively, effectively, and properly implement measures necessary to ensure that such standards are observed (Environment Basic Act, Article 16). These environmental quality standards include specifications related to the protection of human health, such as mercury and PCB standards, along with specifications related to the preservation of the living environment, such as standards for pH, BOD, COD, total phosphorous and total nitrogen. Standards regarding the latter group are established separately for each water area type, designated as rivers, lakes, marshes, and ocean areas according to the specific uses of the area.

The Water Pollution Prevention Act (Law No. 138, 1970) limits the level of noxious substances or other pollutants contained in waste water discharged from factories or other business entities into water areas subject to public use (effluent
standards). With regard to factories located in regions associated with certain enclosed coastal sea areas, additional standards for areawide total pollutant load control are set forth. Factory owners must provide prior notification to the prefec-
tural governor regarding the installation/modification of certain types of facilities and equipment. At that time, and also after the facilities and equipment are put into operation, the prefectural governor may order the factory owner to comply with those standards (Articles 3–14.2). Concerning discharges of household waste water, the cities or towns located in priority areas designated by the prefectural governor are required to establish and take the necessary steps to implement plans such as improving residential waste water treatment facilities, and educating the residents. The head of such cities or towns may issue guidance, advice, or recommendations to the parties responsible for the discharge (Articles 14.3–14.9). The prefectural governor is required to constantly monitor the status of water pollution. Furthermore, in accordance with plans drafted by the prefectural governor, water quality is also assessed by the national and local governments. In cases of extreme water pollution, the prefectural governor has the power to adopt certain emergency measures (Articles 15–18).

Electric industry facilities are monitored by the Minister of International Trade and Industry (Electric Industry Act (Law No. 170, 1964)), and mining facilities are monitored by the Director of the Regional Mine Safety and Inspection Bureau (Mining Safety Act (Law No. 70, 1949)).

Prefectural governors with jurisdiction over lakes and marshes (and the sur-
rounding land areas), which have been designated by the Prime Minister as requiring the establishment of special environmental quality standards, must, in accordance with the national government’s basic policies, draft plans to protect the water quality of such lakes and marshes. The national and local governments implement the measures necessary to carry out such plans (Act Concerning Special Measures for Conservation of Lake Water Quality (Law No. 61, 1984) Articles 2–6). Owners of certain factories located within the designated areas are required to comply with the pollutant load standards and regulations established according to these plans. Prefectural governors may order such owners to take the necessary steps to achieve this compliance (Articles 7–10). For facilities which require, by cabinet order, notification from the owner prior to installation/modification (including carp breeding facilities), the prefectural governor may establish standards concerning the structure and methods of use of the facilities and order the owner to comply with the standards (Articles 15–20).

Under the Act Concerning Special Measures for Conservation of the Seto Inland Sea (Law No. 110, 1973), special measures have been adopted with regard to the Seto Inland Sea. The act states that, as a scenic resort boasting unparalleled beauty and a treasure chest of invaluable fishery resources, the Seto Inland Sea should be shared equally by all of the country’s citizens and should be preserved for later generations to enjoy as well. Toward this end, the national government has established a basic plan concerning the protection of the water quality and the preservation of the natural scenery of the Seto Inland Sea. Based on this basic plan, the governors of the 13 related prefectures are required to establish plans detailing
the steps to be carried out in each prefecture. The national and local governments then take the necessary steps to fulfill the prefectual plans (Articles 3–4.2). With regard to effluent regulations, the permission of the prefectural governor is required before installing or modifying certain types of facilities in areas bordering the Seto Inland Sea. Steps to reduce the total areawide pollutant load expressed as COD are also being taken (Articles 5–12.3). Furthermore, in order to prevent damage from, for example red tides caused by eutrophication, prefectural governors, in accordance with guidance policies established under the direction of the Director-General of the Environment Agency, may issue guidance, advice, and recommendations concerning the reduction of phosphorous and other designated substances to parties who emit such substances (Articles 12.4–12.6). Finally, the national and local governments promote and provide assistance with sewage and waste disposal facilities and other projects vital to preserving water quality, and the national government is taking steps to prevent or control the discharging of oil and develop environmental preservation technologies as well as implement relief programs for fishery operators whose fishery businesses have been harmed (Articles 15–19).

In order to prevent the use of agricultural chemicals from harming aquatic plants and animals, as well as humans and domestic animals, an agricultural chemical registration system and regulations concerning the sale and use of such products were established to promote the proper and safe level of agricultural chemical use (Agricultural Chemicals Regulation Act (Law No. 81, 1948)). With regard to organic tin compounds and other chemical substances which do not easily decompose and which are potentially harmful to human health, a system for conducting nature inspections of such substances before they may be manufactured or imported has been established, and regulations implemented regarding the manufacture, import, and use of such substances (Act Concerning the Examination and Regulation of the Manufacture, etc. of Chemical Substances (Law No. 117, 1973)).

Forests also play an important role in fishery resources by providing fish food and water rich in nutrients, as well as preventing soil erosion. Because of this, promoting the maintenance and cultivation of forests, along with greater forest productivity, is very important even from the standpoint of fisheries. The Minister of Agriculture, Forestry, and Fisheries may designate certain forests as protection forests, particularly in order to prevent erosion, gather fish, and preserve navigational landmarks. Within such protection forests, the lumbering of standing trees are restricted, and various projects to rebuild and maintain the forests are carried out (Forestry Act (Law No. 249, 1951), Articles 25–48).

Prevention of waste disposal pollution

In general, the following measures have been adopted to prevent environmental pollution resulting from waste disposal. Waste matter can be broadly classified into two categories—household waste and industrial waste. While municipal authorities are responsible for the collection, transport, and disposal of household waste, for industrial waste, these activities are the responsibility of the individual businesses
which produce the waste. However, these businesses are allowed to contract such management out to other parties, and the management of industrial waste may be carried out by municipalities or prefectures. Such management and contracting of management must be done in accordance with standards established through cabinet order, and there are special requirements which have been established concerning certain waste matter which has the potential to harm human health or the natural environment. Contractors which manage household waste must be approved by the mayor of the relevant municipality, and contractors which manage industrial waste must be approved by the governor of the relevant prefecture. In addition, private contractors which install waste treatment facilities must receive prior permission from the prefectoral governor in order to do so (Waste Treatment and Purification Act (Law No. 137, 1970)).

In order to prevent ocean pollution caused by ships, maritime facilities, and aircraft, the Ocean Disaster and Pollution Prevention Act (Law No. 136, 1970) in principle prohibits ships, maritime facilities, and aircraft from discharging oil, noxious liquid substances, or other waste matter into ocean waters. However, in certain cases exceptions will be allowed, such as discharges which comply with standards established through a cabinet order. In such cases, the party discharging the substance specially recognized by cabinet order, is required to obtain confirmation from the Director-General of the Maritime Safety Agency or other designated confirmation organ that it is in compliance with regulations. Then, the owner of the vessel discharging the waste matter authorized by a cabinet order according to the provisions of the Waste Treatment and Purification Act, must register with the Director-General of the Maritime Safety Agency the details concerning that vessel or give prior notification (Articles 4, 9.2 and 10–18).

Oil loading methods are regulated. Also, with regard to oil and noxious liquids, the vessel owner must install specified pollution prevention equipment and assign personnel to manage such equipment, and vessel captains must keep complete documents (Articles 5–9 and 9.3–9.5). Specified vessels are not allowed to navigate unless they pass Minister of Transport inspections of the vessels’ pollution control equipment and manuals for emergency measures for oil pollution control, and also comply with the conditions noted on the inspection certificate issued upon passage (Articles 17.2–17.10). Parties installing maritime facilities are required to notify the Director-General of the Maritime Safety Agency of the specifics, and the administrators of certain maritime facilities which handle oil must keep complete oil documents (Articles 18.2 and 19).

The incineration of oil, noxious substances, and waste material on board vessels and at maritime facilities is also restricted (Articles 19.2–19.9). Furthermore, the treatment of waste oil is subject to restrictions through the Minister of Transport’s approval policies (Articles 20–37). The law also contains stipulations regarding maritime disaster prevention measures and the defensive steps which are to be carried out by vessel captains, facility administrators, and discharging parties in the event that ocean water is polluted due to the discharge of oil, noxious substances, or waste material (Articles 38–42.12).
The disposal of radioactive wastes, including ocean dumping, is regulated by the Prime Minister and the Director-General of the Science and Technology Agency (Nuclear Raw Materials, Nuclear Fuel and Nuclear Reactors Regulation Act (Law No. 166, 1957) and Act Concerning Prevention from Radiation Hazards due to Radioisotopes, etc. (Law No. 167, 1957)).

Fishery damage relief

Anyone who infringes upon the rights of another party either intentionally or negligently is liable to provide compensation for any damages resulting from such act (Civil Code (Law No. 89, 1896) Article 709). In the event of death or bodily harm due to the emission of specific noxious substances contained in the waste water discharged by a factory or other facility, the owner is required to compensate for damages, regardless of whether such act was intentional or through negligence (Water Pollution Prevention Act, Article 19). The areas where Minamata Disease occurs are designated by cabinet order. Minamata Disease is caused by water pollution from organic mercury in industrial waste water. Persons who meet specific conditions regarding the disease are designated by the prefectural governor as eligible patients, and the prefectural governor, utilizing funds collected from the parties responsible for the mercury pollution, provides those patients with medical treatment, medical fees, and compensation for health injury, as well as any other necessary programs for the welfare of the victims (Pollution Health Injury Compensation Act (Law No. 111, 1973)).

Special measures have been established to provide financing for the business and living expenses of fishery operators, marine products processors, marine products distributors, and other workers, who incur damages due to the suspension of fishery operations, poor sales of marine products, or the pollution of aquatic plants and animals by mercury, polychlorinated biphenyl, or other specific substances that are recognized as posing a potential threat to the health of humans and are discharged in connection with business activities (Act Concerning Special Measures for Finance to Fishery Operator etc. Damaged by Pollution of Aquatic Animals and Plants Due to Mercury etc. (Law No. 100, 1973)).

In the event of oil pollution damage due to oil discharged or leaked from a ship, in contrast to most cases in general (Act Concerning Liability of Owner etc. of Ship (Law No. 94, 1975)), the owner of the ship is liable for the damage regardless whether it was through negligence or not. This liability is not limited in cases where oil pollution damage occurred as a result of the party's own negligence. A system for guaranteeing compensation for oil pollution damage is in place, and vessels which do not have liability insurance coverage may not transport oil in excess of a specified amount (Oil Pollution Damage Compensation Guarantee Act (Law No. 95, 1975)).

Conservation of the natural environment

Areas surrounding coasts, lakes, wetlands, rivers, and the sea which have a pristine natural environment and which require special protection can be designated as nature conservation areas by the Director-General of the Environmental Agency.
In addition, areas with natural beauty prominent enough to be considered representative of Japan’s natural scenery may be designated as national parks, and areas with natural scenery not quite meeting the level of national parks may be designated as quasi-national parks. Within these areas, specific activities are restricted and necessary facilities are installed in order to conserve the natural environment and promote the protection and proper use of the parks. Plans and projects related to nature conservation areas and national parks are determined by the Director-General of the Environmental Agency, and, in principle, such projects are carried out by the national government. Concerning quasi-national parks, on the other hand, although some plans are determined by the Director-General of the Environmental Agency, other plans and projects are determined by the governor of the relevant prefecture, and such projects, in principle, are carried out at the prefectural level. Particularly stringent regulations are implemented with regard to special areas and marine special areas which are designated within the nature conservation areas, and special areas and marine park areas which are designated within national parks and quasi-national parks (Natural Environment Conservation Act (Law No. 85, 1972), Articles 22–27; and Natural Park Act (Law No. 161, 1957), Articles 2, 10–18.2). Furthermore, prefectural governors may designate areas of particularly beautiful natural scenery as prefectural natural parks, designate special areas within those parks, and enforce the same types of restrictions enforced in national parks (Natural Park Act, Articles 2, 41 and 42).

Prefectures situated on the shores of the Seto Inland Sea may designate as natural seashore conservation areas shore areas and offshore waters which (1) are areas in which beaches, reefs, and similar natural environs near the shore are maintained, and (2) are areas which are used by the public for swimming, shell gathering, and other similar purposes, and which are recognized as being appropriate for those purposes. The prefectures may then require any party wishing to build a new structure or conduct other specific activities in such areas to provide notification of such intent, and may provide any necessary advice and recommendations to ensure the conservation and proper use of natural seashore areas (Act Concerning Special Measures for Conservation of the Seto Inland Sea, Articles 12.7 and 17.8).

In an effort to preserve endangered species of wild plant and animal life, restrictions on the capture and marketing of those endangered species (Act Concerning Preservation of Endangered Species of Wild Fauna and Flora (Law No. 75, 1992), Articles 7–33) have been enacted along with regulations concerning the protection of wildlife habitats. In other words, the Director-General of the Environmental Agency may designate habitat areas, recognized as vital to the preservation of certain species, protection areas, causing certain activities to be restricted within those areas. The Director-General of the Environmental Agency may designate special administration areas within these protection areas, and may further designate entrance restriction areas within the administration areas. Within such areas, particularly stringent restrictions are enforced. Additionally, in accordance with national plans, the national government, local governments, and other groups carry out a variety of projects intended to protect and cultivate these species (Articles 34–48).
Parties wishing to reclaim public waters including even the national government must first receive permission or approval from the prefectural governor. In such cases, the project contractor must carry out an Environmental Impact Assessment, and demonstrate that the reclamation thoroughly addresses the concerns of environmental protection and disaster prevention (Public Waters Reclamation Act (Law No. 57, 1921), Articles 2-4 and 42). With regard to the granting of permission and approval for the reclamation of public waters in the Seto Inland Sea, the prefectural governor must give adequate consideration to the Seto Inland Sea’s special status as a spectacular scenic area and a valuable source of fishery resources (Act Concerning Special Measures for Conservation of the Seto Inland Sea, Article 13).

A cabinet decision (August 28, 1984) established uniform rules regarding procedures for carrying out the Environmental Impact Assessments mentioned above with regard to specific projects in which the national government is involved. These procedures specify the drafting of a preliminary E.I.A. document, public notification and inspection, hearings, drafting of a final E.I.A. document, and so on. Various local governments have also established ordinances or guidelines concerning Environmental Impact Assessment policies.

CONSIDERATIONS AND PROPOSALS

Independent fisheries management

Japan’s legal water use system is comprised, in accordance with the Fisheries Act of 1949, of fishery rights established by prefectural governor charters, fishery permits and other restrictive and prohibitive measures by the government ministries or prefectural governors, and the operation of fishery adjustment organizations which are composed primarily of fishery operators and their employees. The continuous high levels of fishing in the waters surrounding Japan has developed as a result of this system. Implementation of fisheries oriented resource management is promoted by the Marine Fisheries Resources Development Promotion Act, while production and cultivation fisheries are promoted by the Coastal Fishing Ground Improvement and Development Act for fish farming enterprises in general, and by the Fisheries Resources Protection Act with regard to salmon and trout farming. Furthermore, in accordance with the Coastal Fishery etc. Promotion Act and various other laws concerning fisheries promotion, measures have been implemented regarding the execution, advice, guidance, and financing of a variety of coastal fishing ground improvement and development projects, and more thorough surveying, research, and testing is being encouraged.

This water use system has reflected the opinions of interested parties through the Fishery adjustment Commissions for a long period of time. However, the source of the recent issue of continuous and high level water use stems from the emphasis being placed on the promotion of independent fishery management, which is based on the mutual consent of fishery operators. With varied marine resources and a wide range of fishing methods, proper fishery management for the continuous use of these resources demands more than just limitations on the number and size of fishing vessels, regulations covering areas and duration of operations, and other forms of
public fisheries management. To better reflect the views of the fishery operators who have the biggest interest in this issue, and to ensure that the specific needs of each region are properly addressed, it is preferable to conduct independent fishery management in accordance with the mutual consent of fishery operators. The system that promotes this would consist of resource management agreements by fishery operator organizations and fishery operators, resource management rules that are to be observed by Fisheries Cooperative Association members, and fishing ground use agreements between Fisheries Co-operative Associations and the Federation of Fisheries Co-operatives with sport fishing guides and sport fishing organizations.

Independent fisheries management is much stricter than legal regulations, and is an effective means of maintaining operational systems, stabilizing the volume of catches, and stabilizing fishery management. Fish are generally caught over a large area in the open sea which makes outside surveillance extremely difficult, so maintenance of a working system necessarily depends on restrictions and mutual supervision founded on the volition of the interested fishery operators themselves. For this reason as well, it is necessary to improve management based on the mutual agreement of fishery operators. To do this, we strongly urge the organization and mutual cooperation of fishery operators.

**Protection of fishery resources and preservation of the environment**

Given such a constant and high level of use of water areas, the proper management and rational utilization of marine life resources with consideration for the environment is very important. Since the fisheries industry is essentially based upon the efficient use of there productive ability of living organisms, the sound growth and development of the fisheries industry depends not only on the preservation of those forms of life that are subject to harvesting, but also on the preservation of other forms of aquatic life, as well as the preservation of the environment which supports all of these organisms.

The legal system related to environmental protection is made up of a group of legal statutes centered around the Environment Basic Act. It is of a different pedigree than the legal system which deals with fisheries, and is only related in the sense that it deals with the water environment, the natural environment of coastal sea areas, and the preservation of fishing grounds. However, with the issue of environmental protection becoming increasingly important to fisheries today, it is now necessary to aggressively position environmental protection laws within the legal system concerned with fisheries. A system governing protected water areas is already in place, and projects related to the preservation and creation of sea weed beds, tidelands, shallow water areas, and other locations important to the reproduction of aquatic life are being promoted. Furthermore, because the protection of marine resources is an integral part of overall environmental conservation, and because it is a particularly vital issue for fisheries, fishery operators must be cast as major players in the environmental conservation struggle. In order to accomplish this, fishermen must realize that they are the main components in the water use system, and that they must actively participate in independent fishery management which is based on
mutual agreements.

In order to protect marine resources, water use other than by fisheries, such as effluence, reclamation, sand and gravel extraction, shipping lanes, and other industrial uses, residential sewage, and a variety of aquatic recreational uses (sport fishing, yachting, jet skiing, board sailing, scuba diving, etc.) must be regulated, and water use by such land-based industries and the general public should be coordinated with the fisheries. Water use by the general public also includes the preservation of scenery and other forms of environmental protection. While the protection of marine resources is one aspect of environmental preservation, fishery interests are not always the same as environmental protection interests. Accordingly, there are many cases in which fisheries should be regulated in order to protect the environment. Regarding the Seto Inland Sea area, where water use is at a particularly high level, comprehensive use coordination is promoted by the Act Concerning Special Measures for Conservation of the Seto Inland Sea, and it is hoped that such coordination will be conducted in closer accordance with the purposes of this statute in the future.

Conclusion

Concerning such coastal management, government authorities must function properly to ensure that the autonomy of both fishery operators and the general public is respected, and that the respective interests of each are coordinated and allowed to be realized. Furthermore, in order to ensure that coastal management is able to bring about sustainable development, fishermen, the general public, and government administrators must all obtain the assistance of the scientific community in order to correctly understand the facts relating to coastal management. While Japan’s legal system concerning the fisheries industry does indeed provide us with beneficial guidance relating to the governance of coastal management, there remain many issues that must still be addressed.

For this reason, we have drafted a number of proposals. These proposals are based on organization and analysis conducted in accordance with current legal considerations. In addition, as argued in the following supplementary discussion, reconstructing the respective rights of fishermen and the general public from a new perspective might also be worth trying.

SUPPLEMENTARY DISCUSSION—WATER-RELATED RIGHTS OF FISHERY OPERATORS AND THE GENERAL PUBLIC

We believe that the water use system should be restructured to promote independent fisheries management based on agreement between fishery operators, as well as to actively incorporate environmental protection system.

Although the water use system relating to fisheries is made up of public regulations which are enforced by government agencies, it is vital that fishery operators understand that they are the primary component of this system and participate more actively in it. For this reason, fishery-related rights must be appropriately structured.
Reconsideration of fishery rights

A fishery right is the right to use a specific area of public waters for a specific fishery purpose, and has the attributes of a real property right in that it allows a specific party to exclude other parties and to exercise control over a specific thing. This exclusive character, which is unique to real property rights, is recognized with regard to fixed net fishery rights and rights of demarcated fishery because owners of such rights would be unable to carry out their trade without the use of long-term fishing implements or facilities in specific, exclusively possessed waters. It is also recognized with regard to common fishery rights because the use of specific water areas for specific fishery acts is limited to members of specific fisheries co-operative associations.

Fishery rights entitle holders of such rights to conduct the fishery acts of harvesting or cultivating specific types of aquatic plants or animals. While the traditional school of thought seems to have been that the control of specific water areas based on these fishery rights applies only to the fishery acts themselves, we must start recognizing that the control of a specific water area also implies the responsibility for the maintenance of the plants and animals in the area, as well as the preservation of the fishing area environment in a state conducive to the survival of the marine life.

When a fishery right is violated, the owner of the right can demand that the violator cease the violation and prevent any future violations. It is clear that a violation of fishery rights by another party includes not only the illegal culturing or harvesting of the aquatic animals or plants within the relevant water area, but also the worsening of the fishery right holder’s harvesting conditions through damage to the breeding conditions of aquatic animals and plants and the destruction of sea weed beds or tidal lands by pollution or land reclamation within the water area. Furthermore, any excess harvesting, pollution, or reclamation in water areas other than those covered by fishery rights that directly contribute to a worsening of a fishery right holder’s harvesting conditions, should also be considered a violation of that person’s right. This is because the ocean waters are interconnected, and the constant movement of the waters and the marine life means that the fishery acts conducted in a certain water area are strongly influenced by the marine resources and environments of other water areas.

This also applies to the rights that members of fisheries co-operative associations have to engage in fishery activity. The actual benefactors of rights such as demarcated fishery, common fishery, and common-of-piscary rights owned by fisheries co-operative associations are the member fishermen themselves. All fishermen have the right to exercise this type of control over water areas, and these fishery rights and common-of-piscary rights have been created as a means of coordinating and protecting the rights of the large number of fishermen to operate their own fisheries based on the aggregate will of all of the members.
Rights of fishermen who engage in private-common use of water areas

Fisheries which are not based on fishery rights or rights to engage in fishery activity do not have real property rights, even if such fisheries have obtained administrative authorization. However, in the event of indiscriminate fishing that causes a depletion of marine resources, pollution that adversely affects fisheries, or reclamation that destroys sea weed beds or tidelands, even these fishermen should also be allowed, in some circumstances, to demand that such activities be halted. As the basis for this, we recommend that the rights of fishermen who engage in private-common use of water areas should be structured as follows.

Fishermen engage in private-common use of waters for the purpose of conducting a wide variety of fishery acts, and the principal of fishery freedom means that this private-common use of water areas should be recognized under the law. The benefits of such use are obtained not by excluding another party from conducting a similar activity, but by sharing and cooperating with other parties. In this sense it has a public quality, which makes it vastly different from real property rights. However, because these interests also have specific substance which should receive legal protection, it is necessary to structure them as a category of rights. The use of water areas prescribed by these rights should include responsibility for properly maintaining the level of marine life in the water areas, and protecting the environment so that the appropriate conditions exist for the survival of aquatic animals and plants. Acts that violate this basic premise should be considered violations of these rights, and as such should be halted.

These rights of private-common use should be recognized not only for waters directly used for fishery acts, but also with regard to natural public property such as public waters, natural seashores, reefs, and forests, as well as waters used for purposes such as recreation, sight seeing, and research. These should be called uses of natural public property which, along with being common use rights intended for the use of the air, water, soil, and other elements of the living environment of humans, should also be considered a category of environmental rights. An environmental right is often defined as “the right to enjoy and govern a good environment”. However, if one is emphasizing the common use of the environment, a better definition is “the right of every individual to engage in the use of a specific environment for a purpose which a large number of other people can co-participate, in a manner by which they can co-exist”. The specific uses and methods of use that would be included would be determined by the will of a large number of owners of the rights. In more concrete terms, this would mean customary uses, and these uses could be altered by a determination of all of the interested owners of the right. Any changes in the substance of these rights, in most instances, would have to be done through proper administrative procedures in which the participation of all those entitled to the right is ensured.

Fisheries adjustment accomplished via fishing ground planning, fishery right charters and fishery permission, the system of administrative orders from the competent government minister or the prefectural governor, and the system of guidance by the Fisheries Adjustment Commission are not simply means to establish
the details of fishery rights and chartered fisheries. Rather, they should be thought of as administrative procedures which decide on changes regarding the details of these types of use of natural public property. Furthermore, it should also be understood that they include the additional purpose of bringing about the quick and simple elimination of violations against the right to use natural public property. Accordingly, the application of these systems must adequately reflect the views of fishermen. In the event that their application is deemed improper, fishermen should be allowed, as right holders, to seek redress by initiating administrative litigation. Also, with regard to permission granted to conduct land reclamation in public water areas where proper consideration is not given to the use of this natural public property, fishermen should be allowed, as “parties with legal interests”, to be recognized as plaintiffs in initiating an action for revocation of such activity.

When a specific party is granted a fishery right or a fishery is chartered, not only is that party granted special benefits, but use by others of natural public property within the relevant water area becomes limited, with restrictions placed on the fishery acts of other fishery operators. This is not to say that the use by parties other than the right holder of natural public property for the particular water area is eliminated completely. At least, marine resources and environments necessary for the continued growth of the production capacity of fisheries should be maintained also for that water area through the use of natural public property. Therefore, Fishery rights and chartered fisheries are naturally so stipulated not to harm such marine resources and environments. Both the use of natural public property, and fishery rights which have the characteristics of real property rights, include the obligation that fisheries in other water areas are not to be harmed through excessive harvesting of aquatic life or alteration of the fishing ground environment.

If fishermen recognize that they possess not only the fishery rights and rights to engage in fishery activity which are clearly stated in the law, but also the right to engage in the private-common use of waters for fishery acts, they would probably better understand the primary role that they play in the waters use system. Furthermore, if these fishermen understand that those rights do not only apply to fishery acts, but also include the right to the protection of the marine resources and environment necessary for the continued growth of fishery production capacity, as well as the obligation to preserve those same marine resources and environment, they would be more likely to actively participate in environmental preservation efforts. This in turn could be expected to bring about even greater promotion of independent fishery management, resulting in even more effective utilization of environmental protection policies.

Establishment and coordination of use of natural public property

Waters subject to public use are used for a wide variety of purposes, including transportation, recreation, sight seeing, and research. Those actions which essentially apply to the common use of the entire general public should be included in the use of natural public property, and as such should naturally be provided legal protections.

Fishery rights, rights to engage in fishery activity, and rights of private-
common use of waters relating to fisheries are in general agreement with the
substance of these rights of use of natural public property in the sense that they
include the right to protection of a good water environment suitable for common use.
However, they are often in conflict in terms of the actual fishery acts, and thus mutual
coordination of interests is necessary.

This coordination of interests could be addressed under the fishery adjustment
system provided for by the existing law. However, because the majority of the
members of the Fishery Adjustment Commission, which performs the primary work,
are fishermen, adjustments tend to be overly generous in favor of the interests of
fisheries. In order to realize a more fair coordination of interests, it may be necessary
to establish a system of administrative procedures which makes it more likely that
coordination of interests will be conducted from a perspective that goes above and
beyond just fisheries. It goes without saying that these procedures must ensure the
participation and respect the views of the general public, who of course have the right
of use of natural public property. A system of fishing ground use agreements is
already in place, and it is our hope that this kind of system can be implemented even
more thoroughly.

REFERENCES

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