

Comparative Analysis of Fishing Rights and Resource Management Arrangements in the Circumpolar North

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7.0 Comparative Analysis of Fishing Rights and Resource Management

Arrangements in the Circumpolar North

The difficulties of devising successful and equitable arrangements to share common resources – such as fisheries – are not unique to the Ponoï. The interests of sportfishing enterprises, regional authorities, local governments, commercial food fisheries, and subsistence users clash in many parts of the globe. This chapter describes resource management arrangements (resource regimes) in other parts of the Circumpolar North. This review of the experience in Canada, Alaska, Greenland, Iceland, Scandinavia and other regions of the Russian North aims to inform Ponoï River stakeholders of approaches in place elsewhere that may be useful and to identify the strengths and weaknesses of those arrangements. We focus first on “co-management” as it is an idea spreading rapidly to increase participation of local users in management of and responsibility for resource use. We will then discuss the legal framework for resource rights, specifically fishing and river management strategies of specific countries and regions of the North.

Subsistence, aboriginal and food fisheries are the terms used in different parts of the Circumpolar North when referring to fishing by indigenous and local peoples. Hunting and fishing are the traditional ways that humans have derived sustenance and nourishment for thousands of years. In addition to providing a means of survival, fishing, hunting, and gathering activities are important culturally. Increasingly, laws recognize indigenous and local peoples' rights to harvest fish for food for their families and communities, and agreements between governmental authorities and Native peoples protect harvest rights, but how the rights are defined and who is entitled to exercise such rights often remains controversial.

Conflicts in fisheries result from the finiteness of the resource, and unlimited access to a “commons” or “common property” (of which fisheries are classic examples) may lead to overuse

(or in the case of fisheries, a population crash) often called a "tragedy of the commons."¹ Privatization of fishing rights has often been prescribed to prevent overfishing. Indeed, this is what has occurred on the Ponoï and other Kola Rivers leased to private enterprises for their exclusive use during the prime fishing season. But the "tragedy" frequently does not occur in small-scale, locally organized common property systems, even in the absence of formal rules and regulations.² Thus, privatization of the commons is not a prerequisite for protection of fish resources. It is, on the other hand, a frequent source of conflict due to prior users being excluded from access without their consent.

Historically, enclosure of the commons in Europe and Britain, including privatization of salmon streams, proved to be a hardship to the rural poor and provoked protests and the development of a culture of poaching. In the United States protection of the commons as open-access resources, on the other hand, left open the possibility for uncontrolled competition leading to resource depletion.³ Too frequently, only two options have been considered for governance of common property resources: 1) privatization of property or 2) public control over access. Research on common property systems, however, suggests that control of a common property resource by the community that depends upon the resource can be an "optimal institutional arrangement."⁴

In the case of the Ponoï River, access to fish has never been fully open, but rather was restricted in the pre-Soviet period by locally understood norms and rules. As is evident from Genetz' description of fishing on the Ponoï at the end of the 1800s (quoted in section 2.3 above), the system of fishing provided all families with food. In the Soviet period, the state asserted

¹Garrett Hardin, "The Tragedy of the Commons," *Science* 162 (1968): 1243-1248.

² See David Feeny, Fikret Berkes, Bonnie J. McCay and James M. Acheson, "The Tragedy of the Commons: Twenty-two Years Later," *Human Ecology* 18:1 (1990): 1-19.

³ Bonnie McCay, "The Culture of the Commoners: Historical Observations on Old and New World Fisheries," *The Question of the commons: the culture and ecology of communal resources* (Tucson: University of Arizona Press, 1987) 195-216.

⁴ Elinor Ostrom, "Institutional Arrangements for Resolving the Commons Dilemma: Some Contending Approaches," *The Question of the commons: the culture and ecology of communal resources* (Tucson: University of Arizona Press, 1987) 250-265.

control over fisheries and instituted a commercial fishery both at sea and at the mouth of the river. Regulation by regional authorities responded to central directives rather than to local controls and led to concerns about overfishing in the 1950s (see Section 3.5).

Government authorities and laws do not regulate completely what occurs in riparian fisheries of the Circumpolar North, many of which are remote from government centers. Before the introduction of sportfishing on the Ponoï, state management encouraged legal over-exploitation of the resource and tolerated illegal harvesting by individuals for their own use. When the Murmansk Oblast authorities established the fish reserve on the middle and lower Ponoï in the 1980s, they attempted to protect fish stocks by prohibiting subsistence fishing, even by locals, and charged fines creating conflict with local people of Krasnoshchelye and Kanevka, but government authorities did not have the personnel and resources to monitor and enforce the regulations. By privatizing rights to the resource in the 1990s through exclusive licenses, the Murmansk authorities closed access to fishing by local people. Fish inspectors began patrolling the area, enforcing a regulatory permit system. While this ensured protection of the salmon stocks, closing stretches of the Ponoï River to traditional and local users without their meaningful consent, requiring locals to obtain a permit each time they want to fish, and charging them a permit fee have led to the conflict on the Ponoï and contributed to local hardship conditions.

7.1 Co-management

Over the last twenty years, resource managers in Canada and other countries have pioneered an approach known as co-management as a tool for conflict resolution and management of fish and game resources. In essence, co-management occurs when governments share decision making power with indigenous and local peoples and user groups in exchange for their cooperation and assistance in resource management.⁵ There is no single form of co-

⁵ Gail Osherenko, "Can Comanagement Save Arctic Wildlife?" *Environment* 30:6 (1988).

management. A review of the literature on a variety of fisheries co-management arrangements in Japan, Norway, Philippines, Canada, Zimbabwe, and the United States found “a hierarchy of co-management arrangements from those in which the fishers are merely consulted by the government before regulations are introduced, to those in which fishers design, implement and enforce laws and regulations with advice and assistance from the government.”⁶ What distinguishes co-management from systems of either government management or community-based management “is that co-management is a middle course between pure state property and pure communal property regimes. ...Co-management involves the recognition and legitimization of traditional or informal local-level management systems. A certain degree of community-based resource management is a central element....”⁷ Understandably, co-management often involves substantial commitment and investment of time from both user groups and government authorities to take into account different worldviews and priorities.⁸ Co-management requires understanding and employing both science and traditional ecological knowledge to meet research goals. By devolving authority to more local levels of administration, decentralizing decision making, and delegating powers to local levels of government or even to user organizations through co-management, government authorities may increase compliance with rules restricting harvest, reduce conflict, and often expand and improve data gathering and scientific research.⁹

United States government agencies have employed co-management in Alaska to reduce conflicts over hunting of waterfowl, bowhead whales, and walrus. Formal co-management

⁶ Robert S. Pomeroy and Fikret Berkes, “Two to tango: the role of government in fisheries co-management,” *Marine Policy* 21:5 (1997): 466. The commercial salmon fishery of Old Harbor, Alaska, is an example of an informal, consultative arrangement; it was studied by one of the co-authors of this chapter, Deborah B. Robinson, “Changing Relationships to Marine Resources: The Commercial Salmon Fishery in Old Harbor, Alaska,” MA Thesis, McGill University, 1996.

⁷ Pomeroy and Berkes, 1997, 467.

⁸ Gary P. Kofinas, “The Costs of Power Sharing: Community Involvement in Canadian Porcupine Caribou Co-Management,” Ph.D. Thesis, University of British Columbia, 1998.

⁹ Examples and analyses of many of these may be found in Pomeroy and Berkes, 1997; Gail Osherenko *Sharing Power with Native Users: Co-management Regimes for Native Wildlife*. CARC Policy Paper 5. Ottawa: Canadian Arctic Resources Commission, 1988b; Osherenko 1988a; and Evelyn Pinkerton, *Cooperative Management of Local Fisheries* (Vancouver: University of British Columbia Press, 1989).

arrangements for fish and game in Alaska fall on a continuum from cooperative arrangements to legal agreements. Formal legal agreements include the Yukon-Kuskokwim Delta Waterfowl Management Plan and agreements made by agencies of the U.S. government with the Eskimo Walrus Commission and the Alaska Eskimo Whaling Commission. These agreements consist of a contract between a U.S. government agency and an organization representing the relevant indigenous peoples (usually referred to as Alaska Natives) authorizing the Alaska Native organization to carry out specific responsibilities of management including allocation of harvest quotas (if any) among villages. Discussion of research plans and priorities occurs within the Native run organization among Native village representatives. While the form may appear to be that of the dominant society, meetings are more likely to be conducted in Native languages and in accord with Native customs and norms of behavior. These agreements are widely recognized as having improved conservation and management of the targeted species while reducing sharp conflicts between government authorities and Alaska Native users.¹⁰

The number and range of co-management regimes in North America have grown from a handful to hundreds, and the concept of government authorities sharing power with Native organizations (in Canada called First Nations) has spread throughout North America and beyond. The concept and practice of co-management, if not the exact term, is much older. An early example of successful fisheries co-management arose in Norway in the 1890s when the Norwegian government devolved management power to the cod fishermen of the Lofoten Islands off of Norway's northwest coast.¹¹ Cases of fisheries co-management from developed and developing countries in both hemispheres have been studied and analyzed, providing a rich body of literature and examples involving indigenous and non-indigenous user groups, some engaged in small-scale, local fisheries, and others in large commercial fisheries.¹² While there is to date

¹⁰Richard A. Caulfield, "Alaska's Subsistence Management Regimes," *Polar Record* 28:164 (1992): 23-32; Osherenko, 1988a.

¹¹ Svein Jentoft, "Fishermen's co-management: the case of the Lofoten Fishery," *Human Organization* 48 (Winter 1989): 355-65; Svein Jentoft, "Fisheries co-management: Delegating government responsibility to fishermen's organizations," *Marine Policy* 13:2 (1989): 137-54.

¹² See Sevaly Sen and J. Raakjoer Nielsen, "Fisheries Co-management: a comparative analysis,"

no systematic or uniform evaluation of these that would enable us to formulate a definitive recipe for success, the variety of experience with co-management should encourage Russian authorities to develop their own models for sharing decision-making and management responsibility with indigenous and local resource users.

First Nations in Canada have increasingly sought control over renewable resources including fisheries. In response, Canadian land claims settlement agreements have since 1975 incorporated co-management of fish and wildlife resources. The most recent of these, the Agreement for the Nunavut Settlement Area, accords the Nunavut Wildlife Management Board (NWMB), a co-management board, regulatory (and not just advisory) powers.¹³ The success of co-management is evident in reduced conflict between users and managers, and increased cooperation of user groups in research, management, and compliance. The fact that co-management has been so widely accepted in the Canadian North demonstrates its acceptance by both user groups and management authorities.

Co-management regimes range from formal agreements signed by government authorities and First Nations organizations, to informal cooperative arrangements in which a government manager works closely with local user groups without a formal written agreement. A recent study¹⁴ compared user involvement in caribou management systems in Canada and Alaska and attempted to measure management effectiveness in each system. The study hypothesized that the more formal Canadian structure employing a co-management board (usually constructed with equal representation of Native users and government officials) would produce greater cooperation between users and managers and greater appreciation of each others' viewpoints than the Alaskan system employing local advisory councils at the village level to advise and inform federal management officials. Researchers found, however, that "interaction between

Marine Policy 20:5 (1996): 405-18.

¹³ Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty The Queen in Right of Canada: Ottawa: Indian and Northern Affairs Canada, 1993, 171-173.

¹⁴ Jack Kruse, Dave Klein, Steve Braund, Lisa Moorehead, and Bill Simeone, "Co-Management of Natural Resources: A comparison of Two Caribou Management systems," *Human Organization* 57: 4 (Winter 1998).

traditional users and government managers [was] higher in Alaska, because, to a greater extent than in the [Canadian] system, the area biologists live in user communities.”¹⁵ While the study identified potential benefits of a joint user-manager board, the critical factor in effective management appeared to be frequent and repeated visits by biologists to user communities or the presence of a government biologist living in the community and regularly interacting with users.¹⁶ Participants in a 1995 Circumpolar Conference on Aboriginal People and Co-management Practice identified the problem of linkage between the Nunavut Wildlife Management Board and the 27 communities in the settlement region as a significant obstacle in determining research needs and priorities.¹⁷ They also concluded that informal co-management arrangements may succeed where formal arrangements have failed.¹⁸ For co-management regimes to be successful (Osherenko concluded in 1988), “administrators and indigenous users must form partnerships in which user groups acquire a stake in, and a sense of responsibility for, the success of the regime.” Three ingredients are key to forming such partnerships:

- the government agency must grant users a decision-making role in shaping and operating the regime from research design to enforcement. ...
- the regime must gain the support of native villages. ... [and]
- the regime must remove cultural and linguistic barriers to native user participation.¹⁹

More recent case studies based on a longer time period and more cases emphasize the importance of these elements while elaborating others.²⁰

¹⁵ Kruse et al., 452.

¹⁶ Kruse et al., 457.

¹⁷ "Circumpolar Aboriginal People and Co-management Practice: Current Issues in Co-management and Environmental Assessment," proceedings of conference held at Inuvik, NWT 20-24 Nov. 1995, (Calgary, Alberta: Arctic Institute of North America 1996): 40. See also www.grida.no/caff/comanag.htm.

¹⁸ "Circumpolar Aboriginal People and Co-management Practice," 1996, 95.

¹⁹ Osherenko, 1988a: 32, 33.

²⁰ For a discussion of conditions for successful co-management of fisheries, see Evelyn W. Pinkerton, "Local Fisheries Co-management: A Review of International Experiences and Their Implications for Salmon Management in British Columbia," *Canadian Journal of Fish and Aquatic Science* 51 (1994): 2363-78, 2372-74. Kofinas, 1998, 24-26, provides a nuanced discussion of perspectives on co-management encapsulated in four "images" of power sharing: decentralization, convergence, compromise, and community burden.

Detailed surveys of users and managers in the Kruse study revealed that wide disparities in the values and views of users and managers persist with regard to appropriate management techniques and tools, harvest practices and interpretation of data. A somewhat surprising result of this study, at least to the non-indigenous researchers, was the degree of differences in opinion that remained despite co-management. This is not to conclude that the process is a failure. Co-management can be viewed as a form of social learning: the mutual understanding that results from the cooperative process may reduce conflict and build communication links that will help to avert future management crises.

7.2 Canadian Comprehensive Claims Agreements and Co-management

The extensive co-management arrangements in the Arctic regions of Canada discussed in this section provide the most useful models for the Kola Peninsula and the Russian North, and are generally regarded as successful examples of cooperation between First Nations and governments in the Circumpolar North. The comprehensive claims agreements reached in 1985 and in the 1990s for Arctic settlement areas (Nunavut, Gwich'in and Inuvialuit) guarantee the indigenous residents significant rights regarding access to and management of renewable resources. These Arctic settlement areas do not have large commercial fisheries, but Arctic char is an important subsistence resource and the occasional target of adventurous sport fishers. At this time, conflicts between sport and subsistence fishing are minimal. Some of the key provisions of these co-management regimes, as well as provisions of the 1975 agreement for James Bay and Northern Québec, are discussed below. A discussion of the legal background that set the stage for these comprehensive claims will follow as well as new developments in Canadian courts regarding indigenous rights and a discussion of the fisheries regimes for areas of Atlantic and Pacific Canada where comprehensive claims negotiations have moved more slowly and where competition among fishing interests (aboriginal, commercial, and recreational) have been more acute.

Nunavut

Nearly one quarter of the land area of Canada is now managed under terms negotiated by the government with Inuit.²¹ On April 1, 1999, a new semi-autonomous territory – Nunavut – replaced the Government of the Northwest Territories (NWT) in the eastern, central and high Arctic region of Canada.²² Within Nunavut, Inuit are accorded priority to harvest fish and wildlife for personal, family and community use over sport and commercial operations, subject to restrictions for purposes of conservation. In exchange for ceding aboriginal title, the Inuit of Nunavut are to receive fee simple title to 16 percent (137,000 square miles) of the settlement area including some subsurface rights and a variety of other constitutional rights and benefits. These include rights to harvest subsistence resources, priority in establishing sport and commercial fish and wildlife ventures, and a strong voice in management of renewable resources through co-management boards.²³

The 1993 Nunavut Agreement created five co-management bodies that accord Inuit a significant role in management decisions regarding fish and wildlife, water, land, mineral and hydrocarbon resources, and industrial development. The boards should improve management through the use of traditional ecological knowledge (TEK) and local observation integrated with scientific research and western management techniques. Government members of the co-management boards will not be able to fall back on their ministries as in the past, since they will not have the power to override the board's decisions.²⁴ The body overseeing fisheries is the Nunavut Wildlife Management Board (NWMB). It has nine members: four Inuit appointees, four federal appointees, and a chairperson appointed by the Governor in Council (a federal official) based on

²¹ Nunavut Land Claims Act, N-28.7 (1992, c.29).

²² Nunavut Act, Chapter N-28.6 (1993, c.28).

²³ *Agreement Between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada* (Ottawa: Minister of Indian Affairs and Northern Development and the Tungavik Federation of Natives [hereafter *Nunavut Agreement*], 1993) 171-3; and Terry Fenge, "The Nunavut Agreement and Sustainable Development in the Canadian Arctic and Circumpolar World," paper presented at the Conference on Indigenous Politics and Self-Government, University of Tromsø, Norway 1993, 1-16

²⁴ Fenge, 1993.

nominations of the NWMB. Of the four federal members, three are appointed by the Governor in Council on the advice of the Minister responsible for Fisheries and Oceans, the Minister overseeing the Canadian Wildlife Service, and the Minister of Indian Affairs and Northern Development, and one is appointed by the Commissioner-in-Executive Council of Nunavut. Hunters and Trappers Organizations and Regional Wildlife Organizations are responsible for much of the local harvest management.²⁵

The Gwich'in Settlement Area

The Gwich'in Comprehensive Land Claim Agreement of 1992 granted Gwich'in fee simple title to approximately 22,329 square kilometers (8,622 square miles) of land along the Yukon Border in the NWT. Approximately 19 percent of that land includes subsurface rights. Under the Gwich'in settlement, the government will retain ultimate jurisdiction over fish and wildlife but participate in the Gwich'in Renewable Resources Board, a co-management body. Six members and six alternates sit on the Renewable Resources Board: the Governor in Council and the Executive Council of the Government of the NWT choose these members, which must include three members and three alternates from nominees put forward by the Gwich'in and by the government. The seventh board member is the chairperson who must be a resident of the settlement area agreed upon by the government.²⁶

Objectives of the Gwich'in claim concerning fisheries include protecting future rights for Gwich'in to fish, providing the Gwich'in with exclusive and preferential rights to harvest, giving members access to economic benefits of the resource, conserving the resource, involving the Gwich'in in management, and dealing fairly with non-Gwich'in who wish to use resources in the settlement area. The Gwich'in Tribal Council has the right of first refusal concerning guiding and

²⁵See *Nunavut Agreement*, 1993, 178 and Fenge, 1993, 28, 46-8.

²⁶*Comprehensive Land Claim Agreement Between Her Majesty the Queen in Right of Canada and the Gwich'in as Represented by the Gwich'in Tribal Council*, hereafter *Gwich'in Agreement* (Ottawa: Gwich'in Nation and Indian and Northern Affairs, Canada, 1992) A2, 81, 43, 56.

outfitting licenses for sportfishing.²⁷ Similar rules regulate caribou hunting and caribou habitat management for the Gwich'in,²⁸ who traditionally rely primarily on caribou for food. Gwich'in members sit on the Porcupine Caribou Management Board, which is responsible for the herd's management in Canada, and on the International Porcupine Caribou Board, which oversees transboundary management issues in Canada and Alaska. Members of both boards include representatives from the Canadian federal government, the NWT, Gwich'in and Inuvialuit peoples, and Yukon Indians.²⁹

Inuvialuit Settlement Region

Within the Inuvialuit Settlement Region, the harvest of country food makes a "significant contribution to the household economy."³⁰ The Inuvialuit Final Agreement of 1985 granted exclusive or priority use to Inuvialuit residents for the harvest of fish and wildlife, subject to conservation, and established co-management regimes for these resources. The Final Agreement gives Inuvialuit the right to sell, trade or barter fish to other Inuvialuit, other Natives, and anyone else who is not legally prevented from buying the fish. Non-Inuvialuit persons may fish in the region at the discretion of the Inuvialuit after registering with the local Hunters and Trappers Committee. Non-exclusive sport and commercial access by outsiders is allowed in waters open to fishing with the proper government licenses and registration with the Inuvialuit Fisheries Joint Management Committee.³¹

Sportfishing and hunting lodges as well as other commercial developments that could affect fish or caribou, must be approved by an Environmental Impact Screening and Environmental Impact Review Process. Screening Committees consist of seven permanent

²⁷*Gwich'in Agreement*, 1992, 43.

²⁸ *Gwich'in Agreement*, 1992, 54.

²⁹Porcupine Caribou Technical Committee, "Sensitive Habitats of the Porcupine Caribou Herd," (USA and Canada: International Porcupine Caribou Board, 1993).

³⁰Peter Usher, "Sustainable Use: the Key to Conservation in Canada's Western Arctic," paper presented at the Third International Wildlife Law Conference, Washington, D.C., 31 Mar. 1998.

³¹Usher, 1998, 7, 26, 29

members: three appointed by the Inuvialuit, three appointed by Canada including one each from the governments of the Yukon Territory and the Northwest Territories, and a Chairperson appointed by Canada.³² The Inuvialuit Environmental Impact Screening Committee processes more than 50 development proposals per year, receiving input from environmental impact statements, local community plans, hunters and trappers committees, and various co-management committees. Large scale or controversial projects are referred to the higher tier co-management body, the Environmental Impact Review Board.³³ Commercial sportfishing operations in the Inuvialuit Settlement Region must pass the environmental screening process before permits are granted.³⁴ Decisions regarding subsistence fish quotas, sport and commercial fishing are made by the Minister of Fisheries and Oceans (DFO) in Ottawa with recommendations from the Inuvialuit Fisheries Joint Management Committee.³⁵

James Bay and Northern Québec

The James Bay and Northern Québec Agreement dates to 1975. The co-management body responsible for fishing is the Hunting Fishing and Trapping Coordinating Committee. The Coordinating Committee consists of twelve members – three each from Inuit and Cree constituencies, three from the province and three from the federal government. Settlement lands are divided into three categories: lands on which Natives retain traditional rights to fish, hunt and trap but which otherwise are treated as public lands under the administration of Québec; lands upon which Inuit and Cree have exclusive hunting, fishing and trapping rights, but which may be developed at the discretion of the province so long as replacement lands are provided to Inuit and

³²*The Western Arctic Claim: The Inuvialuit Final Agreement* (Ottawa: Indian and Northern Affairs Canada, 1985); Porcupine Caribou Technical Committee (1993), and Brian Johnson of the Inuvialuit Wildlife Management Advisory Council, telephone interview with Deborah Robinson, 9 Apr. 1998.

³³ Michael P. Robinson and Karim-Aly S. Kassam, *Sami Potatoes: Living with Reindeer and Perestroika* (Calgary, Canada: Bayeux Arts 1998) 25-6.

³⁴ *Inuvialuit Final Agreement*, 1985 and Johnson, 1998.

³⁵ Section 14 (62) of the Inuvialuit Final Agreement, 1985.

Cree; and lands in the vicinity of Native communities that operate as self-administered municipalities and within which Natives hold exclusive hunting, fishing and trapping rights.³⁶ As the first of the comprehensive claims agreements in Canada, this agreement set important precedents for the later agreements; more recent agreements for Nunavut and for the Gwich'in region granted more extensive rights to land and resources as well as more useful and effective models of co-management for the indigenous population.

7.3 Canadian Fisheries Management and Aboriginal Rights

The effectiveness of management of Canadian fisheries in the territories of First Nations (aboriginal bands) range widely. In some fisheries, stocks are in serious decline, and communities have limited harvest rights and little input into management. Aboriginal groups exert varying degrees of control over fisheries: in large part the level of control depends on whether a settlement has been reached in comprehensive claims negotiations. In order to understand the context in which co-management developed in Canada, it is necessary to look at the evolution of aboriginal rights in Canadian court decisions and the Constitution Act of 1982.³⁷

Under the Canadian Constitution, the federal government is responsible for the management and conservation of fish.³⁸ In the provinces of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island and Newfoundland, and in the Yukon and Northwest Territories (and now Nunavut) the federal government (Department of Fisheries and Oceans) manages inland fisheries. Federal regulations may be superseded by certain provisions of provincial or territorial regulations in the areas listed above or by the Aboriginal Communal

³⁶*The James Bay and Northern Québec Agreement*: Éditeur officiel du Québec, 1976: 367-93, XVI-XVII.

³⁷ Constitution Act, 1982 (79). Key sections of this Act (the Canadian Charter of Rights and Freedoms, section 15, and Rights of the Aboriginal Peoples of Canada, section 35) as well as other laws of Canada, Alaska, Norway and Finland pertaining to indigenous rights have been translated into Russian and appear in *Legal Status of Indigenous Peoples of Circumpolar States [Pravovoi Status Korennykh Narodov Pripolyarnykh Gosudarstv, Materials to the Conference. Moscow 26-28 February 1997]*. Moscow: People's Friendship University of Russia, 1997.

³⁸ Constitution Act, 1982.

Fishing Licenses Regulations.³⁹ The provincial and territorial governments license sport fishing, and additional permits may be required in special management areas and settlement regions.⁴⁰

7.3.1 Aboriginal fishing rights in Canada

In a 1973 landmark decision,⁴¹ a majority of the Supreme Court of Canada found that aboriginal title had existed in British Columbia, although they disagreed on the subsequent question of whether such title had been extinguished.⁴² The case for the first time in Canada raised the possibility of unextinguished aboriginal title⁴³ and laid the foundation for comprehensive land claims negotiations.

Nine years later, the Canadian Constitution Act of 1982 recognized aboriginal rights as the supreme law of the land. Section 35 (1) states that "the existing aboriginal and treaty rights of aboriginal peoples of Canada are hereby recognized and affirmed." Following the 1982 repatriation of the Constitution from Great Britain, First Nations have focused on demonstrating the existence of their particular claims to aboriginal rights to land and resources, including fisheries, and showing that these have not been legally extinguished.

In 1990 the Supreme Court of Canada overturned a decision of the highest court of the Province of British Columbia that held that the regulation of fisheries implied an extinguishment of aboriginal fishing rights. The Canadian Supreme Court decision, Ronald Edward Sparrow v. Her Majesty the Queen,⁴⁴ addressed whether Section 35(1) of the Constitution Act of 1982

³⁹ Fishery (General) Regulations (SOR/93-53) P.C. 1993-186 4 February, 1993, Aboriginal Communal Fishing License Regulations, SOR/93-333, s. 2; SOR/94-296, s. 1.

⁴⁰ Fishery (General) Regulations, 1993.

⁴¹ Calder v. Attorney General of British Columbia, [1973] S.C.R. 313; [1973] 4 W.W.R. 1 (S.C.C.); 34 D.L.R. (3d) 145 (S.C.C.)

⁴² Peter Cummings, "Canada's North and Native Rights," *Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada*, Bradford W. Morse, ed. (Ottawa: Carleton University Press, 1985) 707.

⁴³ See Laura Cameron, "The Aboriginal Right to Fish," <http://web20.mindlink.net/stolo/aborigin.htm> Sto:lo Curriculum Consortium, Sto:lo Nation. Updated May 1996 (1 Jun. 1999).

⁴⁴ 1 S.C.R. 1075 (1990).

limited Parliament's power to regulate aboriginal fishing. The Court held that the Constitution Act affirms aboriginal fishing rights and that the Canadian Fisheries Act did not extinguish these rights. Thus, the Court recognized the subsistence, social and ceremonial rights of the Musqueam Band in British Columbia.

In Sparrow, an indigenous individual had been charged under the Fisheries Act of 1970 with the offense of fishing with a drift-net longer than permitted by the terms of an Indian food fishing license that had been issued to the Musqueam Band. The individual claimed that the regulation was invalid because the Band had an aboriginal right to fish for food, particularly salmon, in the area that could not be limited by terms in the license. The Musqueam band showed that it had existed in the area from time immemorial and that salmon fishing from the area in question had been and continued to be an integral part of the Band's life, thus proving the existence of the Band's aboriginal fishing rights. The Court considered whether the legislation restricting net length was justifiable on the basis of conservation or resource management. In its holding, the Court emphasized the constitutional nature of the aboriginal (food) fishing rights and required that any allocation among users heed the following priority: (1) the conservation of the fishery, (2) the aboriginal right to take fish for food, social and ceremonial purposes, (3) if established, an aboriginal right to take fish for commercial purposes, and (4) commercial and sports fisheries. The decision limited, for the first time, the power of the federal government in Canada to regulate an aboriginal food fishery.⁴⁵

In a later case, the Supreme Court, however, has been reluctant to recognize and affirm an aboriginal priority for commercial fishing. In Her Majesty the Queen v. Dorothy Marie Van Der Peet (1996),⁴⁶ the Supreme Court ruled that, despite accounts of trade in salmon pre-dating

⁴⁵ See Michael C. Blumm, "Native Fishing Rights and Environmental Protection in North America and New Zealand: A Comparative Analysis of Profits a Prendre and Habitat Servitudes," *Wisconsin International Law Journal* 8:1 (1989): 1-50; Cameron, 1999, and M.H. Thomas, "In the Provincial Court of British Columbia: Regina v. John Martin Cummins," *British Columbia Aboriginal Fisheries Commission*: <www.bcafc.org/docs/cummins.html> (11 Jun. 1998).

⁴⁶ 2 S.C.R. 507 (1996).

the establishment of the province, salmon caught in an aboriginal food fishery could not be sold.⁴⁷ Sale of salmon in British Columbia (B.C.) is a threat to a large and troubled commercial fishery. Commercial fisheries take about ninety percent of B.C.'s salmon catch, and since their early days have impaired aboriginal fisheries and devastated salmon stocks.⁴⁸ Aboriginal and sports fisheries account for approximately equal portions of the remaining ten percent of salmon harvested in B.C. First Nations in the province profit little from sportfishing, although the potential for development of Native lodges and guiding operations is good.⁴⁹

In December 1997, the Supreme Court of Canada returned to the issue of the existence of aboriginal title in British Columbia, handing down a landmark decision that such title had never been extinguished, Delgamuukw v. British Columbia.⁵⁰ Overturning lower court decisions, the decision recognized the validity of oral history as documentation of Native claims to land and resources. The court called for new negotiations rather than further litigation to resolve outstanding issues paving the way for a settlement that may, like those in Nunavut and elsewhere, protect aboriginal fisheries and produce co-management arrangements. In the first six months following the decision, the provincial government exercised caution, as demonstrated by its 1998 policy to ensure respect for aboriginal rights:

To fulfill its legal obligations as discussed in the Delgamuukw decision, the province, when making decisions about activities on Crown land, must make its best efforts to first determine if aboriginal rights exist in that area and then determine whether the proposed activity would infringe upon those rights.

.... That means if you are applying to the province to authorize some activity on Crown land, part of the application process will likely involve the provincial government's need to satisfy the legal obligations established by

⁴⁷See Cameron, 1999 and R. v. Cummins, [1998] B.C.J. No. 125.

⁴⁸Terry Glavin, *Dead Reckoning* (Vancouver: Greystone Books, 1996); and Diane Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993).

⁴⁹Glavin, 1996.

⁵⁰Delgamuukw (Uukw) v. British Columbia [1997] 3 S.C.R. 1010. Text on the Internet at http://www.droit.umontreal.ca/doc/csc-scc/en/pub/1997/vol3/html/1997scr3_1010.html (1 Jun. 1998); Anthony DePalma, "Canadian Court Ruling Broadens Indian Land Claims," *New York Times* 12 Dec. 1997: A3.

the Delgamuukw decision on aboriginal rights. The ministry responsible for the application will make sure this requirement is met.⁵¹

First Nations still wield little actual power or jurisdiction over commercial, sport or even aboriginal fisheries in British Columbia, and the Delgamuukw decision is likely to influence that only indirectly through future land claims.⁵²

The Department of Fisheries and Oceans implemented the Constitution Act and Supreme Court decisions in the Aboriginal Communal License Regulations adopted in 1993⁵³ under the authority of the Fisheries Act of Canada.⁵⁴ The regulations called for creation of an "Aboriginal Fisheries Strategy" (Strategy). Consistent with Sparrow, the regulations accord aboriginal fishing priority over other uses after conservation.⁵⁵ Under the Strategy, First Nations have a "right of consultation," which means that the Department of Fisheries and Oceans must communicate with the affected aboriginal group whenever there is a possible infringement on aboriginal fishing rights or upon "the productivity of fish stocks upon which aboriginal rights may be asserted."⁵⁶ The Department credits the Strategy with providing a greater aboriginal role in fisheries management and harvesting while "stabilizing" fisheries as evidenced by better monitoring of aboriginal fishing, improved enforcement, more selective fishing, fewer protests and confrontations, and less litigation. Each year since 1992, 125 agreements have been signed by the Department of Fisheries and Oceans and groups in Pacific and Atlantic regions of Canada and Québec in order to conform to the Aboriginal Fisheries Strategy.⁵⁷ Since the ratification of the Aboriginal Communal Fishing License Regulations in 1993, numerous agreements throughout Canada have increased First Nations' involvement in fisheries management.

⁵¹For complete policy see British Columbia Ministry of Aboriginal Affairs, "Aboriginal Rights and the Delgamuukw Decision," <http://www.aaf.gov.bc.ca/aaf/pubs/abrights.htm> updated December, 1997 (5 Jun. 1999).

⁵² Terry Glavin, "Re: sportfish rules," e-mail to Deborah Robinson, 14 May 1998.

⁵³Aboriginal Communal Fishing Licenses Regulations (SOR/93-332) P.C. 1993-1318, 16 Jun. 1993.

⁵⁴Fisheries Act, R.S.C. c. F-14 (1992).

⁵⁵ See *R. v. Cummins*, [1998] B.C.J. No. 125, or Thomas, 1998.

⁵⁶Glavin, 1998.

⁵⁷Dept. of Fisheries and Oceans, Canada, "Aboriginal Fisheries Strategy," http://www.dfo-mpo.gc.ca/communic/backgrou/1997/aborig_e.htm (14 Jun. 1998).

In British Columbia and Yukon, dozens of agreements with different Indian bands describe the framework for consultations with First Nations, allocate of numbers of salmon each year to bands, define management tasks including data gathering by band members, and determine the amount of federal funding to be provided for First Nations' participation.⁵⁸ A sport fish advisory board organized by the Department of Fisheries and Oceans for the Fraser River has discussed concerns of First Nations people such as insufficient monitoring, the conduct of anglers towards indigenous people and problems with litter. As of an April 1999 meeting, however, no First Nations representatives sat on the board (which is composed of representatives from government, anglers and the sport fishing industry), but appointment of an indigenous member was being discussed.⁵⁹

The Delgamuukw decision is likely to give added impetus to comprehensive claims negotiations with First Nations of British Columbia, and to increase the participation of indigenous peoples in fishery management.

7.3.2 Atlantic Canada: recreational and subsistence fishing conflicts

Federal moratoria and license buyouts of commercial salmon fisheries in the Atlantic provinces have ended Canadian harvest of Atlantic salmon at sea, most recently with an agreement in June 1998 to close the Labrador fishery.⁶⁰ Aboriginal fishers in Labrador harvested salmon for food and ceremonial purposes; they also constituted a majority of Labrador's commercial salmon fishers. Recreational angling brings an estimated 550 tourists annually to the region (roughly _ of the number of tourists that the camps on the Kola leased to foreign

⁵⁸See DFO, 1998. BC and Yukon Aboriginal Fisheries Agreements. <http://www-ops.pac.dfo-mpo.gc.ca/afs/> updated 3 Jun. 1999, (5 Jun. 1999).

⁵⁹ DFO April 1999, "Fraser River Sport Fish Advisory Board Communications Working Group," <http://www-ops.pac.dfo-mpo.gc.ca/frd/Sport/CWG.htm> (5 Jun. 1999).

⁶⁰NASCO, "North Atlantic Salmon Conservation Organization," paper presented at the NASCO Fourteenth Annual Meeting, Ilulissat, Greenland, 1997, and NOAA Public Affairs, <releases@hulkhovis.rdc.noaa.gov> "U.S. Achieves Conservation Objectives at Recent International Meeting on Atlantic Salmon," press release NOAA 98-040, 6/23/98, which details the agreement worked out at a meeting held in Edinburgh, Scotland 8-12 Jun. 1998 by NASCO.

enterprises can accommodate) and provides approximately 100 jobs. Recreational bag limits were reduced from 15 in 1990 to 6 in 1996. The Department of Fisheries and Oceans is working with the provincial government to reduce mortality from angling. The agency also recognizes its obligations to aboriginal peoples in Labrador, and states it "will work with aboriginal groups to monitor food fisheries and will involve them in cooperative programs to understand stock status."⁶¹

Websites for the Department of Fisheries and Oceans in Québec (the Laurentian Region) do not specifically mention the Aboriginal Fishing Strategy or Aboriginal Communal licensing. They claim that the agency:

... meets its responsibilities with respect to Native fisheries and fishing rights. While awaiting the results of ongoing negotiations, it has entered a number of co-management agreements with Native communities which harvest marine species for subsistence as well as for social and ceremonial purposes.⁶²

Significantly, the beluga fishery in Québec has been managed since 1982 on a co-management basis.⁶³ The success of this co-management arrangement is due, in large measure, to the commitment over many years of individuals within the Department of Fisheries and Oceans who have sought the input of Inuit hunters primarily through the local hunting and trapping organizations.

In 1996, a variety of sportfishing stakeholders attending a workshop on the future of New Brunswick sportfishing recommended that the governments of New Brunswick and Canada adopt cooperative management plans for individual watersheds in the province. Under the proposal, aboriginal communities would be represented on a board with stakeholders representing conservation interests, outfitters and anglers, and forestry and mining industries.

⁶¹ For 1994 estimates, see Dept. of Fisheries and Oceans, Canada, "The Labrador Salmon Fishery," <http://www.dfo-mpo.gc.ca/communic/backgrou/1997/hq26el.htm> (11 Jun. 1998).

⁶² DFO Laurentian Region Fisheries, <http://www.qc.dfo-mpo.gc.ca/en/peche/peche.htm> (5 Jun. 1999).

⁶³ DFO Maritime Region, "The Fisheries Management Partnering Concept," http://www.gfc.dfo.ca/gulffish/gestion_e.htm 1998 (5 Jun. 1999). See also Gail Osherenko, *Sharing Power with Native Users: Co-management Regimes for Native Wildlife*. CARC Policy Paper 5. Ottawa: Canadian Arctic Resources Commission, 1988b.

Federal and provincial governments had not yet taken up this management recommendation in 1998, although they do consult with First Nation peoples as required by the Aboriginal Fishing Strategy.⁶⁴

Controversy has been especially sharp between aboriginal food fishers and sport anglers along the Miramichi River in the province of New Brunswick where the federal government has decreased aboriginal quotas and reduced allowable uses of nets. First Nations peoples may not legally sell salmon but may harvest the fish for food.⁶⁵ Grant Russell of the Miramichi Salmon Association believed that the government would ban the use of gillnets on the Miramichi in 1998 in favor of trap nets, from which grilse can be harvested and larger spawning stock released unharmed. Natives are allowed to fish (with nets) on waters within Reserves, where trained aboriginal fishery officers act as wardens. There are three other categories of waters in New Brunswick: "crown open water" open to all New Brunswick residents, where non-residents may fish in the company of a guide, "private water" areas leased to outfitters, who conduct angling operations that are significant in the regional economy, and "closed waters" where salmon are protected from poaching and released upriver in time to spawn. During certain periods of the season, only catch-and-release fishing is permitted.⁶⁶

In several communities in Atlantic Canada, indigenous groups have joined conservation efforts; others are taking advantage of economic opportunities in the recreational fishing industry. According to Pete Bodo of the Atlantic Salmon Federation, the 1990 Sparrow decision resulted in harm both to salmon stocks and to relations between users because First Nations fished militantly to assert their new rights. In Bodo's opinion, aboriginal groups are now seeing the value of cooperation with other stakeholders and of conservation for long-term benefits to

⁶⁴Gilles Thériault, "Miramichi watershed partnerships," *Symposium Proceedings: Toward a Better Sportfishing Future for New Brunswick*, (Fredericton, New Brunswick: Atlantic Salmon Federation, 1996) 117; Atlantic Salmon Federation, "Symposium Proceedings," paper presented at Toward a Better Sportfishing Future for New Brunswick, Fredericton, N.B. 1996.153-4.

⁶⁵Pete Bodo, "Is a New Age Dawning Among Native Peoples?" *Atlantic Salmon Journal* 44:1 (1995b): 16-20; Grant Russell, Phone interview by Philip Burgess, 28 Mar. 1998.

⁶⁶Russell, 1998.

their way of life. Alliances with conservation and angling groups may even strengthen the position of aboriginal peoples in negotiations with the government. But fisheries conflicts continue, and First Nations' jurisdiction to police their own waters remains limited. Recreational fishing-related businesses on aboriginal reserves have not prospered as well as nearby non-indigenous ventures.⁶⁷

The government view of their cooperation with aboriginal groups is more positive. Aboriginal communities in the Maritimes Region (Nova Scotia, Prince Edward Island and New Brunswick) receive about five million Canadian dollars annually for their participation in the Aboriginal Fisheries Strategy. Implementation of the Strategy in the Maritimes includes negotiation between government and aboriginal groups over harvesting plans, fisheries management infrastructure and development initiatives. Conservation, enforcement, habitat improvement, research, economic development and training are addressed. Through “Native fishery Guardian programs” in the region, indigenous participants learn to monitor fisheries, collect harvest data, and conduct patrols with federal fisheries staff. The guardians then receive limited enforcement powers and are employed by their communities to monitor and control fishing.⁶⁸ In the Maritime Region, the Aboriginal Fisheries Strategy also includes allocation of funds for retiring commercial lobstering licenses, which are then converted to aboriginal communal licenses.⁶⁹

The evolution of aboriginal rights to fish in Canada strengthened the bargaining position of First Nations, which in turn has increased efforts to resolve conflict through negotiation of co-management arrangements.

7.4 Alaska

⁶⁷Bodo, 1995b, 16-20.

⁶⁸ DFO, Maritime Region - Gulf Fisheries Sector, “Aboriginal Fisheries Strategy, <http://www.gfc.dfo.ca/gulffish/afs.htm> 1998 (5 Jun. 1999). Fisheries Act, Aboriginal Communal Fishing Licenses Regulations (SOR/93-332) P.C. 1993-1318 16 June, 1993.

⁶⁹ DFO “Aboriginal Allocation Transfer Program,” <http://www.gfc.dfo.ca/gulffish/atp.htm> 1998 (5 Jun. 1999).

Before Alaskan statehood in 1959, federal fishery laws loosely administered by a distant authority allowed outside commercial fishing ventures to nearly destroy salmon runs.⁷⁰ Once Alaska became a state, local and regional managers stopped unbridled exploitation, gradually improved management and rebuilt the fish stocks.⁷¹

Prior to 1978, Alaska state law allowed all Alaskans, regardless of ethnicity or place of residence, to engage in subsistence hunting and fishing, but the law did not accord any subsistence use priority over commercial or recreational use.⁷² With the passage in 1971 of the Alaska Native Claims Settlement Act (ANCSA) that ordered the transfer of title to roughly 11 percent of Alaska lands to private Native corporations,⁷³ the U.S. Congress extinguished aboriginal rights to fishing and hunting in the state but promised to return to the issue and provide subsistence rights. Nine years passed, however, before Congress returned to the subsistence issue.

The opportunity to adopt legislation protecting subsistence rights came when Congress turned to Alaska land issues in order to create and expand a number of national preserves, wildlife refuges, and other conservation units. The resulting law adopted in 1980, the Alaska National Interest Lands Conservation Act (ANILCA), devoted an entire chapter to subsistence. ANILCA required state law to meet the federal standards guaranteeing

customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for

⁷⁰Jefferson F. Moser, "The Salmon and Salmon Fisheries of Alaska: Report of the Operations of the U.S. Fish Commission Steamer Albatross for the Year Ending June 30, 1898," *Bulletin of the U.S. Fisheries Commission* 18 (1899): 1-178.

⁷¹See A.W.H. Needler, "Evolution of Canadian Fisheries Management Towards Economic Rationalization" *Journal of the Fisheries Research Board of Canada* 37:7 (1979): 716-24 and Patricia Roppel, *Salmon From Kodiak: An History of the Salmon Fishery of Kodiak Island, Alaska* (Anchorage: Alaska Historical Commission Studies in History No. 216, 1994).

⁷²Alaska Statute AS 16.05.940 (1978). The law defined subsistence as fishing for "personal use and not for sale or barter."

⁷³Act of December 18, 1971, P.L. 92-203, 85 Stat. 689, 43 USC 1601 et seq., as amended.

personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.⁷⁴ [Emphasis added.]

Thus the federal law guaranteed subsistence rights on the basis of current residency in a rural area coupled with customary and traditional uses rather than on the basis of aboriginal rights, group rights stemming from occupation of a place from time immemorial.

In 1978, prior to passage of ANILCA, the Alaska State Legislature had adopted a subsistence law that accorded subsistence fishing priority over sport and commercial uses if restrictions should be necessary to maintain fish stocks for conservation. The state legislature, however, narrowed the definition of subsistence fishing (and hunting) so that it no longer specifically included “customary trade, barter or sharing” but limited subsistence to direct personal or family consumption for “customary and traditional uses.”⁷⁵ The 1978 subsistence law required the Board of Fisheries to adopt regulations providing priority for such subsistence use. The regulations adopted by the Board of Fish, however, were struck down by the Alaska State Supreme Court in 1985 as inconsistent with the State’s 1978 subsistence law and legislative intent.⁷⁶

Alaska replaced its 1978 statute in 1986 with a state subsistence law that met the conditions laid out in ANILCA by giving subsistence preference to rural residents.⁷⁷ Three years later, the Alaska Supreme Court struck down rural preference as a violation of equal protection under the Alaska State Constitution on the grounds that it discriminated against urban residents who depended on fish and game (McDowell v. Alaska).⁷⁸ McDowell, an urban resident, contended that he had a long personal history of customary use of fish and game, and depended on these resources for food. The case sparked a heated and divisive controversy over who should have rights to the resources. Divisions that allocated resources in practice along racial lines

⁷⁴Act of December 2, 1980, P.L. 96-487, Title VIII, 94 Stat. 2371, 16 USC 3111 et seq. For a short discussion, see David S. Case, *Alaska Natives and American Laws* (Fairbanks: University of Alaska Press, 1984) 25-6.

⁷⁵ Alaska Statutes 16.05.940(23).

⁷⁶ Madison v. Alaska Dept. of Fish and Game, 696 P.2d.168 (Alaska, 22 Feb. 1985).

⁷⁷See 1986 Alaska Sess. Laws 52.

⁷⁸McDowell v. Alaska, 785 P.2d 1 (Alaska 1989).

would violate the Alaska Constitution and have been politically unacceptable to Alaskans. The federal government, on the other hand, has a special obligation known as the “trust responsibility” to Native Americans including Alaska Natives that is not based on race or ethnicity but rather on their status as aboriginal peoples whose rights are protected through international treaties, Supreme Court decisions and Congressional laws. At least on federal lands in Alaska, the trust responsibility preempts or overrides state laws that conflict with the federal obligation to protect subsistence rights of Alaska Natives.⁷⁹

To ensure compliance with ANILCA, the federal government took over subsistence management from the state on federal lands in 1990,⁸⁰ leaving the state to resolve the conflicts between the Alaska Constitution and guarantees of subsistence rights in ANILCA.⁸¹ This, however, did not resolve the question of whether the federal government may assert management authority over fishing in the navigable waters within the federal public lands or possibly even over navigable waters outside the boundaries of federal public lands in order to guarantee subsistence rights.⁸²

The State of Alaska has jurisdiction over navigable inland waters within its borders and is responsible for management of anadromous fish, but the federal government proposed regulations to take over management of subsistence fisheries in certain waters, regulations that took effect in October 1999 because the state had not complied with ANILCA. A series of lawsuits have challenged, so far unsuccessfully, federal implementation of ANILCA’s

⁷⁹ See David Case (1984), Chapter 7 generally on subsistence in Alaska and pages 293-294 specifically on the federal trust responsibility.

⁸⁰ The Department of the Interior adopted temporary regulations in 1990, 55 Fed. Reg. 27, 114 (19 Jun. 1990; effective 1 Jul. 1990) and permanent regulations that took effect 1 Jul. 1992, 57 Fed. Reg. 22,940 (29 May 1992) and are codified at 50 C.F.R. section 100.3(b).

⁸¹ James A. Fall, “The Division of Subsistence of the Alaska Department of Fish and Game: An Overview of its Research Program and Findings: 1980-1990,” *Arctic Anthropology* 27:2 (1990): 68-92; and Christopher Smith, “A Collision of Cultures,” *Alaska Living* (Aug-Sept 1992): 16-19.

⁸² The US Constitution gives all states, including Alaska, jurisdiction over navigable waterways but reserves some rights to regulate navigable streams under the Commerce Clause, (U.S. Constitution, Act. I. § 8) to the extent necessary to accomplish the purpose for which the lands are held in the public domain. This is known as the reserved water rights doctrine. (*Winters v. U.S.* 207 US 564 (1908).

subsistence provisions on federal land. In a 1995 decision, the Ninth Circuit Court of Appeals held that “public lands subject to subsistence management under ANILCA include certain navigable waters,” but not all navigable waters.⁸³ An effort by the Alaska Legislative Council and certain members of the Alaska State Legislature to block the expected implementation of federal fisheries regulations promulgated under ANILCA was rejected by a federal district court in July 1998 as premature (“not ripe for judicial review”).⁸⁴ A group of ANILCA management cases were stayed until the federal subsistence fisheries regulations took effect in October, since the Alaska legislature failed to place a subsistence amendment on the ballot.⁸⁵

The conflict over subsistence rights in Alaska has produced a checkerboard pattern of management with federal lands managed by federal government agencies and state law applying to state and privately owned land. Both levels of government are vying for authority, with the federal government asserting the right to manage inland waters adjacent to federal lands and coastal waters. Several cases are on appeal or pending resolution by the Alaska State Legislature. Robert Loescher, President and Chief Executive Officer of Sealaska [Native] Corporation, pointed out in a February 1999 speech that the economic considerations in fisheries are much

⁸³ The Katie John case (which was consolidated for decision with Alaska v. Babbitt) resulted in a decision the lower court that “the Secretary [of the Interior], not the State of Alaska, is entitled to manage fish and game on public (federal) lands in Alaska for purposes of title VIII of ANILCA.” Judge Holland’s consolidated opinion in the U.S. District Court for the District of Alaska is Katie John v. United States and Alaska v. Babbitt, 1994 U.S. Dist. LEXIS 12785, 1994 WL 487830 (D. Alaska 30 Mar. 1994). On appeal, the Ninth Circuit Court of Appeals held that “public lands subject to subsistence management under ANILCA include certain navigable waters,” but not all navigable waters. State of Alaska v. Babbitt, 72 F.3d 698, 703 (9th Cir. 1995), cert denied, 517 U.S. 1187, 134 L. Ed. 2D 776, 116 S. Ct 1672 (1996). As explained by U.S. District Judge Robertson in a later case, “The Ninth Circuit reached only the ‘navigable waters’ issue raised by the Katie John plaintiffs because the state of Alaska stipulated to dismissal with prejudice of its appeal on the issue of federal authority to implement the subsistence priority [citing 72 F.3d at 700 n.2], Alaska Legislative Council, et al. v Bruce Babbitt, Secretary of the Interior, et al., 15 F.Supp. 2d 19; 1998 U.S. Dist. LEXIS 12455 (24 Jul. 1998).

⁸⁴ Alaska Legislative Council v Babbitt, 15 F.Supp. 2d 19; 1998 U.S. Dist. LEXIS 12455 (24 Jul. 1998).

⁸⁵ “Significant Natural Resources Cases,” <http://www.law.state.ak.us/naturalresources/significantcases.html> (6 Jun. 1999).

greater than in wildlife controversies. While litigation did lead to federal takeover of wildlife management on federal lands, “to date, litigation truly has not been effective in forcing the establishment of a federal subsistence fisheries management program.”⁸⁶ Loescher urges support of a resolution introduced in the Alaska State Legislature to amend the State Constitution to grant a preference “to and among residents in the taking of fish and wildlife for subsistence uses on the basis of customary and traditional use, cultural tradition, direct dependence, local residence, or the availability of alternative resources.”⁸⁷

One of the pending cases regarding federal/state dispute jurisdiction on navigable waters was brought by the Native Villages of Quinhagak and Goodnews Bay (and other plaintiffs). Since the early 1970s the villages of Quinhagak and Goodnews Bay have been prohibited from using nets to take rainbow trout for subsistence uses and could be prosecuted for subsistence catches on the Kanektok, Arolik and Goodnews rivers. At the same time, sport fishermen in growing numbers were allowed to target rainbow trout in all of these rivers. The villages challenged state regulations that banned taking of rainbow trout for subsistence and federal regulations that, by excluding Alaska’s navigable waters from the regulation of “public lands”, failed to protect subsistence fishing for rainbow trout within the Togiak National Wildlife Refuge.⁸⁸ In reversing the district court’s denial of a preliminary injunction that would have suspended the application of the state’s regulations, Judge Pregerson of the federal appellate court wrote,

⁸⁶ Robert W. Loescher, “Native Subsistence Rights - Where are we now in State and National Politics?” paper presented to The Alaska Federation of Natives Political Leadership Summit, 16 Feb. 1999, 16; <http://www.sealaska.com/images/subsist.doc> (4 Jun. 1999).

⁸⁷ Alaska Senate Joint Resolution No. 1 (1999) Section 19, introduced by Senators Adams, Hoffman and Lincoln, discussed in Loescher at 19.

⁸⁸ Quinhagak v. United States, 35 F.3d 388 at 389; 1994 U.S. App. LEXIS 23797; 25 ELR 20291 (Ninth Circuit, 1 Sep. 1994), reversing the district court’s denial of a motion for preliminary injunction. The appellate court did not rule on the jurisdictional question in this case, but noted(at 392) that the federal government had changed its position in the Katie John case conceding there “that its reserved water rights sufficed as an ‘interest’ in the waters for purposes of ANILCA.”

Most subsistence fishing (and most of the best fishing) is in the large navigable waterways rather than in the smaller non-navigable tributaries upstream and lakes where fisherman [sic] have access to less fish. And, rainbow trout is a critical source of fresh fat and protein, especially during the winter when equivalent substitute food sources are not available. The Villages' evidence showed that 95% of Quinhagak residents, for example, rely heavily on fish for survival, and that rainbow trout and char are the *only* fish which can be caught to provide fresh food when salmon are not available....⁸⁹

Conflicts in the Kuskokwim Bay drainage (including the Togiak, Kanektok, Arolik, and Goodnews Rivers) in Southwest Alaska have a history dating back to the 1980s when a conflict arose between the traditional Yup'ik Eskimo subsistence fishery and non-Native recreational anglers on the Togiak River. In 1987, Alaska dispatched State Troopers to the Kanektok River to dispel potential violence between Native harvesters and sportfishers. Robert Wolfe, a resource manager with the subsistence division of the Alaska Department of Fish and Game has explained the underlying conflicts as a conflict in values due to the differences in the way each group views land, resource use and fish.⁹⁰

The Togiak, Kanektok, and Goodnews rivers are major salmon and char fishing rivers, which five Yup'ik villages have used for subsistence fishing and for a few small-scale commercial salmon fisheries.⁹¹ Local Yup'ik fishermen have asked that sportfishing be closed, at least in some areas of these three rivers. The Yup'ik fish with nets for subsistence on the lower twelve miles of the Togiak River. In the 1980s, this location also became popular with the Alaska sport fishing industry. In 1986, twice as many recreational anglers fished on the Togiak, Kanektok and Goodnews rivers as Yup'ik village residents, and by 1987, six recreational fishing camps were in operation on the Togiak.

The Yup'ik regard fish as sentient beings capable of perception, feeling, and thinking and, thus, aware of how people treat them; Yup'ik generally disapprove of catch-and-release practices. Recreational fishermen, on the other hand, while respecting and enjoying the struggle with powerful fish, have not perceived any problem between subsistence fishing and sportfishing

⁸⁹ Quinhagak v. United States, 35 F.3d 388, 393.

⁹⁰ Wolfe, 1988.

⁹¹ Wolfe, 1988, 4.

on the Togiak River. In their view, fish were an abundant common property resource that was not put at risk by catch-and-release fishing.⁹² The Yup'ik, on the contrary, viewed the catch-and-release policy as harming their food supply. An elder from Goodnews Bay told the Alaska Board of Fisheries:

...We always brought back the subsistence catch. We never wasted anything. We stored it. We shared it with the elders and others. The number one rule in Yup'ik way of life is, we don't waste subsistence food, subsistence animals...We are taught in the Yup'ik way of life, once you handle that fish, it dies once it leaves you...Also, people can no longer use their traditional fish camps anymore because of the sport fishing activity along the river...⁹³

The Yup'ik, like many local people of the Ponoï region, regard catching fish and throwing them back in the water as abnormal behavior that will have long-term consequences. A Yup'ik woman (quoted in Wolfe) commented upon her perception of catch-and-release as playing with food: "Those people play with the fish, and the fish will decrease. Playing with food tends to decrease them. My father used to tell us, that all things of the sea and the land belongs [sic] to God, and it isn't meant to be played with...." Other Yup'ik regard catching and releasing fish as a form of abuse and mistreatment that demonstrates disrespect to the fish and damages the fish resource:

As Yup'iks, we don't like to see fish hurt...A fish getting cut is the same as with a person. Cuts get infected, just like when you get cut with a knife. It's the same as with fish. It is not us they are abusing, it is the fish they are abusing. After they damage the mouths, they let them go. It is like us: when the fish are hurt, they can't eat.

Ever since there have been sport fishermen, the people have caught skinny fish. The flesh is not well built.... I believe the playing with fish may be the cause of the fish that are getting skinny. Their mouths are torn...The fish don't look appetizing.

⁹² Wolfe, 1988, 3-4. The philosophy of catch and release is well expressed by North American angler and author Lee Wulff, who is credited with writing (in 1938), "A good gamefish is too valuable to be caught only once," <http://www.tu.org/trout/whatis/c&r.html>, (6 Feb. 1998).

⁹³ Quoted in Wolfe, 1988.

We know about letting fish go. Some fish go swimming with one eye, and we see fresh fish dead on the bottom of rivers...That is why the fish are decreasing...Fish die off if played with.⁹⁴

Yup'ik proscriptions about proper food treatment are emotional and the potential social and health consequences of mistreated fish are of great concern.⁹⁵ One elder instructed people not to eat fish with torn mouths because the fish were sick in body and soul and eating them might bring sickness to the people as well.

Due to their concerns about the fish resource, in 1987 a group of Yup'ik traveled up the Kanektok River from their village of Quinhagak to ask the sport fishermen to stop fishing. In December of 1987, village residents of Togiak, Goodnews Bay, and Quinhagak appealed to the Alaska Board of Fisheries to close portions of the local rivers to sport fishing. In 1988, Natives' appeals were denied while a federal-state planning process was reviewing the management of the rivers. Despite Yup'ik protest, a decade later, the Alaska regulations for 1998 allow only catch-and-release methods to be used for recreational fishing of many sport fish in most Kuskokwim area drainages, including the Kanektok and Goodnews rivers.⁹⁶

The increasing popularity of angling for Pacific salmon in Alaska has led to conflicts becoming even more pronounced. Faced with trespass on their Native lands (private lands owned by Alaska Native corporations created under ANCSA) and with problems of human waste from anglers, Quinhagak and other villages asserted jurisdiction over these lands under their own tribal law. (Many Alaska Native villages and Native American tribes have Native governments with limited jurisdiction, and tribal police that operate independently of state government.) Beginning in 1996 tribal police officers patrolled their waters, imposed tribal taxes, enacted tribal laws, and enforced these laws in tribal courts.⁹⁷ The state turned down a 1998 request from

⁹⁴Wolfe, 1988, 12-13.

⁹⁵Quoted in Wolfe, 1988, 11.

⁹⁶ Alaska Dept. of Fish and Game, "New Sport Fishing Regulations for the Kuskokwim River and Southern Kuskokwim Bay," 26 Jan. 1998, <http://www.state.ak.us/local/akpages/FISH.GAME/sportf/geninfo/eo-nr/1998/nrr3/1-26-98.htm> (5 Jun. 1999).

⁹⁷ Tom Kizzia, "Indian Country: Two Destinies, One Land," *Anchorage Daily News*, Special

Quinhagak tribal leaders to delegate authority to the tribal officials to police recreational fisheries. Instead Alaska Governor Tony Knowles promised extra money and personnel for state law enforcement. State troopers patrolled together with tribal police in 1998. Villagers were pleased that the state was giving the problem some attention, but were skeptical that budgets would allow sufficient coverage for all villages in the region.⁹⁸ Although the state promised more patrols by the Department of Natural Resources (DNR), that agency has no authority to cite offenders for overstaying camping limits or depositing human waste. And the state's three day limit on camping is not enforceable by troopers. Advantages of tribal policing would include an ability to address all types of problems and the low cost of a local authority. The state may consider delegating limited authority to the tribe in the future⁹⁹

Some Alaskans feared that the courts would declare lands held by the Alaska Native corporations created under ANCSA to be "Indian country" thereby allowing tribal organizations to assert jurisdiction to manage resources on these lands that would add a third authority to federal and state jurisdiction and thus "create a chaotic patchwork of jurisdictions and deepen racial divisions."¹⁰⁰ In Alaska v. Venetie, the U.S. Supreme Court, however, declared that ANCSA lands did not qualify as "Indian country" within the meaning of 18 U.S.C. §1151 (b) since ANCSA

. . . transferred reservation lands to private state chartered Native corporations without any restraints on alienation or significant use restrictions, and with the goal of avoiding any permanent racially defined institutions, rights, privileges, or obligations.¹⁰¹

Issue 29 Jun.- 5 Jul. 1997: 1-28.

⁹⁸ Tom Kizzia, "Knowles denies tribe's bid to police tourists on river," *Anchorage Daily News* 8 Jul. 1998: 1A.

⁹⁹ Kizzia, 1998.

¹⁰⁰ Kizzia, 1997.

¹⁰¹ Alaska v. Native Village of Venetie Tribal Government et al., 118 S.Ct. 948 (25 Feb. 1998). Decision may be found on the Internet at: <http://supct.law.cornell.edu/supct/html/96-1577.ZS.html>.

In the wake of the Venetie case, Native groups continue to seek legislative and other avenues to assert tribal sovereignty and to obtain a subsistence priority.¹⁰²

7.5 Greenland

Greenland has only one river with conditions suitable for salmon spawning and this is closed to salmon fishing. Some ocean angling and subsistence harvesting of salmon may occur, but commercial catches of foraging salmon in saltwater have been more significant. As discussed earlier (see section 3.3) the Greenland Home Rule Government and KNAPK (the Organization of Hunters and Fishers in Greenland) agreed with NASCO (North Atlantic Salmon Conservation Organization) to limit the commercial catch of salmon in Greenlandic waters for two years (1993-1994) in exchange for compensation to Greenland,¹⁰³ and after a lapse of several years adopted a revised agreement in 1998 that allows Greenland to continue an "internal consumption" fishery but halts all salmon exports.¹⁰⁴

The limited amount of angling tourism in streams and lakes is focused on Arctic char,¹⁰⁵ the only freshwater fish in Greenland. The char move from inland lakes to salt water in the spring and return to streams and lakes in August.¹⁰⁶ The char season runs from June 15 to September 25. Tourists are restricted to rod and fly-fishing. There are no catch limits, but most anglers keep only what they can eat and release the rest. A one-month fishing license for visiting anglers costs 200 Danish kroners (DKK) (about \$28 US), and a three-month license sells for 500

¹⁰² Native American Rights Fund memo to AITC/Tribal Clients, 25 Feb. 1998; Loescher.

¹⁰³Nicholas E. Flanders, Flemming Enequist, and Oran R. Young, *Alternatives to the West Greenland Atlantic Salmon Fishery* (Hanover, NH: Dartmouth College, Dickey Center Institute of Arctic Studies, 1995) A1-C5; and NASCO, "North Atlantic Salmon Conservation Organization," (Ilulissat, Greenland: NASCO, 1997) 12-33.

¹⁰⁴NOAA Public Affairs, 1998.

¹⁰⁵NASCO, 1997, 12, opening statement by the Minister of Fisheries, Mr. Paviaraq Heilmann; Maniitsoq Tourist Service, "Angling," <http://www.greenland-guide.dk/maniitsoq-tourist/angling.htm> (11 Jun. 1998).

¹⁰⁶ Søren Thalund, information manager for the Tourist Board of Greenland, telephone interview with Gail Osherenko, 2 Nov. 1999.

DKK (about \$70 US). Children under age 18 may fish without charge.¹⁰⁷ Sportfishing for Arctic char is now actively marketed. More fishing tours were advertised on the World Wide Web for the 1999 season than were available a year earlier. Prices for one outfitter's 11-day package including roundtrip transportation from Copenhagen were DKK 12,500-13,500 (\$1,766-1,907 US) with an additional week of fishing time available for DKK 1500- 2000 (\$211-283 US). These tours are more rustic than those in more developed locations, and require fishermen to bring their own sleeping bags and to help with camp chores such as cooking. Anglers on the Kangia and Amitsuaarsuaq Rivers are urged, though not required by law, to employ catch-and-release techniques.¹⁰⁸ Søren Thalund, information manager for the Tourist Board of Greenland, estimates that only 100-150 tourists annually go to Greenland specifically to fish, but many visitors engage in some fishing in addition to hiking and sightseeing.¹⁰⁹

In addition to the Executive Order of the Greenland Home Rule Authority regulating fishing, all municipalities have local regulations; these must be stricter than the Home Rule Order in order to receive approval from the environmental ministry. Municipal regulations, for example, may close areas to fishing for a year or two.¹¹⁰ Thus, targeting certain stocks of landlocked char is prohibited altogether.¹¹¹

Rivers in Greenland cannot be privately owned, but several households will utilize a traditional territory to harvest fish for personal or community use.¹¹² Although exclusive rights to areas where local families have fished for 50 to 60 years are not codified, generally such traditional rights are respected. Tourists are advised to go to the local tourist office to obtain

¹⁰⁷ Amalie Jessen, (Head of Office, Department of Industry, Greenland Home Rule Government, Nuuk) telephone interview with Gail Osherenko, 2 November 1999. See also "Team Arctic: Hunting and Angling" <http://www.greenland-guide.dk/teamarctic/hunt-kangia.htm>, <http://www.greenland-guide.dk/teamarctic/hunt-amit.htm> (Nov. 1, 1999).

¹⁰⁸ Team Arctic Websites, Nov 1, 1999; Currency conversion made at <http://finance.yahoo.com/m3?u> (Nov 1, 1999).

¹⁰⁹ Thalund interview.

¹¹⁰ Jessen interview and Jessen email to Gail Osherenko, 2 Nov. 1999.

¹¹¹ Team Arctic Websites, Nov 1, 1999

¹¹² Per Lyster, Statistics Greenland, e-mail to Deborah Robinson, 8 Jun. 1998.

information on local rules and practices. Conflicts have not arisen between recreational anglers and local residents.

Residents of Greenland must obtain one of two categories of annual permit in order to hunt and fish. Both types of permit cover hunting and fishing, but one is for “full-time” hunters and the other for sport hunting and fishing. The first is available only to persons who have been residents of Greenland for the prior two years, possess the appropriate registration documents, and earn at least fifty percent of their income from hunting and fishing. The sport hunting and fishing permit is available only to citizens of Greenland or Denmark who do not hold a “full-time” hunting and fishing permit. New regulations approved by Greenland’s Landsting (Parliament) at the end of October 1999 require a permit in order to fish for char. Thus, all inland fishing in Greenland requires some form of permit or license. The cost of either category of permit for residents is a nominal 30 DKK (about \$5 US) per year.¹¹³ As on the Kola, local fishing is regarded as fishing for food. As Thalund explained, “catch-and-release sounds ridiculous to Greenlanders.”¹¹⁴ While resident license holders must annually report their harvest of seal, whale, musk ox, polar bear, and caribou, as of 1999 there were no reporting requirements for Arctic char. Net fishing is allowed at sea (in the fjords), but nets must be at least 150 meters from the mouth of a river or stream.¹¹⁵ Net fishing is also permitted in the lakes but limited by regulation to the period between June 15 and September 25.¹¹⁶ The only catch figures available for char from Greenland’s waters are from the fish processing plants that produce char for distribution and sale only in Greenland. Commercial char sales in 1998 totaled 12 tons, valued at 75,000DKK.¹¹⁷

In Greenland, as was the case in the former Soviet Union, land and natural resources are publicly owned, but the Home Rule Government (based in Nuuk) ensures communal ownership

¹¹³ Jessen interview.

¹¹⁴ Thalund interview.

¹¹⁵ Jessen interview.

¹¹⁶ Jessen email, 2 Nov. 1999.

¹¹⁷ Jessen interview. These statistics and those for earlier years are available from Statistics Greenland, <http://www.statgreen.gl>.

of resources, and management decisions benefit the community rather than individual owners.¹¹⁸ The Greenland Home Rule Act recognizes Greenland's rights to natural resources and the right to withhold consent regarding entering agreements with Denmark concerning "non-living" resources, thus providing some protection for fisheries from mineral or other development. Prospective mineral development is likely to occur only in areas far from populated places, and thus does not present a conflict with fishing.¹¹⁹

The abundance of Arctic char and the lack of fishing pressure on most streams and lakes (many are far from living places) as well as the low level of tourism or even commercial char production have kept conflict to a minimum. While some poaching occurs, it is not a serious concern for resource managers in Greenland at present. Prior to 1993 the local communities regulated fishing. While there was initial opposition to regulation of hunting and fishing by the Home Rule Government, there is now a good understanding between municipalities and the Home Rule authorities, and the municipalities retain considerable power to conserve fish stocks.¹²⁰

7.6 Fenno-Scandia: Norway, Sweden and Finland

Sámi who live in the Nordic countries have faced pressures on their land and resources from the south for several hundred years as settlers moved north and turned reindeer pasture into farmland.¹²¹ Presently, sport fishers have a significant influence on both fish and human populations in northern Fenno-Scandia. International and national Atlantic salmon sportfish organizations are using funds to buy shares of commercial catches to reserve for anglers and are lobbying for an end to net fisheries.¹²² On the river that forms the border between northern

¹¹⁸Gail Osherenko and Oran R. Young, *The Age of the Arctic: Hot Conflicts and Cold Realities* (Cambridge, UK: Cambridge University Press, 1989) 216, 99-100.

¹¹⁹Thalund interview.

¹²⁰Jessen interview.

¹²¹Osherenko and Young, 1989, 86-90

¹²²Flanders, Enequist, and Young, 1995; North Atlantic Salmon Federation, "NASF Protects the Atlantic Salmon," <http://www.finlandia.net/media/arctic-salmon/nasf.htm> (29 May 1998).

Norway and Finland, known as the Teno in Finnish, the Tana in Norwegian, and the Deatnu in Sámi, fishing tourism is intensive. Local Sámi and outside interests are in conflict; sportfishing tourism brings important revenue but also cultural intrusions that are less welcome.¹²³

Norwegian and Swedish laws give Sámi reindeer herders the "statutory right" to inland fisheries, whereas non-herding Sámi have no special fishing rights and must apply for licenses.¹²⁴ Under the Reindeer Homestead Act, many reindeer households of Utsjoki, Finland were allocated portions of state land, often including special rights for weir, net, seine or driftnet fishing.¹²⁵

Finnish law ties water rights to adjacent land ownership. On both sides of the Deatnu, local Sámi complained that southerners held too much property along the river. In addition to landowners' rights to fish, however, regulations allow fishing by those who have used the resource since time immemorial and by locals such as reindeer herders who live permanently in the area. Locals, Sámi or not, may purchase annual rod and reel fishing permits for a nominal fee.¹²⁶

An important change for Sámi in Finland came about with legislation addressing ownership in traditional Sámi territory. Recommendations of a Finnish Parliamentary Committee for Constitutional Law resulted in 1978 in the demarcation of six "water villages" along the Teno River, effectively giving ownership control to the inhabitants of those communities.¹²⁷ The Committee considered that the residents of those northern municipalities, who were mostly Sámi, "had rights to waters by virtue of perpetual possession since time immemorial."¹²⁸ The Finnish

¹²³Philip Burgess, "Deatnu: Southern Habits in a Northern River - Fragmentation of a River System in Northern Fennoscandia," MA Thesis, University of Lapland, 1996, 3

¹²⁴Lars-Nila Lasko and Gail Osherenko, "The Sámi People and the Northern Sea Route: Juridical, Social and Cultural Concerns," Lysaker, Norway: INSROP Working Paper No. 154 - 1999, IV.4.1 (1999): 14.

¹²⁵Burgess, 1996,15.

¹²⁶Burgess, 1996, 27.

¹²⁷Burgess, 1996, 31.

¹²⁸Kaisa Korpijaakko, "Sámi Land Law: Possible or Impossible?" *Diedut* 7, Ludger Müller Wille and Linna Weber Müller Wille, eds. (Montreal/ Guovdageaidnu: Nordic Sámi Institute/ Northern Studies Program, 1993).

Fishing Act of 1982 expressly excluded application to three northern municipalities (Inare, Enontekiö, and Utsjoki), leaving in place a 1951 law guaranteeing fishing use rights to the local population, Sámi and non-Sámi without the need to obtain permits.¹²⁹

Fishing cooperatives made up of landowners, including "outsiders," regulate their portions of the river, but members may have variable rights depending on the size of their land holding and status as local or traditional users. Several Sámi associations have gained fishing rights in designated areas of state waters. These provisions are managed under the Finnish Fishing Law of 1951, the Deatnu Fishing Agreement containing regulations dating to 1872, and various tributary regulations.¹³⁰

The legal position of Sámi in Norway is not well defined. The Sámi Rights Commission of Norway issued the Norwegian Official Report¹³¹ with the objective of guaranteeing a natural basis for Sámi culture in Norway in accordance with guidelines for national as well as international law. The Commission has developed regulations on local management of land and natural resources in Finnmark County that would give the Norwegian Sámi Parliament a role along with county and municipal organs. The report will be subjected to comprehensive hearings in the fall of 1999 before being put to the Government and the Storting (Norwegian Parliament).¹³²

On the Norwegian side of the Tana, fishing is currently limited by the Law of 1888 and the King's Resolution of 1911. "*Laksebrev*," or rights to fish with nets, were connected to certain households under the 1888 law. The Resolution defined eligibility for *laksebrev* in a manner that restricted the number of participants with fishing rights to landowners engaged in hay. This rule continues today; thus, the minority of land holders who qualify may still use nets to fish. Others are restricted to rod and reel. Fishing on the Norwegian side of the river is regulated by the

¹²⁹Lasko and Osherenko, 14.

¹³⁰Burgess, 1996, 28.

¹³¹NOU, 1997, 4.

¹³²Wenke Brenna, "The Sami of Norway,"

<<http://odin.dep.no/html/nofoalt/depter/ud/nornytt/uda-309e.html>> Ministry of Foreign Affairs
Posted December 1997(1 Nov 1999

agreement between Norway and Finland. The Norwegian Directorate for Nature Management participates in the ongoing negotiation process that is expected to be concluded in the summer of 2000. Representatives of the Sami Parliaments of Norway and Finland are also participating in the process. The Sámi Rights Commission has proposed that an entirely local administrative board consisting of both net and rod fishermen should be created to manage the Tana/Deatnu River.¹³³

The Tana rules are not standard in Norway; in most districts Norwegians may fish with the proper state and local fishing licenses. All anglers over the age of 16 must obtain a National Fishing License: the annual license to fish on inland waters for salmon, sea trout and char as well as inland fish and crawfish may be purchased for 180 Norwegian kroner, NOK, (\$23US) at any post office. Weekly permits that do not include the right to fish for salmon, sea trout or char are available to individuals and families for 45NOK (roughly \$6US) and 60NOK (roughly \$8US) respectively.¹³⁴ In addition, a local license must be obtained; these are sold in local sport fishing shops, local tourist offices, or from private fishing companies. The price for these may range from a nominal 60 NOK per year to several thousand Norwegian kroner per day, depending on the market.¹³⁵ Those who are not residents of Norway are more restricted in their access to salmon streams.¹³⁶ Although anglers on the Alta River in Finnmark County in northern Norway may at times be restricted to catch-and-release¹³⁷ due in part to concerns of declining numbers of trophy-sized salmon in the upper reaches of the Alta,¹³⁸ there is still a strong interest in eating all or at least part of the catch.¹³⁹

¹³³ Stig Johansson, Senior Executive officer, Directorate for Nature Management, Trondheim, telephone interview with Gail Osherenko, 16 Nov. 1999.

¹³⁴ These fees are valid from 1 April 1999 through 31 March 2000. The application form and an information pamphlet on the National Fishing Licence, "*Til deg som vil prøve fiskelykken: Fiskeravgift 1999*" ["For you who will try your fishing luck: Fishing fees 1999"], are available at post offices throughout Norway.

¹³⁵ Arne Eggereide, Head of fisheries section, Directorate for Nature Management, Trondheim, Norway, telephone interview with Gail Osherenko, 4 Nov. 1999.

¹³⁶ Stig Johansson, 1999.

¹³⁷ "The Alta River," at website: http://nettvik.no/spor...almon_fishing/alta.htm (2 Feb. 1998).

¹³⁸ Jan Gunnar Furuly, "Salmon News From Norway," Jan Gunnar Furuly's Salmon Fishing

The Fishing Agreement of 1872/3, a bilateral agreement between Finland and Norway, imposed limitations on traditional gear and size of fish and instituted closures on the Deatnu. Updates to the agreement in 1938, 1982, 1990 and 1996 have further limited traditional gear and addressed problems associated with sportfishing. The most recent version cited by Burgess, Article 7 for 1996, limits the number of anglers at certain points on the river.¹⁴⁰

Sportfishing for salmon in Sweden is limited to a few areas in the south of the country. Development of a sportfishing industry in the remaining viable rivers in northern Sweden is now being considered, although currently it is limited by commercial catches of salmon in the Baltic Sea.¹⁴¹ Thus, at this time, there is little experience in Sweden that can be usefully compared with the situation on the Kola Peninsula.

7.7 Iceland

Iceland has no indigenous peoples. Since the time of the Viking settlers, fishing rights have been attached to ownership of the land adjacent to rivers. Icelandic law has always regulated fishing to fairly distribute fishing rights within rivers, prevent fishing conflicts, and conserve fishery resources.¹⁴² Local landowners, mostly farmers, control salmon management to a large degree and benefit greatly from the resource. The Salmon, Trout and Char Fishing Act of Iceland (1970) grants landowners exclusive rights to fish on waters of their own lands. The Act allows fishing rights to be leased to another party, but prohibits selling fishing rights separately from land. Exceptions to this rule may be made only for rod fishing rights, which may be severed from ownership for periods not greater than ten years unless the Director of Freshwater Fisheries and

Pages - Regulations. <http://home.sol.no/~jangf/elaks97.htm> (27 May 1998).

¹³⁹The Alta River website, 1998; Stig Johansson, 1999.

¹⁴⁰Burgess, 1996, 36-9.

¹⁴¹G. Weissglas, M. Alatalo, and H. Appelblad, "Rapids Wild with Wild Salmon," *Fiskbiologi i Ume/Vindelälven: Information*, <http://www-umea.slu.se/fisk/sve/information/laxistrida.htm> (20 May 1998).

¹⁴²Gudni Gudbergsson, "Evaluation of recreational fisheries in Iceland, market values - non market values," paper presented at the Conference on Socio-economics of recreational fishery, Vaasa, Finland, 1997.

the Freshwater Fisheries Council consents to other arrangements.¹⁴³ Redemption of dissociated fishing rights may be pursued under provisions of the act.

Landowners are obliged to join fishing associations, which have authority to establish rules for each fishing zone, allocate fishing among its members, lease rod fishing rights in the designated portions of the fishing zone, and provide for enhancement and enforcement of the fishery. Associations usually rent fishing rights to angling clubs, and operate a fancy fishing lodge on the river in their territory.¹⁴⁴ In this system of shared management, the Directorate of Freshwater Fisheries sets a fixed number of rods on each river and addresses problems of poaching in salt water. The Institute of Freshwater Fisheries conducts scientific monitoring of the stocks and advises associations on stock enhancement and other biological questions.¹⁴⁵

About 80 of the 250 rivers in Iceland support salmon populations. Commercial netting may be permitted on several of the rivers that are not suitable for angling; however, the majority of salmon are caught by recreational fishers.¹⁴⁶ Icelandic rivers provide excellent and exclusive sportfishing for wild salmon, making angling a far better extractor of resource rents than the commercial fishery. Gudni Gudbergsson, a biologist with the Institute of Freshwater Fisheries, estimates that a commercially caught salmon yields only 2 to 2.5 percent of the value of an angled fish. With catch-and-release fishing becoming popular in the last several years, these values may be more difficult to calculate¹⁴⁷ but would generally make angling even more valuable. Icelandic sportfishing is very expensive (as much as \$1800US per rod per day) providing significant revenue to the farming economy, motivating the farmers who gain financial

¹⁴³ Directorate of Freshwater Fisheries, "The Salmon, Trout, and Char Fishing Act," Reykjavík: Iceland Directorate of Freshwater Fisheries, 1996, Ch. II, section 2(4): 4.

¹⁴⁴Arni Isaksson, e-mail to Deborah Robinson, 26 May 1998. "The Salmon, Trout, and Char Fishing Act," 1996; Arni Isaksson, "Sea Ranching of Atlantic Salmon with Special Reference to Private Ranching in Iceland." Paper presented at the Global Trends: Fisheries Management, Seattle, 1994, and Arni Isaksson, "Salmon Management in Iceland," paper presented at the Community Watershed Management Symposium, Corner Brook, Newfoundland, April, 1995.

¹⁴⁵Isaksson, 1998 and Thorsteinn Thorsteinsson, e-mail to Deborah Robinson, 26 May 1998.

¹⁴⁶Dennis L. Scarneccchia, "The History and Development of Atlantic Salmon Management in Iceland," *Fisheries* 14:2 (1989): 14-21.

¹⁴⁷Gudbergsson, 1997.

benefits to be conscious of environmental threats and keeping farm landowners interested in maintaining strong salmon runs. Thus, poaching is almost nonexistent. The down side is that farmers and local anglers are forced to fish early and late in the season, when foreign and non-local demand slackens and prices are reduced. Lower income Icelanders fish for trout and sea trout. ¹⁴⁸ Foreign anglers are estimated to use approximately 20-25 percent of the angler days in the best salmon rivers.¹⁴⁹

7.8 Kamchatka, Russia

Kamchatka, in the Russian Far East, like Kola is a region that has been able to take economic advantage of excellent fish runs to attract western anglers. Kamchatka illustrates that similar problems and issues may arise on salmon rivers on the east coast of Russia as on the Kola. In Kamchatka, however, poaching and an extensive caviar trade are undermining conservation and may be destroying the resource and its future profitability. Nevertheless, on the northwest coast of Kamchatka in the Koryak Autonomous Okrug (a region with its own fishery department and regulations¹⁵⁰), the Council of Itel'men Revival in cooperation with a non-governmental environmental organization and others, worked out a co-management arrangement protecting a sizable territory for both cultural and ecological protection. This is described earlier in chapter 6.

Kamchatka is a wild and remote land boasting rivers and streams in which run six species of Pacific salmon, steelhead (ocean-run rainbow trout), grayling, trout, and char.¹⁵¹ Sportfishing was first opened to foreigners in 1991 after the collapse of the Soviet Union, at which time there were no special regulations for sportfishing. According to Igor Voinilovich, specialist of the Kamchatka Federal Department for the Protection of Fish Resource and Fisheries Regulations

¹⁴⁸Isaksson, 1998 and Thorsteinsson, 1998.

¹⁴⁹Gudbergsson, 1997.

¹⁵⁰Igor Voinilovich, e-mail to Philip Burgess, 4 Apr. and 27 Mar. 1998.

¹⁵¹(outfitter) Lena and Friends, Ltd. 1998, "Lena and Friends, Kamchatka. Fishing and Rafting," <http://www.kamchatka.su/friends/fishing.html> (25 May 1998); "The Fishing Trip Company" <http://www.kamchatka.com/> (1 Nov. 1999).

(Kamchatrybvod), legal fisheries for salmon include: food fishery by quota for Russian citizens using nets, issued to family brigades; sportfishing by Russians for food using spinning or fly rod in designated areas; for Russians or foreigners, catch and release fishing in any river, two fish allowed in possession for a \$10 per day license fee;¹⁵² "commercial" net fishing in defined areas by brigades and firms, who are taxed; and citizen quotas allocated on the basis of a license fee and cost per fish.¹⁵³

Russians have been conducting fisheries research in Kamchatka since 1965. American Pete Soverel of the Wild Salmon Center (WSC) with various other Russian and American academic, governmental, and scientific institutions formed an unusual partnership with Moscow State University researchers in 1994. The WSC is committed to funding the Kamchatka Steelhead Project (KSP) "for the purposes of conducting joint scientific expeditions to and promoting local economic development of the Kamchatka Peninsula" until 2015. "Sponsors," mostly US sport fishermen, work under the supervision of scientists to "study" Kamchatka steelhead, which are listed in the Russian Red Book of Rare and Disappearing Species.¹⁵⁴ Although steelhead fishing in Kamchatka closed officially in 1983, the catch-and-release fishermen are allowed to angle some of the largest steelhead in the world – and are issued kits with which they measure and sample their catch. Their "donations," after expenses, support further research.¹⁵⁵ Soverel's group has surveyed nine rivers on the NW coast of Kamchatka.¹⁵⁶

Poaching on steelhead decreased with the depopulation of scattered settlements after the dissolution of the Soviet Union. Soverel is hopeful that, with conservation, a world class steelhead sportfishing industry will be possible in Kamchatka. Since 1994 KSP has hired, trained, and made loans to local outfitters who run KSP camps.¹⁵⁷

¹⁵²Igor Voinilovich, e-mail to Philip Burgess, 27 Mar. 1998.

¹⁵³Igor Voinilovich, e-mail to Philip Burgess, 4 Apr. 1998.

¹⁵⁴Pete Soverel, e-mail to Philip Burgess, 20 Mar. 1998.

¹⁵⁵Soverel, e-mail, 1998.

¹⁵⁶Pete Soverel, e-mail to Deborah Robinson, 28 May 1998.

¹⁵⁷Pete Soverel, e-mail to Philip Burgess, 20 Mar. 1998.

KSP has been working with the local government on a model for a responsible sportfishing industry. Barriers to this development include: poor infrastructure, locally inflated ideas of the value of steelhead angling (based on Atlantic salmon fishing operations such as on the Ponoï), a short steelhead season, a strong Alaskan salmon sportfishing industry, and problems of enforcement and corruption.¹⁵⁸ Ingo Skulason, Vice President of Lena and Friends, Ltd., estimated that four companies operated commercial guiding ventures in Kamchatka by 1998. Lena and Friends, a wholly Russian owned and registered private limited liability company, has operated on the west coast of the Kamchatka Peninsula and in central Kamchatka since 1994, bringing approximately 200-300 anglers from the US, Japan, England, and other countries each year. In 1998 the outfitter was licensed for sportfishing on 2000 km of rivers in Kamchatka, including the Kamchatka, Nikolka, Zhirovaya, Bystraya, and Opala rivers. Mainly fly-fishing, they target king salmon, silver salmon, char, and steelhead, most of which are caught and released. The clients may keep two trophy fish.¹⁵⁹ One European guide "advises" a local staff, including people of Kamchadal, Koryak, and Russian origin. The company generally uses local food, preparing many traditional dishes, and tries to show clients how people lived off the land in earlier times. The Lena and Friends outfitters are investing in building facilities for accommodation. They lend local guides money to buy their own boats and other equipment, contributing to the local economy.

According to Skulason, Lena and Friends has a contract with both regional and local authorities and operates under "endless rules, regulations, licenses, inspections etc." The rules on which the licenses are based change most years, and have sometimes required compliance with new policies that make no sense for a tourist operation (e.g. having to send the entire staff on a safety course designed for a building company). The company must purchase a tourist operator license (valid for three years), a general fishing tour operator license for specific rivers (valid for

¹⁵⁸Guido Rahr, telephone interview with Deborah Robinson, 13 May 1998, and Pete Soverel, telephone interview with Deborah Robinson, 14 May 1998.

¹⁵⁹Lena and Friends website, 1998.

Ingo Skulason, (V.P. of Lena and Friends), e-mail to Deborah Robinson, 23, 25 May 1998.

ten years), and specific licenses for each group or individual visitor. None of these licenses grant Lena and Friends exclusive rights to the rivers.¹⁶⁰ License fees go to the federal budget with no benefit accruing directly to local or indigenous residents, a problem well-known to the local people of the Ponoï villages. At this time there is "no effective way to solve this problem;" but Voinilovich of Kamchatrybvod noted that as the number of foreign anglers increases, it would be necessary to change the current financial arrangements.¹⁶¹

Informal agreements between guides and officials are supposed to exclude local net fishers and anglers from licensed sportfishing rivers, but both legally licensed food fishing and poaching continue in these areas. In 1996, Lena Ltd. witnessed roe-stripping poaching, with "hundreds of tons [of fish] ... just driven into the forest." Skulason anticipated that this wasteful and illegal caviar harvest would continue in the summer of 1998.

Spawning areas (generally the upper reaches of a river, and smaller side streams) are closed to fishing, but Kamchatka is a big place, and with vast wilderness areas for fish inspectors to cover, enforcement is spotty. Some of the sportfishing expeditions gain access to the rivers by vehicle, while more expensive fishing tours include helicopter transport to remote areas.¹⁶²

Legislation, decrees, and regulations prescribe a formal version of events that may have no relation to what actually occurs on the rivers. Variations generally depend on the distance of the fishery from centers of authority. As stated by American anthropologist Nelson Hancock:

Rights in law are in no way correlated to rights in actuality, thus it turns out in my work that the police department and fish wardens collaborate to poach enormous amounts of fish while fining petty fishermen and confiscating then re-selling the goods when they encounter large scale poachers.¹⁶³

There are legal permits to harvest fish for food, but poachers can be fined heavily for possessing fish, so they discard them. Fines perpetuate poaching – the only cash sources to pay them. The

¹⁶⁰Lena and Friends website, 1998; Ingo Skulason, (V.P. of Lena and Friends), e-mail to Deborah Robinson, 23,25,28 May 1998.

¹⁶¹Igor Voinilovich, e-mail to Philip Burgess, 4 Apr. 1998.

¹⁶²Skulason, e-mail to Deborah Robinson, 26 May 1998.

¹⁶³Nelson Hancock, e-mail "Re: Russian Federation Resources," to Deborah Robinson, 5 Apr. 1998.

legal harvest of fish is badly regulated. Kamchadals are allowed permits for a limited number of fish, if they go through a complicated bureaucratic process and do lots of paperwork.¹⁶⁴

In Kamchatka, with 20-25 percent unemployment, salmon caviar is the main, and often the only, source of cash income. "The fishing is illegal, the profits aren't taxed, mafia are always involved, along with bribes for game wardens."¹⁶⁵ Among Kamchadals (a southern group of Itel'men people who settled and intermarried with Russians in the southern part of Kamchatka), there is a generation gap. The young people don't want to live a subsistence lifestyle, they want imported goods and an image better than the derogatory connotations of Kamchadal as uneducated, lazy, simple and poor.

Frequently, people are not paid regularly, often only every six to eight months, and perhaps as infrequently as every two years. People depend on elders' pensions and odd jobs. Everyone keeps gardens and gathers wild foods, but vehicles are often needed to reach the resources. Indigenous and non-indigenous peoples have basically the same economy. But to Kamchadals, it is very important to do traditional harvesting (by whatever means) and have fish on the table. So people depend on the harvest of caviar, which is extremely wasteful. Tons of fish are discarded.¹⁶⁶

The most significant spawning grounds for the Kamchatka River, the peninsula's largest river, are located in the region of central Kamchatka where Nelson Hancock has worked. He reported:

Theoretically it is a highly protected area ecologically and there is talk of forbidding any salmon fishing whatsoever. Ironically, and this is one of those weird moments in Russian law which nobody even tries to explain, while catching fish is illegal, selling caviar is legal, and miraculously, it is not taxed.

¹⁶⁴Nelson Hancock, "Televisions and computers: New Fishing Tools for Kamchatka's New Political Economy," paper presented at Seventh Annual Symposium on Cultural Studies of Eastern Europe and the former Soviet Union, 27-28 Mar. 1998, available in Nancy Ries and Cathy Warner, eds., *Out of the Ruins: Cultural Negotiations in the Soviet Aftermath* (depot University, 1999), <http://condor.depaul.edu/~rrotenbe/aeer/v16n2.html#hancock> (6 Jun. 1999).

¹⁶⁵Hancock, e-mail, 1998.

¹⁶⁶ Hancock, 1999.

It is the only profitable sector of the economy and officially it does not even exist.¹⁶⁷

The young sportfishing industry will not find it easy to compete with the resource drain of poaching and corruption. The need for some form of cooperative management of fish resources that draws locals into joint responsibility for management of the resources may be crucial to conservation in order for either subsistence use or commercial profit to continue on a sustainable basis.

Thus, Kamchatka provides comparative cases of fishery management conflicts – some moving toward resolution, others toward crisis. In some of Kamchatka's rivers, fish stocks are in poor shape in contrast to those on the Ponoï. At the same time, the newly created ethno-ecological refuge or TTP on the Tagil River in the Koryak AO (discussed in chapter 6) demonstrates that it is possible in Russia today to adopt a co-management regime to simultaneously protect fish stocks and traditional livelihoods of the local population.

8.0 Conclusions

Research and examples from the circumpolar north discussed here illustrate three lessons:

- (1) open access, which may be in the form of the highest bidder or most powerful player acquiring rights to resources, occurs in places and times of rapid change and may lead to overuse and exhaustion of the resources;
- (2) traditional systems of management, forged over long periods of history by people local to the resource may provide a sound basis for management of river resources; and
- (3) a management system that combines scientific knowledge with local and traditional knowledge can conserve the resource, serve local needs, and minimize conflicts.

Each of the circumpolar nations has dealt with allocation of fishing rights somewhat differently than the others, and each provides useful lessons and comparisons with the Ponoï River on the Kola Peninsula. Models from the Canadian North and Iceland may provide the most

¹⁶⁷ Hancock, 1999.

useful and relevant ideas for Russia. In Iceland, ownership of the resource by local people who have a long-term stake in outcomes fosters responsible management and allows for careful weighing of the economic advantages of sport versus commercial fishing to arrive at balanced payoffs. In Iceland, fishing rights are tied to land ownership and landowners make collective decisions on access to fish and allocation of rights through their membership in the fishing association for their zone. We are not suggesting that land adjacent to the Ponoï and other northern rivers be transferred to individual private owners as has occurred in Iceland; but much may be learned from Iceland's collective decision making system in which local users have a stake in the outcome and share in the economic benefits of recreational, subsistence and food fisheries.

Under a Canadian co-management model, the central and regional governments have retained control over the resource for conservation purposes and have representation on the co-management board while users have gained a substantial voice in management decisions. The most recent agreements provide the strongest models for sharing power with indigenous peoples and the most far-reaching indigenous rights to resources. Sportfishing is not excluded, but the local communities participate in decisions regarding sportfishing access and the local communities benefit from the revenue. The Canadian cases demonstrate that considerable resources (time, effort, and financial support) are required to negotiate co-management agreements and to operate the co-management boards.

The participation of local users in rule making, research and management decision is increasingly important in all Arctic states. The Alaskan model of co-management is no less time consuming to negotiate initially but may avoid some ongoing costs by authorizing a local organization (such as the Association of Village Council Presidents) or a Native organization (for example, the Eskimo Walrus Commission or the Alaska Eskimo Whaling Commission) to allocate previously set quotas among villages and users among other tasks. In Fenno-Scandia, as on the Kola Peninsula, in contrast to Canada, Greenland, and even Alaska, long-term settlement of farming southerners and other outsiders complicates resolution of conflicts. The efforts of the

Sámi Parliament in Norway to increase fishing rights and to create a co-management arrangement for the Tana/Deatnu River will be particularly interesting developments for those on the Kola Peninsula to monitor. Notably, municipal and county governments play a significant role in regulating inland fisheries in Norway and Greenland. While Norway's Directorate for Nature Management establishes conservation regulations, the particular rules governing individual rivers and streams rests with a more local authority. And municipalities in Greenland may regulate fishing so long as their rules serve to conserve the fish stocks more strictly than the Home Rule authorities.

The Sámi of Fenno-Scandia have taken a different approach to promoting their rights and protecting their culture by creating Sámi parliaments in Sweden, Norway, and Finland as well as an umbrella Sámi Parliament. These organizations are the vehicle through which Sámi advise their respective state governments. The parliaments have dramatically increased the Sámi voice in policy decisions and been particularly effective in promoting cultural and linguistic rights. While it is natural for the Sámi in Russia to join with other Sámi to the west, we are reluctant to recommend that time and energy be focused on the creation of a political body modeled on the Sámi parliaments of Fenno-Scandia as opposed to other forms of organization that have been more effective in protecting rights to land and resources elsewhere in the Circumpolar North.

Recommendations

Resolution of fishing conflicts on the Ponoï cannot be addressed entirely separately from the issue of land rights. As land is not yet privatized in the Russian North the areas might be held in some form of collective ownership or even retained by the central government as ethno-ecological reserves (such as Tkhsanom on Kamchatka). Within such reserves and territories of traditional nature use (TTPs) the local users would help formulate rules and regulations for conservation and access through fishing associations modeled on the Icelandic system or co-management arrangements such as those established under Canadian land claims agreements.

The basis for an ethno-ecological reserve exists in the 150,000 hectare state fish management reserve on the Ponoï River Basin. Murmansk authorities created the reserve in 1987 along a 234 mile stretch of the Ponoï from the mouth to Chalmny-Varre; it encompasses nine tributary rivers and a 1000 meter buffer zone along these rivers and the Ponoï. Developing a co-management regime for the Ponoï could reduce conflicts, enable managers to draw on the traditional knowledge of local inhabitants, and meet the legal obligations to comply with international conventions and Russian Federation laws described in Chapter 6. This could be done in part by using the expertise and lessons of a project initiated in 1995 by the Kola Sámi Association, the Arctic Institute of North America, and the Russian Academy of Sciences. The project employed tools used in Canadian resource co-management to assist in resource allocation and use decisions and in environmental impact assessment. A team of Sámi community researchers created a set of detailed land-use and resource maps for part of the Lovozero Raion.¹⁶⁸

The Kola Peninsula has at least as complex a mix of stakeholders vying for access and priority to fish and wildlife as does Alaska. In addition to the “newcomer” population who came to Kola in the Twentieth Century, the Kola population includes aboriginal peoples such as the Sámi and Nenets, indigenous peoples who do not have the same legal status under Russian law (the Komi), and long term residents descended from Pomors who have depended on fish for several centuries. It is not surprising that the region has become snarled in divisive conflict. The Murmansk Oblast, Lovozero Raion and federal authorities must comply with laws that guarantee specific substantive and procedural rights to aboriginal peoples (indigenous minorities) under the new law adopted in April 1999 as well as prior laws and decrees.

As in Alaska, where fishing rights tied to tribal sovereignty or to ethnic background are politically unpopular, on the Kola Peninsula fishing rights and management responsibility for riverine fisheries will likely be accorded on the basis of criteria such as customary use,

¹⁶⁸ Robinson and Kassam, 1998.

availability of alternative foods or income, or geographic proximity to the resource. It may be helpful for indigenous peoples and other local residents to foster open communication with authorities wherein every perspective can be heard and increased understanding and mutual respect are encouraged. Under these conditions, cooperative arrangements can be negotiated in which government authorities share management responsibility with locals who have traditionally used the resource. This is the course adopted elsewhere in some regions of the Russian Federation where clan communities not limited by ethnic composition have been created.

The willingness of regional and central authorities in Russia to negotiate land claims settlements, co-management arrangements, or other alternative resource regimes allowing locals a greater role in decision making will depend in part on local governments and indigenous peoples increasing their bargaining strength. Long term outcomes may well depend on the degree and shape of future land privatization in Russia. Internationally, there has been a strong trend in recent decades toward increased acknowledgment of indigenous rights to land, resources, and self-determination within local territories. Whether the Russian Federation and its "subjects" (oblasts, okrugs, and republics) will follow this trend has yet to be seen.

The "rule of law" is only beginning to take hold in the Russian Federation. The first cases affirming the need to comply with environmental laws has only recently been handed down by the Supreme Court of Russia. In Canada, First Nations fought battles in the courts that set precedents that will improve settlements for those who have not yet concluded land claims negotiations with the government. In the U.S. and Canada, judicial decisions have accorded some indigenous peoples leverage to harvest fish and wildlife on an equal, or frequently better, footing than commercial and sport interests. While the transaction costs of negotiating and operating co-management arrangements are high, these agreements in the long run serve the interests of all stakeholders in a manner that reduces conflict, increases compliance and reduces the cost of enforcement of rules and regulations.

In order to move toward partnership and to reduce conflict regarding management and use of the Ponoï River, we recommend a workshop be held in the Lovozero Raion that would draw together managers, researchers, and local fishers from all parts of the Circumpolar North to provide first-hand descriptions of their own experience in addressing inland fishing conflicts, compare regulatory systems, and discuss potential applications to the Ponoï. The growing array of co-management arrangements and the increase in legal recognition of indigenous rights to land and resources throughout the Circumpolar North point to a future quite different from that now evident on the Ponoï. If the Kola Region is to achieve a more sustainable economy, it must share the economic benefits with local areas and engage in a meaningful partnership with local communities and indigenous peoples. And western interests who have benefited from exclusive use of Kola Rivers must recognize that they too bear responsibility for the future well being of peoples whose land and resources they have been privileged to use. The time has passed when sport fishing operators and tourists could ignore the local population and hide behind the veil of legitimacy endowed upon them by regional authorities' abuse of power. The time has come to address the conflicts openly to achieve cooperation, equity, and to secure cultural diversity, conservation and sustainability.

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Winters v. U.S., 207 US 564 (1908).

Appendix 1. Kola Sámi Association Letter

Appendix 2. Interviews by Evelyn Hurwich during the Kola Consultations, 31 August - 19 October, 1996

Name, Title, Location, Date(s) of Interview.

Afanasjeva, Nina. Kola Sámi Association, President. Murmansk September 26, October 7, 9, 1996.

Avdejeva, Larissa. Kola Sámi Association, Lovozero Representative. Lovozero, September 21, 1996.

Etylin, Vladimir M. Association of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation, Vice President. Moscow, September 28, 1996.

Barakovskii, Nikolai & Vladimir Salov, Murmanrybvod, Fish Inspectors Ryaboga, September 16 & 17, 1996.

Budanov, Konstantin. Murmansk Region Fishing Committee, Chairman of the Committee. Murmansk, October 16, 1996.

Bulatova, Nadezhda, Institute of Linguistic Research of the Academy of Science of the Russian Federation, State Pedagogical University. St. Petersburg, October 1, 1996.

Davies, Bill. Kola Salmon Marketing, Murmansk, September 4, 5, 1996. Degtjarj, Irina. GOSKOMSEVER Head of the Department on Issues of Indigenous Peoples of the North. Moscow, September 27, 1996.

Kanevka Village Meeting. Approximately 40 villagers, Kanevka, September 18, 1996.

Kovtun, Marina V. Committee of Sport, Murmansk, September 24, 1996. McKenzie, Thorpe & Ted Dalenson. Owners, Ponoï River Company. Ryaboga, September 17 & 18, 1996.

Maksutov, Sibir. Former Mayor of Kanevka. Lovozero, October 13, 1996. Matryokhin, Dmitrii. Pamyat Lenina, Director of Krasnoshchelje branch. Murmansk, October 17, 1996.

Mayagin, Viktor. Pamyat Lenina, Manager of Branch Number 1, Kanevka & Natalia Mayagina, Head of the Village of Kanevka. Kanevka, September 18, 1996.

Murmansk Regional Duma Representatives. Present were, Sergei Evgeni Uspenskij, Vice Chair of Duma; Galina V. Andreeva, Deputy, Chair of the Commission on Education, Culture, Science, Healthcare and Nationalities; Viktor S. Voronin, Vice Chair of the Commission on Education, Culture Science, Healthcare and Nationalities; Jouri V. Pakhomov, Consultant for the Commission of Ecology, Economics. Murmansk, September 24, 1996. Nikiforov, Sergei. Russian Ministry of Foreign Affairs, Counsellor to the Legal Department. Moscow, September 27, 1996.

Sapelnikov, Nikolai. Murmanrybvod, Senior Inspector, Lovozero district. Lovozero, September 20, 1996.

Shveitser, Fyodor J. Lovozero District Administration, Vice Head. Lovozero, September 20, 1996.

Semyashkin, Sergei, Committee on Issues of Indigenous Peoples of the North of the Murmasnk Region, Chair of the Committee, & Nikolai Bogdanov, Committee on Issues of Indigenous Peoples of the North of the Murmansk Region, Main Specialist on Economic and Social Issues, Murmansk, September 24, 1996.

Vakhtin, Nikolai. European University of St. Petersburg, Vice Rector of Research. St. Petersburg, October 1, 1996.

Vaskina, Nadiya and Valerii. Ponoï River Company employees. Ryaboga, September 15, 17, 1996.

Vatonena, Ljubov. Kola Sámi Association. Murmansk, September 4, 5, 7, October 7, 1996.

Wroblewski, Mariusz. Camp Manager, Ponoï River Company. Ryaboga, September 16, 17, 1996.

Yevgenii, Hunting Inspector, Ryaboga, September 16, 1996.

Zakharov, Andrei, Villager from Krasnoshchelye. Lovozero, September 26, 1996.

Zelensov, Alexander. Murmanrybvod, Chairman. Murmansk, September 24, 1996.

Zubchenko, Alexander. PINRO, Head of the Inland Biological Resources Division & Moskalenko, Vladimir. PINRO, Director of Research, Murmansk, October 7, 1996.

Appendix 3. Open Letter from Kanevka villagers to Lovozero Administration

Appendix 4. Database of Contacts

Map 4 . Pull out Map. The Ponoι River, with Major Tributaries, Former and Current Settlements, Military Barracks, Commercial Fishery (RUZ) Location and Ponoι River Company exclusive water.