Legitimacy and Effectiveness through Fisheries Co-Management

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Introduction: Co-Management and Legitimacy in Oceans Governance

It is timely to consider the key importance of co-management institutional arrangements in successful fisheries management. Co-management is power-sharing between government agencies charged with the responsibility of governing one or more natural resources and the place-based communities, organizations, or regions that are most affected by the agency’s decisions.¹ Feit prefers to call such arrangements ‘co-governance’,² but it can be useful to reserve this term for high levels of power-sharing in joint policy-making, while operational decisions such as how, when, and where to take actions are termed ‘co-management’. Co-management and even co-governance often begins as an ‘incomplete’ arrangement in which the scope and geographic scale of the power of the non-government party is fairly limited.³ Although such arrangements often evolve, it is seldom to the point of joint policy-making. Authentic co-governance is usually driven by court decisions or unique policy situations.

Legitimacy is essential in fisheries co-management. Both the legitimacy of senior governments and the legitimacy of local authorities who are working with these senior governments are important. Although it is desirable to have both types of legitimacy, local legitimacy is indispensable and can make a system work, even if senior government legitimacy is lacking. There is high

¹ E. Pinkerton, “Attaining Better Fisheries Management Through Co-Management: Prospects, Problems, and Propositions,” in Co-operative Management of Local Fisheries: New Directions for Improved Management and Community Development, ed. E. Pinkerton (Vancouver: University of British Columbia Press, 1989), 3–33.
² H. Feit, “Re-cognizing Co-management as Co-governance: Visions and Histories of Conservation at James Bay,” Anthropologica 47, no. 2 (2005): 267–288.
³ E. Pinkerton, “Toward Specificity in Complexity: Understanding Co-management from a Social Science Perspective,” in The Fisheries Co-Management Experience: Accomplishments, Challenges and Prospects, eds., D.C. Wilson, J. Raakjaer Nielsen and P. Degnbol (Dordrecht: Kluwer, 2003), 61–77.
agreement among social scientists that legitimacy plays a major role in compliance with regulations, so management is problematical if legitimacy is lacking at both levels.

This essay focuses particularly on the importance of establishing legitimacy through including local Indigenous voices in management decisions. The value of legitimacy is currently under-appreciated because of an increasing emphasis on efficiency and neoliberal values related to reducing the role of government and relying on the market to achieve desirable outcomes.

**A Legitimate Co-Management System**

Legitimacy in fisheries management is examined here through a fishery example in British Columbia, on the Pacific coast of Canada. In this region, the federal government and its Department of Fisheries and Oceans (DFO) faces the problem of conflicting demands on fisheries access from sport, commercial, and Indigenous parties, as well as from sub-divisions of all of these. In addition, DFO has suffered progressive budget cuts and lacks the capacity to monitor and enforce its regulations, especially in the many rural areas where DFO presence might exist for only a few days a year. Therefore, incentives exist to co-manage with local organizations, but there is little guidance for DFO regarding how and when to work with local parties.

This essay considers key components of what that guidance might look like if social scientists were consulted, using an example from the West Coast of Vancouver Island where I have worked with Indigenous and non-Indigenous communities since the late 1980s. Kyuquot Sound/Checklesht Bay (Area 26), on the northwest coast of Vancouver Island (Canada), is one of the traditional territories that are home to 14 Nuu-chah-nulth First Nations. The essay focuses on the components of a legitimate clam co-management system in this location.4

Prior to establishment of the system, the initial situation could be called a worst-case scenario because of the complete lack of local regulations or respect for DFO regulation. The Indigenous community of Kyuquot-Checklesht (KC) hated DFO because they interpreted DFO’s actions since state regulation of fisheries began as evidence that the agency was deliberately trying to hurt them, and that its regulations had nothing to do with conserving fish. This

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4 E. Pinkerton and L. John, “Creating Local Management Legitimacy: Building a Local System of Clam Management in a Northwest Coast Community,” *Marine Policy* 32, no. 4 (2008): 680–691.
interpretation was partially a response to government policies and actions that had marginalized the community and resulted in the loss of virtually all their finfish licenses, and partially awareness that government regulations were not based on local knowledge. Thus, when the area was closed to clam fishing because of government belief or precaution that there was paralytic shellfish poison or fecal coliform in the area, residents ate the clams, did not get sick, and considered government regulations ill-founded.

But over a 20-year period of 1986–2006, a community member who became the KC Fisheries (KCF) manager, Leonard John, built a local management and co-management system that was based on scientific, regulatory, political, and moral legitimacy. The process and its components are summarized below.

(a) **Scientific legitimacy** was first built through volunteer community participation in clam stock assessment led by a fisheries biologist from the Nuu-chah-nulth Tribal Council and later by John. Because the community had seen local clam stocks overfished by diggers from the entire west coast of Vancouver Island and then closed, they understood the importance of stocks rebuilding sufficiently to sustain a harvest.

(b) **Regulatory legitimacy** was achieved because John enforced the regulations that diggers hold a valid commercial license, dig only during a commercial harvest opening, not dig on beaches that were closed due to water quality concerns, and deliver real and legal-size clams to buyers. If government closures of supposedly contaminated beaches were not enforced, the entire area might be closed, so diggers recognized that it was in their self-interest to follow government regulations and have an orderly fishery and credibility with buyers.

(c) **Political legitimacy** was gained when KCF was perceived as being able to act effectively and decisively as a local authority that could protect community fishing rights when DFO questioned the boundary of an open area, and when John applied for clam licenses for community members who had missed the deadline. The political legitimacy it gained by these actions put John in a stronger position to assert regulatory authority.

(d) **Regulatory capacity** was built when DFO created the communal license, allowing KC as a successful applicant community to exclude outsiders and regulate its own members’ activities. KCF’s community meetings to make and revise access and other rules were well attended; rules were revised annually and attendees were required to sign a paper that they had attended and agreed to these rules, and could lose their license if they broke them. Offenders were warned privately and respectfully over coffee that they could not repeat the offence and were given a chance to indicate their acceptance of this privately, but lost their license and were
publicly shamed if they did not. The respectful manner in which rules were thus enforced was consistent with traditional local values.

(e) **Moral legitimacy** was gained because local regulation was open, accountable, democratic, and consistent with the values of the community. Management systems based on moral authority perform at a much higher level than those run on legal, political, scientific, or regulatory authority alone. The local management system met a number of criteria for moral legitimacy that are broadly accepted by social scientists: (1) there were objective standards in the system; (2) the standards were visible, transparent, and culturally appropriate; (3) the outcomes were effective and perceived as fair; and (4) the use of natural science in the context of a co-operative and highly communicative relationship played a key role in legitimacy creation.

Public trust in local resource management because of moral authority resulted in a virtuous cycle of further growth of scientific and regulatory authority. Economist Samuel Bowles, remembering the importance that economist Adam Smith accorded to ‘moral sentiments’, has made the case that well-designed laws and public policies can harness self-interest for the common good only if they do so by appealing to these moral sentiments.⁵ His study showed that incentives that appeal to self-interest are likely to fail when they undermine the moral values that lead people to act in other-regarding or public-spirited ways.

This highly legitimate local management system was also a co-management system because it depended on DFO regulations to legitimize local enforcement of the exclusion of outsiders from beaches with communal licenses and also to regulate local license use. There were also some management activities that senior government agencies required local managers to perform, such as water quality testing delegated by Environment Canada (now Environment and Climate Change Canada) and the Canadian Food Inspection Agency, or stock assessment surveys that had to be reported to DFO. The existence of a competent and legitimate local manager raised the confidence level of government agencies that these activities were being carried out effectively.

This local system also benefited from favorable conditions in the clam resource and in the community. Clams are more easily monitored than many other species because they are non-mobile and located on a limited number of known beaches with specific clear boundaries where diggers are highly visible because they require a boat to get to a beach. The community is small,

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⁵ S. Bowles, “Policies Designed for Self-Interested Citizens May Undermine ‘The Moral Sentiments’: Evidence from Economic Experiments,” *Science* 320 (2008): 1605–1609, doi.org/10.1126/science.1152110.
remote, and culturally cohesive with high rates of seasonal unemployment, high dependence on clams for employment, and hold clams in high regard as a culturally important resource. These conditions make monitoring and management in general easier, and a more feasible foundation upon which to build legitimate management and co-management.

**Conclusion**

A local management system based on the scientific, regulatory, political, and moral components described above can be highly effective, and certainly far more effective than a government system working alone. Senior governments do not have the capacity to enforce their regulations, or often even to devise ones that could work in areas they cannot regularly monitor. In such situations, government acceptance of and support of local management should be based on an awareness that the alternative is, without a local authority, substantial poaching and overexploitation, the situation that existed before the KC local authority developed effective local management. Local authority, which contained the appropriate components, demonstrated effectiveness in making and implementing its own regulations as well as those of government agencies; it kept the system functional, orderly, and acceptable to government agencies so that closures were not threatened.

The KC situation benefited from the existence of a highly experienced senior DFO clam manager whose headquarters were located on the east coast of Vancouver Island, and who was willing to work with a highly competent local manager as the situation evolved into one in which local management could be fully developed. Since this situation also benefited from favorable conditions in the nature of the community and the clam resource, which cannot always be guaranteed, government managers should be aware of the need for a social scientist to assist in the recognition of necessary elements for effective co-management. A social scientist would be able to identify missing elements and the need for specific kinds of support to allow a potentially effective situation to become fully operational. Evaluations could be made about which situations offered the most promise and were worth considerable time investment or monetary support. Situations that lacked any of the scientific, regulatory, political, and moral components could be addressed with specific attention to those components. Building on favorable conditions in the government agency, in the clam resource, and in the community, plus the elements of a highly legitimate system, would give co-management initiatives a good chance of success.