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FISHING COMMUNITIES AS SPECIAL PLACES: THE PROMISE AND PROBLEMS OF PLACE IN CONTEMPORARY FISHERIES MANAGEMENT

*Seth Macinko**

I. INTRODUCTION

A thematic focus on special strategies for protecting special areas gives rise to several questions of a definitional nature. For example, what do we mean by “protecting”—protection from what and for what purpose (or even, a bit anthropocentrically, for whom)? Or, perhaps more importantly, what do we mean by special areas? It seems to be the norm these days in discussions of marine policy to use “special areas” as a sort of shorthand for (special) areas deserving protection through the application of a (special) tool known as MPAs—marine protected areas. But the whole thing is a bit circular—MPAs are a special strategy for protecting special areas, which are defined as areas protected by MPAs. I want to address a different kind of special area and a different kind of protection strategy.

One meaning of special areas is special places. And the special places I wish to address are fishing communities. Fishing communities warrant at least some of our attention when thinking about place-based strategies for management. In this paper, I argue that management for fishing communities as special places has promise, but that place-based management is thwarted by the fusion of two contemporary streams of thought in fisheries management: conflation of interest groups and “communities,” and the emphasis on “rights-based” fishing. In Part II, I explore the concept of place—what I mean by place, the importance of place to people, the contrast between place-based management when the focus is on marine organisms as opposed to when it is on human

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communities, and the potential contribution of place-based strategies to fisheries management in the future. Despite the promise, place-based management faces substantial impediments and in Part III, I discuss how the coalescing interest in “property rights” and “community-based management”—in concert with a complementary legal ruling—impedes broader recognition of fishing communities as special places and experimentation with place-based management. In Part IV, I return to the idea that place-based management holds considerable promise for the benefit of fishing communities and the biological communities they exploit.

II. THE PLACE OF PLACE IN FISHERIES MANAGEMENT

Does place matter in fisheries management—do people care, and should they care, about place? The answer to this question would appear to be “it depends.” It depends on whether place refers to marine organisms or to human communities. As the burgeoning literature on MPAs attests to, place-based management is in fashion these days¹—when the intended beneficiary is the marine ecosystem. But an explicit focus on place (and preserving place) recedes when the subject is human communities.

The differential recognition of the importance of place (to human and non-human systems) is stark and suggests that there is a kind of human frontier²—largely unexplored territory—when it comes to place in our thinking about managing marine ecosystems. We simply have not explored the importance of place to the functioning and sustainability of human communities to the degree that we have for non-human components of marine ecosystems.

Clearly, some MPA proponents emphasize the benefits of MPAs to local human communities (human benefits can come from both enhanced or recovered population of marine species and a sense of empowerment through participatory governance structures and human capacity building), but the principal focus of the MPA literature is on marine biological systems. This emphasis on systems highlights the differences between how

1. See generally NATIONAL RESEARCH COUNCIL, MARINE PROTECTED AREAS: TOOLS FOR SUSTAINING OCEAN ECOSYSTEMS (2001), for an overview on MPAs and an expansive (though now somewhat dated due to the continued growth of the field) bibliography.

2. I use the term “human frontier” here in a more general sense than that coined by Harold Brookfield (a boundary, delineating acceptable from unacceptable areas of inquiry into human activity, that is not crossed—Brookfield’s location of the frontier distinguished types of inquiry into human activity, whereas the sense employed here is more generic, locating the boundary between inquiry into non-human versus human ties to place). H.C. Brookfield, *Questions on the Human Frontiers of Geography*, 40 *ECON. GEOGRAPHY* 283, 284 (1964).

we treat the human and non-human components of the marine ecosystems we care about. For the latter, we identify special places for protection of entire assemblages of various trophic levels across generations. Specifically, we do not try to protect (or reward or endow) individual organisms (e.g., we do not aim to protect specific scallops). Yet, on the human side, modern fisheries management consists of endowing specific individuals in the present generation. This focus on individuals holds true even if these management measures are labeled “community-based” or “co-management.” The substantial distinction between place-based management and what is frequently called community-based management is discussed in detail in Part III.

By “place,” I mean physical place³—what I think most people mean by “place” in everyday usage—and here I am restricting my focus to inhabited places. By “place-based” management, I mean management focused, in the first instance, on endowing places, rather than individuals, with resource wealth. The critical distinction here is between a focus on endowing individuals in the present generation and a focus on endowing *places* so as to provide a stream of opportunity for individuals in those places into the future. A hypothetical example may be illustrative of the distinction. Suppose a philanthropist wishes to provide for the enhancement of reading at the local (community) level. On the one hand, she could select some target communities and then handsomely endow individuals (perhaps even all residents at a specific time) with personal libraries. Alternatively, she could (like Andrew Carnegie) endow the place directly with a public library. One path is individual-based, while the other is place-based. We can imagine very different trajectories of the distribution of benefits into the future. In the fisheries realm, many policies that might ostensibly appear to be place-based are, upon closer inspection, revealed to be focused on the endowment of particular individuals, not places.⁴ Significantly,

3. Importantly, I do *not* mean “space.” See TIM INGOLD, *Concluding Commentary*, in *NEGOTIATING NATURE: CULTURE, POWER, AND ENVIRONMENTAL ARGUMENT* 213 (A. Hornborg & G. Pálsson, eds., 2000), for a trenchant commentary on the displacement of place in favor of space in a contemporary analysis; *see also* TIM INGOLD, *THE PERCEPTION OF THE ENVIRONMENT* 190-92 (2000).

4. The quintessential example might be the fisheries policy in Newfoundland. *See generally*, HAROLD A. INNIS, *THE COD FISHERIES: THE HISTORY OF AN INTERNATIONAL ECONOMY* (Mary Q. Innis et al. eds., rev. ed. 1954); MIRIAM WRIGHT, *A FISHERY FOR MODERN TIMES: THE STATE AND THE INDUSTRIALIZATION OF THE NEWFOUNDLAND FISHERY, 1934-68* (2001). Another example is the Alaskan fisheries policy. *See generally*, RICHARD A. COOLEY, *POLITICS AND CONSERVATION: THE DECLINE OF THE ALASKA SALMON* (1963); JAMES A. CRUTCHFIELD & GIULIO PONTECORVO, *THE PACIFIC SALMON FISHERIES: A STUDY OF IRRATIONAL CONSERVATION* (Henry Jarrett et al. eds., 1969). While both cases clearly involve an interest in places, the policies in question were focused on individuals and/or

rights-based fishing and, as I argue in Part III, contemporary interest in community-based management and co-management aligns with the focus on endowing individuals.

It may be useful to back up and consider the question “does place matter?” more generically, not initially focused on the context of fisheries management. It seems obvious that place matters, often deeply, to (many) people. This is obvious in the rich tradition of the study of “landscapes,”⁵ the study of the reciprocal exchanges between humans and the natural environment. But the richness of *terrestrial* landscape studies contrasts sharply with the dearth of marine/coastal analogs.⁶ It is unlikely that peoples’ attachment to place stops at the coast and this gap in the literature seems reflective of disciplinary influences. Maritime geography exists,⁷ but is clearly in the minority in a discipline predominantly devoted to studying human/environment interactions on the thirty percent of the earth’s surface that is dirt, not water.⁸ Cultural oceanography seems nonexistent. I think it is worth crossing into the frontier, to think for a moment about the potential benefits of place-based management for fisheries.

If fisheries management is about human objectives as much as or more than piscatorial objectives, it seems odd to leave out of the management program what is likely to be a significant source of human benefit and attachment. Moreover, place seems integral to the concept of “ecosystem” and ecosystem-based management is increasingly the focal point of new management approaches.⁹ It is inconsistent to pay so much attention to the importance of place in ecosystem-based management approaches focused

individual firms, *not* the endowment of specific places regardless of the presence of any particular entities and individuals at a particular time.

5. See, e.g., Yi-Fu Tuan, *Thought and Landscape: The Eye and the Mind’s Eye*, in THE INTERPRETATION OF ORDINARY LANDSCAPES 89 (D.W. Meinig ed., 1979); D.W. MEINIG, THE INTERPRETATION OF ORDINARY LANDSCAPES (1979); LANDSCAPES: SELECTED WRITINGS OF J.B. JACKSON 1 (Ervin H. Zube ed., 1970). Of course, human history provides more trenchant examples of the connections between people and place than any academic musings on landscape. Consider, for example, the testimony to the power of place that is occurring in our time in the rebuilding and resettlement of post-Katrina New Orleans, or the tragic consequences of displacing people from their place as represented in the story of the Aleuts who were relocated to Southeast Alaska during World War II. See generally DEAN KOHLOFF, WHEN THE WIND WAS A RIVER: ALEUT EVACUATION IN WORLD WAR II (1995).

6. Stilgoe’s work on what he calls “alongshore” (his term for a coastal counterpart to “landscape”) stands out as a notable exception. JOHN R. STILGOE, ALONGSHORE 1 (1994).

7. See, e.g., BERNARD NIETSCHEMANN, CARIBBEAN EDGE: THE COMING OF MODERN TIMES TO ISOLATED PEOPLE AND WILDLIFE 1 (1979).

8. Much modern geography is lost in “space.” See Ingold, *supra* note 3, at 213.

9. See generally U.S. COMMISSION ON OCEAN POLICY, AN OCEAN BLUEPRINT FOR THE 21ST CENTURY: FINAL REPORT (2004).

primarily on the biological targets of management attention, yet so little attention to place in terms of the human targets of management. If we believe in ecosystems as *systems* with synergistic relations between human and non-human components, then to talk of ecosystem sustainability without taking these relationships into account is shallow. The phrase “ecosystem and place” is redundant; an ecosystem without place is not an ecosystem. Can we imagine using the term “sustainable” to describe a situation in which, over the long term, the bond between people and place is destroyed?

True place-based management provides some interesting opportunities to aim for sustainability of human and natural communities linked by the common medium of place. But a very real difficulty in trying to talk about place-based management is that we know so little about it (having tried it so rarely). There is room for much experimentation with forms of place-based management, but I think that the way forward in very general terms is via something I have called the Community Fishing Trust concept.¹⁰ The essence of the concept is that the wealth of the fishery represents an endowment, and that rather than conferring this endowment on only particular members of the present generation of the fishing industry, we might prefer to anchor that endowment to places. Very different benefit streams and future trajectories of these benefit streams are likely to be associated with the two options. True place-based management might offer a benefit stream that would appear attractive from the standpoint of current interest in the plight of fishing communities. But, of course, that would depend on whether those communities were thought of in place-based terms in the first place. And therein lies a considerable challenge to communities. It is to this subject of contemporary challenges to communities and place-based management that I now turn.

III. PLACE AS PROBLEM

A gross generalization is that the trend is toward management and co-management communities; this trend is encouraged by private rights-based management schemes. However, in many countries and fishery-dependent regions, this carries the risk of further

10. Seth Macinko, *In Search of Transition, Community and a New Federalism: Six Questions to Confront on the Road Towards a National Policy on Dedicated Access Privileges*, in *MANAGING OUR NATION'S FISHERIES II: FOCUS ON THE FUTURE* 236, 242 (David Witherell ed., 2005). See generally, SALLY K. FAIRFAX & DANA GUENZLER, *CONSERVATION TRUSTS* (2001), for an overview of the natural resource-as-endowment concept.

marginalizing already vulnerable place-based and occupational communities. Hence, a counter-movement can be discerned, to protect and build upon place-based, local-level communities. That is what most people mean by the term “community-based fisheries management,” even though as I have suggested, community can have many other referents.¹¹

The quote above underscores two important trends in contemporary fisheries management. First, there is an emerging dichotomy between consideration of place on the one hand and the union of rights-based and co-management philosophies on the other. It seems clear that ideological support for so-called rights-based fishing and for co-management, defined as devolution of management authority to industry participants, is coalescing.

The second trend suggested in the quotation above is a counter-intuitive (placeless) interpretation of “community” so as to permit the first trend to be talked about as community-based management.¹² As others have noted, there are two broad conceptual categories of communities: place-based communities and communities of interest.¹³ Common sense understanding of “community” runs with the former conception, but in contemporary fisheries management circles, there is substantial emphasis on the latter—communities of interest. Communities of interest are also known by other labels such as “virtual communities” and “epistemic communities.”¹⁴ Together, the trend towards rights-based fishing and the trend toward virtual communities are inconsistent with an emphasis on place. I

11. B.J. McCay, *Community-based Approaches to the 'Fishermen's Problem,'* in USE OF PROPERTY RIGHTS IN FISHERIES MANAGEMENT: PROCEEDINGS OF THE FISHRIGHTS99 CONFERENCE 203, 204 (Ross Shotton ed., 2000).

12. I expand on this counter-intuitive construction of community in Part II. Note the seamless interchange between co-management and community-based management in the quotation. See Marco Antonio Quesada Alpízar, *Participation and Fisheries Management in Costa Rica: From Theory to Practice*, 30 MARINE POL'Y 641, 642-44 (2006), for a discussion of the distinctions between co-management and community-based management.

13. See, e.g., NATIONAL RESEARCH COUNCIL, SUSTAINING MARINE FISHERIES 1, 97-99 (1999); McCay, *supra* note 11, at 204.

14. See, e.g., NATIONAL RESEARCH COUNCIL, *supra* note 13, — the volume is replete with references to “virtual communities” but see 99-100, and McCay, *supra* note 11, at 204, respectively. These appellations may be a case of the proverbial old wine in new bottles as it is not clear why the entities referred to by these various labels are something other than what used to be known as interest groups and coalitions of interest groups, or what Merton long ago called social groups and social collectives. ROBERT K. MERTON, SOCIAL THEORY AND SOCIAL STRUCTURE (9th ed. 1964).

elaborate on four impediments to place-based management of fisheries and fishing communities in the United States in the following discussions.

A. *The Ageographical Nature of Fisheries Economics*

A signal characteristic of the conventional fisheries economics literature emphasizing property rights is that it is ageographical. This ageographical character is a direct outgrowth of the particular obsession with property rights that pervades the fisheries economics literature. For over a half-century, the fisheries economics literature has resembled a monolithic block. “From the start,”¹⁵ fisheries economics has been focused on the alleged lack of property rights in ocean fisheries.¹⁶ If the message has remained unchanged, the stridency of the delivery of that message has certainly increased and shows no sign of abating. The property rights and “rights-based fishing” literature is voluminous and growing.¹⁷ The general subject of the property rights movement in fisheries management is not my focus *per se* in the present paper. The topic is huge and I have attempted to tackle it elsewhere.¹⁸ However, the substantial influence of fisheries economics on contemporary possibilities for place-based management

15. Parzival Copes, *A Critical Review of the Individual Quota as a Device in Fisheries Management*, 62 LAND ECON. 278, 278 (1986).

16. The start of fisheries economics—in the English literature—is invariably located with the writings of H. Scott Gordon, *The Economic Theory of the Common Property Resource: The Fishery*, 62 J. POL. ECON. 124, 124 (1954), and the biologist Milner B. Schaefer, *Some Considerations of Population Dynamics and Economics in Relation to the Management of the Commercial Marine Fisheries*, 14 J. FISH RES. BD. CAN. 669, 669-71 (1957) [hereinafter Schaefer, *Population Dynamics*]; see also Milner B. Schaefer, *Biological and Economic Aspects of the Management of Commercial Marine Fisheries*, 88 TRANS. AM. FISH. SOC. 100, 102-04 (1959) [hereinafter Schaefer, *Commercial Marine Fisheries*]; Anthony Scott, *The Fishery: The Objectives of Sole Ownership*, 63 J. POL. ECON. 116, 121-24 (1955). See generally Anthony Scott, *Development of Economic Theory on Fisheries Regulation*, 36 J. FISH RES. BD. CAN. 725 (1979), for a survey of the development of the fishery economics field.

17. See, e.g., RIGHTS BASED FISHING: PROCEEDINGS OF A WORKSHOP ON THE SCIENTIFIC FOUNDATIONS FOR RIGHTS BASED FISHING (Philip A. Neher et al. eds., 1989); USE OF PROPERTY RIGHTS IN FISHERIES MANAGEMENT, *supra* note 11; RÖGNVALDUR HANNESSON, THE PRIVATIZATION OF THE OCEANS (2004).

18. Seth Macinko, *Public or Private?: United States Commercial Fisheries Management and the Public Trust Doctrine, Reciprocal Challenges*, 33 NAT. RESOURCES J. 919 (1993) [hereinafter Macinko, *Public Trust*]; SETH MACINKO & DANIEL W. BROMLEY, WHO OWNS AMERICA’S FISHERIES? (2002) [hereinafter Macinko & Bromley, *America’s Fisheries*]; Seth Macinko & Daniel W. Bromley, *Property and Fisheries for the Twenty-First Century: Seeking Coherence from Legal and Economic Doctrine*, 28 VT. L. REV. 623 (2004) [hereinafter Macinko & Bromley, *Legal and Economic Doctrine*].

springs directly from the intense focus on rights-based fishing and it is essential to locate a discussion of place within the broader focus on “rights.”

First, some clarification of terms is in order. Rights-based fishing is more properly termed property rights-based fishing, and, more properly still, private property rights-based fishing. That is, the rights-based literature is a celebration of alleged private property rights, not human rights or civil rights or any other form of right human societies might sanction.¹⁹ It would be difficult to overstate just how extreme this celebration has become.²⁰ The early mild references to “limited entry”²¹ have now been replaced by open talk of “the privatization of the oceans”²² and of privatization of entire marine ecosystems.²³ It would also be difficult to overstate how blithely accepted the property rights based diagnosis (of what ails marine ecosystems) has become in all walks of marine policy. Consider, for example, the following statement found in the opening sections of the National Research Council’s (NRC) report on Marine Protected Areas:

The failure of communities to limit use of the commons by individuals in the cause of overall community interest and sustainability has led to a shift in most countries to private or government ownership of most land areas. This shift imbues property owners with a strong incentive to protect the land and its resources from overuse and destructive activities, thus empowering the owners to act as stewards of the land.²⁴

19. Another distinctive characteristic of the conventional fisheries economics literature is that from the start, it has been conspicuously devoid of any apparent need, much less scholarly duty, to consider what rights actually *are*, as viewed from the perspective of the law and established legal scholarship. In this respect, fisheries economics is just a particularly acute case of a phenomenon afflicting economics in general. The confusion in the economics discipline as to what property rights are is nothing short of staggering. See Daniel H. Cole & Peter Z. Grossman, *The Meaning of Property Rights: Law vs. Economics*, 78 LAND ECON. 317 (2002).

20. See Martin L. Weitzman, *Landing Fees vs. Harvest Quotas with Uncertain Fish Stocks*, 43 J. ENVTL. ECON. & MGMT. 325, 326 n.2 (2002), for a specific comment on the extremism involved.

21. See *generally* LIMITED ENTRY AS A FISHERY MANAGEMENT TOOL: PROCEEDINGS OF A NATIONAL CONFERENCE TO CONSIDER LIMITED ENTRY AS A TOOL IN FISHERY MANAGEMENT (R. Bruce Rettig & Jay J.C. Ginter eds., 1978).

22. See HANNESON, *supra* note 17.

23. R. Árnason, *Property Rights as a Means of Economic Organization*, in USE OF PROPERTY RIGHTS IN FISHERIES MANAGEMENT, *supra* note 11, at 22-23.

24. NATIONAL RESEARCH COUNCIL, *supra* note 1, at 20.

In view of this miraculous power of ownership, one wonders why there are any conservation issues left in the terrestrial realm. What we see here—in the ownership-promotes-stewardship thesis—is the substitution of faith and ideology for analysis. Of direct concern for this paper, the exultation of property rights poses distinct implications for place.

In fact, the fisheries economics literature is hostile to place. By now the underlying theory of the Gordon-Schaefer bio-economic model is known to most fisheries policy-makers and analysts in the United States.²⁵ The essence of the accompanying policy prescription is removing people and capital from a fishery:

One implication of this [theoretical] insight is that reducing the number of fishermen and gear will usually increase the income of those enterprises that remain by more than it will reduce the incomes of those that are excluded. In principle, at least, a system that transferred part of the gains from the first group to the second could leave both of them better off than they had been, *while the rest of society would benefit from the labor and capital freed for other useful activity.*²⁶

It is perhaps not at all surprising that some people remain skeptical about the benefits of being liberated from their current, chosen, employment. Questions about the places those people live follow, but place is not a factor in the standard model as shown in the exchange below:

I wonder what the effect the share quota systems . . . [would have on] Alaska's coastal communities or industries?²⁷

Well, I suppose I don't know. To some extent, I'd like those questions to be on the other side of the ledger. What I'm interested in and what I think we need to focus our attention on is the aggregate effect over the entire U.S. economy, initially ignoring

25. See Gordon, *supra* note 16; Schaefer, *Population Dynamics*, *supra* note 16; Schaefer, *Commercial Marine Fisheries*, *supra* note 16; see generally SUZANNE IUDICELLO ET AL., *FISH, MARKETS AND FISHERMEN: THE ECONOMICS OF OVERFISHING* (1999), for a quick overview; and Macinko & Bromley, *America's Fisheries*, *supra* note 18, at 22-24, for more details.

26. Arlon R. Tussing, *Introduction to ALASKA FISHERIES POLICY* 8 (Arlon R. Tussing et al., eds., 1972) (emphasis added).

27. D. Herrmsteen, panel discussant in *PROCEEDINGS OF THE CONFERENCE ON FISHERIES MANAGEMENT: ISSUES AND OPTIONS, ALASKA SEA GRANT REPORT 85-2*, 145 (T. Frady ed., 1985). The panel discussant was a commercial fisherman and former Mayor of Kodiak.

the question of how particular groups, and particular individuals and particular regions come out.²⁸

What we see here is an outcome that is preordained—fisheries economics has simply ruled place out of consideration *at the outset*. The aggregate versus the particular emphasized in the quote above is simply the all-important distinction between allocation and distribution that is drilled home to any economics student. Allocation is neutral and objective, whereas distribution is normative and subjective:

That is not to say, of course, that there won't be clear and identifiable impacts on those industries and communities that directly support the fishing industry. But, here as with intra-industry economic effects, we have an issue of income distribution, rather than net national economic product.²⁹

By definition, distribution involves questions of “who” and, crucial to the present focus on place, “where.” But place is more than just relegated to the status of a second-order issue—place is fundamentally a problem for the smooth functioning of the economic theory *on its own terms*. Recall the emphasis on “freeing” some people and capital for use elsewhere in the national economy.

1. On “Yer” Bike: Place as Problem, Mobility as Solution

What I have called the ‘let them work elsewhere’ theory³⁰ only works to produce benefits for the nation as a whole (and that is what it means to say the theory “works”) if those newly unemployed actually *move* on to new employment. The issue is one of “factor mobility.” In theory, all factors of production (including labor) should be perfectly mobile, capable of moving in and out of productive activities on a short-term basis. Of course, it does take time to switch machinery around but having people develop an attachment to place is even more problematic, so much so as to represent the only “real” problem as perceived from the vantage point of the conventional fisheries economics canon: “The problem, if there is one, is to redirect the flow of potential new entrants from the fishery to other occupations.”³¹ When the fishery is in one location and alternate

28. R.L. Stokes, panel discussant in FRADY, *supra* note 27, at 145.

29. R.L. Stokes, *The Economics of Management and Allocation: Experience from Outside U.S. Fisheries Management*, 127 in FRADY, *supra* note 27, at 139.

30. Macinko, *supra* note 10, at 238.

31. J.A. Crutchfield, *Economic and Social Implications of the Main Policy Alternatives for Controlling Fishing Effort*, 36 J. FISH RES. BD. CAN. 742, 751 (1979).

employment options are distant from that place, things can depart rather substantially from theory. One solution is to attempt to enhance the mobility of labor by relocating those liberated from their employment. Another solution is to adopt the posture that people really just should not live in places where labor “stickiness” is likely to be a problem (e.g., Newfoundland, Maine, the redwood coast of northern California, Alaska).³² But of course people do live in places where labor mobility is limited, whether for reasons of attachment or dearth of alternatives. Indeed, many of the places we call fishing communities are characterized by their remoteness or relative isolation and consequent labor stickiness.

When place matters, the problem is often not how to exit a place but rather how to remain viable *in* that place. Note that emphasis on mobility in order to *leave* a community is precisely the inverse of a reliance on mobility to remain *in* a community—now mobility plays a critical role in the quest for in-place sustainability. Those most successful at staying in a place are often those with the ability (i.e. mobility) to pursue a portfolio of productive activities in the surrounding region (whether focused on monetary remuneration or capture of subsistence resources or both).³³

In many respects, fisheries economics is divorced from the world it seeks to comment on. In the real world, the world in which management policies are devised, distribution does matter, and place is often a critical part of distributional concerns.³⁴ Indeed, place-based distributional

32. Note that these are not mutually exclusive options. The (in)famous attempt to “resettle” the populace of the fishing outports of Newfoundland arguably represents a combination of the two. See WRIGHT, *supra* note 4, at 146-49. Fishery economists are not only dismissive of place-based distributional concerns, but of distributional issues in general, including those focused on individuals. At times, their adherence to the allocation vs. distribution distinction can seem remarkably brazen. Commenting on the usual distributional concerns that accompany most attempts to introduce (private) property rights into fisheries, one of the founders of modern fisheries economics noted: “To the extent that the very young, untrained, and handicapped find entry more difficult because of the higher capital investment required, one can only reply that it is unwise to be poor, ignorant, or unwell—the same restrictions on entry that apply everywhere.” Crutchfield, *supra* note 31, at 748.

33. See generally NATIONAL RESEARCH COUNCIL, THE COMMUNITY DEVELOPMENT QUOTA PROGRAM IN ALASKA AND LESSONS FOR THE WESTERN PACIFIC (1999), for a discussion of the linkages between income, mobility, and successful subsistence harvesting.

34. And not *all* fisheries economists reject place and distribution:

Wealth distribution does matter Many fisheries are located in depressed regions and it is important therefore to ensure that investment is directed at these areas. By and large, federally directed regional policy has failed to achieve this goal The policy debate . . . is a debate about the absolute condition of fishermen and fishing communities.

S. Cunningham, *Fishermen’s Incomes and Fisheries Management*, 9 MARINE RESOURCE ECON. 241, 250-51 (1994).

concerns were at the root of the first changes to the national standards that form the core of our national fisheries legislation. It is to this statutory focus on place that I now turn.

B. The Virtual Assault on Community

The incompatibility between human attachment to specific places and an economic theory that relies upon a high degree of factor mobility is obvious. It is less obvious (and in fact ironic) that place should be problematic to an interest in “community” and community-based management. But this seemingly counter-intuitive result is precisely the situation that exists in the United States today and it exists because of changes to our national fisheries legislation that emphasized a place-based conception of community.

C. The Coming of Age of “Community” in Fisheries Management: Be Careful What You Wish For?

In 1996, the U.S. Congress reauthorized the nation’s federal fisheries legislation—the Magnuson-Stevens Fishery Conservation and Management Act (MSA—originally passed in 1976)³⁵—via an act known as the Sustainable Fisheries Act (SFA).³⁶ The SFA introduced a new national standard into the MSA emphasizing consideration of impacts on fishing communities when designing management policies. Specifically, National Standard 8 reads:

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.³⁷

35. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1882 (2000).

36. Pub. L. No. 104-297, 110 Stat. 3559 (1996) (current version at 16 U.S.C. §§ 1801-1882 (2006)).

37. 16 U.S.C. § 1851(a)(8). I have quoted from the 1996 version of the Act (P.L. 104-297), not the newest reauthorization (P.L. 109-479) that introduced some additional verbiage to the Standard. For the purposes of discussion here, the additional language is irrelevant.

National Standard 8 was accompanied by language added to the definitions section of the MSA that specified, “[t]he term ‘fishing community’ means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.”³⁸

A student of fishery management in the United States could be forgiven for thinking that these changes to the MSA would have been greeted with warmth, if not euphoria, by a social science community that had been pinning for a toehold in the policy process to match that occupied by biologists and economists.³⁹ But a funny thing happened on the way to the celebration: many social scientists began to attack, rather than embrace, the place-based conception of community articulated in the revised MSA.⁴⁰

Whole sessions at professional academic conferences have been devoted to critiquing the MSA definition of fishing communities.⁴¹ At times, the attack on place is lost in the fog of post-modernism:

Does the presence of community enlarge our currently limited imaginary relative to fisheries management to include community-based management and community economies generally? To do so it is imperative that we continue to reveal the presence of community, of the other within the domain of the dominant and trace its effects.⁴²

Rather when the essence of community is seen as enduring and bounded, it becomes severed from history and geography such that

38. 16 U.S.C. § 1802(17).

39. Fisheries science and management has been dominated by biologists first, economists a distant second, and then by a small haggard group of social scientists lingering far behind. Or, as one commentator put it: “For historical reasons, biologists are far more influential than social scientists in fisheries management. Already beleaguered for decades by economists demanding more influence on decision-making, fisheries biologists are now confronted increasingly by social scientists making similar demands.” R.E. Johannes, *Foreword* to *FOLK MANAGEMENT IN THE WORLD’S FISHERIES: LESSONS FOR MODERN FISHERIES MANAGEMENT* xi (Christopher L. Dyer & James R. McGoodwin eds., Univ. Press of Colorado 1994).

40. For representative critiques of the place-based notion of community in the MSA see McCay, *supra* note 11; Julia Olson, *Re-Placing the Space of Community: A Story of Cultural Politics, Policies, and Fisheries Management*, 78 *ANTHROPOLOGICAL Q.* 247, 248 (2005); Kevin St. Martin, *The Impact of “Community” on Fisheries Management in the US Northeast*, 37 *GEOFORUM* 169 (2006).

41. See Olson, *supra* note 40, at 263 n.1.

42. St. Martin, *supra* note 40, at 171 (citation omitted).

the 'outside' is a source of endangerment. Locating community outside modernity and inside culture is, ironically, a cultural construction. But it is one where community and culture become severed from the plays of power, practice and meaning that provide grist for anthropological analyses.⁴³

Note the hint that one aspect of the furor over the place-based conceptualization of community in the MSA is academic disciplinary angst:

Put another way, the marginalization of anthropology in public policy is related in part to the persistence of discourses that locate community and culture outside modernity and rationality. The effect of this is to undermine the critical capacity of anthropological notions of culture to analyze power and practice, as well as to undermine the potential that alternative spaces like communities offer for political engagement.⁴⁴

At other times, the attack seems more like a conspiracy theory, with Alaskan fish-politicians as conspirators allegedly bent on using National Standard 8 to their advantage in the perennial struggle between Alaska and the Seattle-based fleet that fishes off Alaska.⁴⁵ Under these accounts, the Alaskan interest in place-based communities is at odds with, and detrimental to, the fishing communities of the northeast.⁴⁶ Belief in the Alaska conspiracy is buttressed by the opinion of the NOAA Office of General Counsel that National Standard 8 "was another stratagem in the Alaska/Seattle conflict . . . [but] the new understanding of the meaning of 'fishing communities' has reduced the impact of Standard 8 as a tool against factory trawlers or large fishing corporations."⁴⁷ But these accounts involve a peculiar reading of history. First, NOAA General Counsel is itself an actor in the Alaska/Seattle conflict. Second, Congressmen from California and Oregon expressing concern for place-based fishing communities *in their home districts* are curiously alleged to be speaking "clearly to the conflict between Alaskan and Seattle-based fishing interests."⁴⁸ Third, the whole Alaska versus Seattle depiction is a bit too theatrical and simplistic, given the ample record of substantial concerns for place-based communities on the part of congressional districts far-removed

43. Olson, *supra* note 40, at 257.

44. *Id.* at 248.

45. See Olson, *supra* note 40, at 250-52.

46. See St. Martin, *supra* note 40, at 176-77.

47. Olson, *supra* note 40, at 264, n.5.

48. *Id.* at 252.

from Alaska. As the NOAA General Counsel report (relied upon by subscribers to the Alaska conspiracy theory) notes:

H.R. 39 used the term ‘local coastal communities’ in the individual quota section (e.g., an IQ system should ‘minimize negative social and economic impacts of the system on local coastal communities’). While the term was not defined in H.R. 39, several House members felt the Senate bill diluted these ‘protections.’ Cong. Miller said that S. 39 defines fishing communities ‘far too broadly.’ Cong. Furse believed the Senate bill ‘removes safeguards for coastal communities.’ Cong. Riggs said the Senate bill includes under ‘fishing community’ the ‘home ports of the distant water, corporately held, factory trawlers.’ The definition of ‘fishing community’ in the bill reported out of the Senate Commerce Committee was changed very little in the managers’ amendment. Instead, the understanding of the definition seems to have evolved over the summer from the drafters’ hope that it was the equivalent of the House’s ‘local coastal communities’ to a near-consensus that it includes any place where vessel owners, operators, and crew or U.S. fish processors are based. The Washington delegation insisted on this interpretation, because they did not want their residents disadvantaged (see Gorton’s and Murray’s floor statements).⁴⁹

The point here is that the House was heading towards an even stronger embrace of place-based conceptualization of community, motivated by non-Alaskan members of Congress. In fact, the more that the Alaska/Seattle schism influenced the process, the farther “community” drifted from the strict place-based conception of community that other areas of the country were passionately advocating.⁵⁰ Moreover, the insinuation that National Standard 8 is or was an offensive weapon is simply at odds with the plain language of the Standard itself. National Standard 8 essentially says “if you have two policy options that are otherwise equal, pick the one that does the least harm to fishing communities.” In short, National Standard 8 is defensive—not offensive.

49. NOAA Fisheries Service-National Marine Fisheries Service, *102 Definitions*, <http://www.nmfs.noaa.gov/sfa/sfaguide/102.htm> (last visited Oct. 15, 2007).

50. The reader is invited to consider the embrace of place by Congressman Miller of California in particular. See 141 Cong. Rec. 10,242 (1995); 142 Cong. Rec. 11,440-41 (1996); 142 Cong. Rec. 1,871 (1996).

It is striking just how dominant the emphasis on communities of interest has become in the fisheries literature.⁵¹ Stripped of the jargon and the conspiracy theories, the essence of the post-modernists' critique is that communities of interest—virtual communities—are communities too, and that Congress erred in giving the nod to place-based communities. But the first half of this assessment is a tautology—of course various kinds of assemblages can be referred to as “communities” including associations of particular people, but this fact does not mean that people do not form special bonds with places. And all this is far from what most people mean when they inquire, for example, about the impacts of management regimes on “fishing communities.”⁵² Nor does it logically follow that Congress erred in trying to *add* (not elevate or advantage) place to the statute. What is odd about the fuss over Congress's (weak) embrace of place is that virtual communities—*i.e.*, interest groups, or to be blunt, the commercial fishing industry—have always had access to the statute *and* to the management process it created. The MSA was a monumental act of industry protectionism, and the domestic management process it created was *designed* to defer to industry.⁵³ Unlike virtual communities, place-based communities did not have access to the statute, and National Standard 8 can only be interpreted as Congressional recognition and redress of that lacuna.

51. See *supra* notes 38-47 and accompanying text. Even away from the heart of the fray over the definition of “community,” it seems to be routine to emphasize virtual communities over traditional place-based communities. See, e.g., FLAXEN D.L. CONWAY ET AL., OREGON'S CHANGING COASTAL FISHING COMMUNITIES 4 (J. Gildea ed., 1999).

52. Indeed, I suspect that even the proponents of the virtual community concept are aware of the stubborn habits of custom and common sense involved here. I have witnessed public presentations of fishery policy analyses in which in one slide analysts stress the virtual interpretation of “fishing community” and in the next slide present summary demographic information on place-based fishing communities—no doubt the seamless switch is made for highly pragmatic reasons. Imagine the outcry and confusion if, during the *community* impacts part of the environmental assessment presentations, the analysts started talking about impacts on various segments and alliances within *industry*—many of which were no doubt already covered in earlier portions of the assessment focused, appropriately enough, on impacts on industry.

53. See Oran Young, *The Political Economy of Fish*, 10 OCEAN DEV. & INT'L L. J. 199 (1982) (arguing that the MSA was a protectionist act through and through, and that political interests were designed to dominate the Regional Fishery Management Councils created under the MSA). See also Thomas A. Okey, *Membership of the Eight Regional Fishery Management Councils in the United States: Are Special Interests Over-Represented?* 27 MARINE POL'Y 193, 193 (2003) (presenting empirical evidence arguing that the fishing industry is over- not under-represented on the Regional Fishery Management Councils created under the MSA).

D. *The Necessary Placeless Reconstruction of “Community”*

I argue that the assault on place is more than just a philosophical difference—it is a *necessary* event, given alignment of contemporary interest in both property rights-based fishing *and* community-based management. What we are witnessing is a radical placeless reconstruction of community, a reconstruction necessary for the marriage of interest in community-based management with “rights-based” management. Place must be displaced in order for “community” to be paired with a conceptualization of people as atomistic maximizers with an attendant emphasis on factor mobility. The “community” must, like the industry, become “footloose.”⁵⁴

In other words, trying to meld an economic theory that is inconsistent with social-psychological attachment to place with an interest in sustaining place-based communities would be like the proverbial mixing of oil and water. Something has to give, and it would seem that it is easier to define place out of community than it is to introduce attachment to place into neo-classical economics. In this way, the growing emphasis on virtual communities can be seen to be consistent with, indeed supportive of, the already substantial emphasis on property rights-based fishing. Place recedes, while “property” and (virtual) communities advance. Thus, little of what may be called “community-based” management is place-based, because the label itself has been “stolen”—wrenched away from ordinary usage. “[T]here is some early evidence that the postmodern community is not a community at all, at least not in the sociological sense of the term The ‘communities’ have little in common with what are called communities elsewhere.”⁵⁵ “[T]he postmodern ‘community’ is really some other kind of social formation under the stolen label of *community*.”⁵⁶

The placeless “reconstruction of community for the next century”⁵⁷ is now self-proclaimed, so there can be little argument about what is happening. This reconstruction of community essentially substitutes industry for community. When “community” becomes synonymous with

54. ROSEMARY OMMER, *The Ethical Implications of Property Concepts in a Fishery*, in JUST FISH: ETHICS AND CANADIAN MARITIME FISHERIES, 117-39 (Harold Coward, Rosemary Ommer & Tony Pitcher eds., 2000) (using the word “footloose” to describe a shift from long-standing cultural attachments to place towards the detached, free-roving maximizer of modern economic models).

55. DEAN MACCANNELL, EMPTY MEETING GROUNDS: THE TOURIST PAPERS 88 (1992).

56. *Id.* at 92. MacCannell trenchantly refers to the individuals that function in these new post-modern social formations as “neo-nomads.” *Id.* at 4.

57. RICHARD B. APOSTLE ET AL., ENCLOSING THE COMMONS: INDIVIDUAL TRANSFERABLE QUOTAS IN THE NOVA SCOTIA FISHERY 117 (2002).

interest group, “community-based” management becomes a euphemism for user self-regulation.⁵⁸ The literal displacement of place involved in contemporary constructions of community thus highlights a distinction between place-based management and the current emphasis on “community-based” management.⁵⁹ If community does not really mean community as used in everyday language, then community-based management is likely to mean something different too. In the first instance, place-based management is focused on management *for* a community, whereas what is now called community-based management is focused on management *by* a community. But, again, just what that “community” is, is in doubt. That is, contemporary “community-based” management is rarely, if ever, about management *by* an entire community. Rather, at least (and perhaps particularly) in the United States it is openly focused on management of an industry (or industry sector) by members of that industry. This seems a long way from true management *by* a community let alone management *for* such a community. In this world of self-regulation and industry-as-community, it should not be surprising that the prevailing management schemes are characterized by endowments to individuals, not place-based communities. But the emphasis on self-regulation carries with it an additional implication.

*E. Strange Bedfellows: The Marriage of Post-Modernism
and the Wise-Use Movement*

The debate over “community” is more than just an academic exercise. At the extreme, as noted, the focus is on user self-regulation. Thus, we are witnessing the harnessing of post-modernism for neo-conservative ends.⁶⁰

58. See McCay, *supra* note 11, at 211 (saying “Here I close with a note on an expanded notion of ‘community-based management,’ which is another way of talking about self-regulation by appropriators and local-level management.”).

59. See generally S. Jentoft, *The Community: A Missing Link of Fisheries Management*, 24 MARINE POL’Y, 53, 53 (2000); NATIONAL RESEARCH COUNCIL, *supra* note 33; John D. Wingard, *Community Transferable Quotas: Internalizing Externalities and Minimizing Social Impacts of Fisheries Management*, 59 HUM. ORG. 48, 48-57 (2000); ROBERT S. POMEROY & REBECCA RIVERA-GUIEB, *FISHERY CO-MANAGEMENT: A PRACTICAL HANDBOOK* (2006).

60. Perhaps Olson speaks for many on the post-modern “left” when she reacts with incredulity to the kind of analysis just suggested here: “It may be surprising that anthropology’s methodological tendencies towards the local-level, or advocacy among common property theorists for decentralization, could be seen equivalent to anti-federalist, conservative ideology. It might also be easy to dismiss such misreadings as the expected peril of interdisciplinary conversation.” Olsen, *supra* note 40, at 249. But this is a naïve dismissal. One only needs to spend a few minutes “surfing” the internet sites of recent

There is considerable irony involved in this fusion. Cooperative/ community-based management arguably started out as the darling of the ideological left, as something that “provides an especially rich opportunity to test and refine Marxist predictions about relations between peripheral

conferences celebrating “rights” and local control of fisheries *and* those of the organizations funding such conferences to see that there is no misreading or miscommunication involved at all. Interested readers, and anthropologists, are invited to draw their own conclusions based on a short perusal of the following sites that tease out the connections between funding and lots of talk about property rights and community-based management. The exercise starts with an account of a conference in Del Mar devoted to the theme of “put[ting] fishermen in charge.” Becky W. Evans, *Conference: Put Fishermen in Charge*, THE STANDARD-TIMES, Jan. 30, 2005, at B1, available at <http://www.s-t.com/daily/01-05/01-30-05/b01pe312.htm>. Then simply follow the money and the rhetoric from there. Evan’s account mentions the involvement of the Sand County Foundation and the Alex C. Walker Foundation. The Sand County Foundation coordinated the event. See Invitational Pamphlet for Sand County Foundation Workshop, http://sandcounty.net/uploads/Fisheries_Invitation.pdf; James Fahn, A Report of the Sand County Foundation’s Workshop: Emerging Strategies for Improving Fisheries Management (2005), http://sandcounty.net/uploads/Fisheries_Report_web.pdf. Collectively, these documents point to the Walker Foundation, the Bradley Foundation, the Property and Environment Research Center (PERC), Environmental Defense, and the Reason Foundation. The latter document specifically mentions a Congressional lobbying campaign. For a chronicle of this campaign see IFQs: Building a Coalition for Individual Fishing Quotas, <http://www.ifqsforfisheries.org> (last visited Nov. 2, 2007). This effort involves a partnership between Environmental Defense, PERC, and the Reason Foundation as prominently displayed at DONALD R. LEAL ET AL., OVERCOMING THE THREE HURDLES TO IFQs IN THE U.S. FISHERIES: A GUIDE FOR FEDERAL POLICY MAKERS (Policy Brief no. 28), available at <http://www.reason.org/pb28.pdf>, and IFQs: Building a Coalition for Individual Fishing Quotas, *About Us*, <http://www.ifqsforfisheries.org/about/index.php> (last visited Nov. 2, 2007). The Bradley Foundation is “committed to preserving and defending the tradition of free representative government and private enterprise that has enabled the American nation and, in a larger sense, the entire Western world to flourish intellectually and economically” and supports “limited, competent government.” The Lynde and Harry Bradley Foundation, *The Bradley Foundation’s Mission*, http://www.bradleyfdn.org/Foundations_Mission.asp (last visited Nov. 2, 2007). The Walker Foundation’s “mission is to investigate the causes of economic imbalances, seek free-market solutions, protect the free enterprise system, investigate the effect of the monetary system in fostering a sustainable economy, and inform the public of the results.” Alex C. Walker Foundation, *Our Mission*, <http://walker-foundation.org/net/content/page.aspx?s=5530.0.69.5316> (last visited Nov. 2, 2007). The Reason Foundation “advances a free society by developing, applying, and promoting libertarian principles, including individual liberty, free markets, and the rule of law,” Reason Foundation, *About Reason*, <http://www.reason.org/aboutreason.shtml> (last visited Nov. 2, 2007), and claims to be “the world leader in privatization.” REASON FOUNDATION, 28 Privatization Watch 1 (2004), available at <http://www.reason.org/pw327.pdf>. Whatever one’s personal political ideology, it would seem to be an empirical fact that “anti-federalist, conservative ideology” has indeed been joined to the local control, devolution of authority aspects of the “community-based” management rhetoric so prevalent in fisheries these days.

resource communities and the state, relations among more and less powerful fishing communities, and relations between more and less powerful or wealthy individuals within one community.”⁶¹ But co-management has now been co-opted by the ideological right in the form of the so-called wise-use movement and its private property rights bandwagon.⁶²

This unusual marriage of ostensible ideological opposites has implications for conservation goals as well as for the allocation agendas it serves. That is, the conflation of industry interest groups with community has real consequences for both human and ecological communities. Specifically, the possibilities for true systemic sustainability are challenged by the redefining of community in service to “neo-liberal” economic policies.⁶³

F. A Constitutional Impediment (?)

The emphasis on footloose individuals inherent in the placeless reconstruction of community is consistent with another challenge to place-based management that comes from the legal arena. Place-based management will require careful consideration of equal protection principles under U.S. law. In 1976, the U.S. Supreme Court struck down a local-preference fishery management scheme with a ruling that at first glance might stifle any further consideration of place-based management: “Our decision is very much in keeping with sound policy considerations of federalism. The business of commercial fishing must be conducted by peripatetic entrepreneurs moving, like their quarry, without regard for state boundary lines.”⁶⁴ On closer inspection, however, the Court has not precluded place-based management at all, but has firmly stated that all

61. EVELYN PINKERTON, *Introduction to CO-OPERATIVE MANAGEMENT OF LOCAL FISHERIES: NEW DIRECTIONS FOR IMPROVED MANAGEMENT AND COMMUNITY DEVELOPMENT* 31 (Evelyn Pinkerton ed.) (1989).

62. For an example of wise-use movement literature focused on fisheries, see Donald R. Leal, *Homesteading the Oceans: The Case for Property Rights in U.S. Fisheries*, PERC POLICY SERIES, August 2000, PS-19, available at www.perc.org/publications/policyseries/homestead.html; on the larger movement itself, see generally DAVID HELVARG, *THE WAR AGAINST THE GREENS: THE “WISE USE” MOVEMENT, THE NEW RIGHT AND ANTI-ENVIRONMENTAL VIOLENCE* (1994). Cf. Becky Mansfield, *Neoliberalism in the Oceans: “Rationalization,” Property Rights, and the Commons Question*, 35 *GEOFORUM* 313 (2004) (explaining a complementary observation regarding the pairing of co-management/community-based management with “neo-liberalism”).

63. See e.g., ANTHONY DAVIS, *DIRE STRAITS: THE DILEMMAS OF A FISHERY: THE CASE OF DIGBY NECK AND THE ISLANDS* 98 (1991).

64. *Douglas v. Seacoast Products*, 431 U.S. 265, 285 (1977).

fishery management endeavors have to uphold equal protection principles.⁶⁵ There is, however, an instructive lesson in the Court's language that goes beyond the boundaries of mere legal jurisprudence.

G. The Needs of Peripatetic Entrepreneurs: Capital Accumulation

Fishery management is often about the needs of business as much as the needs of resource conservation. The Court's dictum above suggests as much. We see a familiar emphasis on mobility. The Court specifically spoke of the need for fishers to follow fish across imaginary lines in the ocean, but the language of "peripatetic entrepreneurs" invokes an image of the atomistic profit-maximizers of economic textbooks.⁶⁶ And what do these peripatetic businessmen need? One answer, posited by some, is that they need the opportunity to accumulate capital. In fact, capital accumulation appears to be a canonical goal for fisheries management:

The fishing industry is highly fragmented. Fishermen consist, for the most part, of small independent fishing vessel operators, more than 90% of which employ less than five people. The fish processing and distribution components likewise consist principally of small establishments. The fragmented nature of the industry leaves little opportunity for capital accumulation and makes achieving coordination among various operators to develop fisheries extremely difficult.⁶⁷

Whatever their utility or disutility in terms of sustainable management, a fervent insistence on the necessity of property rights, a placeless concept of community, and legal emphasis on free-roving investors, combine to make a management program ideally suited to address the capital accumulation issue. From this standpoint, attachment to, or interest in, place by those who are expected to move on to other employment looks like a threat to the very foundations of business enterprise.

65. Macinko & Bromley, *Legal and Economic Doctrine*, *supra* note 18, at 655. I argue that *Douglas* is a pre-modern era ruling (meaning that it is a pre-Exclusive Economic Zone ruling) and there is a need to revisit the ruling (and the dictum) in the modern era of fisheries management in the United States.

66. Or, one might say, "neo-nomads." MACCANNEL, *supra* note 55, at 4.

67. GAO, THE US FISHING INDUSTRY: PRESENT CONDITION AND FUTURE OF MARINE FISHERIES 119 (1976).

H. Indigenous Exceptionalism

Ironically, the final challenge to place-based management comes in the form of the only positive acknowledgement place-based management has received. In reality, as noted at the outset of this paper, place matters. Place matters to people and place matters to the idea of sustainability. But this relationship between people and place is apparently easier to see and understand under certain settings: “[i]t should be emphasized that the situation in isolated communities may involve a very different assessment of the way of life argument, particularly where there are strong cultural ties to the industry (as in the case of many of the Indian and Eskimo fisheries of the Pacific northwest).”⁶⁸

We see here a kind of exceptionalism—certain extreme cases are the exception to an otherwise sound rule. In this case, isolated indigenous communities are the exception to the rule that place has no place. That this kind of exceptionalism can serve to confirm the general rule is amply illustrated by a unique management program targeting part of the population referred to in the quote. The Community Development Quota (CDQ) program for western Alaska represents a unique experiment with place-based fishery management—communities, or associations of communities, not individuals, are endowed with fishing privileges.⁶⁹ But the uniqueness of the CDQ program is codified in statute, its exceptionalism guaranteed by virtue of the fact that the program is mandated for western Alaska, but other trials of the CDQ concept elsewhere are precluded.⁷⁰ It is as if to confirm the deservedness of the western Alaska communities involved in the program, we have said: “You are different, place *really* matters to you. Therefore we will let you alone have a place-based management scheme and thereby confirm that you are special by virtue of the fact that you have a unique program.”

It ought to be possible to overcome such indigenous exceptionalism without having to enter into a debate about the relative meaning of place across cultures. That place may matter in very different ways to different

68. Crutchfield, *supra* note 31, at 751.

69. See NATIONAL RESEARCH COUNCIL, *supra* note 33, at 15-46 for an overview of the CDQ program.

70. To be more precise, Congress has authorized trial of the concept in the Western Pacific under specific conditions while mandating the eligible villages and program features in Alaska. See 16 U.S.C. § 1855. Congress has specifically prohibited use of the concept by the North Pacific and Western Pacific Councils outside of these conditions. 16 U.S.C. § 1855(i)(4). Thus, Congress has spoken with great specificity to the use of the concept in two regions, while remaining silent on other regions. Under this construction, whether Congress has precluded use of the concept by other Councils is, *perhaps*, open to question.

cultures and on incommensurable scales does not detract from the basic proposition that place matters within many cultures and that place-based management could hold a wider promise than is currently acknowledged.⁷¹

IV. PLACE AS OPPORTUNITY

Place-based management faces serious but not insurmountable obstacles. The main hurdles are ideological. We can overcome those barriers if we choose to. As noted early in this paper, there are quite different policy trajectories to choose from. But, we do have to decide if place matters. Place-based management offers a direct alternative to the placeless emphasis of prevailing policy prescriptions. We know what the current trend towards extreme placeless property rights systems produces—it would seem that much of the opposition to some of the leading policy prescriptions of the day is in fact derived from place-related concerns. That is, people are scared of “rationalization” programs precisely because they are worried about what they will mean for, and do to, special places that they care about.⁷² Pushing place further into the policy margins is not likely to result in policies that are successful or sustainable over the long run.

A response to these concerns over the placelessness of much past policy seems to be emerging in the United States and that response is protectionism—protection of fishing communities.⁷³ But there are two problems with the current community protection approach. First, it may be focused on protecting virtual communities—i.e. industry—rather than place-based communities and thereby not address place-based concerns. Second, it involves protectionism. I have suggested that protectionism may not be the best way forward, that protectionism tends, ultimately, to disadvantage the very thing(s) it is ostensibly designed to advantage and this is particularly so in the world of dynamic market economies.⁷⁴

However, place-based management need not, and should not, be cast as reactionary. There is, and must be, a difference between “protecting”

71. Would we withhold democracy, for instance, from some places in order to confirm the perceived specialness other places?

72. On “rationalization” see Mansfield, *supra* note 62, at 321-22; Macinko & Bromley, *America’s Fisheries*, *supra* note 18, at 16. On being apprehensive regarding the effects of rationalization on fishing communities, see also 142 Cong. Rec. 1,872 (1996) (statements appended to Rep. Miller remarks, where Grader complained that the SFA “perverts” the conception of fishing community embraced in the House bill).

73. See, e.g., MANAGING OUR NATION’S FISHERIES, *supra* note 10, at 164-69 (summarizing a panel session devoted to “protecting community interests.”).

74. See Macinko, *supra* note 10, at 242.

places and just not systematically disadvantaging them under a rule (and conceptual) structure that is hostile to place. It would be foolish to try to use any management tool to lock in present patterns (a feature of most protectionist policies), but it does seem appropriate to ask that management tools not inherently disadvantage places. The relationship between place-based management and individual enterprise also warrants careful consideration. It is not axiomatic that the former precludes the latter. Indeed, it seems clear that the way forward is to address the very real concerns people have for place by establishing some sort of place-based endowments. Underneath this place-based foundation, we would then expect a myriad of virtual communities to interact and compete in the dynamic process known as market capitalism.