

# Formalizing Indigenous Fishing Rights

Recent developments in Norway seem to indicate that the rights of the traditional small-scale Coast Sami people will finally be formally recognized

The coast and fjord area in northern Norway—mainly north of the Arctic Circle—is home to the indigenous Coast Samis, a branch of the Sami people who live in four different countries, namely, Sweden, Finland, Russia and Norway. They have been living on the shores and along the fjords of the Barents Ocean for thousands of years, with very well-developed skills and technologies to cope with the harsh nature of this northernmost part of the European mainland. Even though they have utilized the marine resources in the area for generations, they have never exceeded the limits of natural sustainability.

The Coast Samis have been living in the region long before the Norwegian State was established, before they were outnumbered by ethnic Norwegians who moved into the area. Little wonder then that the northernmost county of Norway is called Finnmark, “The Land of the Sami”.

Until the latter part of the 19th century, the Coast Samis made their living by hunting marine mammals and different land-based species, and from small-scale fishing and some subsistence farming. But for more than a hundred years, they have had to constantly struggle to safeguard the traditional and customary fishing areas in their local waters.

At the start of the 20th century, new and more effective fishing equipments were introduced in Norway’s fisheries. The first trawlers appeared and the exploitation of herring for industrial purposes started. The purse-seine and the Danish seine soon came into

widespread use. The fishing vessels were built larger, and equipped with the most sophisticated technology to find fish.

For a very long period, no measures were taken to protect the various stocks of fish from being depleted. The voices of the Coast Samis were totally ignored even as the high-tech deep-sea vessels enjoyed free access to even the smallest fjords. Around the middle of the 20th century, for a period, this fleet almost

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nearly totally eradicated the stocks of herring and capelin, and gravely diminished many other stocks, such as cod, the most important of the species caught even by Sami fishermen.

Even though the Coast Samis did not take part in the resource destruction, they have had to bear many of the heaviest burdens resulting from the breakdown of the fish stocks. They continue to bear these burdens, even in a situation where some success has been achieved in rebuilding stocks.

## Quotas allotted

The Coast Samis’ practice of harvesting marine resources in a sustainable way did not fetch them any special rewards when new regulations were introduced or when quotas were allotted. The structures of power within Norwegian

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fisheries did not favour fishermen with vessels adapted to inshore or fjord fisheries. Thus it has been more and more difficult to continue the traditional Coast Sami way of living, combining small-scale fishery with husbandry, or other local industries.

During the last few decades, Norway has adopted a new and supportive policy towards Sami cultural and material matters, and has also been promoting indigenous rights at the international level. Several Sami institutions have been established. The Samis achieved constitutional recognition in 1988 and the next year, a Sami Parliament was established. Norway was the first country in the world to ratify the 1990 International Labour Organization (ILO) Convention 169, on the rights of indigenous peoples.

But there is one area where the new policy has had little visible effect—within management of the sea fisheries, with the central fishery authorities being very unwilling to recognize the link between small-scale fisheries and indigenous rights, most obviously in northern Norway.

In 1989-90, the fishery authorities introduced a new way of allocating fishing rights—the so-called vessel quota. To obtain such a quota, the prescribed prerequisite was that you should have caught a certain amount of

cod in one of the preceding three years. The amount was not extremely high. But for most fishermen with smaller boats in the Sami districts, that prerequisite was impossible to fulfil. The reason was that during the 1979-88 period, there had hardly been any cod in many of the fjords in the northernmost marine Sami areas. That was due to a natural disaster—the invasion of harp seals during the period, which prevented cod from coming into the fjords.

The result was that many small-scale fishermen, mainly Coast Samis, were systematically excluded from obtaining vessel quotas. Instead they were transferred to a competitive quota, under which they simply had no possibility of earning adequately to make a living. Customary law was not taken into account at all, when this was decided on.

Over the last few decades, the king crab, introduced by the Russians from the Pacific to the Barents Ocean, has invaded the waters along the coast and in the fjords of northernmost Norway. When the commercial king crab fishery started in 2002, boats shorter than 8 m were automatically excluded from the fishery. The other criterion for obtaining a fishing licence was the requirement of having caught a certain amount of cod in two of the three preceding years. For many fjord fishermen, that prerequisite was also hard to fulfil, because net- and longline fishing had already been severely hampered by the immense number of king crabs in the fjords.

In simple terms, this meant that the smaller boats that could not fish cod any more, because of the presence of king crabs, were denied the right and the possibility to fish the crab. It was not until 2008 that this injustice was repaired.

### Legal standards

In 1990, a report from one of the most outstanding legal experts in Norway, Carsten Smith (who went on to become Chief Justice), pointed out that the Norwegian State, by internal and international legal standards, is obliged to take Sami interests into account when regulating the sea fisheries in Coast Sami areas. Even though in 1992 the national Parliament

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Coast Sami fishers in Deanodat, the innermost part of the Tana fjord, east Finnmark. The basic material rights of the Coast Samis are endangered

of Norway expressed itself in favour of such legislation, no significant changes occurred.

Then, after many setbacks, in 2008 the high-ranking Coastal Fisheries Committee for Finnmark, with Carsten Smith as chairman, formulated an indigenous and regional rights approach to small-scale fisheries along the following lines:

- Everybody along the coast and fjords in Finnmark should have a right to fish adequately to make a decent living for a household, without having to buy a quota.
- The quota is personal and cannot be traded.
- The basis of this right is historical utilization and international and indigenous law.
- The right is independent of fishery regulations, but sustainable use has to be taken into account.
- This right should be formalized in a separate Act.
- Furthermore, if it is necessary to limit the fishery, Coast Sami fishing activity has the prerogative.
- People along a fjord should have a stronger fishing right for the area, than others elsewhere. Outside the fjords, fishermen from other regions should also be given access to the fishery.
- A new administrative body—Finnmark Fishery Agency—is proposed.
- The agency should have six members, three appointed by the county council of Finnmark, and three by the Sami Parliament.
- Finnmark Fishery Agency is anticipated to have the competence to regulate fishing activities out to four nautical miles from the coastline.
- Even more important, the Finnmark Fishery Agency shall also allocate quotas and fishing rights.

Providing quotas for the Finnmark Fishery Agency is, of course, a matter of great concern. According to Section 8 of the proposal from the Coastal Fisheries Committee for Finnmark, the State should provide the Finnmark Fishery Agency with sufficient resources, in the form of capital, quotas or fishing licences, to safeguard the material basis



A Coast Sami fisher in Deanodat, with a catch of king crabs that he was not allowed to sell. Quotas and licensing have, until recently, prevented Coast Samis from catching crabs

of the Coast Samis and other coastal cultures in Finnmark. Therefore, the adoption of the proposals from the committee offers a unique opportunity for the Norwegian government and parliament to secure the future of the small-scale fishing communities in the north of Norway, and, not least, to also incorporate this sector of society into the general positive nature of Norwegian indigenous policy, both domestically and internationally.

Let me conclude by being both moralizing and imperative. Norway, with its high standards in matters relating to human rights and indigenous issues, cannot afford a situation where the basic material rights of the Coast Samis are endangered. For that reason, my true belief is that the main elements of the proposals from the Coastal Fisheries Committee for Finnmark will be formalized by an Act adopted by the Parliament.

This model may also have elements transferable both to indigenous and non-indigenous areas in other parts of the world where the rights of the traditional small-scale fisher people are not recognized or otherwise settled in a proper manner. 3

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#### Sami Council

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#### Finnmark Act