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THE NEW FEDERALISM AND ECONOMIC SELF-DETERMINATION ON KAMCHATKA

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Petropavlovsk-Kamchatsky
Russia

Dear Peter,

Bringing economic reform to the Russian Far East fishing industry depends foremost reforming the snarled Russian legal system, and filling the legal void left by the defunct USSR Constitution. Published by the Russian Federation Supreme Court in 1992, the present Russian Federation Constitution is cobbled together from bits and pieces of the 1978 RSFSR Constitution, with "changes and additions promulgated as RSFSR Law from the 27th of October, 1989, from the 31st of May, the 16th of June, and the 15th of December, 1990, and as Russian Federation Law from the 21st of April, 1992." It is larded with references to the Soviet Union and phrases like 'the socialist organization of society'. Although this Constitution pays lip service to democracy in its Preamble--"People's power, federalism, a republican form of government, and the separation of powers form the permanent basis of Russia's constitutional system"--the thinking that lies behind it is vintage late-period Soviet, having far more in common with Mikhail Gorbachev's failed attempt to create a 'socialist democracy' than with the Russia of 1993.

The present Russian Federation Constitution legitimizes a political and economic system which keeps a centralized, Moscow-based administrative hierarchy--the nomenclatura--in power behind the illusion of Western-style democracy. The nomenclatura's grip on the economy must be greatly loosened, and the economic system decentralized, for reform to succeed in Russia; little wonder the Yeltsin Administration is pushing so hard for constitutional reform. The Yeltsin Administration's success or failure in creating a federal system sufficiently vital to supplant the old one will greatly determine Russia's economic fate.

The idea of a true Russian Federation, with rights distributed equally between the central and regional governments, enjoys

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a great deal of popularity in the Russian Far East, whose politicians carry on with gay abandon about 'federalism' and 'equal rights for federal subjects' at the Constitutional Convention now in session in Moscow. These politicians (who, in turn, make up the Russian Far East's own regional nomenclatura) see in the flush of decentralization a golden opportunity to seize control of the natural resources and economic activity in their separate fiefdoms. While discussing federalism in this part of the world, it is useful to bear in mind that, while Russian Far East politicians may profess to admire a federalist system of government, they tend to put their personal agendas and ambitions ahead of Russia's political reconstruction.

Russia's present federal structure administrative sets the stage for the emergence of the new Russian federalism. The Russian Federation today consists of republics, krajs, oblasts, and the cities of Moscow and St. Petersburg. Russians refer to these units as 'federal subjects', 'territories', or 'the provinces'; annoyingly, these terms get used interchangeably in Russian legal documents.

There are important differences between the federal subjects. Republics and okrugs generally have significant populations of indigenous peoples living in them; for example, native Koryaks (ethnically similar to the Aleuts in Alaska) inhabit the Koryak Autonomous Okrug in the northern half of the Kamchatka peninsula, while Yakuts people the diamond-rich Republic of Sakha. Republics and okrugs are considered equal partners (in Russian, 'ravnopravniye subyekti', or 'subjects with equal rights') in the present Russian Federation, and theoretically hold important participatory rights, such as equal representation to the central government. Most importantly, they enjoy limited freedom to determine resource use within their territory, and can conduct some independent foreign trade. Krajs, oblasts, and territories, on the other hand, possess none of these rights, and still defer wholly to Moscow. Understandably, there is great hope in Russian Far East krajs, oblasts, and territories that the new Constitution will grant them status and rights equal to those of republics and okrugs within the Russian Federation.

Federal subjects do have vague participatory rights, according to Russian Constitution Article IX, Amendment 84, 'The Krai and Oblast in the Russian Federation': "The joint jurisdiction of the Russian Federation governmental bodies and the governmental bodies of krajs, oblasts, and the cities of Moscow and St. Petersburg includes...j. resource use, conservation, and the guaranteeing of ecological integrity..." However, in the best traditions of Soviet jurisprudence, a rider attached to Amendment 84 assures central government control. "In case the promulgation of legal acts by a krai or oblast governmental agency on questions relating to the jurisdiction of the Russian

Federation governmental agencies, or if legal acts passed by a krai or oblast, contradict federal laws relating to joint jurisdiction by Russian Federation governmental bodies and krai and oblast government agencies, federal law shall be applied." Another federal structure, the Russian Federation Supreme Soviet, arbitrates disputes between the central government and federal subjects.

Any new Constitution will certainly redefine the basic rules for economic activity in Russia; and the redefinition of Russia's federal structure will necessarily entail changes in the present administrative structure. The redefinition will affect first the ministries, and the entrenched nomenclatura bureaucrats who run them. To better illustrate how the present ministerial system functions in the Russian Far East, and the difficulties involved in reforming it, it is useful to review the system's legal basis in the present Russian Federation Constitution, especially concerning marine resource use and fisheries in the Russian Far East; since there are no maritime republics in the Russian Far East, I will discuss this problem only as it applies to krajs, oblasts, and territories.

Russian Federation Constitution Chapter II defines 'The Economic System', and states in Article 11 that, "The land and its resources, waters, and flora and fauna, belong to the people living on that territory." These in turn, and particularly marine resources, are owned by Russian Federation citizens through the government: "Russian Federation government property includes the assets of government enterprises, the establishments and organizations of the Russian Federation, and the resources of the Russian Federation continental shelf and marine economic zone...The control, use, and distribution of government property is implemented in accordance with the Russian Federation law in the republics included in the Russian Federation, and in accordance with the laws of krajs, oblasts, autonomous oblasts, and autonomous okrugs (in the Russian Federation)."

The key words in the preceding citation are control, use, and distribution; and Russians love to joke that, since everything belongs to everybody, then nothing belongs to anyone. Since the concepts of private property and the public domain are only just beginning to enter Russian civic life, exactly who should have the constitutional right to dispose of Russia's resources has yet to be agreed on, determined, and legislated. Now that the Communist Party is out of business, Russia's ministries--overwhelmingly staffed and run by the same officials who ran them before August, 1991--have the exclusive right to control, use, and distribute Russia's natural resources. Until the question of rights is settled, the ministries, with their legions of grey bureaucrats trained to manage by decree, will stay in place and plan Russia's economy by default.

As during the Soviet era, marine resource use in the Russian Far East today is controlled vertically from Moscow through the Committee of Fisheries Management; the Committee's regional vassals administer the distribution of marine resources between the region's fishing enterprises. The fisheries nomenclatura's control of the Russian Far East's abundant marine resources, and their export, is authorized as part of a single, unified system by the Russian Federation Constitution in Chapter III, 'The National-Governmental and Administrative-Territorial Structure of the Russian Federation', Article 7, Amendment 72; "The following belong to the competence of Russian Federation governmental authority: b. the federal structure, membership, and the territory of the Russian Federation in its entirety...f. the property of the federal government and its administration...k. Russian foreign economic relations...m. the status, management and protection of Russian Federation national boundaries, territorial waters, air space, economic zones and continental shelf."

Atop the 'national-governmental and administrative-territorial structure' sits the Russian Federation Council of Ministers. The Council of Ministers is the Russian government's economic executive branch; it includes the Committee of Fisheries Management (formerly the Ministry of Fisheries). Ministerial powers are enshrined in Russian Constitution Article 14, 'The Russian Federation Council of Ministers', Amendment 125, which reads: "...The authority of the Russian Federation Council of Ministers includes: 1) providing leadership in the national economy and social-cultural organization; developing and implementing measures providing for the people's welfare and cultural advancement, and for the development of science, technology, and the rational use and conservation of natural resources..." The Council of Ministers enjoys a broad range of adjunct powers, including the authority to repeal edicts coming from krai or oblast administrations, as well as those from other ministries within the Russian Federation.

To begin the very long process of breaking the powerful ministerial hold on the economy, Russian Federation President Yeltsin did something very intelligent following the collapse of the Soviet Union in 1991. Although he himself is a Siberian, support for Yeltsin during the August, 1991 Coup chiefly came from the progressive politicians and citizenry in the cities. Recognizing that to make economic and political reforms work (and to increase his authority, prestige, and personal power base), he needed to enlist the generally more conservative 'provincial' politicians into the cause, Yeltsin offered the federal subjects a new covenant--the Federal Treaty--and, with it, a stake in the success of Russia's political and economic reform.

Adopted and ratified on March 31, 1992, in Moscow, the Federal

Treaty laid the foundation for a new Russian federalism, predicated on a genuine social contract, rather than an administrative-command relationship, between the central government and the federal subjects. The federal subjects welcomed the Federal Treaty. Its Preamble promised, "...a qualitative transformation of federative relations on the basis of the rational division of authority, and its effective use...within the bounds of their authority, krai and oblast...governmental bodies independently exercise that authority on their own territory..." Although the rights conferred to federal subjects by the Federal Treaty seem quite limited (Article I, for example, rehashes most of the same material regarding government property found in the old Russian Constitution), the Federal Treaty grants federal subjects something they never enjoyed under Soviet power--a say in what happens in their regional economy, and to their natural resources.

Joint jurisdiction, rather than administrative command, underlies the Federal Treaty. Article II reads: "The following points relate to the joint jurisdiction of Russian Federation government agencies and government agencies of Russian Federation kraia and oblasts:...g) administrative and housing legislature; land, water, and forest legislature; natural wealth and conservation legislature...i) natural resource use, conservation, and the guarantee of ecological integrity..." Article III. (3) spells out these joint rights, and, more importantly, does not give precedence in disputes to either central government agencies or law. "Questions about the jurisdiction, use and distribution of land, natural wealth, water, forest and other resources are regulated by the Russia Federation Basic Legislation and the legal acts of kraia and oblasts...The status of natural resources is determined by mutual agreement between Russian Federation government agencies and those of the kraia and oblasts..." Article III further allows oblasts and kraia to enter independently into foreign trade and economic agreements with 'foreign entities'.

Politicians I have spoken with in the Kamchatka Region give the Federal Treaty mixed reviews. Clearly, it did not live up to everyone's expectation as the document that would suddenly clarify the relationship between Moscow and the federal subjects. It may have even worsened the political and economic confusion in Russia, since it isn't clear at all which piece of paper--the Russian Federation Constitution (which, of course, still remains in force) or the Federal Treaty--takes precedence in authorizing natural resource use and foreign trade rights.

But the Federal Treaty gave a powerful legal impetus to the new federalism in the Russian Far East. After participating in the Constitutional Convention in Moscow in May, 1993, Viktor Yershov, a member of the Kamchatka Region Congress of People's

Deputies and Chairman of the Kamchatka Region Standing Legal Commission told me in a private conversation that he found, "wide support for restructuring the Russian government as a federalist system, including increased rights for the territories to determine their own economic destiny, as spelled out originally in the Federal Treaty. There's much work to be done, but virtually every representative (from regional Congresses People's Deputies) from the Urals to the Far East I spoke with was for such a federalist system." Mr. Yershov is a member of the Constitutional Committee of Russian Far East People's Deputies, an ad-hoc group dedicated to creating a federalist political system in Russia.

The Chairman of the Kamchatka Region Congress of People's Deputies, Pyotr G. Premyak, has spoken out many times for establishing a Russian federalist system similar to the one in the United States. Following a week at the Moscow Constitutional Convention he told me in a private conversation, "The situation in Moscow is very tense, and the main battle being fought between the old administrative structure and the federal subjects is over resources and economic sovereignty." The old administrative structure, said Premyak, sees its demise in federalism, especially in the de-evolution of resource distribution rights from the central to local governments.

Local politicians have good reason to fight for a more independent economic status for the Kamchatka Region. The Kamchatka Region's economy depends almost entirely on its fisheries resources--and with close access to approximately two-thirds of the Russian Far East's total fishery (including Russian Federation territorial waters and the Russian Federation Exclusive Economic Zone), the Kamchatka Region should benefit more from a resource base of unimaginable wealth. Instead, the productivity of Kamchatka's fishing fleet has fallen from an all-time high of 1 million 300 thousand tons in 1989 to only 960 thousand tons for 1992. To find a way out of severe economic hardship and unnatural dependence on mainland Russia for fuel, food, and consumer goods, as well as successfully integrate into the more modern and developed economies of the Pacific Rim, Kamchatka must have the right to use its marine resources to fund regional economic development.

The difficulties for the Kamchatka Region lie not so much in winning the political right to joint jurisdiction over its marine resources from the federal government, as in taking these resources out of the hands of the traditional administrative apparatus--the Committee of Fisheries Management. While the movement towards federalism would seem to indicate that Russia is moving into the future, a closer look at how the present system functions reveals the scope of the problem, and the many dangers lying ahead.

The real keys to Moscow's dominion over Russian Far East fisheries are monopolistic management and vertical resource distribution through a highly centralized ministry. The Committee of Fisheries Management sets catch 'limits', or quotas, for the Russian Far East fishery 'basin', which is further subdivided into fishing areas (in Russian, 'zoni', or zones). The Committee has the final say in allowing foreign ventures into Russian waters, and also regulates the purchase, reoutfitting, and construction of fishing vessels.

Quota politics provide the best example of Moscow's ability to dictate marine resource use in the Russian Far East. After the Committee of Fisheries Management determines the total allowable fishing quota for a given species of fish in the Russian Far East basin, the Committee of Fisheries Management executive branch in the Russian Far East, the Russian Far East Basin Industrial Fishing Union (in Russian, The 'Dalnevostochnoye Basseinovoye Proizvodstvennoye Rybokhozyaistvennoye Obyedeneniye', usually called Dalryba for simplicity's sake) then decides how much quota to allocate to each of its subordinates within the basin. The Kamchatka Region's fishing enterprises may get a total limit for, say, pollock or crab, from Dalryba for any number of different Russian Far East zones. The final division of the quota pie within the Kamchatka Region is agreed on annually in negotiations between the Kamchatka Region Committee of Fisheries Management representative, representatives of Kamchatka's fishing enterprises and collectives, and the Kamchatka Region Administration. Since the Russian Federation government owns marine resources, large fishing enterprises are allocated limits, but 'buy' the fish they catch at a price set by the Committee of Fisheries Management.

The quota system functioned well when all fishing enterprises were government property, part of USSR, Incorporated, and did not compete among themselves for economic survival. Now that all of Kamchatka's fishing enterprises are 'privatized' (either jointly-owned by workers and the government under various privatization schemes, or fully worker-owned), and presumably working independently, it would seem logical for them to work more like fishing companies do in the West. In the United States, for example, fishermen and fishing companies essentially fish competitively in open-access fisheries for the maximum piece of a quota pie and maximum profits; the best fishermen get the big money, while the less competitive ones go bankrupt.

Kamchatka's reality mirrors the American model, turning market principles inside-out. Reeling with privatization shock and suffering from chronic fuel shortages, virtually none of Petropavlovsk-Kamchatsky's 'Big Five' semi-privatized fishing enterprises made a profit last year. The quota distribution system further removes any incentive to restructure and begin

operating like fishing companies in market economies. Kamchatka's fishing enterprises are essentially on welfare, heavily subsidized, and almost totally dependent on government entitlements for their survival. The quota distribution system assures their reliance on the Committee of Fisheries Management. On the other hand, there is no fast, easy way to get Kamchatka's fishing enterprises off the dole. Fishing enterprises here function foremost as employment agencies for fishermen. To suddenly declare them all insolvent and close them down would visit social disaster on the entire region. If the goal is to make economic reform work and get Kamchatka's fishing enterprises operating on a competitive basis, then the old system will have to be replaced gradually.

However, trends in Russian fishing law indicate there is little chance of changing the established system of fisheries management by a Moscow-based ministry without a hard fight. A Decree dated March 20, 1993, by the Presidium of the Russian Federation Supreme Soviet (and signed by Supreme Soviet Chairman Ruslan Khasbulatov), "A Draft of the Russian Federation Law on the Fishing Industry", shows that, despite talk of economic reform, the most important features of the old fishing system--the 'basin principle' and centrally-controlled quota distribution--may yet stay in place for years to come.

The Draft Law reaffirms the Committee of Fisheries Management's supremacy in determining who administers, and benefits from, Russia's marine resources. As stated in Section I, "Russian Federation Authority Regarding Fishing and the Conservation of Fisheries Resources", Russia's fish are the exclusive domain of the central government, and by extension, the Committee of Fisheries Management. Section I, Statute 4 reads in part: "The following lie within Russian Federation jurisdiction:

"--the management of fishery resources in (Russian Federation) territorial waters, the (Exclusive) Economic Zone and continental shelf, in the open ocean, and those regions of the world ocean regulated by international convention beyond the Exclusive Economic Zone.

"--the management of anadromous species (salmon)...

"--the establishment of protocol for transferring use of fishing grounds within Russian Federation territorial waters and Exclusive Economic Zone to foreign persons and legal entities.

"--the issuance of fishery resources usage rights to foreign persons and legal entities on the basis of international agreements between the Russian Federation and the appropriate government, or by other agreement.

"--the establishment of the amount and protocol for loan payment

for use of Russian Federation fishery resources, and also for loan payment benefits, as well as oversight over the appointed funds.

"--the granting of permission (licenses) and selection of participants for the use of fishery resources for industrial, scientific, test, propagative, recreational, and other purposes in waters under federal jurisdiction.

"--the issuance or removal of permission to use fishery resources within federal jurisdiction."

Section II, Statute 7, 'Governmental Authority of Fishery Resources' leaves even less doubt about who controls Russia's fish:

"Governmental authority over fishery resources includes:

"--the establishment of fishery catch limits (quotas)...according to species and fishing region, and the distribution (of quotas) between users.

"--licensing the construction, reoutfitting, and acquisition of fishing vessels, and the licensing of fishing vessels currently in use."

Besides firmly controlling quota distribution, the federal government is keeping a tight hold on profits to be earned by selling Russia's fish. Section VI, Statute 33, states that marine resource use continues to be for payment, and that "the amount of payment for use of fishery resources is determined by the species and quantity of the fishery resource..."

Payment for the use of fishery resources goes to federal and territorial budgets according to the scheme outlined in Statute 34, 'Distribution of Payments for Fishery Resource Use'; "(Payment) for fishery resource use under federal jurisdiction: 80 percent into the Federal budget; 10 percent into the budget of Russian Federation republics, krajs, oblasts and autonomous areas; 10 percent into the budget of cities (except for cities included in regions) and regions (except for regions included in cities).

Statute 34 further outlines an advantageous payment scheme for use of fishery resources under the jurisdiction of federal subjects--that is, within Russian Federation Territorial Waters, or 12 miles (as opposed to the Russian Federation 200-mile Exclusive Economic Zone). But the Draft Law effectively classifies fisheries with any real value as being under federal jurisdiction elsewhere. Salmon (anandromous species), for example, are dealt with separately in Section I as a federal resource, rather than territorial one, and other big-money

fisheries (such as the ones for crab, cod, and pollock) generally operate far from shore in federal, rather than territorial waters.

The Draft Law arrived in Petropavlovsk-Kamchatsky for review on March 30, 1993, and was to be returned to the Supreme Soviet for amendment and ratification by April 20, 1993, giving the Kamchatka Regional Administration, the Council of People's Deputies, and the directors of Kamchatka's fishing enterprises less than three weeks to review and make recommendations on a law that will effect fishing in the Russian Federation for many years. Khasbulatov's heavyhanded approach won him few friends on the peninsula. A working group co-led by Viktor Manzhos, Chairman of the Kamchatka Region Committee of Economic Development, and Mikhail Dementyev, Chairman of the Kamchatka Region Committee of Fisheries Management, was formed to make its own recommendations on the Draft Law. These were signed by Kamchatka Governor V.A. Biryukov and Chairman of the Kamchatka Council of People's Deputies P.G. Premyak, and returned to the Supreme Soviet.

The Working Group's recommendations sharply criticize the Draft Law, and reflect the growing sense of regionalism among federal subjects in the Russian Far East. Notice throughout that, rather than propose a system of open access to marine resources for fishing enterprises, the Working Group instead recommends expropriating the federal right to quota distribution for the region. The Working Group's recommendations and criticisms for the Draft Law on the Fishing Industry filled eight pages, but concentrated particularly on Section II, Statutes 4, 5, and Section VI, Statute 34.

The additions made to Statute 4 limit the Committee of Fisheries Management's role to the basin level: ("The following lie within Russian Federation jurisdiction:--")

"--the issuance of fishing, marine product, and other animal and plant quotas, as well as for anadromous...species, for the disposal of maritime federal subjects bordering on the ocean (and) for final distribution and use by fishing agents, in territorial waters, the Exclusive Economic Zone, and continental shelf adjacent to those territories.

"--the distribution by agreement between federation subjects of fishing and marine product quotas to be jointly used by them.

"--the conclusion of agreements with maritime federal subjects on the management and use of marine biological resources in territorial waters, the Exclusive Economic Zone and continental shelf, and also in the open ocean and convention zones of the Pacific Ocean and coastal zones of foreign states.

"--By agreement with concerned maritime federal subjects:

"b) the granting of marine biological resource use rights to foreign legal entities and persons exclusively on the basis of international treaties for the exchange of quotas between the Russian Federation and the appropriate government, including intergovernmental agreements, with the participation of maritime federal subjects.

"c) the establishment of the amount and protocol for loan payment benefits for biological resource use under federal jurisdiction, as well as loan payment benefits and oversight of the above-mentioned funds."

"g) the approval for marine biological resource use.

"j) the establishment of protocol for the distribution of fishing and marine product quotas in territorial waters, the Exclusive Economic Zone, and the continental shelf adjacent to territories at the disposal of maritime federation subjects, as well as fishing quotas for species caught jointly (by those subjects).

"--for quotas issued by krai, oblast, and okrug administrations...The selection of fishery participants, according to representation by those administrations..."

For Section I, Statute 5, the Kamchatka Region Working Group recommended the regulation of fishing and establishment of quotas for anadromous species by treaty with a "specially empowered government agency". Beyond this, the Working Group advised that for all species, federal subjects "Participate in, and have the right to, compliance in the following areas:

"b) the issuance of marine biological resource use permission to legal foreign entities exclusively by international agreement between the Russian Federation and the appropriate foreign government, and also by intergovernmental treaty for the exchange of quotas, with the participation of maritime federal subjects."

The Kamchatka Working Group affirmed the 'basin principle' of management for Russia's fisheries, but with greatly expanded rights for maritime federal subjects. The Working Group proposed the addition of the following paragraph to the Draft Law:

"Special Regional Scientific-Commercial Councils are to be founded for the facilitation of the basin management principle of fishery resources...The membership of the Scientific-Commercial Agencies, and the regulation of the Agencies and their operations, shall be confirmed by a specially-empowered government board.

"Regional Coordinating Councils, which include representatives

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from (federal subject) governors, shall be created for the coordination and joint operation of specially-empowered governmental councils, with the administrative agencies in the Russian Federation, krajs, oblasts, and autonomous regions, to address questions of quota distribution, fishery resource use, the licensing, reoutfitting, and construction of the (fishing) fleet, and the long-term development of the fishing industry in a (given) basin (region), as well as other questions concerning fisheries management. The Councils shall be directed by a representative of the specially-empowered government agencies.

"The membership of the Coordinating Council shall be confirmed by a specially-empowered government board representing (federal subject) governors. The regulation and operations of the Councils shall be confirmed by the Coordinating Council."

The Working Group saved its sharpest criticism for Section VI, Statute 34, and initially proposed at least a fifty-fifty split of resource use fees between the federal government and subjects. In the end, the Working Group recommended excluding Statute 34 altogether. Commented Mikhail Dementyev, "I am convinced that there should be no further payment for marine resources, since we already pay for them with taxes. The statute is also very vague about where the money for the payment will go, or what the federal government intends to do with it."

To further defend local interests, The Kamchatka Region formed a separate 'Department of Fisheries Management' in the end of May; the Department has signed an agreement with the Committee of Fisheries Management dividing fisheries management functions between the two agencies. The Department will, in the first instance, give recommendations to the Kamchatka Regional Administration for fishing quota distribution between Kamchatka's fishing enterprises, and encourage foreign trade. "We will pay special attention to providing maximum stimulation of fish exports," said Mikhail Dementyev, the newly-appointed Department Chairman. "Since only hard currency will allow us outfit local industry with modern equipment and technology, and pay our fishermen."

As Russia evolves its own brand of federalism, Russian Far East federal subjects will have to struggle for the right to use regional natural resources for their own benefit. The Kamchatka Region, in making its recommendations on the Draft Law and forming the Department of Fisheries Management, has taken two small steps forward towards economic self-determination, and demonstrated the willingness of Russian Far East politicians to decide for themselves how best to manage the natural resources upon which regional survival depends.

All best,

