The Recognition and Regulation of Aboriginal Fraser River Sockeye Salmon Fisheries to 1982

Douglas C. Harris, PhD
Nathan T. Nemetz Chair in Legal History
Associate Dean Graduate Studies & Research, Faculty of Law, UBC

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Introduction

The abundant resources of North America's temperate northwest coast supported one of the world's densest non-agrarian populations.[1] Many marine and terrestrial species sustained the Aboriginal peoples who lived west of the Western Cordillera, and no species was more important in the territory that became British Columbia than the Fraser River sockeye salmon.[2] Aboriginal peoples harvested Fraser sockeye at many points along the length of the anadromous fish's return journey to the spawning grounds of its natal streams, but fishing was not equally good everywhere. A productive fishery depended on the life cycle of the salmon, the coastal and riverine geography, including local climates, and the culture of Aboriginal peoples, including their fishing and processing technology and their management practices. These factors coalesced in highly productive reef-net fisheries on the coast that intercepted the

[1] The region, argues anthropologist Wayne Suttles, *Coast Salish Essays* (Vancouver: Talonbooks, 1987), 45, "refutes many seemingly easy generalizations about people without horticulture or herds. Here were people with permanent houses in villages of more than a thousand; social stratification, including a hereditary caste of slaves and ranked nobility; specialization in several kinds of hunting and fishing, crafts, and curing; social units larger than villages; elaborate ceremonies; and one of the world's great art styles." For a survey of the different estimates of pre-contact Aboriginal population of British Columbia see John Douglas Belshaw, *Becoming British Columbia: A Population History* (Vancouver: UBC Press, 2009), 72-90.

[2] Fraser River sockeye form what anthropologists Ann Garabaldi and Nancy Turner, "Cultural Keystone Species: Implications for Ecological Conservation and Restoration" *Ecology and Society* (2004) 9: 1-18 at 1, label a "cultural keystone species," which they describe as "the culturally salient species that shape in a major way the cultural identity of a people." For detail of Aboriginal fishing techniques, see Hilary Stewart, *Indian Fishing: Early Methods on the Northwest Coast* (Vancouver: Douglas & McIntyre, 1977). For estimates of pre-contact harvest levels, see Gordon W. Hewes, "Indian Fisheries Productivity in the Pre-Contact Times in the Pacific Salmon Area," *Northwest Anthropological Research Notes* 7 (1973): 133-55. For an analysis of the connections between the availability of salmon and Aboriginal cultures on the Fraser see Michael Kew, "Salmon Availability, Technology, and Cultural Adaptation in the Fraser River Watershed," in *A Complex Culture of the British Columbia Plateau*: *Traditional* Stl'átl'imx *Resource Use*, ed. B. Hayden (Vancouver: UBC Press, 1991), 177-221; J.E. Michael Kew and Julian R. Griggs, "Native Indians of the Fraser Basin: Towards a Model of Sustainable Resource Use," in *Perspectives on Sustainable Development in Water Management: Towards Agreement in the Fraser River Basin*, ed. Anthony H.J. Dorcey (Vancouver: University of British Columbia, Westwater Research Centre, 1991), 17-47 . See also Marilyn G. Bennett, *Indian Fishing and its Cultural Importance in the Fraser River System* (Fisheries Service, Pacific Region, Department of the Environment, and Union of British Columbia Indian Chiefs, April, 1973); Terry Glavin, *Dead Reckoning: Confronting the Crisis in Pacific Fisheries* (Vancouver: Greystone Books, 1996), 92-127.

returning adult sockeye before they entered the river,[3] dip-net fisheries in the Fraser canyon and along the middle Fraser that drew tens of thousands of fishers every summer,[4] and weir fisheries in the lake systems close to the headwaters of the Fraser River and its major tributaries.[5]

This paper reviews the various ways in which Aboriginal sockeye fisheries on the Fraser were recognized and regulated by the colonial government and then, after 1871 when British Columbia joined the Canadian confederation, by the Dominion and provincial governments. The analysis begins with the Douglas Treaties, the fourteen agreements the Hudson's Bay Company signed on behalf of the British Crown with Aboriginal peoples on Vancouver Island in the early 1850s. The company concluded these agreements, which included a fisheries provision, with Aboriginal peoples who were all catching Fraser River sockeye. The right to "fisheries as formerly" in the treaties was early recognition of the importance of the fisheries to Aboriginal cultures and economies.

The paper then turns to a discussion of Aboriginal participation in the first fifty years of the industrial commercial fishery on the Fraser River. The introduction of canning technology in the early 1870s extended the geographical reach and expanded the market for Fraser River

[3] On the reef-net fisheries operated by one Coast Salish community see Daniel L. Boxberger, *To Fish in Common: The Ethnohistory of Lummi Indian Salmon Fishing* (Seattle: University of Washington Press, 2000).

[4] Two of the most productive stretches of river were in the Fraser canyon above Yale and at the mouth of the Bridge River north of Lillooet. On the fisheries around Lillooet see the following essays in *A Complex Culture of the British Columbia Plateau* (see n. 2): Steven Romanoff, "Fraser Lillooet Salmon Fishing," 222-65; Dorothy I.D. Kennedy and Randy Bouchard, "*Stl'átl'imx* (Fraser River Lillooet) Fishing," 266-354; and Aubrey Cannon, "Conflict and Salmon on the Interior Plateau of British Columbia," 506-24. On the fisheries above Yale see Keith Carlson, "Innovation, Tradition, Colonialism and Aboriginal Fishing Conflicts in the Lower Fraser Canyon," in *New Histories for Old: Changing Perspectives on Canada's Native Past*, ed. T. Binnema and S. Neylan (Vancouver: UBC Press, 2007), 145-74.

[5] For analysis of the Lake Babine weir fisheries, part of the adjacent Skeena River system, see Douglas C. Harris, *Fish, Law, and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001), chap. 2.

sockeye, transforming the fishery in the process. Aboriginal fishers were central to this emerging industry, catching most of the fish that would be cooked in tins and shipped around the world. However, by the first decades of the twentieth century, Aboriginal participation became almost irrelevant to the industry. This paper chronicles the decline and suggests reasons for it.

In addition to the commercial fishery, Aboriginal people also had access to a separately identified and regulated food fishery. The "Indian food fishery" was a category constructed in law that, while providing some limited protection for Aboriginal fishing, operated to marginalize whatever prior claim Aboriginal peoples had to the fisheries by virtue of their long history of fishing. In effect, the Indian food fishery performed the same role in the fisheries as the Indian reserve did on land; both were designed to contain the Aboriginal presence, opening a resource and territory to immigrants.

Finally, this paper documents the important connections between the process of constructing an Indian-reserve geography in British Columbia and the fisheries. Most reserves in British Columbia, including many throughout the Fraser River basin, were allotted to support either the catching or the processing of fish; indeed, these reserves were allotted to secure access to the fisheries. The fish, which had supported Aboriginal peoples for centuries prior to the British assertion of sovereignty, were to be the resource that supported viable, local, reserve-based economies. However, the reserve grants did not secure the fisheries when a common-law and legislated fisheries regime opened the resource to immigrants and to Anglo-American capital. Similarly, the weak standing of Aboriginal or treaty rights in British Columbia provided little protection for Aboriginal fisheries. This would persist, as I note in the conclusion,

at least until the constitutional entrenchment of Aboriginal and treaty rights in 1982 and their subsequent interpretation in Canadian courts.

The Douglas Treaties, 1850-54

The Douglas Treaties are the fourteen agreements between the Hudson's Bay Company (HBC) and Aboriginal peoples on Vancouver Island. The British Crown had granted Vancouver Island to the HBC as a proprietary colony in 1849 with a mandate to promote British settlement in the remote corner of empire. James Douglas, in his capacity as the HBC's chief trader and then governor of the colony of Vancouver Island, negotiated the agreements, first with the Aboriginal peoples around Fort Victoria, then near Fort Rupert at the Island's northeastern end, before concluding agreements on the Saanich Peninsula and, finally, near the future town site of Nanaimo (Figure 1). The written texts of the agreements contain provisions regarding land purchase and the allotment of reserves. They also contain the following hunting and fishing clause: "it is also understood that we are at liberty to hunt over the unoccupied lands, and to carry on our fisheries as formerly."[6]

The origin of the fisheries provision—"to carry on our fisheries as formerly"—is evident in the colonial correspondence. In anticipation of the treaties, Douglas wrote to the HBC that he "would strongly recommend, equally as a matter of justice, and from regard to the future peace of the colony, that the Indians Fishere's [*sic*], Village Sitis [*sic*] and Fields, should be reserved for their benifit [*sic*] and fully secured to them by law."[7] The HBC, in setting out its obligations and policy toward Aboriginal peoples on Vancouver Island, instructed Douglas that the "right of

[6] *Papers Connected with the Indian Land Question, 1850-1875, 1877* (Victoria: Queen's Printer, 1987), 5-11.
[7] Douglas to Archibald Barclay, HBC Secretary, 3 September 1849, in *Fort Victoria Letters: 1846-1852* , ed. Hartwell Bowsfield (Winnipeg: Hudson's Bay Record Society, 1979), 43.

fishing and hunting will be continued to them."[8] On these instructions, Douglas entered negotiations and, over three days in the spring of 1850, concluded nine agreements at Fort Victoria. As part of the negotiations, the Aboriginal chiefs placed X's on blank sheets of paper. Douglas then wrote to the HBC to explain his understanding of what had transpired: "I informed the natives that they would not be disturbed in the possession of their Village sites and enclosed fields, which are of small extent, and that they were at liberty to hunt over unoccupied lands, and *to carry on their fisheries with the same freedom as when they were the sole occupants of the country.*"[9] He forwarded the "signatures" of the chiefs and asked that the HBC supply the proper conveyancing instrument to which the signatures could be attached.

Several months later the Company replied, approving the agreements as Douglas explained them and sending a template purchase agreement, based on New Zealand precedents, that became the text of the Douglas Treaties.[10] It had added the fisheries provision, which appeared to be an abbreviated version of the agreement as described by Douglas several months earlier. Five years after concluding the last of the treaties, Douglas informed the Vancouver Island House of Assembly, in similarly expansive terms, that Aboriginal peoples "were to be protected in their original right of fishing on the coast and in the bays of the Colony."[11]

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[8] Barclay to Douglas, 17 December 1849, Hudson's Bay Company Archives, Archives of Manitoba, Winnipeg A.6/28 fols. 90d-92.

[9] Douglas to Barclay, 16 May 1850, in *Fort Victoria Letters,* 96 (emphasis added) (see n. 7).

[10] Barclay to Douglas, 16 August 1850, BC Archives, Victoria, AC 20, Vi7 M430. On the New Zealand connection and understandings of Aboriginal title, see Hamar Foster, "The Saanichton Bay Marina Case: Imperial Law, Colonial History and Competing Theories of Aboriginal Title," *UBC Law Review* 23 (1989): 629-50.

[11] Douglas to House of Assembly, 5 February 1859, in *House of Assembly Correspondence Book, August 12th 1856 to July 6th 1859* (Victoria: W. Cullen, Printer to the King, 1918).

It is difficult to get at Aboriginal understandings of these events. The text, as anthropologist Wilson Duff suggests, appears to be "the white man's conception (or at least his rationalization) of the situation as it was and of the transaction that took place."[12] However, it is clear that fisheries were not an afterthought for either party. Indeed, the fisheries were at the core of commercial relationships between the HBC and Aboriginal peoples on the Pacific coast. The HBC had briefly deployed some of its workers to fish on the lower Fraser River in the 1840s but decided instead to purchase fish from Aboriginal fishers. These fish, which the company barrelled and salted on the Fraser beginning in the 1820s, had become one of its principal exports from the Pacific coast of North America.[13] Thus, the treaties were concluded in a context of well-established and ongoing commercial activity in the fishery involving the HBC and Aboriginal peoples. Douglas believed that this would continue and he hoped that it would grow.

Douglas also thought that the long-term prosperity of the colony depended on attracting immigrants, and that the fisheries would be one of the principal draws for those newcomers. The HBC had sought the fisheries when the Crown granted Vancouver Island to the company as a proprietary colony, but the Crown withdrew this provision, which had appeared in an early draft of the grant, in the midst of general public disapproval of the HBC in London.[14] Instead, the HBC prospectus for the colonization of Vancouver Island informed interested land

[12] Wilson Duff, "The Fort Victoria Treaties," *BC Studies* 3 (1969): 4.
[13] Richard Mackie, *Trading Beyond the Mountains: The British Fur Trade on the Pacific, 1763-1843* (Vancouver: UBC Press, 1996), 221-30.
[14] In correspondence over the application of the Reciprocity Treaty with the United States to the inhabitants of Vancouver Island, Herman Merivale (Permanent Under-Secretary, Colonial Office) wrote that the Crown grant of Vancouver Island to the HBC "not only omits the fisheries, but these were specifically and deliberately omitted." Merivale annotations to a letter from E. Hammond to H. Merivale, 13 June 1855, BC Archives, Victoria, Colonial Office Correspondence, CO 305/6, p. 237.

purchasers that "*every freeholder shall enjoy the right of fishing* all sorts of fish in the seas, bays, and inlets of, or surrounding, the said Island."[15] In tidal waters, then, the prospectus asserted the right of landowners to fish as, indeed, the common-law doctrine of the public right to fish established for the public at large. In the context of a vast and apparently inexhaustible resource, the boundaries of respective Aboriginal and newcomer rights to fish did not need to be carefully drawn. Abundance was presumed and, although Douglas saw opportunity in the fisheries, there was little non-Aboriginal interest. That would change in the 1870s, but at the time of the Douglas Treaties and for the next two decades the fisheries were almost exclusively Aboriginal; the colonial government did not intervene.

Although concluded with a limited number of Aboriginal peoples on Vancouver Island, the Douglas Treaties have broader relevance. The treaties reveal the early efforts of the colonial government to address the issues of Aboriginal rights and title, and, although the treaty-making process in British Columbia did not continue, the Douglas Treaties reflect the colonial government's understanding of rights that, while not recognized in treaty documents elsewhere, were not formally extinguished either. The right to "fisheries as formerly" expressed the early colonial government's view of Aboriginal rights to fish in the British territory on the Pacific.

With respect to the Fraser River sockeye, the treaties also have specific relevance. The treaty signatories at the north and south ends of Vancouver Island fished many species, including Fraser River sockeye as the fish passed through their territories toward the Fraser (Figure 2). The Aboriginal peoples on southern Vancouver Island, in particular, had extensive

[15] *Prospectus for the Colonization of Vancouver Island* (London, 1849) (emphasis added).

reef-net fisheries on the surrounding islands that intercepted migrating sockeye.[16] The mid-Island signatories—the Synuneymuxw—had a fishing village on the Fraser River just downstream from Fort Langley.[17] As a result, the right to "fisheries as formerly" was negotiated in a context where many if not all of the Aboriginal signatories were harvesting Fraser River sockeye in the waters adjacent to their treaty lands or on the Fraser River itself.

Aboriginal Participation in the Early Industrial Fraser River Sockeye Fishery

The first salmon cannery in British Columbia appeared in 1871 at New Westminster, just upriver from the mouth of the Fraser. Three canneries were operating there in 1876, two more the next year, and eight by 1878. Several canneries had also opened in the north near the mouth of the Skeena River, and there were salting operations along the coast for salmon and other species.[18] English and American capital flowed into the industry, and production increased rapidly, if unevenly, in the last quarter of the nineteenth century. By the first decades of the twentieth century, fifty to eighty canneries operated each year, many of them isolated industrial work camps on the Nass and Skeena rivers in the north, and around Rivers Inlet on the central coast. However, the largest cluster occupied the stretch of the Fraser River

[16] See the map of reef-net fisheries in John Lutz, "Work, Wages and Welfare in Aboriginal–Non-Aboriginal Relations, British Columbia, 1849-1970" (PhD diss., University of Ottawa), 149, 224. See also Douglas C. Harris, *Landing Native Fisheries: Indian Reserves and Fishing Rights in British Columbia, 1849-1925* (Vancouver: UBC Press, 2008), 29.

[17] See the notation on Captain Aemilius Simpson's chart, reproduced in *The Fort Langley Journals, 1827-1830* , ed., Morag Maclachlin, (Vancouver: UBC Press, 1998), 8. See also Mackie, *Trading Beyond the Mountains*, 222-23 (see n. 13).

[18] See the Department of Marine and Fisheries annual reports in the *Sessional Papers* of the Canadian Parliament through the 1870s.

downstream from New Westminster to Steveston, not far from the emerging city of Vancouver.[19]

The industrial commercial salmon fishery in nineteenth- and early-twentieth-century British Columbia was predominantly a drift-net fishery targeting migrating sockeye. At the mouths of British Columbia's major rivers, fishers deployed gill nets from hundreds of skiffs that had been towed by cannery-owned tenders to the fishing grounds.[20] Using nets suspended from a cork line on the surface and weighted with a lead line to hang down in the water, and working in pairs from a skiff, a fisher who handled the nets and a boat puller who worked the oars would stretch a net across a river or near its mouth. With one end of the net attached to a buoy, the other to the skiff, the assemblage would drift with the current, the boat puller keeping the net perpendicular to the path of the migrating salmon. As the salmon headed into the river or upstream, they would swim into the mesh. Unable to squeeze their bodies through the openings or to back out because of their gills, they would be caught. At the end of a "drift," the fishers would haul in the net, disentangle the fish, and row back upstream for another set or to the cannery or tender to unload their catch.[21]

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[19] On the spatial distribution of the canning industry, see Edward N. Higginbottom, "The Changing Geography of the Salmon Canning Industry in British Columbia, 1870-1931" (master's thesis, Simon Fraser University, 1988); Dianne Newell, "Dispersal and Concentration: The Slowly Changing Spatial Pattern of the British Columbia Salmon Canning Industry," *Journal of Historical Geography* 14 (1988): 22-36; Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993), 16-20. For general histories, see Geoff Meggs, *Salmon: The Decline of the British Columbia Fishery* (Vancouver: Douglas and McIntyre, 1991, 1995); Joseph E. Forester and Anne D. Forester, *Fishing: British Columbia's Commercial Fishing History* (Saanichton, BC: Hancock House, 1975); Cicely Lyons, *Salmon: Our Heritage* (Vancouver: British Columbia Packers, 1969).

[20] Forester and Forester, *Fishing,* ibid., 55-59; Richard Rathburn, *A Review of the Fisheries in the Contiguous Waters of the State of Washington and British Columbia* (Washington, 1899), 305-10.

[21] See the description from the Dominion superintendent of fish culture, Samuel Wilmot, in "Salmon Fishery and Fishery Regulations of Fraser River, B.C." in Department of Fisheries Annual Report, 1890, Canada, *Sessional Papers* 1891, pp. 65-66.

The commercial fleet grew quickly in the early years to supply the burgeoning canning industry. Beginning in 1881, the Dominion Department of Fisheries (Fisheries), which had assumed jurisdiction over the resource after British Columbia joined the Canadian confederation in 1871, required that all fishers on the Fraser who were catching salmon for the canneries near its mouth purchase an annual licence.[22] Nearly all of the 600 to 700 annual licence holders on the Fraser from 1882 to 1887 were Aboriginal, an indication of the degree to which the canneries relied on Aboriginal labour in the early years of the industry.[23]

However, if the importance of Aboriginal fishers held over from the HBC-era, the terms of their participation changed with the arrival of the industrial commercial complex in the 1870s. A relationship that had been based on trade became one based on employment law. In a series of cases in the mid-1870s, several fish processors prosecuted Aboriginal fishers under the law of master and servant. In each case, the fishers appear to have signed on with one cannery at the start of the season, but then left to fish for another cannery when offered better terms. A number of them were convicted and imprisoned for breach of employment contract. Aboriginal fishers, now understood as employees, were being jailed for acting as traders who owned their fisheries.[24] It was an important shift in the legal framing of the transaction, but the effect on Aboriginal participation in the commercial fishery was limited while Aboriginal labour remained important. That would soon change.

With the rapid expansion of canning capacity, some began to question the sustainability of the fishery and the profitability of the industry. Massive fishing effort and severe habitat

[22] This licensing requirement followed the *Fishery Regulation*, Canada Order-in-Council, 11 June 1879, *Canada* Gazette, *Vol. 12*, p. 1616, which prohibited all salmon fishing except under lease or licence from Fisheries.
[23] George A. Rounsefell and George B. Kelez, *The Salmon and Salmon Fisheries of Swiftsure Bank, Puget Sound, and the Fraser River* (Washington, DC: US Government Printing Office, 1938), 706.
[24] See Harris, *Fish, Law, and Colonialism*, 49-55 (see n. 5).

destruction had already produced sharp declines in the salmon runs in California and on the Columbia River, and Fisheries officials expressed their concerns about the Fraser.[25] Cannery operators also raised concerns, although primarily about their ability to secure enough salmon given the increasing competition for fish. They sought restrictions in and greater control over the licences, primarily to limit the arrival of new processors. In 1889, Fisheries complied, instituting the first limited-licence regime in British Columbia by restricting the number of salmon drift-net licences on the Fraser to 450. The canneries divided 350 licences among them; the remaining 100 went to independent fishers.[26] The many formerly independent fishers who were unable to get licences were not pleased, and, in 1890, Fisheries increased the number of independent licences to 150 and the total number of licences to 500.[27] The same limits remained in effect the following year and then were removed in 1892.

The short-lived experiment with a limited-licence regime affected many fishers, but it had a dramatic effect on Aboriginal commercial fishers, cutting their number in half, from more than 600 in each of the six years preceding the restrictions to a few more than 300 during the trial with limited licences.[28] Of these, most worked under a cannery licence. According to the testimony of Captain George of Chehalis to the British Columbia Fishery Commission in 1892, only forty Aboriginal fishers held independent licences in 1891, fewer than one-third of the 150 independent licences, although many more had boats and nets and wished to fish

[25] On the state of the Columbia River fishery, see Joseph E. Taylor III, *Making Salmon: An Environmental History of the Northwest Fisheries Crisis* (Seattle: University of Washington Press, 1999), 39-67.
[26] Under the *Fishery Regulations for the Province of British Columbia,* 1888, s. 5, the minister of Marine and Fisheries had the capacity to "determine the number of boats, seines, or nets, or other fishing apparatus to be used in any of the waters of British Columbia." Canada Order-in-Council, 26 November 1888, *Canada Gazette,* vol. 22, p. 956.
[27] *Fishery Regulations for the Province of British Columbia*, Canada Order-in-Council, 14 March 1890, *Canada Gazette, Vol. 23*, p. 1903. See Meggs, *Salmon,* chap. 3 (see n. 19).
[28] Rounsefell and Kelez, *Salmon and Salmon Fisheries,* 706 (see n. 23).

independently.[29] And while some Aboriginal communities had fewer independent licences than they wished, others were excluded altogether. When Cowichan fishers applied for independent licences on the Fraser in 1889 and 1890, Fisheries refused on the grounds that they were not members of a resident tribe.[30] The main winter villages of the Cowichan and their Indian reserves straddled the Cowichan River on Vancouver Island, but every summer they crossed the Strait of Georgia to fish sockeye near the mouth of the Fraser River.[31] This seasonal round long predated the canning industry and had continued until the 1890s as Cowichan fishers took advantage of the new market for their catch. However, the site of their fishing village on the Fraser had been sold to absentee owners before the Dominion and provincial governments allotted Indian reserves at the mouth of the Fraser, and when the Indian reserve commissioners did arrive in 1876 they did not allot another site. Without a reserve on the Fraser, the Cowichan could not get fishing licences.[32]

Fisheries confirmed the end of the short-lived limited-licence regime on the Fraser in 1894 when it introduced regulations stipulating that "each *bona fide* fisherman, being an actual resident of the province of British Columbia," could obtain one salmon fishing licence for ten dollars.[33] Thereafter, the number of license holders grew dramatically, and the makeup of the fishing fleet began to change in two important respects. First, newly issued independent licences accounted for most of the increase, so that by the late 1890s only a small minority of

[29] British Columbia Fishery Commission, 1892, Record of Proceeding and Minutes of Evidence, p. 392, in Canada, *Sessional Papers* 1893, p. 392.
[30] W.H. Lomas, Indian agent, to John McNab, inspector of Fisheries, 26 January 1892; McNab to S.P. Bauset, acting deputy minister, Department of Marine and Fisheries, 29 February 1892, Library and Archives Canada, Ottawa, Department of Indian Affairs (DIA), RG 10, vol. 3828, file 60926 (reel C-10145).
[31] See Mackie, *Trading Beyond the Mountains*, 219, 221-23 (see n. 13).
[32] Harris, *Fish, Law, and Colonialism*, 144-45 (see n. 5).
[33] Canada Order-in-Council, 3 March 1894, *Canada Gazette,* vol. 27, p. 1579.

fishers on the Fraser worked under cannery licences.[34] The ethnic composition of the Fraser fishing fleet also changed. From the lifting of licence restrictions for the 1892 season until 1905, roughly 500 Aboriginal fishers held annual licences that permitted them to fish commercially on the Fraser. Over this same period, the number of Japanese and white fishers grew dramatically. In most years there were well over 1,000 licensed Japanese fishers (in some years as many as 1,800) and nearly 1,000 white fishers. Based on these figures, Aboriginal fishers made up, on average, 44 percent of the Fraser fishery from 1891 to 1894, a figure that fell to 12 percent between 1901 and 1904.[35]

The number of Aboriginal fishers, which had declined as a proportion of the fleet in the 1890s, declined absolutely in the first two decades of the twentieth century. In those years, Japanese fishers comprised the majority of the fleet on the Fraser, followed by white and then Aboriginal fishers. These racial divisions were important markers in the industry, and were played upon by the cannery owners to dampen the force of the frequent labour unrest in the years around 1900.[36] As categories to describe the nature of the fishing fleet, however, they are problematic, concealing great diversity within the named groups, particularly within the "white" category, whose members shared little more in common than that they were immigrants who were not from Japan.

By 1920, Aboriginal participation in the Fraser River commercial fleet had become insignificant. Over the 1920s and early 1930s, the number of Aboriginal licence holders varied

[34] Keith Ralston, "The 1900 Strike of Fraser River Sockeye Salmon Fishermen" (master's thesis, University of British Columbia, 1965), 33, estimates that by 1900 only 12 percent of licences on the Fraser were held by canneries.
[35] David Reid, "The Development of the Fraser River Salmon Canning Industry, 1885 to 1913" (report prepared for Fisheries & Marine Service, Pacific Region, Department of the Environment, July 1973), 84.
[36] See Ralston, "The 1900 Strike" (see n. 34).

from 26 to 73, in a fleet that fluctuated between 1,000 and 1,500 licence holders.[37] On several occasions, the Department of Indian Affairs requested that Fisheries issue commercial licences without cost to Aboriginal fishers.[38] Fisheries refused. The Japanese presence began to decline as well in the 1920s, a result of specific policies to reduce Asian participation in the fishery.[39] By the early 1930s, the commercial fleet on the Fraser was primarily white (perhaps better described as non-Aboriginal and non-Japanese), with a significant although reduced Japanese presence, and very few Aboriginal fishers.

Why the decline in the Aboriginal commercial fleet? At one level, the apparatus of the Canadian state, including the *Indian Act* and an expanded system of residential schooling, was encircling and disrupting Aboriginal lives, detaching individuals from family, languages, and traditions, and interposing itself between Aboriginal peoples and everyone else. On another level, cannery operators drew on a growing number of immigrants in the towns of New Westminster and Steveston and the emerging city of Vancouver, many of whom were more than happy to have seasonal work in the salmon fishery. Even though the licences were nominally independent, cannery operators frequently owned the boats and the nets or provided significant pre-season credit for this equipment to those fishers whom they wished to hire. Henry Bell-Irving, owner of the Anglo-British Columbia Packing Co., the largest canning

[37] Rounsefell and Kelez, *Salmon and Salmon Fisheries,* 706 (see n. 23).
[38] D.C. Scott, deputy superintendent general of Indian Affairs, to M. Burrell, 11 August 1915, Library and Archives Canada, Ottawa, DIA, RG 10, vol. 3909, file 107297-3 (reel C-10160).
[39] J.A. Motherwell, chief inspector of Fisheries, to J.P. Babcock, 9 August 1922, BC Archives, Victoria, GR 435, box 43, file 392. Motherwell outlines the goals for 1923 of a 15 percent reduction of the Japanese fleet on the Fraser and in the waters around Vancouver Island (Districts 1 and 3), and a 10- to 50-percent reduction on the central and northern coasts (District 2). See Ken Adachi, *The Enemy That Never Was: A History of the Japanese Canadians* (Toronto: McClelland and Stewart, 1991), 142-45; Daphne Marlatt, ed., *Steveston Recollected: A Japanese-Canadian History* (Victoria: Provincial Archives of British Columbia, 1975), 53-55; Hozumi Yonemura, "Japanese Fishermen in British Columbia and British Fair Play," *Canadian Forum* 10 (1930): 357.

company in British Columbia through the 1890s, claimed that by 1900, each cannery deployed as many as 250 boats, vastly exceeding what they had been allowed under the limited licence regime ten years earlier.[40]

In 1913, Squamish Chief Mathias Joseph testified at the hearings of the Royal Commission on Aboriginal Affairs for the Province of British Columbia (Royal Commission) that a fish boat cost $150, nets between $125 and $150, and a gill-net licence $10. When the sockeye runs peaked, a good fisher might clear as much as $800, but in other years he might not be able to cover debts.[41] Gasoline-powered boats, which entered the south-coast fishery in increasing numbers in the 1910s, doubled or tripled the cost of a boat, adding significantly to the initial outlay required to enter the fishery. The $10 licence fee, in place since 1894, was relatively small, but symbolically significant. Many Aboriginal fishers resented paying for permission to fish in waters they had long considered theirs. After 1908, fishers had to buy $5 licences from the Dominion and the province, and this only aggravated the sense of injustice. Musqueam Chief Jonnie complained of the constricting government presence to the Royal Commission: “When I want to go fishing, the two parties are also holding on to each end of my boat – There are initials and numbers on the bow and initials and numbers on the stern, and I know that I own the water that is the grievance that I want to bring before the Commissioners. I don’t want to have a licence to do anything. When I want to catch fish for my living I don’t want to be interfered with at all.”[42]

[40] H. Bell-Irving to Fisheries, 19 February 1912, British Columbia Archives, Victoria, GR 435, box 65, file 607.
[41] Testimony of Squamish chief Mathias Joseph, New Westminster Agency, 21 June 1915, Royal Commission on Indian Affairs for the Province of British Columbia, Evidence, vol. 6, pp. 40-41, archived at UBC Library, Special Collections.
[42] Testimony of Musqueam Chief Jonnie, 24 June 1913, ibid., p. 64.

Japanese immigrants, many from fishing communities in Japan, had quickly established themselves as industrious and effective fishers and came to predominate, despite the pervasive racism directed against them. Only targeted government policy would significantly reduce their participation in the fishing fleet on the Fraser. Employing Japanese fishers was uncluttered and uncomplicated in comparison to hiring Aboriginal fishers, whose employment and ability to acquire debt were made difficult by their status as wards of the state under the *Indian Act*,[43] and who had the suppressed but unresolved issues of Aboriginal title and rights to the fisheries lingering in the background.

Fuller study is needed, but these appear to be the factors that precipitated the rapid decline of Aboriginal fishers' participation in the commercial fishery on the Fraser in the early decades of the twentieth century. Whatever the reasons, Aboriginal communities which had once had the fisheries to themselves, and then had dominated the commercial Fraser River sockeye fleet in the early industrial fishery, were, by the 1920s, peripherally engaged in an industry that continued largely without them on the south coast.

Constructing an Indian Food Fishery

The colony of British Columbia joined the Canadian confederation in 1871, ceding authority over fisheries to the Dominion government. The Dominion *Fisheries Act* of 1868, which became law in British Columbia in 1877, surrounded the fisheries with a new regulatory framework. It empowered the minister of Fisheries to appoint fisheries officers and issue fishing leases or licences, established some basic rules about how and when fish might be caught, set

[43] Under the *Indian Act,* S.C. 1876, c. 18, s. 66, no person could take real or personal property held by an Indian and located on a reserve as security for a loan. The one exception was for the seller of an item who might reclaim that item to recover money owed for its purchase. In the fishery, this exception might have provided some security for a boat seller, but nets only lasted two seasons and quickly lost their value.

out fines for the failure to comply, designated fisheries officers as justices of the peace with powers to convict and punish for offences, and gave the minister the general authority to make regulations for the better management of the fisheries.[44] Indians were mentioned in the act only to indicate that the Department of Fisheries might allow them, at its discretion, "to fish for their own use."[45]

In 1878, in response to demands for some regulation of the rapidly expanding salmon canning industry, Fisheries established the *Salmon Fishery Regulations for the Province of British Columbia.* This first set of regulations consisted of three sentences that confined the salmon fishery to tidal waters, prohibited net fishing in fresh waters, restricted net sizes, and closed the fishery on weekends.[46] If enforced, these regulations, which banned nets in fresh waters, would have shut the commercial drift-net fishery that operated in the 1870s in the tidal but fresh waters of the lower Fraser. They would also have closed many important Aboriginal dip-net salmon fisheries on the Fraser and its tributaries. Fisheries did not change the regulations: the commercial fishery continued as before, and Fisheries provided an informal exemption for Aboriginal fishers, instructing the local inspector of Fisheries "to suspend the

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[44] *An Act respecting the extension and application of "The Fisheries Act," to and in the Provinces of British Columbia, Prince Edward Island and Manitoba,* S.C. 1874, c. 28, extended the *Fisheries Act,* S.C. 1868, c. 60, to British Columbia. The act was proclaimed into force by Canada Order-in-Council, May 1876, *Canada Gazette,* vol. 9, p. 1513, to take effect 1 July 1877.

[45] *Fisheries Act,* S.C. 1868, c. 60, s. 13(8).

[46] *Salmon Fishery Regulations for the Province of British Columbia,* Canada Order-in-Council, 30 May 1878, *Canada Gazette,* vol. 11, p. 1258:

> 1. Drifting with salmon nets shall be confined to tidal waters; and no Salmon net of any kind shall be used for Salmon in fresh waters.
> 2. Drift nets for Salmon shall not be so fished as to obstruct more than one-third of the width of any river. Fishing for salmon shall be discontinued from eight o'clock A.M. on Saturdays to midnight on Sundays.

application in regard to Indians" and "practically to exempt Indians from the operation of the Fisheries Regulations."[47]

In 1888, Fisheries rewrote the rudimentary regulations for British Columbia, making three significant additions: commercial fishers were required to register their equipment and intended fishing location; Fisheries could limit the number of boats in a region; and, under certain circumstances, Indians were not required to hold a licence. This final clause read as follows:

> Provided always that Indians shall, at all times, have liberty to fish for the purpose of providing food for themselves but not for sale, barter or traffic, by any means other than with drift nets, or spearing.[48]

The wording was ambiguous, but the intention was to exempt most forms of Aboriginal food fishing from licensing requirements and restrictions. These provisions appeared to allow Aboriginal peoples virtually unfettered access to food fisheries, but they did not provide any protection for those fisheries. Commercial licence holders increasingly occupied important Aboriginal fishing grounds, provoking concern in many Aboriginal communities about access to the fisheries and about the viability of the harvest.

Whatever limited protection the food fishery provided in law, it offered even less in practice. In 1892, Fisheries established a commission to report on the state of the fishery in British Columbia and to make recommendations for its regulation. The commission heard from 112 witnesses, primarily in New Westminster, but also in Victoria, Nanaimo, and Vancouver, although only two appear to have been Aboriginal: Charlie Caplin from Musqueam and Captain

[47] W.F. Whitcher, Dominion commissioner of Fisheries, to E.A. Meredith, 5 August 1878, Library and Archives Canada, Ottawa, DIA, RG 10, vol. 3662, file 9756 (reel C-10116), pt. 1.
[48] *Fishery Regulations for the Province of British Columbia,* s. 1, Canada Order-in-Council, 26 November 1888, *Canada Gazette,* vol. 22, p. 956.

George of Chehalis. Both Caplin and George complained that since Fisheries introduced the limited-licence regime on the Fraser in 1889, Aboriginal fishers had not had sufficient access to commercial licences, which they said were going to whites. George testified that Fisheries officers were also restricting their food fishery. To his claim that "God gave them these waters and the fish and the land, and now it is taken away from them by new comers," commission chair Samuel Wilmot replied, through the Indian agent as translator: "You tell him that the law gives preference to them—that they can fish without licenses for their own use, but not for barter or sale, and that when they come in competition with white men, they must stand in the same position as white men, but when fishing for their own use, they can fish without licenses." The Indian agent responded: "But I may tell you, Mr. Wilmot, that they are not allowed to fish. I know an instance where their nets were taken and cut to pieces up at Yale—a poor cripple of a man—and they have not the privileges you speak of."[49]

In 1894, following the recommendation of the 1892 commission, Fisheries expanded the *Regulations* to thirty sections. These revisions provided local officials with the first detailed set of rules to govern the fishery in British Columbia. They also allowed for greater state intervention in the Aboriginal fisheries. An Indian food fishery remained exempt from the licensing requirements, but access now required a permit: "Provided always that Indians may, at any time, *with the permission of the inspector of fisheries,* catch fish for the purpose of providing food for themselves and their families but for no other purpose." In another section prohibiting nets in fresh water, there was a similar exemption: "But Indians may, *with the permission of the inspector of fisheries,* use dip-nets for the purpose of providing food for

[49] British Columbia Fishery Commission Report, 1892, in Canada, *Sessional Papers,* 1893, p. 393.

themselves and their families, but for no other purpose."[50] The Indian food fishery was not to be considered a right, wrote the minister of Fisheries, Charles Tupper, but "an act of grace" bestowed by a munificent state.[51]

In managing the Indian food fishery, Fisheries' goal was to contain what it understood to be a privilege. After 1894, Aboriginal fishers needed a food-fishing permit, but it is not clear when Fisheries first enforced this requirement. It amended the regulations in 1908, following the recommendations of the Dominion–British Columbia Fisheries Commission 1905-07, to remove the need for a permit, instead requiring that "Indians and explorers in unorganized districts" report their food-fishery catches. In 1910, the department restored the permit requirement, and a system evolved whereby the Fisheries inspector would issue food-fishing permits to Aboriginal fishers on the advice of the local Indian agent.[52] At times the inspector would challenge the list and the discretionary power of the Indian agent; those who worked or who were deemed capable of working in the wage economy were not to receive food-fishing permits. At other times the inspector would go further, closing a river or other region to food fishing, while allowing commercial or sport fisheries.[53]

The limited food fishery did not, of course, stop Aboriginal fishers from selling or trading fish without a licence. Fisheries was most concerned about those unlicensed fishers who caught and sold fish to canneries. What success it had in limiting these sales is uncertain, but the fact that the fishery was illegal, and therefore posed an additional risk to purchasers, reduced the

[50] *Fishery Regulations for the Province of British Columbia,* ss. 1, 6, Canada Order-in-Council, 3 March 1894, *Canada Gazette,* vol. 27, p. 1579 (emphasis added).
[51] Charles Tupper to Edgar Dewdney, minister of the Interior, 24 August 1891, Library and Archives Canada, Ottawa, DIA, RG 10, vol. 3828, file 60926 (reel C-10145).
[52] *Fishery Regulations for the Province of British Columbia,* Canada Order-in-Council, 8 June 1908, *Canada Gazette,* vol. 41, p. 3209, and Canada Order-in-Council, 12 March 1910, *Canada Gazette,* vol. 43, p. 3206.
[53] On the closing of the Capilano River, see Harris, *Landing Native Fisheries*, 116-25 (see n. 16).

price that Aboriginal fishers working in this informal economy received for their fish. Aboriginal fishers also continued to supply fresh fish to local markets, and there was broad support for the idea that Aboriginal fisheries, including fish caught for food and for sale in local markets, should be protected. Some proposed a "peddler's licence" that would formally sanction the widespread practice of catching fish in small quantities to sell.[54]

Instead, Fisheries officials attempted to limit the Indian food fishery to fish caught for the consumption and not for sale, even if the sale were to raise money to purchase other foodstuffs. In 1913, a stipendiary magistrate at New Westminster suggested that the definition of Indian food fishing in the regulations, which allowed Indians to "catch food for the purpose of providing food for themselves and their families, but for no other purpose," might be interpreted as allowing the sale of fish to purchase food.[55] Fisheries responded that the inspector would simply revoke the food fishing permit if selling fish to procure other foodstuffs became a practice. To reinforce this policy, in 1915 the Department amended the regulations: "Indians may, at any time, with the permission of the Chief Inspector of Fisheries, catch fish to be used as food for themselves and their families, but for no other purpose."[56] The food fishery was to be only a fishery for food, and Fisheries placed two additional officers on the Fraser that year.[57]

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[54] Transcript of Royal Commission on Indian Affairs for the Province of British Columbia with Dominion and Provincial Fisheries Officials in Regard to Fishing Privileges of Indians in B.C., held in Victoria on 23 December 1915, Library and Archives Canada, Ottawa, DIA, RG 10, vol. 3908, file 107297-2 (reel C-10160), pp. 20-23.

[55] F.H. Cunningham, chief inspector of Fisheries, to W.A. Found, 26 May 1913, Library and Archives Canada, Ottawa, Department of Marine and Fisheries, RG 23, file 6, part 8 (UBC reel 5). McGregor Young, legal counsel for the Royal Commission on Indian Affairs for the Province of British Columbia, which had just begun hearings in 1913, came to a similar conclusion in his "Memo as to restrictions upon fishing in B.C.," July 28, 1913, in *Minutes and Report of the Royal Commission on Indian Affairs for the Province of British Columbia*, call number E78.B9 B754 c. 1, p. 278, Department of Indian Affairs and Northern Development (DIAND) Library, Ottawa.

[56] Canada Order-in-Council, 9 February 1915, *Canada Gazette,* vol. 49, supp., 20 February 1915, p. 67.

[57] Fishing Privileges of Indians (see n. 54), pp. 13, 23.

In 1917, in what amounted to a significant extension of its authority, Fisheries amended the regulations to provide officials with greater control. The long preamble to the order-in-council explained the "great difficulty" in preventing Indians from selling salmon caught under the auspices of the food fishery. It also lamented the low probability of a conviction, even when fishers were caught and charged.[58] The new provisions, reproduced below, allowed officials to fix the places, methods, and timing of the Indian food fishery. Furthermore, if a prosecuting Fisheries officer were able to establish that an Indian had sold fish, then the burden fell on the accused to establish that the fish had not been caught under a food-fishing permit, a reverse-onus provision that was intended to enhance the likelihood of conviction for the sale of food fish. Purchasers of Indian food fish were also guilty of an offence, although for these accused it was up to the Crown to establish that the fish were food fish. The provisions stated:

> An Indian may, at any time, with the permission of the chief inspector of fisheries, catch fish to be used as food for himself and his family, but for no other purpose. The chief inspector of fisheries shall have the power in any such permit (a) *to limit or fix the area* of the waters in which such fish may be caught; (b) *to limit or fix means* by which, or the manner in which such fish may be caught; and (c) *to limit or fix the time* in which such permission shall be operative. An Indian shall not fish for or catch fish pursuant to the said permit except in the waters by the means or in the manner and within the time limit expressed in the said permit, and any fish caught pursuant to any such permit shall be deemed to be a violation of these regulations.
>
> (a) *Proof of a sale or of a disposition* by any other means by an Indian of any fish shall be prima facie evidence that such fish was caught by the said Indian, and that it was caught for a purpose other than to be used as food for himself or his family, and *shall throw on the Indian the onus of proving that such fish was not caught under or pursuant to the provisions of any such permit*.
>
> (b) No Indian shall spear, trap or pen fish on their spawning grounds, or in any place leased or set apart for the natural or artificial propagation of fish, or in any other place otherwise specially reserved.
>
> (c) Any person buying any fish or portion of any fish caught under such permit shall be guilty of an offence against these regulations.[59]

[58] Canada Order-in-Council, P.C. 2539, 11 September 1917, Library and Archives Canada, Ottawa, Department of Justice, RG 2, vol. 1178.
[59] Canada Order-in-Council, 11 September 1917, *Canada Gazette,* vol. 51, p. 925 (emphasis added).

These regulations, which gave Fisheries officials new legal tools to restrict the food fishery and further solidified the constructed boundary between food and commercial fishing, were the product of the government's general frustration over its inability to contain Aboriginal fishing to a food fishery. However, the immediate catalyst was the rock slides at Hell's Gate in 1913 and 1914 and their catastrophic effect on the Fraser River salmon fishery.[60] Fisheries officials scrambled to clear the mountain from the river in 1914 before the summer sockeye runs, but with limited success. They allowed the commercial fishery at the coast to continue, but restricted and then shut the Indian food fishery on the Fraser in 1914.[61] The full extent of the devastation became clearer in 1917 when the sockeye did not return in the expected numbers,[62] and the chief inspector of Fisheries blamed Aboriginal fishers: "the Indian is one of the greatest enemies that the sockeye has."[63] As a result, the food fishery remained closed until 1922, and was heavily restricted thereafter.[64] Meanwhile, the commercial fishery at the mouth of the Fraser continued as before, although the reduced runs were a significant factor in the reshaping of the commercial canning industry, which shifted its orientation to the central and northern coasts.[65]

The evidence suggests that Fisheries officials used the enhanced regulatory powers after 1917 to increase their enforcement activity. Reverend Peter Kelly, a member of the Haida and president of the Allied Tribes, one of the early organizations that had formed to advocate for

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[60] See the account in Mathew D. Evenden, *Fish versus Power: An Environmental History of the Fraser River* (Cambridge: Cambridge University Press, 2004), 19-36.
[61] Indian Agent Graham of the Lytton Agency, Evidence to the Royal Commission on Indian Affairs, 4 November 1914, Library and Archives Canada, Ottawa, DIA, RG 10, vol. 11024, file AH7.
[62] Report of the Fisheries Commissioner for 1917, British Columbia, *Sessional Papers* 1918, Q9.
[63] Chief Inspector of Fisheries F.H. Cunningham as reported in the *Vancouver Province,* 18 May 1918.
[64] *Vancouver Sun,* July 4, 12, 1922. See also Andrea Laforet and Annie York, *Spuzzum Fraser Canyon Histories, 1808-1939* (Vancouver: UBC Press, 1998), 99-102; Newell, *Tangled Webs*, 116-21 (see n. 19).
[65] Evenden, *Fish versus Power,* 43-48 (see n. 60).

recognition of Aboriginal title in British Columbia, recounted aggressive enforcement practices in a 1923 meeting with senior officials from Indian Affairs:

> Almost every Indian Agent I think can report cases where the Indians have been held up, where fisheries officials have come and summonsed Indians to Court for catching salmon for food. Fines have been paid. I am just thinking of one particular instance in Nanaimo only last year, where two parties have gone up the Nanaimo River and speared salmon for food; they had I think two salmon in the canoe, one was on the beach; and they were before the Magistrate, and they were fined. It was not very much, but they were fined nevertheless. I think they paid something like five or six dollars apiece. But for taking food which they thought they had a perfect right to take. Now that sort of a story can come from all parts of the Province. Our friends from the Fraser River have the same story to tell, where wagons have been confiscated, teams of horses have been confiscated, because they were hauling salmon from one reserve to another—from the river to the reserves.[66]

The regulations limited the Indian food fishery to that which could be consumed by the fisher and his or her family, but the goal of senior officials within Fisheries was to eliminate it entirely. The chief inspector of Fisheries told the members of the Royal Commission in 1915 that "it would be in the public interest to feed the Indian on white men's food, and don't let them eat fish at all."[67] This view, common among Fisheries officials, led in the 1930s to experimental shipments of commercially caught and processed fish to the interior of the province, with the aim of reducing Aboriginal dependence on sockeye and other commercially valuable species. The hope was that Aboriginal people would eat the commercial products, allowing Fisheries officials to close their food fisheries.[68]

The Indian food fishery was a legal construction, intended on the one hand to provide some limited protection for Aboriginal fisheries, but, on the other, to contain the impact of a separately designated Aboriginal fishery on the commercial fisheries. In effect, the Indian food

[66] Transcript of a meeting between D.C. Scott, W.E. Ditchburn, and the executive committee of the Allied Tribes of British Columbia, 7-8 August 1923, Library and Archives Canada, Ottawa, DIA, RG 10, vol. 3821, file 59335, pt. 4A (reel C-10143), pp. 136-37.
[67] Fishing Privileges of Indians (see n. 54), p. 7.
[68] Correspondence file, Pacific Region Federal Records Centre, Vancouver, Department of Marine and Fisheries, RG 23, vol. 2208, file 10-1-31, part 1.

fishery performed the same role in the fisheries as the Indian reserve did on land. The intent and effect of these legal instruments was to set aside fragments of traditional territories and fisheries for Aboriginal peoples, opening the remainder to immigrants.

Indian Reserves and Fisheries

In 1871, when British Columbia joined Confederation, there were approximately 36,000 people living in the province, roughly 30 percent (10,500) of whom were immigrants.[69] Ten years later the population had increased to 50,000, nearly half of them immigrants who were beginning to spread from southern Vancouver Island and the Fraser Valley inland along the Fraser, Thompson, and Nicola rivers and into the Okanagan.[70] The Crown distributed land titles to these settlers, either through sale or pre-emption (a process to distribute land before its survey), and although the total acreage of alienated land was small, there was not much arable land in the province.[71]

In addition to these Crown grants, the Dominion and provincial governments also created boundaries that marked the spaces reserved for Aboriginal peoples. This process of allotting Indian reserves, begun under the Douglas Treaties and continued sporadically through the colonial era, recommenced with the formation of the Joint Indian Reserve Commission (JIRC) in 1876. The JIRC launched a 50-year Dominion-provincial process to construct an Indian-reserve geography in British Columbia without treaties, negotiated settlements, or a

[69] See the population tables in Jean Barman, *The West beyond the West: A History of British Columbia,* rev. ed. (Toronto: University of Toronto Press, 1996), 379. Also John Douglas Belshaw, *Becoming British Columbia: A Population History* (Vancouver: UBC Press, 2009).
[70] Cole Harris and Robert Galois, "A Population Geography of British Columbia in 1881," in Cole Harris, *The Resettlement of British Columbia: Essays on Colonialism and Geographical Change* (Vancouver: UBC Press, 1997), 141.
[71] See chap. 2 and the tables of pre-emption records (sorted by year and region) in app. B of Robert E. Cail, *Land, Man, and the Law: The Disposal of Crown Lands in British Columbia, 1871-1913* (Vancouver: UBC Press, 1974).

recognition of Aboriginal title.[72] It was an imposed geography, and unlike that anywhere else on the continent. Instead of detaching Aboriginal peoples from their traditional territories and placing them on large centralized Indian reservations (as in much of the United States) or providing several substantial reserves within their traditional territory (as in much of the rest of Canada), the Dominion and provincial governments allotted many small, scattered reserves in British Columbia, more than 1500 in all, that together amounted to slightly more than one-third of 1 percent of the provincial land area.[73]

This unusual Indian-reserve geography is explicable only if one understands the connections between reserved land and the fisheries. Most of the Indian reserves in British Columbia were allotted to secure access to the fisheries. This is particularly evident along the coast and the province's major river systems where the large majority of reserves—for some communities more than 90 percent—were fishing stations. Moreover, to the extent that the Dominion and provincial governments sought to justify the parsimonious land grants, they did so on the grounds that the Aboriginal peoples of British Columbia were fishing peoples who did not need a large land base, only secure access to the fisheries.[74]

Figures 3a and 3b depict those reserves allotted for fishing purposes within the Fraser River basin. Throughout the extensive river system, from the lower reaches in the Fraser Valley, through the Fraser Canyon and middle Fraser where the river cut through the interior plateau, along its major tributaries, and to the large lakes many hundreds of kilometres inland, the

[72] See Hamar Foster, "Letting Go the Bone: The Idea of Indian Title in British Columbia" in *Essays in the History of Canadian Law,* vol. 6, *British Columbia and the Yukon,* ed. H. Foster and J. McLaren (Toronto: Osgoode Society for Legal History, 1995), 28-86; Cole Harris, *Making Native Space: Colonialism, Resistance, and Reserves in British Columbia* (Vancouver: UBC Press, 2002), 94-98.
[73] Harris, *Making Native Space*, ibid., 261.
[74] Harris, *Landing Native Fisheries*, 36-38 (see n. 16).

pattern of Indian reserves represents a land-based geography of the fisheries. The reserve commissioners set aside fishing sites, almost all of them salmon fishing sites or, in a few cases, the places that were important for the processing of salmon, usually drying but sometimes smoking. This reserve geography reveals just how important the fisheries were to Aboriginal economies, but also to the process of securing space for Aboriginal people while also opening the territory to an incoming settler population. Government officials and missionaries were encouraging Aboriginal peoples to adopt agriculture, but the reserved land base could not begin to support viable agrarian economies. Instead, the fisheries, which had long supported Aboriginal societies, were to be the continuing basis for Aboriginal livelihoods on the coast and in the province's interior.

These reserves on the Fraser and its tributaries were primarily the work of two Indian reserve commissioners, Gilbert Malcolm Sproat and Peter O'Reilly. In the late 1870s and early 1880s, these reserve commissioners marked the lands that were to be off limits to a settler society, and the land they set aside reveals just how important were the fisheries to the process of dividing this territory, unequally, in two.

Sproat, a member of the JIRC and then the sole commissioner when it disbanded, spent most of the summer of 1878 working through Nlha7kapmx territory in the Fraser Canyon and along the Thompson River and its tributaries. He travelled carefully and slowly, attempting to make the difficult compromises necessary to secure Aboriginal space, but working within the constrained parameters which required that he not disturb Crown grants or pre-emption claims, or eliminate the possibility of further non-Aboriginal settlement. He was looking for flat land with water that could be farmed, but there was precious little available in the dry,

mountainous country, and settlers were already occupying much of what there was. However, the fisheries remained largely uncontested. Although the canning industry was expanding rapidly on the coast, there was little settler interest in the interior fisheries. Wherever he could, Sproat allotted or confirmed earlier allotments of the many fishing stations, including the many reserves in the vicinity of Yale, Spuzzum and Boston Bar (Figure 3a).

Beyond the particular reserve grants, Sproat also intended that Aboriginal fishers should not be disturbed wherever they fished and whether or not he was able to establish reserves in all the important fishing locations. At the end of his field minutes describing the reserve allotments in the Nicola Valley, he wrote: "The Indians are to have access to, and to be at liberty to carry on, *as formerly,* their fisheries for the various kinds of fish, at their accustomed fishing places, and more particularly in ... [list of locations]."[75] The list highlighted important Aboriginal fisheries, but Sproat thought he was securing the Nlha7kapmx fisheries generally, not just those prosecuted from reserved land. The reference to the fisheries provision in the Douglas Treaties was deliberate. "If the Crown had ever met the Indians of this Province in council with a view to obtain the surrender of their lands for purposes of settlement," wrote Sproat in July 1878, "the Indians would in the first place have made stipulations about their rights to get salmon to supply their particular requirements, and ... land and water for irrigating it would have been, in their mind, secondary considerations."[76] Later in 1878 he wrote: "They have had no treaties made with them, and we are trying to compromise all matters without treaty making. Had treaties been made, stipulations as to salmon would have been in the front.

[75] G.M. Sproat, 8 April 1880, Department of Indian Affairs and Northern Development, Vancouver, Indian Reserve Commission, Federal Collection of Minutes of Decision, Correspondence and Sketches, vol. 3, JIRC and G.M. Sproat, "British Columbia Indian Reserves, files 7571, 8132, 8402, 8496, 9804 and 20242 No. 1 Vol. No. 1" [Reg. No. B-64656], p. 398 (emphasis added).
[76] Sproat to E.A. Meredith, 30 July 1878, ibid., vol. 1, Letterbook 2, pp. 193-97.

It is, in the absence of treaties, all the more necessary to recognize the actual requirements of the people."[77]

Sproat resigned his position as Indian reserve commissioner in March 1880, unable to continue in the face of the province's refusal to recognize his reserve allotments. However, provincial intransigence could not make the land issue go away, and the reserve commission continued with the appointment of Peter O'Reilly. During his first circuit as reserve commissioner in 1881, O'Reilly worked through the lands of the St'át'imc people on the Fraser River north of Lytton. Here he encountered the same challenges that Sproat had faced of inadequate land and water to create viable agrarian economies. His solution was similar: small reserve grants, but expansive protection for the fisheries. At the enormously productive Aboriginal salmon fisheries above and below the confluence of the Bridge and Fraser rivers, just north or Lillooet, O'Reilly allotted not only reserve land but also the exclusive right of fishing along a seventy kilometre stretch of the Fraser.[78] Those reserves and the accompanying exclusive fisheries are mapped in Figure 4.[79] They reveal O'Reilly's attempt at a more explicit rendition of Sproat's policy to set aside particularly important fishing sites, but also to reserve generally to Aboriginal peoples their fisheries.

Most of the reserves in the Fraser River system were connected to salmon fisheries.[80] However, the means for protecting those fisheries would change when the Department of Fisheries objected to the exclusive fisheries on the Fraser (and to later ones that O'Reilly

[77] Sproat to deputy minister of the Interior, 6 November 1878, ibid., pp. 329-33.
[78] On the St'át'imc fisheries see n. 4.
[79] For a fuller discussion of O'Reilly's work on the middle Fraser, see Harris, *Landing Native Fisheries*, 61-68 (see n. 16).
[80] For details of each reserve allotment and the fisheries, see the table accompanying Harris, *Landing Native Fisheries*, ibid., "Indian Reserves Allotted for Fishing Purposes in British Columbia, 1849-1925," available on-line: http://hdl.handle.net/2429/648.

allotted on the Nass River) on the grounds that they violated the public's right to fish. This was an erroneous reading of the common law doctrine, which applied only in tidal waters, but Fisheries adamantly refused to recognize the exclusive fishing rights. Indian Affairs, on the other hand, had instructed the reserve commissioner to do what he could to protect Aboriginal fisheries and argued that the Aboriginal fisheries needed protecting, if not with exclusive fisheries then by some other means.[81] That other means never became clear, but the fisheries remained crucial to the reserving of Aboriginal land.

Figures 5a and 5b depict all the coastal Indian reserves that were explicitly allotted to secure access to the fisheries. Most of these reserves, many of them along the migration route of returning Fraser River sockeye salmon (Figure 2), were allotted by O'Reilly in the 1880s.[82] Although the language of exclusive fisheries did not accompany these reserve allotments, O'Reilly continued to inform Aboriginal peoples that the effect of the grants was to secure their access to the fisheries. This was largely true in an era of abundance and so long as the fisheries remained human- and wind-powered. Control of particular points of land did, more or less, secure access to and even control of the fisheries. O'Reilly also pointed to the regulations, discussed above, that constructed and provided some protection for Indian food fisheries. However, that protection would prove fleeting and illusory.

When O'Reilly retired as reserve commissioner in 1898, he had allotted or confirmed the earlier allotment of more than 850 reserves.[83] However, his would not be the last word. In

[81] For a fuller discussion of the legal basis for denying the exclusive fisheries and of the long debate between the departments of Fisheries and Indian Affairs over the Aboriginal fisheries, see Harris, *Landing Native Fisheries*, ibid., 78-91.
[82] For details of these reserve allotments, see Harris, "Indian Reserves" (see n. 80).
[83] Kenneth Brealey, "Travels from Point Ellice: Peter O'Reilly and the Indian Reserve System in British Columbia," *BC Studies* 115-16 (1997-98): 181-236.

1913, the Royal Commission began hearings that led, in 1916, to a report that the Dominion and provincial governments had hoped would finally resolve the issue of reserve allotments in British Columbia. It would take eight years and another Dominion-provincial panel before the two levels of government finally agreed, in 1924, on the imposed Indian-reserve geography which largely remains in place today. Aboriginal peoples never consented. Indeed, from the beginnings of the Royal Commission hearings until 1927, when the Dominion government closed the file by prohibiting the raising of funds to pursue Aboriginal title or land claims, Aboriginal leaders remarked repeatedly on the inadequacy of the reserve grants, on the refusal to recognize Aboriginal title and negotiate the terms of co-existence in a shared territory, and on the disjuncture between an Indian-reserve geography premised on access to fish and a legal regime that had, for the most part, detached the fisheries from the reserves and reallocated them to other users.[84]

Nowhere was this detachment of the fisheries from the reserved land more evident than in the sockeye fisheries on the Fraser River. The fisheries that remained after the rock slide at Hell's Gate in 1914 were dominated by the industrial commercial complex at the river's mouth. Aboriginal labour, which had been crucial in the early years of the canning industry, was by then almost irrelevant. The Indian food fishery, constructed in law to provide some protection for, but mostly to marginalize, the Aboriginal fisheries, was all but closed.

Conclusion

"There is no single Act in the whole of Canada," wrote provincial court Justice Cunliffe Barnett at Williams Lake in 1979, "that raises more problems between authorities and Indian

[84] Harris, *Landing Native Fisheries*, 165-86 (see n. 16).

people than the *Fisheries Act*."[85] The case involved a charge against a member of the Anaham Band (Tl'etinqox-t'in Government Office) for possessing sockeye caught in the Chilcotin River without a permit. It was one of a number of cases against Aboriginal sockeye salmon fishers on the middle Fraser River and its tributaries in the years around the constitutional entrenchment of Aboriginal and treaty rights in 1982,[86] and these cases reveal something of the extent and nature of the conflict over the fisheries which, by then, was a century old in British Columbia.

While not focussing on the conflict over fisheries, this paper provides some of the important legal and historical background to it. The colonial government and then the Canadian state recognized and regulated Aboriginal fisheries in British Columbia, and the Aboriginal Fraser River sockeye salmon fishery in particular, beginning in the early 1850s. The earliest recognition came in the form of treaty rights that guaranteed to the Aboriginal signatories on Vancouver Island their "fisheries as formerly." Later recognition of the separate and unique status of Aboriginal fishing rights came in the form of a constructed legal category—the "Indian food fishery"—that exempted Aboriginal food fisheries from many of the rules governing the commercial fisheries. While the Department of Fisheries constructed and refined the parameters of the Indian food fishery, the governments of Canada and British Columbia imposed an Indian-reserve geography premised on continuing access to the fisheries. The many fishing stations that dot the province (Figures 3 and 5) provide tangible evidence of the Dominion and provincial land policy which was built around the fisheries.

[85] *R. v. Cooper*, [1979] 4 CNLR 81 at 81.
[86] See also *R. v. Bob*, [1979] 4 CNLR 71, *R. v. Adolph*, [1982] 3 CNLR 63, and *R. v. Mitchell*, [1984] 3 CNLR 158, all involving the Aboriginal sockeye fishery at the mouth of the Bridge River north of Lillooet.

However, these forms of recognition did relatively little to secure to Aboriginal peoples their fisheries. The treaty-making process did not continue in British Columbia after the last of the Douglas Treaties in 1854, and later colonial and provincial governments all but ignored the agreements, including the fisheries provision. It would take a court decision in the 1960s to compel the provincial government to recognize the agreements as treaties,[87] and another court decision to reveal that the right to "fisheries as formerly" amounted to more than a guarantee that the signatories could participate in the fisheries on the same terms as everyone else.[88]

With respect to the Indian food fishery, the Dominion Department of Fisheries never intended that it would last beyond the assimilation of Aboriginal peoples into the wage-labour force. The purpose of the Indian food fishery, as with the Indian reserve, was to contain the Aboriginal presence within discrete and manageable bounds, and Fisheries did what it could to eliminate the separate fishery entirely. It would not be until the Supreme Court of Canada's decision in *R. v. Sparrow* (that the Musqueam held an Aboriginal right to a food, social and ceremonial fishery, and that this fishery, by virtue of its constitutional status, had priority, after conservation, over sport and commercial fisheries) that the Indian food fishery would achieve a secure and stable presence.[89] *Sparrow* had a dramatic effect on fisheries management, not only

[87] *R. v. White and Bob* (1964), 52 WWR 193, 50 DLR (2d) 613 (BCCA), aff'd (1965), 52 DLR (2d) 481n (SCC).
[88] *Saanichton Marina v. Claxton*, [1989] 5 WWR 82, 3 CNLR 46. Exactly what the treaty rights mean in a modern context remains to be determined. For one interpretation, see Douglas C. Harris, "The Boldt Decision in Canada: Aboriginal Treaty Rights to Fish on the Pacific," in *The Power of Promises: Rethinking Indian Treaties in the Pacific Northwest*, ed. A. Harmon (Seattle: University of Washington Press, 2008), 128-53.
[89] *R. v. Sparrow*, [1990] 1 SCR 1075.

on the Fraser, but in British Columbia and across Canada, but until then the Indian food fishery remained viewed as a privilege, subject to broad ministerial discretion.[90]

The Indian-reserve geography, established in the late nineteenth and early twentieth centuries and premised on access to the fisheries, remains largely intact. However, even as the reserves were being allotted it was becoming clear that control of land-based fishing stations did not secure control of, or even guarantee access to, the adjacent fisheries. Two Supreme Court of Canada decisions in the mid-1990s suggest that the effective bonds between land and fish are likely to remain weak, despite the fishing purposes for which the majority of reserves in British Columbia were allotted.[91]

The corollary of the state's weak recognition of Aboriginal fishing rights was its opening of the fisheries to immigrants and to Anglo-American capital. The industrial salmon fishery focussed first on the Fraser River and relied heavily in its early years on Aboriginal labour to catch the fish. However, Aboriginal fishers, so prominent and important while the industry emerged in the nineteenth century, had, by 1920, become an insignificant part of the fleet that worked the lower reaches of the Fraser River and the Strait of Georgia. This remained the case through most of the twentieth century.[92] With increased mechanization and refrigeration in the fishing fleet, the Fraser sockeye fisheries that supported the industrial processing complex

[90] For one view on the capacity of the Aboriginal food fishery to form an enduring part of a well-managed fishery see Douglas C. Harris and Peter Millerd, "Food Fish, Commercial Fish, and Fish to Support a Moderate Livelihood: Characterizing Aboriginal and Treaty Rights to Canadian Fisheries," *Arctic Law Review* 1 (2010): 82-107.
[91] *R. v. Nikal*, [1996] 1 SCR 1013; *R. v. Lewis*, [1996] 1 SCR 921.
[92] H.B. Hawthorn, C.S. Belshaw, and S.M. Jamieson, *The Indians of British Columbia: A Study of Contemporary Social Adjustment* (Toronto: University of Toronto Press, 1958), 113: "Indians have played a relatively insignificant role in the fishing industry for the past several years in District 1, which comprises roughly the coast areas of the Lower Mainland… By 1948 there were only 75 engaged in gill-netting in this area, and by 1953 these had fallen to 71, as compared to 2,281 Whites and 530 Japanese in 1953. There is only one licensed Indian purse-seine captain, and no Indian crews, while only a handful of Indians are engaged in other types of fishing. In brief, Indians have largely left, or been displaced from, the fishing industry in District 1."

spread outward from the mouth of the river to include gill-net and purse-seine fisheries in Johnston Strait (between the northeast coast of Vancouver Island and the mainland), gill-net fishing in Juan de Fuca Strait (between Vancouver Island and Washington State's Olympic Peninsula), and troll fishing off the west coast of Vancouver Island. Aboriginal fishers remained more of a presence for longer in these regions, but they were subject to similar pressures, including lack of access to credit, that had pushed Aboriginal fishers from the fleet at the mouth of the Fraser.[93] Then in the late 1960s, Aboriginal fishers, along with many other small-scale fishers, struggled to remain in the industry when Fisheries reintroduced a limited-licence regime.[94] Fisheries also introduced a licence buy-back program and initiated efforts to enhance the productivity of the fishing fleet. The effect was to increase the cost of licences and boats, creating additional barriers to enter or even to remain in the industry. Various targeted efforts to support Aboriginal fishers and boat-owners in the 1970s, including the designation of licences that cannot be transferred to non-Aboriginal fishers, appeared to limit the reduction in the numbers of Aboriginal licence holders, but not increase them.[95]

The laws and policies of the nineteenth and twentieth centuries, which provided for weak recognition of Aboriginal fishing rights and intrusive regulation of Aboriginal fisheries, remained intact through most of the twentieth century. However, the constitutional entrenchment of Aboriginal and treaty rights in 1982, and the judicial interpretation of those rights are beginning to provide the outlines of a new legal framework at the beginning of the

[93] Hawthorn, *Indians of British Columbia*, ibid., 115-16. See also M.D. James, *Historic and Present Native Participation in Pacific Coast Commercial Fisheries* (Vancouver: Canada, Department of Fisheries and Oceans, Planning and Economics Branch, 1984); Newell, *Tangled Webs* (see n. 19), 122-43; Terry Glavin, *Dead Reckoning*, 92-127 (see n. 2).
[94] Newell, *Tangled Webs*, ibid., pp. 148-62.
[95] James, *Native Participation* (see n. 93), pp. 9-14, 25-34.

twenty-first. That emerging framework must be constructed with knowledge of the history of the fisheries, including prior legal regimes and their effect on fishing communities, if it is to contribute to building sustainable and justly distributed fisheries.

Figures

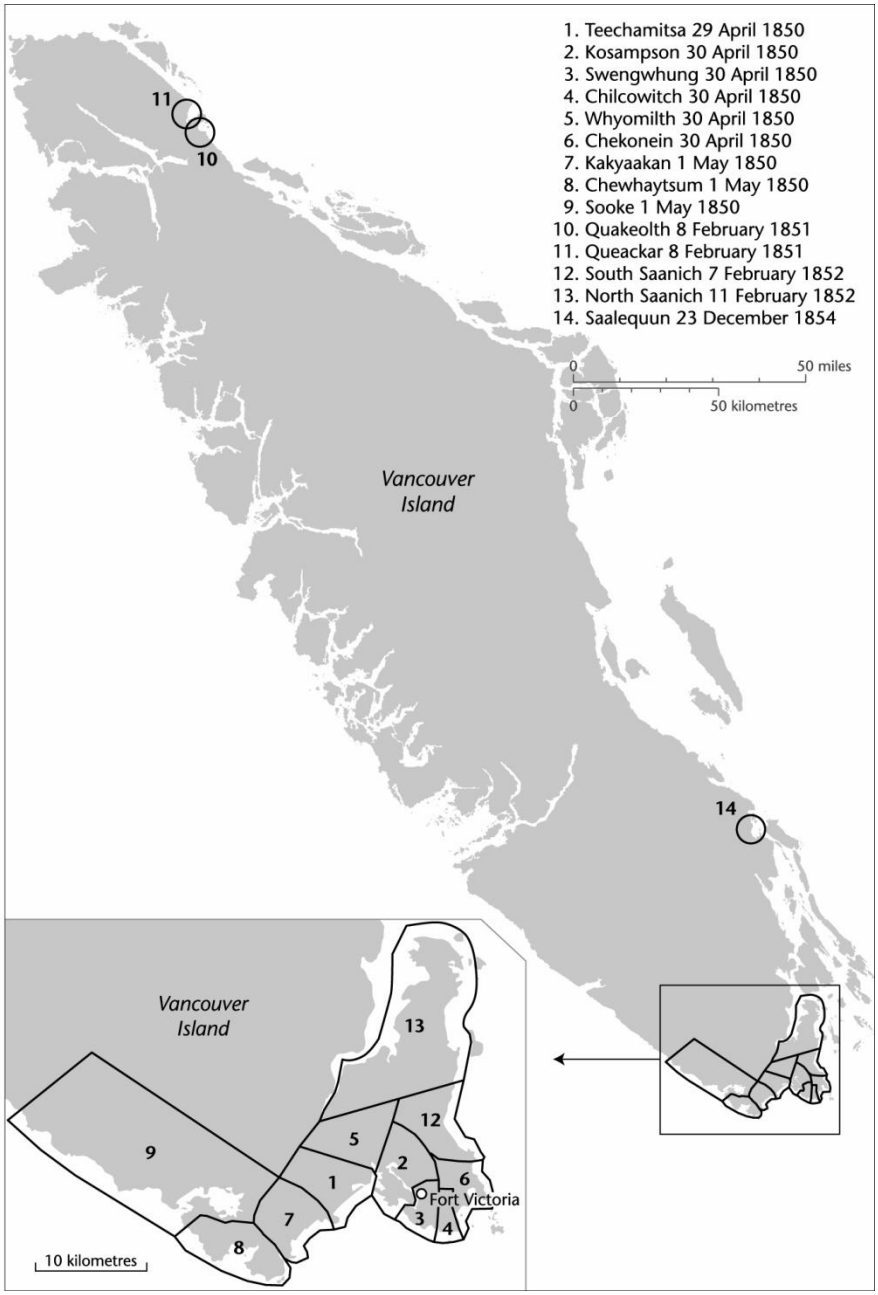

Figure 1 Boundaries of the Douglas Treaties, 1850-54

Source: Harris, *Landing Native Fisheries* (see n. 16), 22.

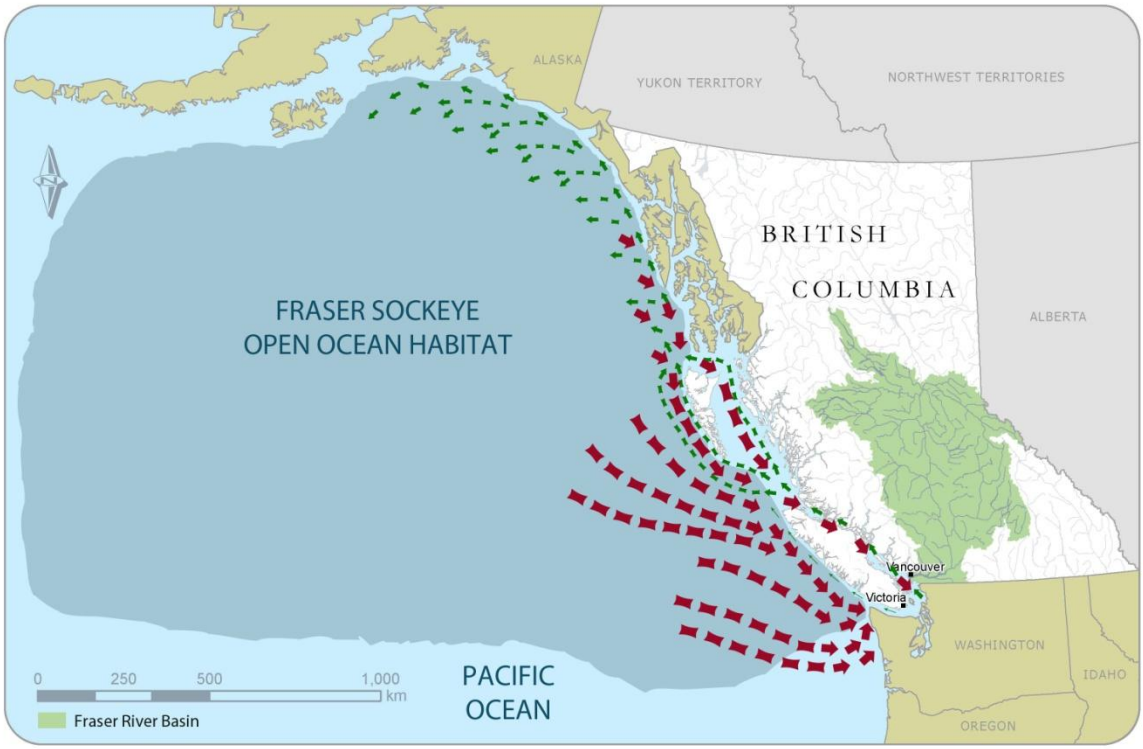

Figure 2 Conceptual map of Fraser River Sockeye ocean migration routes

(Source: The Cohen Commission, November 15, 2010)

Figure 3a Indian reserves allotted for fishing purposes in the Fraser River basin (lower)

Source: Derived from maps in Harris, *Landing Native Fisheries* (see n. 16), Appendix, 199-208.

Figure 3b Indian reserves allotted for fishing purposes in the Fraser River basin (upper)

Source: Derived from maps in Harris, *Landing Native Fisheries* (see n. 16), Appendix, 199-208.

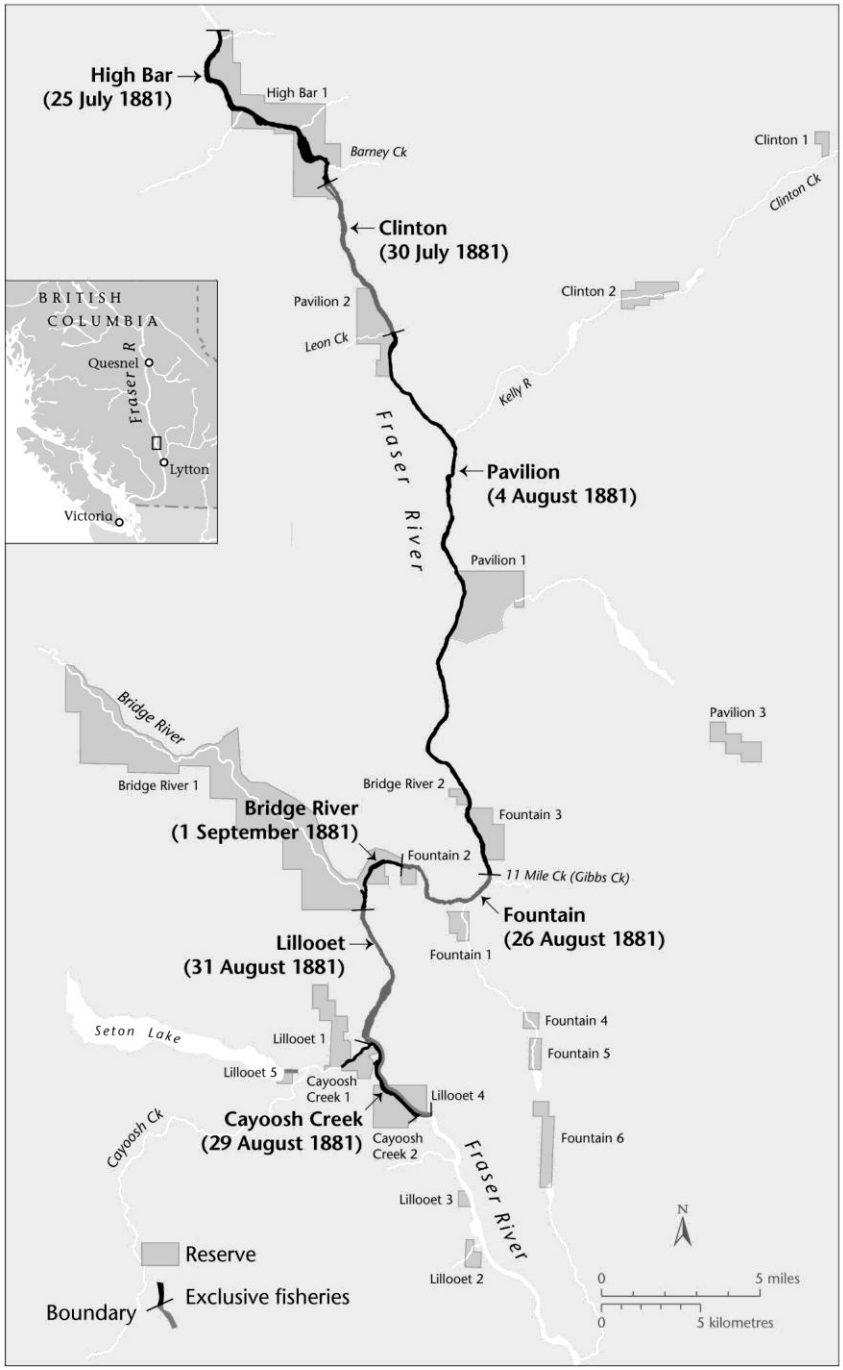

Figure 4 Exclusive fisheries reserved along the Fraser River, 1881

Source: Harris, *Landing Native Fisheries* (see n. 16), 67.

Figure 5a Indian reserves allotted for fishing purposes in coastal BC (south)

Source: Derived from maps in Harris, *Landing Native Fisheries* (see n. 16), Appendix, 199-208.

Figure 5b Indian reserves allotted for fishing purposes in coastal BC (north)

Source: Derived from maps in Harris, *Landing Native Fisheries* (see n. 16), Appendix, 199-208.