

Fishing Issues

Integral to First Nations' Culture

First Nations have for thousands of years sustained vibrant and rich cultural identities profoundly linked to BC's land and waters. It is said that the Nisga'a, people of the mighty river, are so connected to fish that their bones are made of salmon. Living in balance with the land and the water is an integral part of First Nations' cultures, and fishing is regulated by long-standing cultural laws around conservation and preservation for future generations.

Commercial Fishing in BC: A History

Long before there was an official commercial fishery in British Columbia, First Nations had been trading fish among themselves and with European settlers. As commercial fishing evolved, aboriginal people had less and less access to fish as a means of maintaining their livelihoods.

The aboriginal food fishery was created in the 1880s to regulate and limit aboriginal fishing and to allow the expansion of a commercial fishery. In 1889, The Federal Department of Fisheries limited the number of licences on the Fraser River to 450; of these 350 were issued to cannery-owned boats and 100 went to independent fishers. In 1892, the chief of the Musqueam Nation testified before the British Columbia Fisheries Commission about his people's trouble obtaining independent fishing licences. Ten Musqueam people had obtained licences; the rest had access to the commercial fishery only by working for low wages for European-owned canneries.

While aboriginal people had limited access to the commercial fishery, access to fish for food was also curtailed. In 1894, Fisheries regulations were amended to require First Nations to obtain permission from the inspector of fisheries to fish for food. For \$1, a non-aboriginal person could obtain a domestic licence, which allowed the same right to fish for food as an aboriginal person — without seeking 'permission'.

The domination of the commercial fishery by non-aboriginal interests persisted and, until recently, fisheries policies continued to limit aboriginal people's access.

Fairness in the Commercial Fishing Industry

Concerns have been raised that there will be job losses and economic decline among non-aboriginal fishers and supporting industries — that treaties will take away part of somebody else's livelihood.

Treaty negotiations strive to find a balance between providing First Nations with a greater role in the management and commercial use of fish, while protecting the interests of non-aboriginal fishers. Aboriginal and non-aboriginal fisheries co-exist and will continue to do so.

For example, the Nisga'a Treaty and Harvest Agreement sets out an annual allocation of salmon comprising, on average, approximately 26 per cent of the Canadian Nass River total allowable catch. This right is subject to conservation and allocations may be reduced if stock is not available in a given year.

Establishing access to the commercial fishery as part of treaty negotiations is really about recognizing that fish is not only an integral part of First Nations' culture, but also a critical part of restoring economic self-sufficiency.

Managing the Fish Resource

For First Nations, fishing goes hand-in-hand with responsible and sustainable environmental stewardship, so participating in how this resource is managed is critical. Treaties may include provisions for First Nations to be involved in aquatic management planning, somewhat similar to land use planning processes currently underway. For example, the Nisga'a treaty established a Joint Fisheries Management Committee (JFMC) to facilitate the cooperative planning and conduct of Nisga'a fisheries and enhancement activities.

Fish and the Law

Canadian courts did not create the aboriginal right to fish; they simply recognized that it was never extinguished and continues to exist.

The Supreme Court of Canada's decision in Sparrow was a major turning point for aboriginal rights, and specifically aboriginal fishing rights. In this case, the Musqueam Nation was asserting an aboriginal right to fish; the Government of Canada argued that First Nations had only those rights granted by the Fisheries Act and regulations. The court ruled that aboriginal rights could only be taken away by clear and explicit legislation, and the Fisheries Act had never extinguished aboriginal or treaty rights.

Sparrow defined aboriginal people's right to fish for food, social and ceremonial purposes — a right that takes priority over all other uses of the fishery except conservation.

Responding to Sparrow, the Aboriginal Fishing Strategy was launched in 1992 to recognize the aboriginal right to fish. The strategy applies where the Department of Fisheries and Oceans manages the fishery and where treaties or other agreements are not already in place.

The Supreme Court of Canada's 1999 decision in the Marshall case further defined the aboriginal right to fish. Donald Marshall, a New Brunswick Mi'kmaq convicted in 1996 for illegally catching and selling eels, appealed to the Supreme Court. The Supreme Court overturned the conviction and ruled that aboriginal people in the Maritimes affected by a 1760 treaty with the British have access to fish and wildlife to provide a moderate livelihood for such basics as food, clothing, housing and a few amenities.