

The Role of Stevens Treaty Tribes in the Management of Anadromous Fish Runs in the Columbia Basin

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ABSTRACT

In the 1850s, the United States government, represented by Washington Territory governor Isaac Stevens, entered into treaties with many Indian tribes in the Pacific Northwest. Court interpretations of these treaties have placed Stevens Treaty tribes in a position as fisheries resource managers both on and off the reservation. Stevens Treaty tribes with fishing rights for the Columbia River include the Nez Perce, Umatilla, Warm Springs, and Yakima tribes. Collectively, these tribes compose the Columbia River Inter-Tribal Fish Commission (CRITFC). Each of the four tribes, as well as the CRITFC, maintain professional fisheries staffs who are involved in a variety of fishery resource functions, including habitat management, natural and artificial production management, and harvest management.

This is the second article by members of the AFS Native Peoples Fisheries Committee. The first article, "An Introduction to Native Peoples Fisheries Issues in North America," was published in the September–October 1984 issue of Fisheries.—The Editor

Historians have estimated that prior to the arrival of white settlers, the Columbia Basin's Native American population of 50,000 harvested 18 million pounds of salmon (*Oncorhynchus* spp.) and steelhead (*Salmo gairdneri*) annually (Smith 1979). These harvesters were divided primarily among three major cultural groupings: (1) the Northwest Coast Culture that was located along the lower Columbia River and was composed of the Clatskanie and Lower Chinook ethnic groups; (2) the Plateau Culture that extended eastward of the Cascade Mountains in Oregon and Washington to the Bitterroot Mountains of Idaho and Montana and included the Flathead, Nez Perce, Spokane, Yakima, and other ethnic groups; and (3) the Great Basin Culture that was located throughout southeastern Oregon and southern Idaho and included the Bannock, Northern Paiute, and Shoshone ethnic groups (Walker 1967).

By the late 1800s virtually all major Native American tribes and bands in the Columbia River Basin had been settled on the following 12 reservations: Burns-Paiute (OR), Coeur d'Alene (ID), Colville (WA), Duck Valley (ID–NV), Kalispel (WA), Fort Hall (ID), Kootenai (ID), Nez Perce (ID), Spokane (WA), Umatilla (OR), Warm Springs (OR), and Yakima (WA) (Fig. 1). Some of these tribes reserved fishing rights at "usual and accustomed" places outside their reservation boundaries as well as the exclusive right to harvest fish on the reservations.¹

Because of their larger population size and central location in the Columbia-Snake River Basin, tribes of the Plateau

Culture had the greatest historical influence on Columbia River salmon and steelhead fisheries. Walker (1967) estimated that the annual per capita consumption of fish within the Plateau Culture before the arrival of white settlers was approximately 275 kg. This culture's influence on Columbia Basin salmon and steelhead runs is still present, and federal courts recognize four of these tribes' fishing rights on the mainstem of the Columbia River. These four tribes, the Nez Perce, Umatilla, Warm Springs, and Yakima, together comprise the Columbia River Inter-Tribal Fish Commission (CRITFC), which is based in Portland, Oregon. Each of these tribes was party to Stevens treaties to which Beiningen (1976) and Bohn (1980) refer as the most important, in terms of Indian fishing rights, within the Columbia River Basin. These treaties were entered into by the United States government, represented by treaty namesake Governor Isaac Stevens, in order to facilitate homesteading under the Donation Land Law Act of 1850.

This paper will focus on the individual and collective efforts, and the role of the CRITFC tribes in managing Columbia Basin anadromous salmonid stocks. It should be noted, however, that other Columbia Basin tribes that are not parties to the Stevens treaties, possess fishing rights and also have instituted programs dealing with both anadromous and resident fish.

Federal Recognition of Columbia Basin Tribal Treaty Fishing Rights

In 1976, the CRITFC was organized to coordinate anadromous fish management among its four member tribes. Impetus for creation of the CRITFC stemmed from litigation begun in the late 1960s by these tribes. The most important case dealing specifically with Indian fishing rights on the Columbia River is *Sohappy v. Smith*² (the first of a series of cases known collectively as *United States v. Oregon*), which

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¹Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957; Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat. 945; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Yakima Tribe, June 9, 1855, 12 Stat. 951.

²302 F. Supp. 899 (1960).



Figure 1. Reservations of the Columbia Basin Indian tribes.



Ceded land borders per Bureau of Indian Affairs Indian treaty boundaries map, January 1977. □ AREA AVAILABLE FOR ANADROMOUS SALMONIDS

Figure 2. Ceded lands of the Nez Perce, Umatilla, Warm Springs, and Yakima tribes and area currently accessible to anadromous salmonids in the Columbia Basin.

was decided in 1969. In this case, U.S. District Court Judge Robert Belloni held that the states of Oregon and Washington must afford the tribes an opportunity to take "a fair and equitable share of all fish which (sic) the states permit to be taken from any given run." In 1974 Judge Belloni adopted the 50 percent allocation formula, established by Judge George Boldt in the now famous *United States v. Washington* case,³ as the definition of what quantity represented "a fair and equitable share." (This supplemental order initially applied only to the allocation of spring chinook⁴ but was extended by a subsequent supplemental order to fall chinook.⁵ Allocation formulas for steelhead and other salmon species have not required determination by the courts to date.) The Boldt decision, concerning tribes on the coast and in the Puget Sound areas of Washington state, with fishing rights similar to those reserved by the CRITFC tribes, was affirmed by the Ninth Circuit Court of Appeals in 1975⁶ and later upheld by the United States Supreme Court.⁷ (The Supreme Court noted that the tribes were entitled to catch up to 50 percent of the harvestable surplus in order to maintain a "moderate living." The moderate living standard has not been defined at this time.)

In addition to the allocation issue, Judge Belloni addressed management decisionmaking in his continuing jurisdiction over the *United States v. Oregon* case with his supplemental decisions in May 1974 and August 1975. In the former decision he found that the states must consider the least restrictive alternatives to prevent total closure of Indian fishing, and also that the states must provide the tribes a meaningful role in the fish management rule-making process.⁴ In the latter he expressed concern over the continued failure of the states to adopt "a comprehensive plan to assure a fair share to all parties." He noted that problems frequently brought to the Court under its continuing jurisdiction were emergencies requiring "hasty decisions in which neither party has the opportunity for a full briefing and argument on some of the most important principles of law."⁵ Judge Belloni directed the states, in cooperation with the tribes, to develop and promulgate comprehensive rules. In response to this order, the four tribes and two states (Oregon and Washington) that were parties to *United States v. Oregon* reached agreement in February 1977 on a five-year management and allocation plan for Columbia River salmon and steelhead.⁸

Management Authority

The Columbia River once produced over six million salmon annually (Anadromous Salmonid Environmental Task Force 1979) as well as large quantities of steelhead. The Indian tribes of the surrounding region built cultures around these runs of fish. Therefore, it is not surprising that treaties struck in the 1850s contain provisions that expressly reserve the Indians' right to fish on these salmon and steelhead runs.

As noted previously, the tribal fishing right has been interpreted in the decades that followed to represent an opportunity to take up to 50 percent of the harvestable surplus. In addition, the right has been interpreted to include the continued existence of fish, not just a right to dip a net in water (*United States v. Washington [Phase II]*⁶). Collectively, the court interpretations of the treaty rights (i.e., harvest, preservation, restoration) retained by the tribes have placed them in a position as fisheries resource managers both on and off the reservation. Consequently, the CRITFC tribes began the development of tribal fisheries programs in the late 1970s. The tribes view management with the states not only as a right, but also as a responsibility, considering their huge stake in the maintenance of a healthy resource. This stake includes the right to a portion of the catch and, more importantly, to the perpetuation of a culture.

Geographic boundaries of each tribe's lands were determined at the time of the signing of the treaties. Lands for which title passed from the tribes to the United States were termed "ceded" lands. Lands where title was retained by

³384 F. Supp. 312 (W. D. Wash. 1974).

⁴*Sohappy v. Smith*, No. 68-409 (D. Or. May 8, 1974).

⁵*Sohappy v. Smith*, No. 68-409 (D. Or. Aug. 20, 1975).

⁶*United States v. Washington (Phase I)*, 520 F.2d 676 (9th Cir. 1975).

⁷*Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658 (1979).

⁸A Plan for Managing Fisheries on Stocks Originating from the Columbia River and its Tributaries Above Bonneville Dam. Adopted by Judge Belloni as a decree of the Federal District Court on February 28, 1977.

⁹No. 81-3111 (9th Cir. Dec. 17, 1984).

the tribes formed the reservations. Tribal management authority over fish production extends to the ceded lands. In the Columbia Basin this amounts to immense expanses in the states of Oregon, Washington, and Idaho (Fig. 2).

Because of habitat degradation and migration blockages caused by land management activities and dam building, significant portions of the natural habitat in the basin have been eliminated. Of the remaining habitat still accessible to anadromous salmonids, 70 percent is within the reservations and ceded lands of the Nez Perce, Umatilla, Warm Springs, and Yakima tribes (Fig. 2). Because usual and accustomed fishing sites exist beyond the borders of the ceded lands of the Columbia River treaty tribes (below Bonneville Dam), tribal management may extend to fish produced by these areas also.

Types of Fisheries

Tributary Fisheries

Tribal fisheries in the tributary streams of the Columbia and Snake rivers are primarily for subsistence. Generally, most fishing occurs from the banks, although scaffolds are used in some of the larger tributaries, such as the Deschutes and Klickitat rivers. The gear used in these fisheries is mainly hook-and-line, gaff pole, or dip net. The principle tributary fisheries for individual tribes occur on the Clearwater, Grande Ronde, Imnaha, and Salmon rivers for the Nez Perce Tribe; the Grande Ronde, Tucannon, John Day, and Umatilla rivers for the Umatilla Tribe; the Deschutes and John Day rivers for the Warm Springs Tribe; and the Klickitat and Yakima rivers for the Yakima Tribe.

Mainstem Fisheries

For centuries the regional Indian tribes converged on Celilo Falls, a few kilometers east of where The Dalles Dam now stands (72 km upstream of Bonneville Dam [Fig. 1]), to fish and trade for fish when the salmon and steelhead returned to their rivers of origin. At this site the river narrowed and cascaded over a series of falls, thereby providing a point of concentration for fish and a resultant fishery. In 1957 when The Dalles Dam was completed, Celilo Falls was inundated and its harvest opportunity destroyed.

The dipnet fishery that had occurred from the scaffolding hung from the cliffs adjacent to the falls disappeared with Celilo Falls. In its place the tribes' mainstem Columbia River fishery developed in a 210-km stretch of the river that extends from Bonneville Dam to McNary Dam (Fig. 1). This stretch of the river is referred to as Zone 6 in the harvest management scheme that divides the mainstem of the Columbia into six zones for purposes of regulation. Today the majority of fish are caught by using stationary gillnets (set gillnet fisheries). This mode of fishing was developed as the most practical means of fishing the series of reservoirs formed by the three dams. In addition, scaffold/dipnet fisheries still occur at the few remaining suitable sites located in Zone 6.

Historically, fish caught by Celilo Falls provided for the ceremonial and subsistence needs of the fishing tribes, and also for their economic health. Salmon and steelhead were traded for the other essentials of life with nonfishing tribes from as far away as the Great Plains. Later, trade with white settlers gained prominence. The economic importance of these fish to the tribes continues today with a tribal commercial fishery still operating exclusively in Zone 6.

Subsistence and ceremonial fisheries also occur in Zone 6. Fish caught in ceremonial fisheries are used for religious and cultural gatherings, such as the celebration of the coming of spring, weddings, and births. The methods of harvest used in these fisheries include gillnet and dipnet. Limited gillnet fisheries for these purposes occur mainly in the spring and summer by tribal permit; dipnet fisheries occur throughout the year and generally without restriction.

The fishing seasons and allocations for Zone 6 are established by the tribes and the states. A technical advisory committee, created in response to *United States v. Oregon* and composed of representatives of the CRITFC tribes, Oregon, Washington, Idaho, and the U.S. Fish and Wildlife Service, provides the forum for technical review of the status of fish stocks and the effects of proposed harvest regulations on these stocks. The Columbia River Compact, composed of representatives of Oregon and Washington, is the policy level decisionmaking body for fishing allocation and seasons. This body was ratified by an Act of Congress in 1918 in order to facilitate harvest management in the stretch of river where these states share a border (see Fig. 1). The Compact must consider tribal input and proposals in decisionmaking.

The previously mentioned five-year management and allocation plan, approved by Judge Belloni in 1977, expired in 1982. Until its expiration, this plan guided the management of tribal fisheries in Zone 6. Currently, negotiations are underway to develop another plan for regulation and management of mainstem treaty and nontreaty fisheries.

Tribal Management Programs

The Columbia River Inter-Tribal Fish Commission (CRITFC)

The CRITFC serves as the coordinating body of the four Columbia River Stevens Treaty tribes for management of the basin's anadromous fish resource. When the CRITFC was formed, it did not subsume individual tribal authority. Instead, policy direction and decisionmaking were retained by each tribe through the requirement that the four tribes' fish and wildlife committees collectively make up the CRITFC governing body (The Commission). In addition, individual tribal sovereignty is protected by requiring unanimous votes of the Commission in decisionmaking.

The CRITFC has over 40 staff members, including biologists, policy analysts, public information specialists, hydrologists, law enforcement officers, and administrative personnel. This staff provides technical assistance to the CRITFC member tribes. In so doing, the CRITFC works with the many state and federal agencies involved in the Columbia Basin fisheries, power, water, land management, and environmental protection activities, as well as with citizen groups and Native American organizations.

The CRITFC member tribes promote a "gravel-to-gravel" management philosophy for salmon and steelhead. This philosophy requires management involvement through the entire life cycle of the fish and therefore throughout the migratory range of these fish, from the spawning grounds at the basin's headwaters to ocean habitats as far afield as the Alaskan coastal waters. Harvest management activities of the CRITFC cover the ocean (Pacific Fishery Management Council and North Pacific Fishery Management Council) and inriver (Indian and non-Indian) fisheries. In addition,

the CRITFC tribes were actively involved in the negotiations that recently secured the U.S./Canada harvest treaty.

Natural and artificial production management is a high priority at CRITFC. Extensive efforts are directed toward rebuilding upriver runs that have been greatly depleted by overharvest, habitat degradation, and hydropower and flood control dam construction and operation. In addition, efforts are being made to remedy problems caused by past placement of hatchery mitigation for lost upper river habitat in the lower river.

Another major area of CRITFC activity is coordinating with the operators of the 13 mainstem Columbia and Snake rivers hydropower and flood control dams to facilitate upstream and downstream passage of salmon and steelhead. As a part of this activity, CRITFC has been designated by the 11 concerned Columbia Basin tribes to act as coordinator for tribal involvement in implementation of the Water Budget program. The Water Budget was established to provide a volume of water for assisting the downstream migration of salmon and steelhead. The program consists of releasing water from storage dams at prescribed times of the year in order to hasten the downstream migration of juveniles (smolts). Because smolts historically were flushed out of the basin by high spring flows, the series of reservoirs created by impounding the free-flowing Columbia has greatly increased smolt outmigration time. In this effort, the tribes and states work with the entities responsible for management of power production and dam operation, including the Northwest Power Planning Council, the Bonneville Power Administration, the Corps of Engineers, and various public and private utilities. (See generally, Skog 1984.)

In addition to the activities listed above, the Columbia River Tribal Fisheries Enforcement Department (CRTFED), established in 1982, forms a large part of the CRITFC program. The Department employs a full-time staff of 15, including patrol officers and dispatchers who have the responsibility for enforcing tribal fisheries regulations within Zone 6.

Tribal Fisheries Programs

Each of the four CRITFC tribes has established fisheries programs. For the most part, tribal staffs work on fisheries issues relevant to the tribes' reservations and ceded lands. Because of the large area of each tribes' ceded lands (some exceed 53,000 km² which is slightly larger than the combined size of the states of Vermont and New Hampshire, see Fig. 2), most tribal staffs are involved in a variety of fisheries-related activities.

The Fisheries Department of the Nez Perce Tribe includes five fisheries biologists, two fisheries technicians, four fisheries assistants, as well as seasonal employees. The major efforts of the department encompass habitat protection, fish passage restoration, and enhancement of Snake River chinook salmon and steelhead stocks. Recently the tribe began developing a low cost propagation system for salmon and steelhead within the reservation. Resident fisheries efforts are focused on Dworshak Reservoir, an 84 km-long impoundment located within the tribes' 1855 reservation boundaries. (See generally, CRITFC 1984a.)


The Umatilla Tribe employs two fisheries biologists. The tribe is working on the reestablishment of fall chinook runs and enhancement of steelhead runs (via outplants from ac-

climation ponds) in the Umatilla River system. Other activities include fish habitat improvement and work on providing adequate streamflows for anadromous salmonids throughout the reservation and ceded lands. (See generally, CRITFC 1984b.)

The fisheries staff on the Warm Springs Tribe includes three fisheries biologists, eight fisheries technicians, two enforcement officers, along with seasonal employees. The U.S. Fish and Wildlife Service, in cooperation with the tribe, operates the Warm Springs National Fish Hatchery on the Warm Springs River. The hatchery has the capacity to produce 1.2 million spring chinook salmon smolts. Anadromous fisheries efforts of the tribe include habitat protection, habitat improvement, and harvest management for both Zone 6 and tributary fisheries. The Warm Springs fisheries staff also carries out resident fisheries management activities in reservation lakes, reservoirs, and rivers.

The Yakima Fisheries Resource Management Department consists of six fisheries biologists and seven fisheries technicians. Tribal biologists are currently conducting a comprehensive study to determine the best methods of enhancing spring chinook salmon in the Yakima River system. The staff also participates in harvest management data collection and analysis activities in Zone 6 and on the reservation. In addition, the Yakima fisheries staff is active in habitat protection and is in the planning and development stage of a Yakima Basin hatchery that will produce spring and fall chinook salmon, coho salmon, and steelhead.

Conclusion

Tribal participation in the management of the Columbia Basin's valuable salmon and steelhead resources has gone from virtual nonexistence to its current management status in just two decades. The tribes' strong cultural dependence on this resource has required them to become active resource managers; the courts have affirmed the tribes' right to fill this role. All indications are that the Columbia River tribal fisheries programs will continue to grow and improve in the future to meet fully the needs of the resource and fulfill the tribal role as fisheries resource managers. 

Literature Cited

- Anadromous Salmonid Environmental Task Force.** 1979. Freshwater habitat, salmon produced, and escapements for natural spawning along the Pacific Coast of the United States. Pacific Fishery Management Council. 68 pp.
- Beiningen, K. T.** 1976. Indian fisheries on the Columbia River. Investigative reports of Columbia River fisheries project. Pacific Northwest Regional Commission.
- Bohn, B.** 1980. Indian/non-Indian fishing conflicts: what effects are they having on anadromous fishery resources of the Columbia River. Proc. West. Assoc. Fish Wildl. Agencies 60:279-282.
- CRITFC 1984a.** CRITFC News (**Columbia River Inter-Tribal Fish Commission**). 7(4). 12 pp.
- CRITFC 1984b.** CRITFC News (**Columbia River Inter-Tribal Fish Commission**). 7(1). 8 pp.
- Skog, S.** 1984. Water budget promises hope for migrating fish. Northwest Energy News 3(1). 14 pp.
- Smith, C. L.** 1979. Salmon fishers of the Columbia. Oregon State University Press, Corvallis, OR. 117 pp.
- Walker, D. E., Jr.** 1967. Mutual cross-utilization of economic resources in the plateau: an example from aboriginal Nez Perce fishing practices. Washington State University, Laboratory of Anthropology. Report No. 41. 70 pp.