

**'AND THEN WE WILL MIND THE LAW':
THE ENFORCEMENT OF FEDERAL FISHERIES REGULATIONS IN
BRITISH COLUMBIA AND THE
RESISTANCE OF NATIVE FISHERS, 1894-1916**

By

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'And then we will mind the law': The Enforcement of

Federal Fisheries Regulations in B.C. and the Resistance of

Native Fishers, 1894-1914

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ABSTRACT

The federal fisheries regulations that were passed for British Columbia in the late 1800s restricted Native fishing outside the context of the Euro-Canadian controlled commercial salmon fishery and encouraged Natives to supply their fishing labour to cannery-owners. These regulations were geared to serve the perceived needs of the growing commercial fishery and ignored Native systems of fishing and allocating caught salmon. Department of Marine and Fisheries (DMF) authorities, particularly senior officials, subordinated Native fishing rights and cultivated a "common sense" that Native fishing, particularly the use of weirs, was unequivocally "destructive and wasteful".

It appears that Natives did not have significant influence over the creation of regulatory restrictions on their fishing, but, through various paths of resistance, Natives did affect the enforcement of regulations. Officials responsible for enforcement complained of being inadequately resourced, particularly where they were responsible for waters spanning large regions of the province. Natives took advantage of this to intimidate officers into concessions, particularly regarding the use of weirs. In addition, Natives took available opportunities to challenge the discourse of "destruction and waste". These challenges were linked with whatever forms of advocacy Natives could obtain from missionaries and Department of Indian Affairs (DIA) officials.

From 1894 to 1916, the first twenty years of the enforcement of regulatory restrictions on weirs, Natives on the Cowichan River on Vancouver Island and on the Babine River in the northern interior utilized these paths of resistance and, to an important

degree, mitigated the impacts which Euro-Canadian fisheries management had on their fishing activities. These Natives did not maintain their pre-contact forms of power over the fisheries, but this thesis intends to demonstrate that they continued to play an active role in the management of the fisheries in B.C. during times when many histories portray Natives as marginalized and irrelevant in Euro-Canadian society.

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CHAPTER 1**Introduction****I**

Prior to contact with Europeans, the capture and use of salmon played a central role in the lives of most Native peoples living along rivers and near the coast of the region that is now called British Columbia. Many aspects of the lives of B.C. Natives changed with the settlement of the province by Euro-Canadians, but salmon continued to be economically, culturally and politically important to many Native communities. For a time, Euro-Canadians made no significant efforts to restrict Natives' use of the salmon, although by the 1880s the numbers of Euro-Canadians competing with Natives for the salmon catch had risen significantly.

With the development of processing corporations, however, the government of Canada introduced regulations that restricted certain fishing and processing activities in the name of protecting the salmon from overfishing and habitat degradation. As well as restricting Euro-Canadians, Canadian regulations contained restrictions geared specifically to deal with Native fishers. These regulations did not account for the systems that Native communities already had in place for dealing with fishing and the distribution of salmon. As a result, many Native people demonstrated discontent when officials of the Department of Marine and Fisheries attempted to enforce regulations.

The history of Native fishing in the years following the Euro-Canadian settlement of B.C. is a topic which is largely unexplored, but there is some basis in the literature from which to start. In the 1950s, Percy Gladstone studied Native participation in the collective bargaining process during the

early years of the Euro-Canadian commercial fishery and concluded that Natives played significant roles as militant supporters of union objectives in labour disputes around the turn of the century.¹ Keith Ralston reiterated this position in his analysis of the strikes of 1900 and 1901.² In 1978, Rolph Knight asserted that Natives in B.C. played important roles in the Euro-Canadian economy as wage labourers and independent commodity producers until the 1930s. Much of their labour occurred in the commercial fishing sector. His book was, in part, a reaction to Robin Fisher's assertion that after the end of the fur-trade area in about 1858, Indian labour was irrelevant to the B.C. economy as their employment was neither "steady nor permanent" and acquired only "at the pleasure of whites."³ Knight claimed that "neither the absence of 'regular jobs' nor the need to sell their labour power inherently differentiate[d] Indian from other wage workers."⁴

These histories did shed light on previously unacknowledged Native fishing activities, but they perceived Natives as a segment of labour in the Euro-Canadian economy without elaborating much about the importance of cultural differences in their experiences. In addition, very little was said about Native fishing activities outside the context of the Euro-Canadian fisheries.

¹ Percy Gladstone, 'Native Indians and the Fishing Industry of British Columbia.' *Canadian Journal of Economics and Political Science* 19 (February 1953) 20-34.

² H. Keith Ralston, 'The 1900 Strike of Fraser River Sockeye Salmon Fishermen.' MA Thesis, University of British Columbia, 1965.

³ Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*. First Published in 1977. 2nd ed. Vancouver: University of British Columbia Press, 1992, pp. 109-110. Cited in Rolf Knight, *Indians at Work: An Informal History of Native Indian Labour in British Columbia, 1858-1930*. Vancouver: New Star Books, 1978, p. 21.

⁴ Knight, *Indians at Work*, p. 21.

In recent years, particularly as the concepts of aboriginal and treaty rights have emerged as important issues in contemporary Canadian society, more attention has been focused on how Natives' interests in fishing differed from the interests of other racial groups. Outside of the regional context of B.C., Victor Lytwyn and John J. Van West have written about the erosion of treaty rights in Northern Ontario by government restrictions and Euro-Canadian commercial overfishing.⁵ Along a similar slant, Jean Friesen has considered the "attack" on treaty hunting and fishing rights in Manitoba by provincial officials enforcing fish and game conservation regulations.⁶ Each of these histories acknowledges Natives' efforts to uphold their rights in the face of government restrictions and Euro-Canadian encroachments, but they conclude that resistance was ultimately futile.

For B.C., two works stand out for their treatment of the history of Native fishing. Geoff Meggs's *Salmon: The Decline of the British Columbia Fishery* poses the theory that Native fishers, along with other cultural groups that comprised labour for the commercial fishery, suffered a loss of control over their access to salmon and their own labour power. Meggs's asserts that federal fisheries regulations were shaped largely by the tremendous political influence of cannery owners, who wished to shift the nature of the fisheries from common to private ownership while securing cheap, reliable labour. Meggs acknowledges Native resistance to the enforcement of regulations,

⁵ Victor Lytwyn, 'Ojibwa and Ottawa Fisheries around Manitoulin Island: Historical and Geographical Perspectives on Aboriginal and Treaty Rights' & John J. Van West, 'Ojibwa Fisheries, Commercial Fisheries Development and Fisheries Administration, 1873-1915: An Examination of Conflicting Interest and the Collapse of the Sturgeon Fisheries of the Lake of the Woods' in *Native Studies Review* 6/1 (1990), pp. 13-30 and pp. 31-51.

⁶ Jean Friesen, 'Grant Me Wherewith to Make My Living' in *Aboriginal Resource Use in Canada: Historical and Legal Aspects*. Winnipeg: University of Manitoba Press, 1991), pp. 141-155.

both in the form of union action and, outside the commercial fishery, in the context of efforts to solidify aboriginal rights. Meggs, however, concludes that Native resistance was largely ineffective. In particular, he notes of the Department of Marine and Fisheries (DMF) agreement with the Babines to compensated them for restrictions on their fishing activities, that it was a moral victory which held small consolation.⁷

In *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries*, Dianne Newell draws together much of the literature that touches on Native fishing in B.C. Like Meggs, she feels that regulations, particularly licensing provisions, made Native fishers accessible labour for cannery-owners, rather than competitors for access to salmon. Regulations became more restrictive on Natives fishing outside the recognized commercial fishery, but became comparatively less restrictive for cannery-owners and commercial fishers. Newell acknowledges the influence of cannery-owners in DMF's management of B.C.'s salmon fisheries and agrees with Meggs that the fisheries could not be simply described as common property. However, Newell asserts that the fisheries had become state property, while Meggs claims that it was consistently being treated like the private property of cannery-owners.

Newell makes an important contribution to the history of Native fishing in the post-settlement era by placing it firmly in the context of Native struggles to have aboriginal rights to lands and resources recognized and dealt with by the Canadian state. Newell acknowledges Natives' resistance to regulations and their efforts to determine access and ownership issues according to

⁷ Geoff Meggs. *Salmon: the Decline of the British Columbia Fishery*. Vancouver and Toronto: Douglas and McIntyre, 1991). See pp. 74-80.

aboriginal and state-acknowledged rights. However, like Meggs and others who have broached this topic, Newell concludes that during the late nineteenth and early twentieth centuries, Natives "lost effective control of the salmon resource and of their labour to the rapidly growing fish processing industry."⁸

There is little basis for denying that cannery-owners could exert significantly more political influence than could Native peoples on officials who created and amended regulations. It is also apparent that DMF officials were concerned with the preservation of the nascent commercial fishing industry, but did not consider Native rights to be valid considerations in the creation of regulations. As DMF had state-sanctioned authority to manage the fisheries, it would seem that Natives had no influence over important decisions about fisheries management after DMF began to assert control in the late 1880s. However, there is strong evidence to suggest that Natives exerted more influence over decisions about ownership and access issues in the fisheries than has been acknowledged by historians.

When reanalysing Natives' participation in the fisheries, regional or geographic diversity and the accepted conceptualization of power in Native-Euro-Canadian relations should be carefully considered. In a re-evaluation of Fisher's and Knight's arguments about Native participation in the Euro-Canadian economy, James Burrows made a point that has application to all studies of B.C. Native peoples. Burrows stated that,

it [is] impossible to properly examine the role of Indians in the provincial economy without taking into account

⁸ Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries*. Toronto: University of Toronto Press, 1993. p. 96.

regional differences. ...It is necessary to consider the Indians of each region as separate albeit interconnected entities."⁹

While the legal letter of the law ostensibly applied to all regions of province, the enforcement of regulations was differentially affected by variations in population composition, overall local support for enforcement and geographical and transportation/infrastructure development.

The conceptualization of power relations common to traditional perspectives of Euro-Canadian relations also bears scrutiny, particularly in light of regional variation.¹⁰ Two recent histories of Euro-Canadian-Native conflict in B.C. have provided a basis for historians to reconsider how they write about this topic. In her analysis of the court proceedings for the "potlatch prosecution" of Daniel Cranmer, an Native of Alert Bay, Tina Loo asserts that the power of law cannot be understood solely in terms of the symbolic and ideological coercion used by Euro-Canadians to pacify and assimilate Native people.¹¹ Instead, Loo expands the definition of the power of law to include the ability to "define issues, set the terms of the debate and resolution, and provide the measures for assessing the

⁹ James Burrows, 'A Much Needed Class of Labour: The Economy and Income of the Southern Interior Plateau Indians, 1897-1910' *BC Studies* 71 (Autumn 1986), p. 28.

¹⁰ Robin Fisher's conceptualization of Euro-Canadian - Native power relations in B.C. is relied on by many, if not most historians of this topic. Fisher claims that during the fur trade Natives could control and adapt to changes introduced into their societies. Settlement, however, introduced major cultural changes so rapidly that Natives lost control over their lives. Fisher believes that because Euro-Canadians had a higher population and superior military technology, they could force change among Natives, who were now economically irrelevant to Euro-Canadians. See Fisher, *Contact and Conflict*, pp. xxviii-xxix.

¹¹ Tina Loo, 'Dan Cranmer's Potlatch: Law as Coercion, Symbol and Rhetoric in British Columbia, 1884-1951' *Canadian Historical Review* 73/2 (1992), pp. 125-165.

fairness of the outcome."¹² She concludes that Natives were just as capable as Euro-Canadians in manipulating legal rhetoric and creating "truths" that resonated with legal sensibilities.

In his analysis of the redistribution and redefinition of land during the settlement period, Bruce Stadfeld focuses upon acts of individual Natives pursuing their interests as manifestations of power outside the context of Euro-Canadian power structures. Stadfeld asserts Loo's definition of power is a significant contribution to the effort to bring Natives out of irrelevance in historiography, but that it also perpetuates the "picture of a disempowered Native" by conceptualizing power as a foreign instrument or institution that Natives must recognize in order to use.¹³ Instead, he focuses upon Native actions "on the ground" where the "short arm of the law" failed to prevent Natives from challenging Euro-Canadian authority and intimidating settlers and government officials into negotiating the new geography of the province.

Stadfeld's approach has a sound basis. As Douglas Cole and Ira Chaikin note in their book on the enforcement of the potlatch prohibition, Natives could bring strong pressure to bear upon Indian Agents who sought Native compliance with unpopular laws.¹⁴ However, in seeking sources of Native power, historians

¹² Ibid., p. 151. She acknowledges her debt to feminist legal scholarship for these ideas and notes the formative influence of Michel Foucault in *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*. Colin Gordon, ed. New York: Pantheon Books, 1980.

¹³ Bruce Stadfeld. 'Manifestations of Power: Native Response to Settlement in Nineteenth Century British Columbia.' M.A. Thesis, Simon Fraser University, 1993. p. 12.

¹⁴ Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast*. Vancouver and Toronto; Seattle, WA.: Douglas and McIntyre and University of Washington Press, 1990. See the discussion of Agent Halliday's experience enforcing Potlatch laws. The authors assert that Halliday relaxed the policy at least in part because of the "strained relations between the agent and the people he is trying to help", p. 100.

should be guided primarily by indications of Native influence wherever they may be, rather than by the objective of discovering a "pure-bred" source of Native power. Loo's discussion of Native empowerment through legal discourse seems to be problematic because of the difficulty of separating Native discourse from Euro-Canadian discourse or "lawyer's arguments" rather than because it focuses on "Euro-Canadian" sources of power. What historians can take away from Loo's particular example is that Natives challenged Euro-Canadian truths about the potlatch and these challenges had significant impacts upon the manner in which Euro-Canadians could affect the lives of Natives.

This thesis will analyze how the resistance of B.C. Native people "on the ground" affected the enforcement of fisheries regulations, particularly the prohibition of the fishing weir. The time period of 1894 to 1916 covers roughly the first twenty years of regulations enforcement and provides a reasonable span over which to judge the effectiveness of resistance. 1894 marked the beginning of the legal restriction of weirs, while 1916 marked the beginning of the Allied Tribes, a "pan-Indian" organization that took up the cause of fishing rights, as well as land rights. This organization attempted to unite Native resistance and give it a voice at the political level, where it had been heard only sporadically prior to 1916. In a sense, the period from 1894 to 1916 saw some of the most effective demonstrations of Native resistance and, while this power may have existed outside Euro-Canadian institutions, it also existed within them, as the Natives of the Cowichan and Babine Rivers were able to negotiate truths and understandings of ownership and management not only on the ground, but also on paper.

Before proceeding, a few words about terms are in order. I use

the term "Euro-Canadians" to refer to peoples of European ancestry. This description does not acknowledge the smattering of non-native people in B.C. whose ancestors were not from Europe (the Indian Agent for the Kamloops agency during the 1910s was an Afro-Canadian), but it is a more descriptive term than "non-native." It is difficult to know the degree to which DMF officers made distinctions between "Indians" and people of mixed-blood ancestry. In addition, the term "Indian" is currently considered by some people to have derogatory connotations. Therefore, unless referring to specific communities, I use "Natives" as a general term for aboriginal peoples in B.C. I use the acronyms DIA and DMF to refer to the federal Departments of Indian Affairs and Marine and Fisheries, respectively. The terms commercial and food fisheries are used with the understanding that they do not connote categories which predated the emergence of Euro-Canadian fisheries management in B.C.

Native Fishing and the Development of the Euro-Canadian Commercial Fishery

II

Prior to the arrival of Europeans on the Pacific coast, salmon nourished and supported Native societies in one of the most densely populated regions of North America. Fish, particularly salmon, formed about three quarters of the diet of coastal peoples.¹⁵ Many peoples living in the interior, particularly those living near major salmon streams, relied on salmon to nearly the same extent as the coastal peoples. Fur traders observed that for the Babine, Gitksan and Wet'suwet'en, hunting and trapping were very much secondary subsistence activities

¹⁵ Peter H. Pearse, *Turning the Tide: A New Policy for Canada's Pacific Fisheries. Final Report of the Commission on Pacific Fisheries Policy, 1981.* Ottawa: Minister of Supply and Services Canada, 1982. p. 174.

compared to salmon fishing.¹⁶ Effective preservation methods allowed salmon to play a major role in the diet of Native peoples well after seasonal runs had passed. In damp coastal areas, fillets were cured in smokehouses, while drier, windier inland valleys and canyons facilitated drying in the open air.

The Pacific salmon are anadromous fish. This means that spawning occurs in the gravel beds of freshwater streams, creeks and rivers and the balance of adult life is spent in the ocean saltwater. Salmon are also semelparous fish, meaning each Pacific salmon attempts to return to its native freshwater creek or stream to spawn, but dies soon after this single spawning run.

All of the five salmon species in B.C. waters follow this cycle, but there is variance in the time spent maturing in saltwater, time of year for spawning and in the distance travelled upstream for spawning. The sockeye enters rivers between mid-summer and late August and characteristically travels the greatest distances upstream to spawn. The pink (or humpback), which is the smallest of the five species, runs from July through early September, but tends to spawn closer to the sea than any other species. The chum (or dog-salmon), like the pink, is very numerous on the coast. It spawns in the fall and tends to choose freshwater streams close to salt water. The spring (or chinook, king) is the largest, but least abundant of the group. It spawns in the spring and remains close to shore during spawning, as well as during its adult life in the ocean. The coho (or silver) spawns during the late summer, preferring streams close to salt water.

¹⁶ Arthur Ray, 'Fur Trade History and the Gitksan-Wet'suwet'en Comprehensive Claim: Men of Property and the Exercise of Title.' in Carrie Abel and Jean Friesen, eds., *Aboriginal Resource Use in Canada: Historical and Legal Aspects*. Winnipeg, University of Manitoba Press, 1991. p. 302.

For marine and riverine fishers alike, the spawning runs provide not only the last opportunity to catch large quantities of salmon for the year, but also the best opportunity. This is because salmon gather in large schools prior to exiting saltwater and, upon entering rivers, they are sandwiched into dense runs. At both of these stages it is difficult for salmon to manoeuvre in order to avoid or escape nets and other fishing devices. Fishers are often able to gather large catches with relatively minimal time, travel and effort.¹⁷

Salmon were important enough to Native economies to play a role in the location of communities. Natives fished in marine environments and along rivers, and created semi-permanent villages near prime fishing spots.¹⁸ The diversity of salmon runs meant that peoples relying on them migrated seasonally to different places to take advantage of each run.¹⁹

Fishing techniques varied according to geographic location. Since salmon do not feed after entering rivers, trolling and other lure-based capture methods were limited to marine areas. Weirs and traps were the most productive methods in freshwater. Weirs were fence-like structures erected in shallow, slow-moving streams for the purpose of delaying salmon swimming upstream. There were a variety of types, but most consisted of a wooden frame driven into the stream bed and lattice-work panels held onto the frame by the pressure of the current. The panels were designed to prevent salmon from passing through, but to allow through water and fish smaller in size than the targeted species of salmon. Some weirs were designed for fishers to capture the

¹⁷ This discussion relies on information from Newell, *Tangled Webs*, pp. 11-12, 73 and Meggs, *Salmon*, p. 8.

¹⁸ *ibid.*, p. 312.

¹⁹ Newell, *Tangled Webs*, p. 43.

delayed salmon with spears, gaffs or dip nets, while others were designed to steer the salmon into cylindrical or pen-style traps. Traps were frequently used in conjunction with weirs, but could be modified to work just about anywhere.²⁰ Common to both weirs and traps was the intent to take advantage of the salmon's instinctual drive to advance upstream and not retreat.²¹

Weirs could be of a complex design and difficult to build, but once in use, they allowed for maximum catch with minimum effort. In fact, weirs were usually used at night and presented an easy catch for fishers the next morning.²² Fur traders at Fort Alexandria reported these devices yielding up to 400 salmon per night when the runs were heavy, indicating that some weirs were very substantial in size.²³ These labour-saving devices, however, were not appreciated by some early European observers. William Brown, Chief Trader at Fort Kilmaurs on Babine Lake during the early 1800s, complained that most of the Babine, who were weir users, passed the greater part of the year in idleness because in an average year they could satisfy most of their food requirements by fishing during July and August.²⁴ These comments reflect Brown's attempts to increase fur returns at his fort.

In areas that were not physically suitable for weirs or traps, or where local inhabitants did not have the political and economic resources to construct and maintain these devices, other methods were used. Seine, gill and reef netting was pursued at river

²⁰ Kew, 'Salmon Abundance', p. 12.

²¹ Joseph E. Forester and Anne D. Forester, *Fishing: British Columbia's Commercial Fishing History*. Sannichton, B.C.: Hancock House, 1975. p. 41.

²² *ibid.* at p. 40.

²³ Kew, 'Salmon Abundance', p. 12.

²⁴ Ray, 'Fur Trade History', p. 302.

mouths and in areas where water was deep and had high turbidity. Nets were used particularly when salmon were not spawning or when fishers did not have consistent good access to major spawning rivers.²⁵ Trawl, or bag nets were most effective in wide parts of major salmon rivers, such as the area between the mouth and Yale on the Fraser River, and dip nets were most effective in areas where salmon passed through narrow and turbulent passages.²⁶

Salmon sustained a large population of Native peoples in pre-contact British Columbia, but the abundance of these fish was not constant throughout the region.²⁷ Abundance varied according to geographic location, time of year and intermittent environmental changes. All types of salmon passed through the mouths of the Fraser and Skeena Rivers, and most types passed through the mouths of the smaller coastal rivers. Hence, peoples living at or near these river mouths could catch salmon on spawning runs from early spring to late fall.

Conversely, 80 per cent of the catch for Carrier peoples living on the upper reaches of the Fraser River focused on sockeye and, for some, occurred during a period of just two weeks.²⁸ Fishing peoples living at the upper extremities of spawning rivers tended to rely on a more varied diet. Carrier communities, for instance, supplemented their economies with hunting.²⁹ This

²⁵ Forester and Forester, *Fishing*, p. 42.

²⁶ Kew, 'Salmon Abundance', p. 12.

²⁷ *ibid.*, p. 29.

²⁸ Michael Kew, 'Salmon Abundance, Technology and Human Populations on the Fraser River Watershed.' in *Northwest Coast Study Conference Papers, 1976 Vol. 2*, p. 7. Note: Many of arguments made in this paper are reiterated in Michael Kew, 'Salmon Availability, Technology, and Cultural Adaptation in the Fraser River Watershed.' in Brian Hayden, ed. *A Complex Culture of the British Columbia Plateau: Traditional Stl'atl'imx Resource Use*. Vancouver: University of British Columbia Press, 1992, 175-221.

²⁹ Newell, *Tangled Webs*, p. 32.

variety in subsistence patterns is linked to two main factors. Firstly, salmon caught upstream are inferior to those caught closer to saltwater. Salmon cease feeding when they enter freshwater rivers for spawning. Secondly, because the salmon face more obstacles the further they progress upstream, yearly cycles for the appearance of spawners tends to fluctuate more extremely at the upper reaches of salmon rivers.

Although the extreme upper reaches of salmon rivers contained many disadvantages for fishers, middle-inland locations had many advantages over coastal areas. Frequently the most productive fishing techniques worked best in inland areas where rivers and streams were slower and more shallow. In addition, these areas provided the best conditions for preserving salmon. Coastal peoples could catch most types of salmon, but were limited in which types they preserve for winter use. They tended to prefer the leaner and easier to preserve chum (dog-salmon), to the fattier sockeye.³⁰ Finally, middle-inland productive fishing areas were usually located near established trading routes, which gave fishers opportunities to trade their surplus salmon.

As salmon were not universally abundant, Native peoples had to develop rules and systems for managing the use of this resource. The concepts of ownership and status played important roles in Native traditions of fisheries management. Complex social rules based upon these concepts governed the capture and use of salmon to ensure that all members of a community had some access to either fishing locations or the surplus caught fish. These rules also regulated relations between members of different status groups and between different communities.

³⁰ Wayne Suttles, 'Coping With Abundance: Subsistence on the Northwest Coast.' in Wayne Suttles, *Coast Salish Essays*. Vancouver, B.C., Seattle, WA., and London: Talon-Books and University of Washington Press, 1987, 45-63. p. 55.

Prior to contact with Europeans, Native peoples in the B.C. region lived in small groups and moved to various locations in their traditional territory to take seasonal advantage of various natural resources, such as salmon. These groups had recognized ownership rights in their territories over fishing locations, tools and techniques. The nature of ownership was balanced between communal rights and family/clan rights. South coast and southern interior peoples had less stratified societies and emphasized kinship-village control of resource sites.³¹

However, family ownership rights were not uncommon among less stratified societies. Among the Sto:Lo peoples of the Fraser River, individual ownership of valuable dip-net rocks along the river was carefully maintained and passed down through inheritance traditions.³² Among southern groups such as the Cowichan, weirs were used by community members, as well as members from other communities, but were owned by families. In strongly hierarchical communities, particularly those in northern areas, clan ownership of lands and resources under the control of clan chiefs was predominant.³³

Through communal ownership of some fishing locations and tools a conjugal family working together had access to most types of resources, but most families still required some support from their community, particularly when salmon runs were meagre.³⁴ Native communities developed traditions to provide surplus salmon from wealthy families holding exclusive ownership rights to needy

³¹ Newell, *Tangled Webs*, p. 41.

³² Wilson Duff, *The Upper Stalo Indians of the Fraser Valley, British Columbia*. Anthropology in British Columbia Memoir no. 1. Victoria: Provincial Museum, 1953, p. 96.

³³ Douglas Hudson, 'Traplines and Timber: Social and Economic Change Among the Carrier Indians of British Columbia.' PhD dissertation, University of Alberta, 1983. p. 57. Among the Carrier, salmon, which was the most important resource, was taken with fish weirs controlled by clan leaders.

³⁴ Suttles, 'Affinal Ties', p. 20.

families. For coastal peoples, the potlatch (or feast/gift) tradition integrated communities' subsistence and prestige-gaining activities.³⁵ The potlatch was an occasion where status and claims (to inherited ownership rights in the fishery, for example) were witnessed and validated by guests, whose own status was confirmed by the value of gifts they received and the order in which they received them from the claimant giving the potlatch.³⁶ Rank, privileges, names, crests, all of which endowed prestige, were claimed, validated and upheld by the giving away of wealth in a measure befitting the status of their claimant.³⁷ Food, particularly salmon, was frequently distributed. The potlatch also distributed material wealth. This effectively "restored the purchasing power" of poorer individuals and communities, giving them the ability to provide "gifts" in exchange for the fish surpluses of others.³⁸

Some groups did not rely upon the potlatch for food distribution. Among the Coast Salish, wealth (or credit) was also obtained by providing affinal relations with surplus food.³⁹ This affinal exchange strengthened family ties, provided access to surplus food for extended family members, enhanced the status of the food giver, and a means for the producer to bank the value of surplus food (through wealth).⁴⁰

These traditions allowed a number of individuals within communities and communities to co-exist in a shared environment and adapt to the environmental variables that affected abundance.

³⁵ *ibid.*, p. 16.

³⁶ Cole and Chaikin, *An Iron Hand Upon the People*, p. 5.

³⁷ *Ibid.*, pp. 11-12.

³⁸ *ibid.* p. 24.

³⁹ Suttles, 'Affinal Ties', p. 19.

⁴⁰ *ibid.*, pp. 20-23.

However, both systems caused some recipients to become perpetual debtors, which reduced their status and tied them to creditors. Brian Hayden characterizes this social stratification as the creation of elite accumulators. These high profile community members were in a position to call in debt as labour to help them reap the benefits of their fishing sites. Labour intensive, high volume production and trade could help secure an owner's status. As a result, corporate groups formed, leaving disenfranchised poorer families behind.⁴¹ This economic stratification occurred particularly with the use of weirs, which was a labour intensive technique during construction and during the catch of detained fish.

The need to redistribute salmon would have emphasized for Natives the variability of abundance. A tradition common to most fishing oriented Native peoples in B.C. was some variation of "the first salmon ceremony." This ceremony/feast was intended to honour and respect the salmon's spirits, which were believed to sacrifice themselves voluntarily for the subsistence of humans. The first salmon ceremony reinforced social stratification in the community and ritualized community members' awareness that, particularly on streams with small runs, the salmon abundance could not be taken for granted.⁴²

As well as demonstrating concern for future salmon abundance through rituals, some Native groups took other steps to protect the salmon. Communities were aware that unrestricted overfishing in their territories had consequences for upriver peoples. Weirs

⁴¹ Brian Hayden, 'Conclusions.' in Hayden, *A Complex Culture*, 225-63. p. 545-47.

⁴² See the "synthetic story" based on anthropological accounts in Hugh McKervill, *The Salmon People: The Story of Canada's West Coast Fishing Industry*. Sidney, B.C.: Gray's Publishing, 1967. pp. 1-7.

and traps could be totally obstructive, so they were used according to rules which allowed for escapement, although this could be manipulated for political reasons to limit access for upstream fishers.⁴³ Weirs were frequently constructed to obstruct only a portion of a stream and had latticework panels that were easily removed for escapement purposes. As well as providing for upriver fishers, restricting the fishing effort protected salmon populations. The numerous accounts which suggest that salmon runs were quite large prior to the emergence of the commercial fishing industry would seem to suggest that Natives successfully managed even their most efficient techniques (i.e. weirs).⁴⁴ Some evidence provided by early observers suggests that Natives on important spawning rivers took measures to ensure that they did not damage salmon spawning areas and even took steps that could be considered to be habitat protection.⁴⁵

⁴³ Newell, *Tangled Webs*, p. 42.

⁴⁴ *ibid.*, p. 28.

⁴⁵ Georgiana Ball, 'The Monopoly System of Wildlife Management of the Indians and the Hudson's Bay Company in the Early History of British Columbia.' *BC Studies* 66 (Summer 1985) 37-58. pp 43-44.

III

The first Europeans to visit B.C. from the coast were awed by the sizes of the salmon runs that they witnessed. These European marine fur traders, as well as the British explorers from the east who came later, depended for their survival upon salmon provided by Natives. The Hudson's Bay Company (H.B.C.) fur traders who arrived shortly thereafter sought to provide for their subsistence by trading with Native fishers for preserved salmon. By the 1830s, H.B.C. posts, such as Fort Langley, had started exporting smoked and cured salmon to the Hawaiian Islands and to parts of Asia. This limited trade in preserved salmon had little impact on the abundance of the resource and, relying wholly upon Native fishers, was geared to avoid disrupting the fisheries systems already in place.⁴⁶

With the gold rushes of the 1850s and 1860s, disputes broke out between Natives and Euro-Canadians over access to fish and the effects of Euro-Canadian activities upon salmon abundance. As well as removing gold without consideration for local Native communities, Euro-Canadian gold-miners were taking salmon, and for the first time, directly competing with Natives for the catch. Mining activities, such as the disposal of overburden in streams, damaged spawning streams. As the gold rushes ended and more Euro-Canadians were focusing their efforts on fishing, Natives faced more challenges to their control over fishing locations, tools and techniques. The greatest and most sustained impact came with the Euro-Canadian commercial fishery.

Canning technology, which opened the large British market to fish

⁴⁶ Forester and Forester, *Fishing*, p. 53.

traders in B.C., was established on the Fraser River in 1871 and spread to the Nass and Skeena Rivers in following years. The Fraser River was the preferred site for canneries because it was the most important spawning river for the sockeye, the best competitor in the British market against canned California red king salmon. Many Native peoples came to the Fraser River to fish, providing a workforce for cannery owners' fishing and processing requirements.

Most Native men worked with cannery-licenses for wages, gillnetting and seining by hand out of small launches powered by oar and sail. Native women and children worked on shore trimming and cleaning the catch for piece rates. This seasonal employment for families drew entire communities from as far away as the Skeena River. The gendered division of labour in the commercial fishery was similar to that in Native fisheries in that, generally, men were responsible for fishing and women for cleaning, preserving and processing. This dichotomy, however, was flexible in both types of fisheries. Among the Babines, women were responsible for much net fishing and among most Native communities, men would help with processing as required. There is not much evidence of Native men working in the Euro-Canadian commercial processing process (although Chinese men quickly became involved), but Native women often helped their husbands in fishing skiffs, rowing and steadying the boat.

Although there were similarity between the types of tasks performed in the Native and Euro-Canadian fisheries, Native fishers had to make important adaptations to participate in the Fraser River commercial fishery. The Euro-Canadian commercial fishery introduced different materials, techniques and priorities to Native fishers, which caused profound changes in their

societies and economies.⁴⁷ The introduction of new materials for nets eliminated the work prestige and social status of people (often women) who made nets with local materials according to the tradition methods.⁴⁸ In addition, there was a shift from fishing primarily for spring and chum to fishing primarily for sockeye salmon. With this change came a shift from the use of set and dip nets from owned rocks and platforms on the Fraser River to gill nets in different locations on the river. This affected the social status of Natives who owned fishing sites.

Prior to contact, the economies of small communities relied for the acknowledgement of their ownership rights upon recognition by other communities. In addition communities relied upon each other for trade to make up for fishing shortfalls. The potlatch and kinship exchange, institutions responsible for setting out ownership rights and distribution practices, were undermined when Euro-Canadian cannery owners set up their operations and began taking fish from areas claimed by Native owners.⁴⁹ Yearly migrations of entire villages to cannery camps further undermined internal economic institutions and changed the seasonal subsistence activities and movements of Native groups. Within a few years, the members of some Native groups became dependent on canneries for winter supplies, rather than upon their own fishing and hunting efforts.⁵⁰

Native communities resisted these economic encroachments by canneries in a variety of ways. On the Skeena River, the

⁴⁷ Knight, *Indians at Work*. p. 12.

⁴⁸ Romanov, 'Lillooet Salmon Fishing' in Hayden, *A Complex Culture*, p. 231.

⁴⁹ Alicja Muszynski, 'The Creation and Organization of Cheap Wage Labour in the British Columbia Fishing Industry.' PhD dissertation, University of British Columbia, 1986. p. 125.

⁵⁰ Newell, *Tangled Webs*, p. 55.

Tsimshian seized the nets of cannery fleets that encroached upon their territory.⁵¹ After regulations were passed which required Native commercial fishers to obtain licenses linked to canneries, many Natives sold their catch without licenses, therefore acting as direct competitors with licensed commercial fishers and with canneries for the salmon resource. Some Natives attempted to resist cannery control of the resource by acting within the context of the Euro-Canadian commercial fishery. These Native commercial fishers dealt with conflicts over access to the benefits of fishing by forming or joining unions. By becoming active in unions, Natives had to balance their interests as members of a separate community against their common cause with fishers and shoreworkers of other ethnic backgrounds.⁵²

One historian has called the union activism of Native fishers "ethnic defence in a novel form", but many Natives were not well served by unions.⁵³ A racial hierarchy of labour developed out of battles between workers in differential conditions of wages and employment.⁵⁴ During the strike for higher fish prices in 1892, Euro-Canadian fishers abandoned Natives. Following the 1901 and 1902 strikes, Natives were treated poorly by their Euro-Canadian comrades in the settlement with canneries. Canners were aware of the division in the labour force and manipulated them to undermine collective action in the southern and northern fishing areas.⁵⁵

⁵¹ *ibid.*, p. 64.

⁵² Evelyn Pinkerton, 'Indians in the Fishing Industry.' in Patricia Marchak, Neil Guppy, and John McMullan, eds. *Uncommon Property: The Fishing and Fish Processing Industries in British Columbia*. Toronto: Methuen, 1987, 249-69. p. 249.

⁵³ Knight, *Indians at Work*, p. 18.

⁵⁴ Patricia Marchak, 'Organization of Divided Fishers.' in Marchak, et. al., *Uncommon Property*. p. 224.

⁵⁵ Newell, *Tangled Webs*, p. 84.

Prior to the 1890s, most canneries were owned by single proprietors and partnerships and were financed by Victoria commission merchants who had made their fortunes during the gold rush. Plants were small and frequently managed directly by the owners.⁵⁶ However, by the 1890s, anxious entrepreneurs had filled the shores of the Fraser with canneries and in the process, the nascent industry had become over-competitive and overcapitalized. Many cannery owners felt that these problems, in conjunction with the collective action of fishers seeking higher fish prices, justified a significant reorganization of the industry. This led to a series of corporate mergers which left the processing industry in the hands of a few large companies. In 1892, the London-based Anglo-British Columbia Company bought out enough smaller processors to control 60% of the processing sector. Ten years later, the British Columbia Packers Company of New Jersey held that position.⁵⁷

Corporate mergers may have mitigated competition for the salmon, but they did not mitigate the commercial salmon take. Instead, the catch increased as technological improvements made fishing tools and techniques more efficient. Although banned between 1900 and 1905, the use of salmon traps in Boundary Bay and off Vancouver Island by a select group of canners brought in large catches at low labour costs. Gillnetting gradually changed after 1900 from a localized, hand-and-sail operation, requiring a boat puller and a captain, to a motor-powered, one-person operation. This and the use of artificially-produced ice enabled the gillnetter fleet to go farther and stay at fishing spots for longer times. Purse seining became more popular in the early

⁵⁶ Lars Sandberg, 'A Study in Canadian Political Economy: A Critical Review of the Case of the B.C. Salmon Canning Industry, 1870-1914.' MA Thesis, University of Victoria, 1979. pp. 117-18.

⁵⁷ Muszynski, 'Cheap Wage Labour', p. 92.

1900s with the introduction of power-driven rollers for the hauling and shooting of the nets. Purse seines were effective in waters unsuitable for gillnetting, were more mobile and caused a reduction of labour costs. Generally, Euro-Canadians fished with purse-seiners, while Natives and Japanese specialized in gillnetting.⁵⁸

The opening of new markets after 1900 also increased the commercial pressure on salmon stocks. Markets for chum (dog) salmon had opened in Japan and the southern U.S. while the pinks and coho were finding buyers in mediterranean countries.⁵⁹ This led commercial fishers to move their nets into areas traditionally owned and managed by Native peoples.⁶⁰ The chum, which had traditionally been the catch of choice for many Native communities, were now directly sought after by canners.

Native fishers were also facing difficulties within the commercial fishery. Initially, the majority of early gillnetters were Natives, but by 1893, fishers of all races worked the Fraser River.⁶¹ After 1900, there were twice as many Euro-Canadians and thrice as many Japanese as Natives licensed to fish on the Fraser.⁶² Canners preferred Japanese to Native fishers as they were more focused on fishing and less mobile.⁶³ In addition, Japanese fishers did not have the bargaining leverage of being able to fall back on a local subsistence economy. One canner, C.F. Todd, stated to the Dominion Salmon Commission of 1902 that

⁵⁸ For discussions of technological development in the fisheries see Dianne Newell, ed., *The Development of the Pacific Salmon-Canning Industry: A Grown Man's Game*. Montreal and Kingston: McGill-Queen's University Press, 1989. p. 8; Meggs, *Salmon*, p. 105; and Newell, *Tangled Webs*, p. 73.

⁵⁹ Meggs, *Salmon*, p. 113.

⁶⁰ Newell, *Tangled Webs*, p. 66.

⁶¹ Meggs, *Salmon*, p. 23.

⁶² Newell, *Tangled Webs*, p. 52.

⁶³ *ibid.*, p. 85.

Indians of recent years are not as reliable as they used to be. They are not so regular in coming down and even after advances have been made, they come down late, giving excuses that their hay took their time.

This may have reflected a shift in some Native economies away from fishing due to the Department of Indian Affairs's (DIA) efforts to promote Native farming. Todd also noted that Natives were not as productive, demanded higher prices and were more prone to strike than Japanese fishers.⁶⁴

On the Nass and Skeena Rivers, Natives remained predominant as fishers. Natives there were adamant that the situation on the Fraser River not be repeated on the northern rivers and pressured DIA to advocate for continued Native participation in the commercial fishery. Following an eloquent speech, regarding his people's aboriginal rights, to the Royal Commission on Indian Affairs in B.C., Bob Anderson of Bella Bella requested that the commissioners "help us in regard to our fishing licenses and see that no Japanese or Chinamen get them".⁶⁵ By the 1910s, government restrictions on independent fishing licenses in the North were being waived for Euro-Canadian settlers, but not for Native fishers, and canners were hiring Japanese, rather than Natives, to fish for wages.⁶⁶

The emergence of the Euro-Canadian commercial fishery introduced new techniques and priorities into the lives of Native fishers. When Native people entered the commercial fishery they were not

⁶⁴ Canada. *Commission on the Salmon Fishing Industry in B.C., 1902*. BCARS, Government Records 213. (Hereafter BCARS, GR213) pp. 5-7.

⁶⁵ BCARS, GR1995. Canada, Royal Commission on Indian Affairs for the Province of British Columbia, 1913-1916. Evidence for the Bella Coola Agency presented 25 August 1913. p. 60.

⁶⁶ Meggs, *Salmon*, p. 105.

necessarily able to maintain their participation at a level which could support them, but Natives were entering into other economic activities, such as farming, to adapt to new circumstances. In looking at the changes that Native fishers faced it is important to acknowledge that many embraced change where they saw benefits. It is important to note, however, that where Natives viewed encroachments with concern, many resisted and this resistance had effects. This thesis will focus on Native resistance to regulations which were crafted on behalf of Euro-Canadians (particularly canners) who wished to restrict Native competition for salmon resources. This resistance had perceptible and significant effects on how Euro-Canadians managed the salmon fisheries.

CHAPTER 2**The Development and Implementation
of Fisheries Regulations in B.C.****I**

This chapter explores the development of B.C. fisheries regulations and the problems faced by the Department of Marine and Fisheries (DMF) in enforcing these regulations. Cannery-owners and other members of the commercial fishery sought greater catches for themselves by pressuring the government to restrict Native fishing. As the development of the commercial fishery was a government priority, DMF usually attempted to accommodate various interests in the commercial fishery. However, DMF officers faced daunting challenges in trying to enforce regulations. The ability of DMF officers strictly to enforce regulations was undermined by a shortage of staff and other resources, as well as by the resistance of Natives and their Euro-Canadian "advocates".

The British North America Act of 1867 granted the Dominion government jurisdiction over fishing in the tidal and non-tidal waters of Canada. The first Dominion Inspector of Fisheries for British Columbia, A.C. Anderson, was appointed in 1874, and the Dominion Fisheries Act, as well as the jurisdiction of DMF, was extended over the province in the following year. In 1878, the first regulations specific to the province were passed. These regulations prohibited the dumping by canneries of fish offal into salmon-bearing streams and set out requirements for the use of salmon nets (size, location, weekly close times). In an order-in-council the following year, the Dominion government granted to itself the authority to dispense licenses, but fishers

were not actually required to obtain licenses.¹ These regulations were based on standard wording in the Fisheries Act and were passed as a matter of policy rather than as a concerted measure to restrict excessive fishing or damage to fish habitat. As with most areas of the private sector, the Dominion government was reluctant to intervene in the fisheries as it did not want to stifle commercial development.²

By the end of the 1880s, however, DMF senior officials were being pressured to take stronger steps to protect B.C.'s salmon fisheries. In the summer of 1888, Sto:Lo peoples of the Fraser canyon and upper Fraser valley united to express concern about the cannery-related fishing that was taking place near the river mouth. In a petition to the Department of Indian Affairs (DIA), Sto:Lo chiefs stated that their people were in danger of not having enough salmon for the winter. They claimed that few salmon were getting past the nets at the river mouth and the ones that did were rope-marked and spent.³ Subsequently, DIA officials pressured DMF officials to enact more restrictions upon cannery fishing at the mouth of the Fraser.

Senior DMF officials communicated to DIA that they were creating new regulations that would "obviate future complaints by Fraser River Indians".⁴ These officials may have been motivated by the Sto:Lo lobby, as these Natives' concerns were publicized by newspaper editors writing of "improvident management" by DMF.⁵

¹ Newell, *Tangled Webs*, p. 49.

² *ibid.*, p. 51.

³ Canada, Department of Indian Affairs, RG10, NAC - UBCIC (Hereafter UBCIC, RG10). R. C-10140, F. 50341, V. 3802. Petition from Chiefs assembled at Yale to Indian Agent McTierman, 13 August 1888.

⁴ UBCIC, RG10. Deputy Minister of DMF to Deputy Superintendent General of DIA, Lawrence Vankoughnet, 1 September 1888.

⁵ Canada, Parliament Sessional Papers, Department of Marine and Fisheries (Hereafter DMF) Annual Report 1889. p. 233.

The main incentive, however, seems to have been the American example. DMF officials were cognizant of how American overfishing on the Sacramento and Columbia Rivers had destroyed prime salmon runs in those areas.⁶ Canadian officials were anxious to avoid this type of situation on the Fraser.

Prior to the 1890s, it was commonly believed that oceanic fisheries were too vast to be exhausted, and Canadian officials had few scientific means to test these assumptions.⁷

Restrictive measures seemed unnecessary as long as no one complained of low catches. In addition, DMF officials had few successful Canadian models of fish and game resource management to study. In Ontario, however, the fisheries in the Lake Huron and Georgian Bay areas had collapsed by the mid-1880s because management by Canadian fisheries officials had encouraged, rather than moderated, the rapid growth of the Euro-Canadian commercial fishery.⁸

From the beginnings of salmon canning on the Fraser, cannery operators and Non-native commercial fishers pressed the government to curtail Native fishing in spawning rivers and creeks where Natives were not providing their catch to canneries. Cannery owners wanted Native participation to be in the form of reliable labour, providing a direct channel to as much of the salmon catch as possible, while Non-native commercial fishers wanted to reduce the number of competitors for the resource.⁹ Cannery owners were among the most politically powerful individuals in B.C. and were allowed to meet directly with DMF ✓

⁶ *ibid.* p. x.

⁷ Newell, *A Grown Man's Game*, p. 9.

⁸ Lytwyn, 'Ojibwa and Ottawa Fisheries', p. 25.

⁹ Newell, *Tangled Webs*, p. 63.

officials during the drafting of the new regulations.¹⁰

The regulations that were enacted for the 1889 season extended the weekly closed-times and bolstered offal dumping restrictions. Two categories of fishers were devised with different restrictions for each type. "Commercial fishers" were required to obtain licenses that would allow them to sell their catch. The licenses set out where and when they could fish and what type of equipment they could use. In addition, they were required to register and mark all equipment so it could be properly monitored.

"Indian food fishers" were not required to obtain licenses, but were restricted to using equipment and methods deemed by DMF to be "traditional", and were prohibited from selling their catch.¹¹ This distinction was new for Natives, as they had not previously separated their food from commercial fishing activities. DMF officials based the distinction on the understanding that employment in the commercial fishery would replace any of the commercial fishing activities which Natives had practised prior to the enactment of the regulations.

The government was now breaching its tenet of non-intervention in the private sphere, but senior officials were inclined to interfere as little as possible with the fishing industry.¹² As DMF officials came to understand that government intervention was [inevitable, however, they saw their role as one of protecting the]

¹⁰ DMF Annual Report 1890, p. xii.

¹¹ DMF, Annual Report 1888 (1889), p. xiv.

¹² DMF Annual Report for 1889. B.C Fisheries Inspector, T. Mowatt, worried that overly strict enforcement of the regulations against the commercial fishery would hinder the industry in B.C. and result in benefits for Alaskan fishers, see p. 233.

commercial fishery as well as protecting the fish.¹³ The licensing provisions and commercial/food fishing distinction were steps toward this goal.

In 1889, the number of commercial licenses for the Fraser was limited, with canners being given a fixed number, and the rest distributed to "independent" fishers. As very few of the independent licenses were given to Natives, they had to work under the cannery (or "attached") licenses if they wished to be involved in the commercial fishery. Even after license limitation was lifted in 1893, Natives were generally limited to attached licenses, as most did not have the capital necessary to procure the equipment for fishing with independent licenses. This situation would be mirrored on the Nass and Skeena Rivers in future years. When the commercial fishery began to expand on the northern rivers, regulations prevented fishers in this area (mainly Natives) from obtaining independent licenses. These licensing requirements gave cannery-owners significant control over Native labour in the commercial fishery.

DMF was also concerned with cultivating the small but growing presence of Euro-Canadians in the commercial fishery. According to the B.C. Fisheries Inspector, the 1889 prohibition of fish sales by food fishers

does not prevent Indians from bartering fish among themselves to supply each other in food, but does prevent them from entering into competition with whitemen for

¹³ DMF Annual Report, 1902. Supplement no. 1. *Special Reports: III, The Aim and Method of Fishery Legislation*, by Professor E.E. Prince, 1901. The Commissioner of Fisheries, E.E. Prince, believed that the basis and aim of fisheries legislation was to preserve: 1) fish; 2) commercial fishing interests; 3) the state and public interest, and; 4) international interests. See p. 20.

commercial purposes, without first taking out licenses.¹⁴

In protecting the interests of Euro-Canadian fishers, DMF officials sometimes subordinated the interests of cannery owners. When the commercial fishery became firmly established on the Northern rivers, DMF officials took steps to foster the participation of Euro-Canadian fishers. In 1912, B.C.'s chief inspector expressed concern that the system of attached licenses in the north discouraged Euro-Canadians from becoming fishers there.¹⁵ Soon after, DMF was granting independent licenses to Euro-Canadians. However, the power of cannery owners and the desire of most DMF officials to foster commercial development could lead them to pay lipservice to Euro-Canadian fishers' interests. Later in 1912, the chief inspector refused permission to the B.C. Packing Company to operate a northcoast cannery unless it committed to "use every endeavour to have the operations conducted by white men."¹⁶ DMF granted permission after getting a vague commitment that the company would hire Euro-Canadians when it was feasible.

To say that relations of production, as well as ethnic relations in the commercial fishery influenced the formation of regulations, however, is not to say that concerns about salmon populations were not addressed. DMF conservation measures in the late 1800s to the mid-1900s were based upon the premise of "maximum sustained yield". This means that at the very least, DMF officers were mandated to restrict fishing efforts enough to

¹⁴ Canada. Department of Indian Affairs. NAC (RG10) - BCARS (GR1751) (Hereafter BCARS, GR1751 (RG10)). Vol. 3828, File 60926. Inspector Mowat to Deputy Minister Tilton. 17 October, 1889.

¹⁵ British Columbia Department of Fisheries, BCARS, Government Records 435 (Hereafter BCARS, GR435). Box 64, file 606. Memorandum to file from Chief Inspector Cunningham, 5 August 1912.

¹⁶ BCARS, GR435. B. 39, F. 343. Inspector Cunningham to Attorney General Bowser, 11 September 1912.

allow sufficient escapement of spawners to replenish the stocks.¹⁷ In addition, DMF established salmon hatcheries and made efforts to "improve" spawning streams by clearing obstructions and pressuring logging companies to avoid operating on these streams.¹⁸ Although many of these measures were taken at the behest of cannery owners and were geared to increase the cannery pack, they indicated that the department was concerned with addressing the threats posed to salmon stocks.

However, these measures could not change the reality that there was not enough salmon to satisfy all of the competing groups. As a result, existing fish stocks had to be divided between fishers. One means of allocating salmon was the direct distribution of fishing or "ownership rights." Canadian authorities had been dispensing rights to the fisheries since the passage of the first Fisheries act in 1857. Over time, DMF officials in B.C granted exclusive rights, or leases, to canneries and commercial fishers for drag seining, purse seining and trap-netting.

One of the main allocation measures emerged from the differential restrictions that DMF imposed upon the two categories it had created for fishers. Restrictions on the commercial catch determined how many fish were available for Natives upstream, while restrictions on the Native catch allowed Euro-Canadian commercial fishers to increase their share of the maximum sustainable yield. These new allocation systems did not allow for the allocation systems that Native communities already had in

¹⁷ Newell, *Tangled Webs*, p. 68.

¹⁸ Some officers went to considerable lengths to protect salmon. William Galbraith, Overseer on the Cowichan River, removed dead fish from the river and incinerated them "to prevent germs from contaminating the water and infecting good fish." He also spent days shooting birds which, he believed, threatened salmon fry. See NAC, RG23. R. 44, F. 1815 pt.1. Overseer W. Galbraith to Commissioner E.E. Prince, 31 December 1906 and 6 September 1907.

place. When Tsimshian fishers protested the trespass on their traditional fisheries by commercial fishers during the early 1880s, the Deputy Minister of DMF responded that the fisheries were a public domain in which Natives and Euro-Canadians had the same access.¹⁹

The allocation and management measures noted above failed to take into account the Native rights which had been recognized by government officials prior to the passage of federal regulations for B.C. In 1876, the governments of Canada and the province of British Columbia created a Land Commission to record the wishes and concerns of Native communities and establish a peaceful redistribution of land. Most of the Indian reserves created by the commission were much smaller than those laid out for bands in the rest of Canada because the province was hesitant to allocate large tracts of land for what they asserted were largely non-agricultural peoples. It was decided that fishing rights would be attached to these smaller reserves. One of these land commissioners, who was also at the time B.C.'s first federal fisheries inspector, recognized Native fishing rights and guaranteed their future protection. Accordingly, the commission recognized some Native fishing practices (weirs, gaffs, drift nets, and dip nets) and designated many specific fishing sites as off-limits for Canadian federal regulations.²⁰ In the years that followed, DMF officials questioned the authority under which the land commissioners acknowledged these rights.

When regulations under the Fisheries Act were passed for B.C.,

¹⁹ BCARS, GR1751 (RG10). R. B-308, F. 32876. A/Deputy Minister DMF to Minister of the Interior, J.A. Macdonald, 30 January 1882.

²⁰ Reuben Ware, 'The Indian Reserve Commission and the Upper Stalo Indian Fisheries, 1876-1890.' *British Columbia Historical News* 14, no. 3 (Spring 1981) 3-8. p. 4.

DMF authorities claimed that they superseded Native fishing rights. In 1891, Sir Charles Tupper, Minister of DMF, stated how his department was going to treat the "new" Indian food fishery, and it is worth quoting him at some length.

There is no reason why these people [Natives] should be led into the belief that they are a privileged race, quite above the law and regulations as regards fisheries matters. Such a course can only have but one result, create trouble and jealousy among fishermen and occasion annoyance and difficulties to this department and its officers. I am therefore to request that you will be good enough to cause Judge O'Reilly [of the joint commission] and the other Indian Agents in B.C. to be instructed that they must use all their influence to make Indians understand that in extending to them the valuable privilege they now enjoy of taking fish for their own use, whenever and howsoever they choose, such permission is not to be considered as a right, but as an act of grace, which may be withdrawn at any time should it be found that it is abused, or used for other purposes than those for which it is granted, or in such a manner as to embarrass the action of this department.²¹

As well as failing to consider that Natives may not have to have been **led** to believe that they had special fishing rights, Tupper failed to understand that the regulations did, in fact, limit Natives in how they were to fish for food.

The language used in the above passage reflects the authority that the government was asserting over Native peoples and the

²¹ BCARS, GR1751 (RG10). R. B-308, F. 32876. Charles Tupper to Minister of the Interior, J.A. Macdonald, 24 August 1891.

marine resources of the province. In fact, the government's control over management and ownership rights made the fisheries seem more like state property than common property.²² This stance on Native fishing was not new. In 1875, DMF issued a circular to its officers stating that Natives enjoyed no special liberty in the fisheries.²³ During the 1880s, DMF authorities in Ontario began ignoring Natives' treaty fishing rights soon after the treaties had been signed.²⁴

When DMF began allocating salmon resources, it became subject to the pressures of various interest groups. Cannery-owners lobbied for actions that would have undermined independent fishers, and independent fishers pursued their interests by seeking restrictions on canneries or attached fishers. Race also played an important role, with Euro-Canadians and Natives pressuring Ottawa to restrict the opportunities for Asians to enter the country and become involved in the commercial fishery.

One of the most significant struggles over allocation took place along the lines that DMF had drawn between Natives and the commercial fishery. When Natives protested cannery incursions on the stocks that they relied upon for subsistence, canneries responded by accusing Natives of overfishing and illegal activity.²⁵ As one of DMF's priorities was to foster the development of the commercial fishery, cannery-owners and

²² See Marchak, 'Uncommon Property' in Marchak, et. al. *Uncommon Property*. She claims that the ownership rights held by B.C. fishers are too limited to constitute the fisheries as "commonly owned." Instead, she asserts, the ownership rights exercised by the state (e.g. management) make the fisheries state property. pp. 4-5. I would argue that this theory should consider the implications of regional variations in the state's ability to enforce management decisions.

²³ Van West, 'Ojibwa Fisheries', p. 46.

²⁴ Lytwyn, 'Ojibwa and Ottawa Fisheries', p. 24.

²⁵ Newell, *Tangled Webs*, pp. 90-91.

commercial fishers frequently were granted optimal opportunities to sustain or improve their share of the catch. For instance, highly efficient fishing techniques such as drag seines, purse seines and trap nets had been previously prohibited as destructive practices, but were allowed under changes to the regulations in 1904.²⁶

Conversely, restrictions on Native "food fishers" increased as the commercial demand on the salmon runs increased. In 1894, under pressure from canners for increased access to the salmon and to the Native labour force, DMF passed regulations which specified that "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."²⁷ These regulations had a significant effect on the use of Natives' most efficient fishing technique, the weir. Wherever weirs intercepted spawning fish in commercially viable rivers and streams, DMF officials attempted to treat the regulations as a complete prohibition.

The power of corporations affects and can constrain the choices governments make, but, this does not mean that governments are merely their instruments. Canners lobbied intensely in 1905, 1908 and 1910 to close the Fraser River to fishing and allow them to rely entirely upon highly efficient, labour saving devices such as purse seiners and trap-nets in the marine environment.²⁸ This would have allowed cannery-owners to reduce the number of fishers (labour costs), and eliminate Native competition for the

²⁶ John McMullan, 'State, Capital and the B.C. Salmon-Fishing Industry' in Marchak, et. al. *Uncommon Property*, p. 110.

²⁷ Order in Council, 3 March 1894, SC, 1894. Cited in Newell, *Tangled Webs*, p. 89.

²⁸ McMullan, 'State, Capital and the B.C. Salmon-Fishing Industry', in Marchak, et. al. *Uncommon Property*, p. 110.

resource. Each time, however, DMF refused these requests.

In addition, cannery-owners frequently had conflicting interests, which made it difficult to lobby the government with a unified "canners' agenda". Some canners supported fishers' interests against other canners when it suited them.²⁹ Political patronage also divided canners of different political stripes. DMF employed a policy of granting exclusive fishing or cannery licenses in certain waters of B.C. from 1871 to 1920 and this policy was susceptible to political preferment.³⁰ While cannery-owners played an important role in shaping DMF fishing management strategies, this influence was sufficiently fractured for other groups to become influential in shaping regulations, particularly at the ground level where regulations were enforced.

II

Without enforcement mechanisms and policies, fisheries regulations would have been relatively meaningless bundles of paper. Although many cannery-owners' and Euro-Canadian commercial fishers' interests were served by the provisions of the regulations, these interests were often served at the expense of other cannery-owners and Euro-Canadian fishers. As a result, not every cannery-owner and Euro-Canadian fisher felt that they had a stake in obeying regulations that were ostensibly geared to protect economic interests in the commercial fishery. In addition, conservation provisions that restricted the commercial fishing effort were a thorn in the side of most members of the

²⁹ See Meggs's discussion about Henry Doyle, a cannery-owner who decided to "throw his lot in with the fishermen" during a dispute with B.C. Packers, *Salmon*, p. 87. Also see Meggs's discussion about the William Curtis, a canner who, in order to defend his own interests, "became a staunch defender of aboriginal rights", *Salmon*, p 109.

³⁰ Sandberg, 'A Study in Canadian Political Economy', p. 151.

commercial fishery. Finally, many Native communities were upset with the restrictions imposed upon their fishing activities outside the context of the Euro-Canadian commercial fishery. Opposition to the regulations encouraged DMF officials to hire field personnel to monitor and encourage regulatory compliance.

As allocation and conservation issues were of greatest concern in areas where numerous fishers competed for salmon, the department focused enforcement efforts on and near major salmon spawning rivers and along salmon migration routes in the open water. Fisheries guardians, DMF's front-line field officers, were stationed as close as possible to prime fishing locations. During the late 1880s and early 1890s, four guardians were assigned to monitor commercial and non-commercial fishing along the busy Fraser River. As the commercial fishery to the Nass and Skeena Rivers and to Vancouver Island, guardians were hired to enforce regulations in areas where allocation and conservation issues arose. In most cases, lone guardians were assigned to each area, but assistants were hired, and/or officers brought in from other locations for major enforcement activities. In the early 1890s, DMF obtained a steam powered vessel mastered by an experienced seaman, Captain John T. Walbran, for the purpose of lighthouse supply and fisheries protection.³¹ Walbran patrolled the coastal fishing spots around Vancouver Island and along the mainland coast. In the years that followed, the department obtained two other vessels to supplement this patrol function.

DMF also employed "overseers" to enforce regulations. It appears that some overseers supervised guardians, while others had duties similar to guardians. The Fisheries Agent in Victoria and the

³¹ Thomas Appleton, 'Captain John T. Walbran, 1848-1913.' *B.C. Studies* no. 5 (Summer 1970) 25-35. p.27.

Fisheries Inspector in Vancouver were responsible for vetting concerns from the public about fishing, liaising with the Commissioner of Fisheries and Deputy Minister of Fisheries in Ottawa and supervising the enforcement activities of overseers and guardians. The men appointed as fisheries officers came from a variety of backgrounds and many held other positions during their tenure as fisheries officers. Fishers, lighthouse keepers, Indian agents, and government clerks, among others, took up enforcement duties with DMF. While it appears that some fisheries officers had experience in the fisheries prior to being hired, political patronage rather than merit was the basis for appointments. A 1909 judicial investigation of DMF revealed that for Ottawa and regional offices, positions and contracts were consistently awarded on the basis of "patronage lists" drawn up by the local party leaders of the government in power.³² No evidence suggests that, once appointed, fisheries officers received any training with regard to enforcing fisheries regulations.

In the years immediately following the introduction of the 1889 regulations, DMF officials followed an enforcement policy of "moral suasion" rather than direct coercion. E.E. Prince, the long-time Dominion Fisheries Commissioner, claimed that this policy was chosen because the department had no desire to criminalize fishers.³³ While the government was still anxious to avoid interfering with the growth of the commercial fishery, one of the main reasons for the diplomatic approach to enforcement was the lack of resources provided to DMF's officers. As late as 1914, well after many fishers had begun using

³² Gordon Stewart, 'Political Patronage under Macdonald and Laurier.' in A.D. Gilbert et. al., eds., *Reappraisals in Canadian History: Post-Confederation*. Scarborough, ON: Prentice Hall Canada Inc., 1992 129-56. p. 133.

³³ DMF Annual Report, 1902. p. 20.

gasoline-powered boats, many field officers were still using row-boats.

The situation was compounded by short-staffing. Guardians and overseers were responsible for areas that were simply too vast for individuals to monitor. DMF files from the 1890s through the 1910s are replete with letters from fisheries officials and interested parties complaining that significant fishing activities were going un-monitored all over the province as a result of understaffing and a lack of adequate resources.³⁴ In 1910, DMF expanded its administrative structure in B.C. to form three districts (Vancouver Island, the North and the South), and appointed inspectors for each district. Additional guardians and overseers were hired where the department felt pressure to improve enforcement, but field personnel generally remained inadequately resourced.

Fisheries officials often faced intense resistance when they were in a position to check non-compliance. A guardian on the Fraser River noted in 1890 that anyone who attempted to enforce the regulations strictly regarding commercial fishing would have been "run off the river".³⁵ Another officer noted that DMF officers should have bullet-proof cabs on their boats, as they had to deal with Americans who staunchly opposed any restrictions on their fishing.³⁶ The perception of DMF officers as unwarranted or even illegal interlopers persisted among many in the commercial fishery. In 1913, an overseer was assaulted by the owner of a

³⁴ Canada. Department of Fisheries, NAC - UBCL, Record Group 23. (Hereafter NAC, RG23) R. 42, F. 1600 pt. 1. H.M. Sheppard, M.P. to Minister DMF, 7 April 1914. In this letter, the Member of Parliament states that [Guardian] Colvin cannot properly monitor fishing on Cowichan River unless he gets access to a motor-boat.

³⁵ NAC, RG23. R. 44, F. 1815 pt. 1. Guardian Green cited in the Report of Fisheries Detective Galbraith, December 22, 1894.

³⁶ *ibid.*

cold-storage facility in Nanaimo after his gill-nets had been seized because they were located in an area where they were prohibited by DMF. The owner of the nets claimed that he had been advised by a "prominent lawyer" that "he would be quite justified in using clubs if necessary to protect his nets in this area."³⁷

Although there were some general conservation measures that ostensibly affected all commercial fishers and canners equally, (i.e. weekly closed times), many regulatory provisions allocated salmon between fishers using different types of equipment, or from different areas in the province. It was usually these kinds of measures that provoked intense resistance. For instance, the incident mentioned above concerned an owner of gill nets who was upset that he was prohibited from fishing in an area reserved for seine nets. Canners and commercial fishers were well aware that the regulations allocated salmon and perceived, probably quite rightly, that this allocation process was no more neutral than was the process of appointing DMF officers. C.W. Peck, the owner of a cannery in the northern district felt that the decision to lower his boat-rating, thus restricting his fishing effort, was the work of

...some of the little clique of Liberal jobbers who manipulate the patronage of the Liberal government in this province. The purpose of their revenge can only be to punish Mr. Moore and myself (who are the leading spirits of this company) for having supported your candidate in the last provincial election...³⁸

³⁷ NAC, RG23. R. 71, F. 3672. Chief Inspector Cunningham to Superintendent Found, 18 July 1913.

³⁸ BCARS, GR435. B. 64, F. 603. C.W. Peck to R. McBride, Prime Minister [sic], 31 March 1911.

Generally, DMF officials attempted to place emphasis on how allocation measures were essential to protect salmon populations. However, it was difficult to successfully attach conservation concerns to the actions of individuals because most of the activities of commercial fishers and canneries were seen as legitimate until fishing in a particular area became too concentrated and DMF had to make choices about which fishers and canneries would be "cut off" in order to protect salmon populations. In 1894, William Galbraith reported that as a result of inadequate resources and the influence of commercial resistance, fisheries regulations were not being successfully enforced at that time on the Fraser River.³⁹ Although this line of inquiry bears further research, it is not apparent that the success rate for enforcing unpopular regulations on the commercial fishery improved significantly with time and new locations.

III

In the years immediately following the introduction of regulations, DMF senior officials instructed field officers to "avoid unnecessary hardship" in discharging their duties regarding Native fishing.⁴⁰ However, an "enforcement sweep" began in the 1890s in response to complaints and rumours by cannery-owners and settlers about over-fishing and the sale of fish. Enforcement focused on fishing near spawning grounds and fishing with weirs.⁴¹ While DMF officials may have found it difficult to rationalize the allocation of salmon between members

³⁹ NAC, RG23. R. 44, F. 1815. Report of Fisheries Detective Galbraith, 22 December 1894.

⁴⁰ BCARS, GR1751 (RG10). R. B-308, F. 32876. Inspector McNab to Deputy Minister Tilton, 26 September 1891.

⁴¹ Newell, *Tangled Webs*, p. 91.

of the commercial fishery, a discourse of "waste and destruction" quickly emerged for officers to employ when enforcing restrictions on Native fishing. These measures were rationalized as conservation provisions, but the enforcement of the prohibition against the weir effectively allocated salmon from Natives to other fishers.

Cultural difference frequently played a role in how Natives were treated by DMF officers. Euro-Canadian cultural perceptions mixed with Indian Affairs bureaucratic objectives to create and perpetuate an image of the Native fisher as "other", an outsider incompatible with the "modern" fishery. Government discourses constructed "Indian" as "an ecologically and ideologically restrictive" term that identified those with only subsistence needs and who had their subsistence areas defined for them while governments assumed sovereignty.⁴² To assert their authority, many officers adopted the phrases of "pastoral power" relied on by Indian agents and others who claimed to act out of concern for the welfare of Natives.⁴³ There were notable exceptions. For instance, officers with some experience in the fisheries or living in close proximity to Native communities for extended periods of time tended not to make blatant generalizations about

⁴² Arjun Appadurai, 'Putting Hierarchy in its Place.' *Cultural Anthropology* 3, no. 1 (1988) 36-49, p. 39 cited in Daniel Clayton, 'Geographies of the Lower Skeena.' *BC Studies* 94 (Summer 1992) 29-58, p. 52. Clayton sees discourse as comprising material objects, institutions, practices and spatial relations, as well as words and language. (See also Mariana Valverde, *The Age of Light, Soap, and Water: Moral Reform in English Canada, 1885-1925*. Toronto: McClelland and Stewart Inc., 1991, p. 10.) As it is not the focal point of my research, my brief discourse analysis will rely solely on language.

⁴³ Clayton, 'Geographies', pp. 42-44, 52. Clayton notes that Indian Agents exercised a secularized version of the pastoral power exercised by missionaries. This power, through which Natives were discursively conceptualized as objects of compassion, was rooted in Christian traditions which aimed constantly to ensure, sustain and improve the lives of each and everyone. The idea of pastoral power is based on excerpts from Michel Foucault, 'Politics and Reason.' in L. Kritzman, ed. *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-1984*. New York and London, 1988, 57-85.

Native destruction and waste."⁴⁴ Although DMF officials also expressed concern about waste and destruction by non-Natives, these concepts formed the basis for how most DMF officials *understood* Natives. Native waste and destruction became "common sense" to many DMF officials.

In his 1899 report on the "Fluctuations of the Abundance of Fish", E.E. Prince, Dominion Commissioner of Fisheries, commented that the sockeye salmon's four year cycles of scarcity and abundance could be attributed to spawning conditions, but that "overnetting and the slaughter of fish by Indians must have their baneful results".⁴⁵ In making this observation, Prince was not acknowledging that commercial fishing, which occurred downstream of Native fishing, contributed greatly to the impact that Native fishing had on salmon.

Perhaps most troubling to DMF officials was the effect of the most efficient Native fishing practice. In 1895, the DMF Fisheries Inspector, John McNab, referred to weirs as dams. This carried the strong implication that, like the contemporary structures built to divert water, there were few, if any, measures to allow for salmon to reach their spawning grounds. McNab's opinion was that of the "challenges" faced by the spawning salmon (the growth of industry at the mouth of the

⁴⁴ A particularly notable exception was Charles Durham, *Guardian* on the Kitwancool River, a tributary of the upper Skeena River. Durham, who was also a member of the B.C. Fishermen's Union, stated that, based on his observations, he was inclined to believe the Git-win-cool fishers who claimed that their weirs did not endanger salmon spawning runs and that the regulatory prohibition that he was required to enforce had caused unnecessary economic hardship. Durham received no support from Ottawa officials and his suggestions were vigorously opposed by the overseer and the inspector for the Skeena River. See NAC, RG23. R. 23, F. 583 pt.1. *Guardian* C. Durham to Assistant Commissioner R.N. Venning, 3 September 1906; *ibid.* Inspector John Williams to Assistant Commissioner R.N. Venning, 6 October 1906; *ibid.* Overseer Hans Helegeson to Inspector J. Williams, 6 October 1906. See also Meggs, *Salmon*, pp. 79-80.

⁴⁵ DMF Annual Report, 1899. *Report on the Fluctuations of Abundance of Fish by Professor E.E. Prince*. p. li.

Fraser, mining activities upstream) Natives' use of weirs was most destructive.⁴⁶

McNab's perceptions were shared by many field officers. William Galbraith, the overseer responsible for the Cowichan River stated during the 1902 inquiry into the use of weirs on the Cowichan River that weirs were destructive because they obstruct large numbers of fish going up and down rivers.⁴⁷ He maintained this opinion throughout his term as fisheries overseer for the Cowichan River. In 1904, Overseer Hans Helgeson of the Skeena River claimed that

unless drastic measures are adopted by the Department at once to check the illegal fishing by the Indians, now in operation and to ensure the protection of the salmon, we may speedily look for the complete annihilation of this valuable fish and entire depletion of the river and shall have another example of ruination of an extensive industry...⁴⁸

The illegal fishing that Helgeson was concerned about was the use of weirs. He described the physical structure of a "barricade" and concluded that "this made a magnificent fence which not a single fish could get through."⁴⁹

Waste was another significant concern. In 1892, Samuel Wilmot, the chairman of a commission studying the commercial fishery in B.C., noted with some pride that Euro-Canadians had improved on

⁴⁶ NAC, RG23. R. 39, F. 1469, pt. 1. Inspector McNab to Deputy Minister DMF, 1 July 1895.

⁴⁷ NAC, RG23. R. 40, F. 1469 pt.2. [Inquiry Into the Use of Weirs on the Cowichan River ??] Evidence of Mr. Galbraith, 26 August 1902.

⁴⁸ DMF Annual Report, 1905. p. 204.

⁴⁹ Ibid., p. 206.

the "crude and wasteful" methods of Natives.⁵⁰ According to Commissioner Prince, weirs were wasteful because they were left in place after Natives had taken what they needed for food.⁵¹ Reports from fisheries officers on the ground frequently supported this perception. Overseer Galbraith emphasized in a 1907 report that his inspection of a weir revealed salmon and trout in a state of decay, as a result of weirs which he believed were left untended.⁵² The issue of waste was also connected to larger issues about who made proper use of the resource. One DMF memo noted that weirs were often left while men left to spend their cannery earnings "foolishly" in the States.⁵³ In a letter to the Deputy Superintendent General of DIA, the Deputy Minister of DMF stressed that Cowichan fishers had been destroying the salmon of the Cowichan River with their weirs. He felt that they should not complain if they were restricted in their fishing as they were well paid to work in the commercial fishery and were wasting opportunities to cultivate land.⁵⁴ Some years later, similar bids were made by DMF officials to shift the effort of the Babine weir fishers to farming. In northern B.C., the short growing season undermined the prospects for successful farming.

Native peoples' fishing activities may have endangered salmon populations in certain instances. However, DMF officers, even those who most vociferously denounced Native fishing (particularly with weirs), occasionally acknowledged that Native

⁵⁰ DMF Annual Report, 1892. British Columbia Fishery Commission Report, 1891, by Samuel Wilmot. p. v.

⁵¹ NAC, RG23. R. 39, F. 1469 pt.1. Memo from E.E. Prince to file, circa January 1897.

⁵² NAC, RG23. R. 44, F. 1815. Overseer Galbraith to Commissioner E.E. Prince, 1 August 1907.

⁵³ NAC, RG23. R. 39 F. 1469, pt.1. Memo to file from E.E. Prince [?], circa. March 1897.

⁵⁴ NAC, RG23. R. 23, F. 583 pt.1. Deputy Minister DMF to Deputy Superintendent General DIA, 19 June 1897.

weir-users made provisions for the safety of salmon stocks. While it may have been true that weirs stretched across rivers could almost completely obstruct the passage of fish, Inspector Sword stated in 1902 that Natives on the Cowichan were "quite reasonable in the matter and ready to provide means for the fish to get up" past the weirs.⁵⁵ Five years later, in a letter about the destruction caused by weirs, Overseer Galbraith noted that Cowichan fishers had removed one of their weirs.⁵⁶ Galbraith was inadvertently acknowledging the Cowichans' volition in managing their fishing effort, as he had not ordered this removal. Inspector Taylor further noted that "the statements made by Mr. Galbraith as to the great injury done by the Indian weirs on the Cowichan River is very wide of the mark."⁵⁷ In responding to criticisms that DMF was not adequately protecting the Cowichan River, Minister F. Gourdeau of DMF claimed that most of the fish taken by weirs were "spent fish returning to sea after the spawning season."⁵⁸ On the Skeena River system, Overseer Hans Helgeson noted of the Babine in 1904 that they had avoided placing weirs in certain rivers so as to allow for an alternate route for spawners past the weirs.⁵⁹

Despite these acknowledgements, DMF officials continued to castigate weirs as being destructive and wasteful. These concepts were heavily laden with contemporary Euro-Canadian cultural perceptions. In 1897, Inspector McNab asserted that

⁵⁵ NAC, RG23. R. 40, F. 1469 pt.1. Inspector Sword to Commissioner Prince, 1 May 1902.

⁵⁶ NAC, RG23. R. 44, F. 1815 pt.1. Overseer Galbraith to Commissioner E.E. Prince, 1 August 1907.

⁵⁷ Ibid. Inspector Taylor to Assistant Commissioner Venning, 11 September 1907.

⁵⁸ NAC, RG23. R. 24, F. 583 pt.1. Minister F. Gourdeau to C. Drinkwater, Canadian Pacific Railroad, 10 July 1907. The Minister betrayed his unfamiliarity with west coast salmon. They die in the spawning grounds soon after their first spawning run.

⁵⁹ DMF Annual Report, 1905. p. 209.

Natives' uses of weirs obstructed the passage of salmon and had to be stopped "for the Indians' own good."⁶⁰ In the following year, he noted that "Indians will persist in following their traditional methods unless looked after."⁶¹ These types of statements reoccur in the correspondence of other B.C. fisheries officials and reflect Natives' legal status under the Indian Act as minors who required corrective tutelage from Euro-Canadians.⁶²

As they relied on and perpetuated such "common sense" about Native fishing, DMF officials evoked morality issues. For instance, weirs were frequently described as devices that encouraged sloth and all of the problems that come from not working.⁶³ Inspector John Williams of the Northern Region called Babines, who used weirs, "a bombastic, troublesome and lazy lot".⁶⁴

Likely influenced by the moral reform movement that was sweeping the Euro-Canadian urban middle class of Canada at the turn of the century, some DMF officials perceived their role partially as a

⁶⁰ NAC, RG23. R. 39, F. 1469 pt.1. Inspector McNab to Commissioner Prince, 28 January 1897.

⁶¹ NAC, RG23. R. 40, F. 1469 pt.2. Inspector McNab to Deputy Minister DMF, 5 October 1898.

⁶² Noel Dyck argues that Euro-Canadians (particularly governments) have constructed and perpetuated a theory of Native 'inferiority' to rationalize the unilateral imposition of a tutelage relationship with Natives. He defines tutelage as a form of restraint or care exercised by one party over another and as the condition of unequal status and power in the relationship. See Noel Dyck, *What is the 'Indian Problem': Tutelage and Resistance in Canadian Indian Administration*. St. John's Newfoundland: Memorial University, 1991, pp. 24-5.

⁶³ Hans Helgeson, Overseer on the Skeena River, asserted of Git-win-cool fishers that, "[n]aturally the Indians dislike having their barricade removed, as they cannot get out of their heads, the lazy swift way of killing the fish at their dam..." NAC, RG23. R. 23, F. 583 pt.1. H. Helegeson to J. Williams, 6 October 1906.

⁶⁴ NAC, RG23.R. 24, F. 583 pt.1. John Williams, Inspector to R.N. Venning, Assistant Commissioner of Fisheries, 23 July 1907.

response to darkness and sin.⁶⁵ The use of the term "guardian", a word with moral implications, indicates that administrators in Ottawa may have been guided by similar principles. Hans Helgeson provided a condemnatory description of Native fishing in his visit to the Babines on the Skeena tributary. He "could see no other way to remedy the evil" of Natives taking advantage of salmon at a natural waterfall than to blast out the falls and "replenish this noble river." Helgeon asserted that there would be "much evil prevented" if three guardians were appointed to stop local rivers from being "barricaded every year in a shameful manner."⁶⁶ Guardian John Grice of Clayoquot referred to his effort to prevent illegal net fishing on Kennedy Lake as a "crusade" and a "case of desperate diseases requiring desperate remedies".⁶⁷

The discourses that emerge from DMF officers discussing their enforcement activities obscured and reconciled contradictions in DMF conceptualizations of endangerment to salmon stocks. Some salmon hatcheries relied upon weirs to collect salmon. In 1906, Native peoples living along the waters near Seton Lake protested that hundreds of salmon died needlessly in the overcrowded weir operated at the mouth of the lake by a provincial hatchery. Furthermore, the weir deprived these people of the salmon that they required for sustenance.⁶⁸ DMF officials were informed of this situation by DIA officials, but they took no action to have

⁶⁵ Mariana Valverde discusses how, in the effort to raise the "moral tone of the state, civil society, the family, and the individual", social purity activists in 19th and early 20th century English Canada used allegories to discuss perceived evils, ideal behaviour and the means to address the divergence. For instance, medicine served as a paradigm for discussing the moral "health" of society. See Valverde, *Light, Soap and Water*, pp. 17-35.

⁶⁶ DMF Annual Report, 1905. pp. 210-11.

⁶⁷ NAC, RG23. R. 24, F. 583 pt.2. Guardian John Grice to Inspector E.G. Taylor, 10 January 1906.

⁶⁸ NAC, RG23. R. 63, F. 3196 pt.1. Deputy Superintendent General, DIA to Deputy Minister DMF, 29 June 1906.

the use of the weir restricted. After four years, a Euro-Canadian resident in the area initiated a private court action against the manager of the hatchery for destruction of trout by the weir, but DMF officials apparently accepted the assurances of provincial authorities and decided to remain uninvolved.⁶⁹

IV

In the process of enforcing regulatory restrictions on Native fishers, inadequate resources and understaffing plagued DMF officials, just as when they were enforcing regulations against commercial fishers. They also encountered resistance from Natives on the ground and from Euro-Canadians advocating fewer restrictions on Native fishing. Three years after the prohibition on the use of weirs by Natives was introduced, the Deputy Minister of DMF noted that "very few [salmon] streams were unobstructed by Indians fishing for their own use and for sale." Referring to rivers on Vancouver Island, he stated that

the constant fight necessary to prevent such rivers as the Nicila [Nimpkish?], Couighan, Sook, Nanaimo and Courtney from being dammed [with weirs] by Indians, notwithstanding the fact that they flow through well settled districts, shews [sic] the tenacity with which Indians adhere to their old habits.⁷⁰

By 1905, Overseer Williams, located in Prince Rupert, was

⁶⁹ For a provincial response to the allegations, see BCARS, GR435. B. 51, F. 453 Provincial Deputy Commissioner of Fisheries J.P. Babcock memo to file. He states that if the Seton Lake weir was destructive, then it would not have been used. For the DMF response to the court action see NAC, RG23. R. 63, F. 3196 pt. 1. Inspector Sword to Deputy Minister W.A. Found, DMF, 13 September 1910.

⁷⁰ NAC, RG23. R. 39, F. 1469, pt.1. Deputy Minister, DMF to _____ Maxwell, M.P., 14 December 1897.

claiming that the Marine Service vessel in use along the north coast had checked almost all weir use in streams contiguous to bays and inlets.⁷¹ However, Native resistance to the prohibition of weirs on Vancouver Island continued well after 1905. Native fishers around Nitinat Lake were reported to be using weirs in 1913⁷² and Cowichan fishers forced DMF to restrict enforcement against their use of weirs in 1914. In the mainland interior, Carrier peoples were able to extract significant concessions from DMF officials in return for discontinuing the use of weirs.

As Native perspectives were so infrequently recorded or were filtered through the words of missionaries and DIA officials, it is difficult to develop arguments about Natives' motivations in continuing to use weirs in violation of the law. However, Natives did take their concerns to commissions and other forums where their voices were heard. As a result, it is possible to sketch out issues that were raised by Native peoples. Although Native fishing communities varied in many respects, as did the circumstances under which they faced DMF restrictions, there are general concerns that can be traced.

The cultural significance of weirs and the desires of weir users to maintain familiar practices, power structures and sources of wealth and food probably played a role in resistance. However, to acknowledge the cultural significant of certain practices should not lead to casting Native peoples and their cultures as static and undynamic. Some community members, particularly low status people who could rely on the Euro-Canadian economy rather

⁷¹ NAC, RG23. R. 59, F. 3031 pt.1. Overseer Williams to Commissioner Spain, Marine Service, DMF, 6 December 1905.

⁷² BCARS, GR435. B. 64, F. 613. Deputy Commissioner of Fisheries to Provincial Commissioner of Fisheries, 14 June 1913.

than a community-based economy, may not have resisted the prohibition of weirs. Most communities probably went through some process of assessing their options and chose the path that most suited their values.

The allocation of salmon by DMF and the implication which this had for Natives' subsistence was a significant concern. Native fishers were well aware of how the Indian Reserve Commission had acknowledged particular rights and privileges for Native communities and how DMF regulations affected them. During the 1902 Commission on the Salmon Fishing Industry of B.C., Chief Billie of Clayquot Sound's Ahousaht Band stated that cannery steamers seining for salmon had seriously endangered their food supply. He noted that their rights to the Wapook River were made meaningless by cannery overfishing, which forced them to fish the spawning grounds where they were threatened by the fishery officer with punishment for breaking the law. Chief Billie stated that "part of the salmon [should be] reserved for ourselves and our families and then we will mind the law."⁷³ Another member of the band, Chief Keelhla, revealed the band's bottom line.

If the white man takes my fish [then] I am poorly off[.] [I]t is the same as money to me and the white man does not pay me for the fish...it is our principle [sic] food, we ask the chief (Commissioner) to help us, he does not want us to die...⁷⁴

As well as speaking at commissions, Native fishers drew attention

⁷³ BCARS, GR213. Evidence of the 16th session. Speech by Chief Billie of the Ahousaht Tribe, January 1902.

⁷⁴ Ibid. Evidence of the 16th session. Speech by Chief Keelhla of the Ahousaht, January 1902.

to their concerns through Euro-Canadian intermediaries and advocates. One of the main intermediaries was DIA. This department was established in the 1870s to administer the political, economic and social activities of Native peoples.⁷⁵ The basic tenet of DIA, the policy of "assimilation", was pursued in the most economic manner possible.⁷⁶ Hence, DIA officials wanted Native peoples to have access to their traditional means of subsistence (in B.C., this was usually fish) while they were being taught "more civilized" means of self-sufficiency, such as agriculture. DIA officials of all ranks were advocates of Native fishers resisting restrictions on their fishing. However, DIA officials were more interested in making provisions for older Natives to support themselves than in sustaining and developing a "Native" fishery.⁷⁷ Where settlement became well-established and where Natives had some opportunities to farm rather than fish for a living, DIA's advocacy role was reduced to lip-service or disappeared entirely.

Missionaries were regarded by DIA as an important element in the process of assimilation. Many missionaries also strongly supported and advocated Native fishing. This may have been based on empathy, but many missionaries surely would have understood the practical necessity of food in the creation of new Christian communities. It is important to keep the advocacies of these two groups in perspective. Missionaries and DIA officials were not attempting to preserve what may have been perceived as an "Indian

⁷⁵ For an overview of Canada's Indian administration, see John L. Tobias, 'Protection, Civilization, Assimilation: An Outline History of Canada's Indian Policy.' in J.R. Miller, ed., *Sweet Promises: A Reader on Indian-White Relations in Canada*. Toronto: University of Toronto Press, 1991 127-144.

⁷⁶ For an examination of the workings of DIA under a particularly "parsimonious" senior official, see D.J. Hall, 'Clifford Sifton and Canadian Indian Administration, 1896-1905.' *Prairie Forum* 2 no. 2 (1977) 127-51.

⁷⁷ UBCIC, RG10. R. C10160, V. 3908, F. 107297-1 + 2. Memorandum to file from Secretary Maclean, DIA, 7 June 1898.

way of life". Missionary opposition to potlatching ceremonies and subsequent prohibition of these ceremonies under the Indian Act exemplifies this.

It is difficult to judge how Natives shaped the advocacy of missionaries and DIA officials. Certainly, there were many assertions by DMF officials (and some DIA officials) that Natives only became agitated about fishing rights after having ideas planted in their heads by "troublesome" Euro-Canadians. Paul Tennant asserts that this perception was "undoubtedly prompted in good part by the common assumption that Natives were primitive and unsophisticated peoples."⁷⁸ Tennant claims that although missionaries played an important role in the resistance of Native peoples to government land policies, Natives made important decisions on their own.

The degree to which Natives controlled advocacy on their behalf is impossible to measure accurately, but there is evidence to suggest that they did, at times, exert significant influence. Clarence Bolt suggests in his study of the introduction of Christianity to Native communities that, rather than converting because of the powerful presence of a missionary, many Natives adopted Christianity for material advantage (e.g. assistance with land claims). Missionaries who offered no material advantage could be quite effectively rejected.⁷⁹ Some DMF officials attributed missionary support for Native fishing rights to Natives playing Protestant and Catholic missionaries against each

⁷⁸ Paul Tennant. *Aboriginal Peoples and Politics: The Indian Land Question in British Columbia, 1849-1989*. Vancouver: University of British Columbia Press, 1990. p. 87.

⁷⁹ Clarence R. Bolt, 'The Conversion of the Port Simpson Tsimshian: Indian Control or Missionary Manipulation?' *BC Studies* 57 (Spring 1983) 38-56. This article is based on Clarence R. Bolt, *Thomas Crosby and the Tsimshian of Port Simpson, 1874-1897*. MA Thesis, Simon Fraser University, 1981.

other.⁸⁰

In his examination of the career of an Indian agent in Kamloops, Trefor Smith notes that Natives understood how to achieve certain ends with DIA by using bureaucratic discourses of the department.⁸¹ Native petitions to DIA regarding fishing matters demonstrate that they shaped their discourse according to DIA officials' perceptions of themselves and their relationship with Native people. Natives were on the bad end of an unequal relationship with missionaries and Indian agents, but they were not completely without means of influencing these Euro-Canadians.

v

DIA's reactions to DMF activities near Nitinat Lake on Vancouver Island from 1896 to 1898 reveal the nature of DIA's "limited advocacy". During the fall of 1896, Guardian Daykin broke up weirs on the lake operated by two Natives. The Indian Agent located at Port Alberni, Harry Guillod, wrote directly to the Deputy Minister of DMF complaining of the guardian's actions. Agent Guillod challenged Daykin's legal authority to destroy the weirs as they were located on a reserve and noted that these fishers were upset and demanded that they be compensated for DMF's abrogation of the fishing rights that had been acknowledged by the Indian Reserve Commission.⁸²

Subsequently, Daykin reported that his actions were necessary as he felt that the weirs had a negative impact on salmon

⁸⁰ NAC, RG23. R. 40, F. 1469 pt.1. Captain John Walbran to Commissioner E.E. Prince, 31 December 1900.

⁸¹ P. Trefor Smith, "A Very Respectable Man": John Freemont Smith and the Kamloops Agency, 1912-1923.' MA Thesis, Simon Fraser University, 1993, p. 10.

⁸² NAC, RG23. R. 39, F. 1469 pt.1. Indian Agent Guillod to Deputy Minister, DMF, 24 October 1896.

populations.⁸³ Guillod challenged Daykin's assertion that weirs were destructive by noting that these Natives had fished since "time immemorial" without harming salmon stocks and that they were now catching less than they had previously. He reiterated his perception that Daykin had acted in a legally arbitrary manner and that here was no need for strict enforcement in this area, as there was scant Euro-Canadian settlement and, hence, little non-Native demand for the fish.⁸⁴

Although the Deputy Superintendent General of Indian Affairs in Ottawa questioned the suitability of Daykin and his "high-handed methods"⁸⁵, he later acquiesced to the request by the Deputy Minister of Fisheries to inform the Native fishers that it would be in their best interests for the prohibition of weirs to continue to be strictly enforced.⁸⁶ However, Inspector McNab instructed Daykin to take no further action after the Nitinat fishers rebuilt the weirs⁸⁷ and there is no evidence that enforcement was renewed for the following year.

In the spring of 1898, Guardian Daykin reported that Nitinat Natives were causing the "wanton destruction" of salmon by using weirs and wasting escaped salmon by injuring them with spears and gaffs.⁸⁸ The Deputy Minister of DMF requested that DIA officials curtail this "illegal slaughter" to which the Secretary

⁸³ Ibid. Guardian Daykin to Inspector McNab, 9 November 1896.

⁸⁴ NAC, RG23. R. 39, F. 1469 pt.1. Agent Guillod to B.C. Superintendent Vowell, 12 December 1896. Guillod's use of the term "time immemorial" is the only time I have come across it for this time period.

⁸⁵ Ibid. Deputy Superintendent General DIA to Deputy Minister DMF, 3 DEcember 1896.

⁸⁶ Ibid. Deputy Superintendent General DIA to Deputy Minister DMF, 12 March 1897.

⁸⁷ *ibid.*, Guardian Daykin to Inspector McNab, 9 November 1896; *ibid.*, Inspector McNab to Commissioner Prince, 18 November 1896.

⁸⁸ NAC, RG23. R. 40, F. 1469 pt.2. Guardian Daykin to Captain Walbran, 31 May 1898.

of Indian Affairs replied that the local agent would investigate the Native fishers' activities.⁸⁹ Agent Guillod reported after his visit to the area that, although weirs and traps were in use, there was no evidence of the destruction or waste as alleged, but rather that, unlike canneries, these Natives took only what they could eat. Guillod recommended that if increasing Euro-Canadian settlement required that the regulations be strictly enforced, DMF should hire a "properly accredited, unprejudiced" officer for the job.⁹⁰ The DIA Secretary subsequently informed the Deputy Minister of DMF that the "slaughter of fish" reported by Daykins was considerably exaggerated, but that the agent would explain the fisheries regulations to these fishers to avoid future problems.⁹¹

As Daykins did not wish to leave his post at Carmanah to enforce the regulations at Nitinat, it was decided to send the marine vessel of Captain Walbran, who promised to halt illegal activities with a little "diplomacy".⁹² Upon arriving at Chuck-wee-ah River, where he located a weir spanning the width of the river, Walbran had half of it taken down and instructed the Native fishers that he would return to remove the entire thing if it was completely rebuilt. Walbran reiterated Guillod's conclusion that Daykin's report was "somewhat exaggerated" and was satisfied to leave the monitoring of Native fishing activities in the hands of the local missionary.⁹³ Walbran noted that the weir spanned a river that had limited commercial potential, which may partially explain his conciliatory approach

⁸⁹ Ibid. Deputy Minister DMF to Secretary DIA, 30 June 1898.

⁹⁰ NAC, RG23. R. 40, F. 1469 pt.2. Agent Guillod to A.W. Vowell, B.C. Superintendent DIA, 9 September 1898.

⁹¹ Ibid. Secretary DIA to Deputy Minister DMF, 26 September 1898.

⁹² Ibid. Captain Walbran to Deputy Minister DMF, 14 June 1898.

⁹³ Ibid. Captain Walbran to Captain Gaudin, DMF Agent, 7 September 1898.

to dealing with this particular breach of the regulations. However, DMF officials were aware of the role that DIA officials and missionaries played in helping these Natives to "hold their privileges."⁹⁴

⁹⁴ NAC, RG23. R. 39, F. 1469 pt.1. Commissioner E.E. Prince to [?], circa January 1897. Later, Prince claimed that Native were, "...crafty enough, [when] aided by clergy and Indian agents[,] to continue to defy the law [restricting the use of weirs]. ibid. Commissioner E.E. Prince memo to file, 8 February 1897.

VI

Fisheries regulations in B.C. were developed and implemented by DMF officials who were concerned with fostering the development of the commercial fishery and shaped by Euro-Canadian cultural perceptions of Native peoples. Regulations, ostensibly passed to conserve salmon stocks, contained provisions which restricted, and, in practice, prohibited Natives' most efficient fishing technique. Members of the Euro-Canadian commercial fishery, however, were allowed to use increasingly advanced tools of capture. These regulations were enforced by officials who rationalized restrictions on Native fishers as necessary steps to prevent destruction and waste of the salmon. The "common sense" of Native destruction and waste obscured how regulations allocated salmon from Natives to Euro-Canadians, particularly those who dominated the commercial fishery. However, these officers faced many barriers to their enforcement efforts, including the resistance of Native fishers, sometimes aided by missionaries and DIA officials. The extent to which this resistance shaped the enforcement of fisheries regulations, particularly the "prohibition" of weirs, will be explored in the following chapters.

CHAPTER 3**Resistance on the Cowichan River****I**

During the first twenty years of the enforcement of fisheries regulations, perhaps the most prolonged resistance faced by DMF officials was from Cowichan fishers on the Cowichan River. Chum salmon were the most plentiful salmon on the east coast of Vancouver Island and formed the staple of the Cowichan diet. The Cowichan, and neighbouring Native peoples, relied upon the weirs in the river that were owned and maintained by high-status Cowichan families.

As sockeye, initially the primary target species of commercial fishers, did not spawn in this river, cannery-owners did not place much pressure upon DMF to enforce the restrictions against weirs. However, non-natives did fish at the mouth of the river and sold their catch in local fresh-markets. As these "commercial" fishers caught the chum, it is probable that Natives increased their catch of other fish, such as steelhead trout, which was the target species of the nascent Euro-Canadian sport fishery. For the first fifteen years or so, DMF officials, with pressure from local political leaders with an interest in the sport fishery, attempted to prohibit the use of weirs. By 1905, markets had developed for canned chum salmon and cannery fishers were fishing Cowichan Bay. In the years that followed, DMF officials were pressured by federal politicians, likely at the behest of cannery-owners, to put an end to the use of weirs on the Cowichan River.

Cowichan fishers challenged DMF "common sense" about Native destruction and waste, eventually enjoying success in the courtroom. They also attempted to address the "commercial"

competition for chum salmon, but ultimately maintained their participation in the fishery through an intimidating presence "on the ground" that convinced DMF officials to negotiate an agreement under which they would regulate, rather than prohibit the Cowichan's use of weirs.

II

The enforcement of the prohibition of weirs began in June 1895 with the prosecution of a Cowichan fisher for maintaining a weir and obstructing fish. B.C. Fisheries Inspector John McNab claimed that regardless of intent or purpose, the effect of weirs was the total obstruction of spawning fish.¹ Indian Agent W.H. Lomas, who was also the Fisheries Guardian for the Cowichan area, stood up in court on behalf of the Cowichan defendant. Lomas challenged the logic and legality of DMF's position and appealed to the magistrate's sense of justice. Firstly, Lomas stated that weirs could not possibly prevent spawners from reaching their grounds as the Cowichan had been using multiple weirs in the Cowichan River and on adjoining streams without any evident damage to fish stocks. Secondly, he noted that fishing rights had been promised by the Indian Reserve Commission and the right to fish and obtain food had never been surrendered in treaty, while, in fact, fishing rights were virtually acknowledged in the Provincial Game Protection Act. Thirdly, Lomas informed the court that the regulations against spears, nets and weirs prevented the Cowichans from having fish, despite plentifulness. He noted that this was a serious hardship, particularly for older people. Lomas concluded that if prevented from using weirs, the Cowichan could be expected to take measures to prevent fishing by

¹ NAC, RG23. R. 39, F. 1469, pt. 1. Inspector McNab to Deputy Minister DMF, 1 July 1895.

Euro-Canadian anglers, their most important competitors for fish on the River.²

There is good reason to believe that these arguments found their genesis with the Cowichans themselves. Seven years previously, Lomas, in his capacity as Indian Agent, received a Cowichan Band Council Resolution protesting the granting of commercial seining and gill-netting licenses in Cowichan Bay. He suggested that if

this favour should be granted, it should be done on condition that certain Indians give up their right to weir fishing on the Cowichan River. I mention certain Indians as there are only two or three families in each Band who claim this right.³

In years that followed, Lomas had changed his mind about the use of weirs. The arguments of Cowichan fishers may have played an important role in this change.

It is also quite likely that the Cowichan would have supplied the basis for the legalistic parts of the defense. In correspondence to the Deputy Minister of Marine and Fisheries, Deputy Superintendent General Reed noted that the prohibition of weirs was "in the Indians' opinion a violation of treaty stipulations".⁴ This was actually a misunderstanding, on Reed's part, of the Cowichans' position and of the argument made in

² *ibid.* Agent Lomas to Superintendent Vowell, 10 June 1895.

³ Canada. Department of Indian Affairs Files, Black Series. NAC, RG10. (Hereafter NAC, RG10) V. 3801, F. 49,287. Microfilm C-10140. Cowichan Band Council Resolution, 4 June 1888; Agent Lomas to Superintendent Vowell, No Date. Cited in Brendan O'Donnell, 'Indian and Non-Native Use of the Cowichan and Koksilah Rivers: An Historical Perspective.' Department of Fisheries and Oceans, No Date.

⁴ NAC, RG23. R. 23, F. 583. Hayter Reed to Deputy Minister DMF, 27 June 1895.

court. Unlike some neighbouring bands, the Cowichan had never been offered "treaty" by James Douglas, Governor of the Colony of Vancouver Island. Reed was probably referring to the territorial agreements reached with neighbouring bands that stated that those Natives would be "at liberty to hunt over the unoccupied lands, and to carry on [their] fisheries as formerly."⁵ Therefore, while they had not been guaranteed treaty fishing rights, neither had their rights been extinguished. As early as 1877, Cowichans demonstrated a solid understanding of the principles of treaties and Euro-Canadian obligations. At that time, Indian Reserve Commissioner Sproat noted that the Cowichans complained that they had not received payment for the use of their lands, and that there were more lands taken from them than Douglas had originally indicated.⁶

During the course of the trial, letters flew fast and furious between DIA and DMF superiors and within the ranks of both departments. DIA officials explored the possibility of securing immunity from prosecution for food fishing, but were denied this by the Department of Justice. Inspector McNab rebuffed DIA requests to stop the proceedings, claiming that the points brought up in court were irrelevant. These dead-ends led Superintendent Vowell to claim that he was helpless to assist the Cowichan with regards to the enforcement of fisheries regulations.⁷ Agent Lomas warned his superiors that the Cowichan were angry that they were required under regulations to obtain the permission of the inspector in order to fish, while

⁵ British Columbia. *Papers Connected With The Indian Land Question, 1850-1875*. Reprinted in 1987. Queen's Printer, 1875. Cited in Newell, *Tangled Webs*, p. 48.

⁶ NAC, RG10. V. 3662, F. 9756 pt.1. "Memorandum on Cowichan Reserve"; Commissioner Sproat to Superintendent General DIA, February, 1878. Cited in O'Donnell, 'Indian and Non-Native Use of the Cowichan', p. 34.

⁷ NAC, RG23. R. 39, F. 1469 pt.1. Superintendent Vowell to Superintendent General DIA (?), 18 June 1895.

"white anglers" could take fish freely. Lomas noted with great concern that the Cowichan had asked him whether the government was willing to support them.⁸

The Cowichans' approach to DIA on this issue reflected a practical concern about how to secure a means of subsistence, but also an assertion of "ownership" which, if extinguished, would have to be compensated. Natives throughout B.C. frequently couched their concerns about the fisheries in this kind of language, no doubt recognizing that it encouraged the parsimonious department's support and advocacy.

Shortly after their communication with Lomas, the Cowichans assembled to discuss the situation. The final resolutions were submitted by a "Geolbs VanGoethem" to Superintendent Vowell, Agent Lomas, the local missionary and to an attorney whom the Cowichans had resolved to hire.⁹ They demonstrated how the Cowichan perceived the enforcement of regulations, as well as various strategies for responding to them. The Cowichan began with the blanket assertion that

We always had the right to take any fish, by any means, at any time, in any waters of British Columbia, and we want to preserve that right in its entirety.

This statement was a direct challenge to the authority which DMF officials claimed over Native fishers by virtue of the fishery regulations. The resolutions stated that these regulations were unjust because they deprived the Cowichan of their "natural

⁸ *ibid.* Agent Lomas to Superintendent Vowell, 17 June 1895.

⁹ NAC, RG23. R. 23, F. 583 pt. 1. Geolbs VanGoethem to Superintendent Vowell, 23 June 1895.

right" to the ownership of the fish and because it was assumed that Natives destroyed the fish. The Cowichan asserted,

Our history proves that we do not destroy the fish. On the other hand it is evident that the white population does destroy it. The protective regulations then should embrace the white people...

In the resolutions, the Cowichans challenged the discourse of Native wastefulness, stating that "we make use of all the fish we take", unlike Euro-Canadians who, on the Cowichan River at least, fish mainly for pleasure, wasting many of the smaller fish caught. The Cowichan also challenged the image of weirs as dams and barriers, noting that weirs were built to stop only some fish. Finally, the Cowichan stated that they would continue to defend their rights even at the cost of imprisonment, noting the irony that the government which had promised to protect them after taking their lands, "favoured the white people by so far that now they are allowed to take the food from our mouths." The document was carefully tailored, however, to avoid antagonizing DIA officials and missionaries, potential advocates for Native fishers. The Cowichan stated that "we have always been law abiding" and gave no indication that they wished this to change. In addition, they "heartily" thanked DIA officials and missionaries for their past support and advocacy of "our original rights".

The issues raised in this document and the approach which was taken in raising them reveal important facets of the Cowichans' strategies for resisting Euro-Canadians and, hence, exercising power. The Cowichan were "creating truths" about their fishing activities and stating claims to their position in the fisheries.

These truths were used to challenge and reveal inaccuracies in the common sense about weirs.

Natives also created truths (or "knowledges") about their experience under the regulatory regime.¹⁰ This should not be misconstrued to mean that Natives did not suffer as a result of restricted access to fish, or that they created their own hardship. Instead, it should be understood that Natives had a choice in articulating their experiences in ways which were most appropriate for a given context. It is conceivable that the Cowichan would have expressed their experience of restricted fishing in a different manner had they been communicating with other Natives or with a missionary. This would have involved emphasizing aspects of the experience that resonated with the audience and using metaphors with which the audience could have related.¹¹ For their Euro-Canadian audience, as well as for Natives themselves, both of these objectives could be accomplished with the statement "to take the food from our

¹⁰ This discussion relies on some of the methods used in poststructuralism theory to analyze constructions of meaning and relationships of power. The general objective of this kind of analysis is to call universal, unitary categories into question and historicize concepts otherwise treated as "natural." Language (texts, utterances, cultural practices) is examined to understand how meanings change; discourse (organizational, institutional and verbal structures of statements, terms, categories and beliefs) is examined to discover how ideas come to be perceived as truths outside human intervention and how challenges to these assumptions are marginalized or silenced; the identification and definition process is examined to discover where meaning is made through implicit or explicit contrast. Binary oppositions (e.g. Native fishing and Euro-Canadian fishing) are examined for the repression of differences within entities and the ways in which differences between entities are made to work. Joan W. Scott, 'Deconstructing Equality-Versus-Difference: Or, the Uses of Poststructural Theory for Feminism.' *Feminist Studies* 14 no. 1 (Spring 1988) 33-50. Many feminist theorists have relied on poststructuralism to analyze the workings of patriarchy, but this approach can also reveal how power was exercised by "traditionally" marginalized groups. Michel Foucault, the pioneer of poststructuralism, argued that, although power is not democratically distributed, it is employed, exercised and circulated through a net-like organization wherein no individual can appropriate power as a commodity. Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings, 1972-1977*. Colin Gordon, ed. New York: Pantheon Books, 1980, pp. 98-99.

¹¹ For a discussion of how the persuasiveness of arguments can be judged, see Loo, 'Dan Cranmer's Potlatch', pp. 131-2.

mouth". Any law which would deprive someone of their only means of subsistence would have offended the sense of justice held by most Euro-Canadians, particularly if Natives were perceived as dependent upon their protection. This phrase was also frequently adapted by various Native communities to create analogies meaningful within Euro-Canadian knowledges. A Coquitlam chief, for instance, spoke of actions which eroded his people's rights as being "like taking the food out of our cupboard."¹²

The attorney hired by the Cowichan based his defence on three points, all of which had some basis in the assertions made by the Cowichans. Firstly, the Cowichan had, by "treaty" or agreement with the Indian Reserve Commission, a right to carry on their fisheries as formerly; and secondly, the weirs concerned did not prevent fish from ascending rivers.¹³ Ultimately, the case was ruled out of court on a technicality which was raised by Agent Lomas. He noted that the act had been committed during the tenure of previous regulations, under which, weirs were not restricted.¹⁴

As a result of this ruling, it is difficult to assess the effectiveness of the Cowichans' arguments on the magistrate and on other Euro-Canadians. Lomas felt that by the end of the trial the Cowichans' efforts to protect "their right to fish for food as formerly" had the sympathy and support of "the whole of the white population."¹⁵ As we shall see shortly, the Cowichans did have significant settler support and these local residents did

¹² NAC, RG23. R. 52, F. 2780. Chief Johnnie, Coquitlam Band to Inspector of Fisheries, 19 March 1899.

¹³ NAC, RG23, R. 23, F. 583. Agent Lomas to Superintendent Vowell, 27 June 1895.

¹⁴ NAC, RG23. R. 39, F. 1469 pt.1. Agent Lomas to Superintendent Vowell, 19 June 1895.

¹⁵ NAC, RG23. R. 23, F. 583 pt.1. Agent Lomas to Superintendent Vowell.

seem to have been swayed by the Cowichan's arguments. However, Euro-Canadians seemed to have been concerned about Cowichan reactions to fishing restrictions. In addition, the Cowichans' point about requiring government assistance in lieu of weirs had some resonance for Euro-Canadians who did not wish to support "starving Indians."¹⁶

Understandably, DIA officials felt that the trial decision held little protection for weir users. Indeed, the Cowichans' lawyer stated, "I do not think there is any defence to such a prosecution under the existing state of the law".¹⁷ Hence, DIA officials began pressuring DMF to relax its enforcement of food fishing regulations. Senior DIA officials discussed regulations and Natives' potential responses to enforcement in terms of "truth" and consequences. DMF was advised that

deprivation of a considerable section of the Indian population of one of their chief resources for obtaining their food supply is calculated to inflict much hardship on them, and to lead to more or less serious complications.¹⁸

Deputy Superintendent General Reed followed this with another letter, stating,

The abrogation of their former fishing privileges is causing intense dissatisfaction, and the excitement consequent upon the action of your Department in British Columbia is really

¹⁶ Both of these points were expressed by settlers and DMF officials at a 1902 Commission of Inquiry into the use of weirs on the Cowichan River. See NAC, RG23, R. 40, F. 1469 pt.2.

¹⁷ NAC, RG23. R. 23, F. 583, pt. 1. Perry Mills to Federal Minister of Justice, 2 July 1895.

¹⁸ *ibid.* Deputy Superintendent General Reed to Deputy Minister DMF, 27 June 1895.

of a serious nature. The older Indians regard it as an unwarranted interference with rights which they were accustomed to exercise all their lives, and they in consequence are arousing a spirit of unrest in the bands.¹⁹

This approach seems to have been temporarily successful. Overseer James Maitland-Dougall, the DMF officer responsible for issuing the court summons, was set to issue another, but did not when informed that his superiors were expected to make arrangements with DIA regarding the fishery.²⁰ In the meantime, the Cowichans petitioned DIA once again, this time in conjunction with Euro-Canadian residents. The petition reiterated that the Cowichan held rights and that they did not destroy the fish. This petition, however, placed particular emphasis on the Cowichans' reliance on fishing and stated that, if their rights continued to be ignored, "the Indians will become a burden to the Dominion Government", just as had those in the Northwest Territories.²¹ Subsequently, DIA further pressed DMF for relaxation of the regulations. Senior officials noted the "agitation and trouble amongst all classes of people" caused by the restrictions on their fishing.²²

This resistance activity appears to have staved off DMF enforcement of the weir prohibition on the Cowichan River for the next year or so. In a memo some years later, DMF Commissioner of Fisheries stated that in the fall of 1897, fisheries officers on the Cowichan River "energetically prevented the erection of these

¹⁹ *ibid.* Deputy Superintendent General Reed to Deputy Minister DMF, 9 July 1895.

²⁰ *ibid.* Overseer Maitland-Dougall to Inspector McNab, 7 March 1898.

²¹ *ibid.* 285 Petitioners to Superintendent General DIA, Circa. January 1896.

²² *ibid.* Superintendent General DIA to Minister DMF, 28 January 1896.

fishing barriers".²³ As one of those involved in that 1897 enforcement action, Overseer Maitland-Douglas noted that the Cowichans had removed the wicker-work, but had left the poles in the river.²⁴ He does not mention having seized or destroyed the wicker-work. This would have allowed the Cowichan to return at any time to slip the weirs back into place. The Cowichan also took a more proactive approach in their opposition to regulations enforcement. With the aid of a Louis Gabouri as scribe, they contacted the Members of Parliament for Vancouver and Nanaimo, hoping to find in each "a champion of [the Cowichans'] rights and privileges". The Cowichans complained of the injustice and unlawfulness of the regulations and touched on their major issues of protest, noting that

the Indian Department... would stand up for our rights, but unfortunately, it does not know our true conditions and our interests, since it is too far away from us to be well acquainted with our needs.²⁵

These M.P.s asked that attention be given to the Cowichans' protests, but it is not clear whether they pursued the issue further. It is notable, however that there were no prosecutions that year.

Despite the fact that DIA was not taking significant steps to pressure DMF into changing the regulations or enforcement policy, DIA officials on the ground level were visibly upset with DMF's prohibition of weirs. In a letter to his DIA supervisor during

²³ NAC, RG23. R. 40, F. 1469 pt. 2. Commissioner E.E. Prince to Minister, DMF, 11 April 1902.

²⁴ NAC, RG23. R. 23, F. 583 pt. 1. Overseer Maitland-Dougall to Inspector McNab, 7 March 1898.

²⁵ *ibid.* Louis Gabouri to W.W. McInnis, M.P. and to Rev. Maxwell, M.P., both letters are dated 22 September 1897.

the course of the 1895 trial, Agent Lomas remarked that Inspector McNab was "ignorant of the subject of weirs" because he believed them to be totally obstructive.²⁶ Following DMF's enforcement activities in 1897, Lomas commented that,

To speak of these salmon weirs as the "most destructive barriers" only brings the Fishery Department into ridicule as all know that when there were ten times as many Indians, living almost entirely on the fish, the rivers were full of these weirs and still the salmon are as plentiful as ever.²⁷

Lomas had been persuaded by the Cowichans' arguments and believed that most of the population had as well. One can only imagine how this affected his role as fisheries guardian on the Cowichan, as DMF records carry no evidence of his enforcement activities after 1895. In 1899, Inspector McNab terminated Lomas's employment as guardian, stating that his objections to the regulations made him unsuitable for the position.²⁸

Early in 1898, "The Committee of the Vancouver Island Fish and Game Protection Society" contacted the Minister of DMF to complain that the regulatory restriction of weirs was not being enforced properly.²⁹ This group had been pressuring DMF since

²⁶ NAC, RG23. R. 39, F. 1469 pt. 1. Agent Lomas to Superintendent Vowell, 19 June 1895.

²⁷ NAC, RG10. V. 3908, F. 107, 297-1. Agent Lomas to Superintendent Vowell, 9 October 1897.

²⁸ NAC, RG23. R. 42, F. 1600 pt.1. Inspector McNab to Deputy Minister DMF, 11 July 1899.

²⁹ Fishing lodges were built along the river during the 1890s and the area acquired an international reputation as a "sportsman's paradise", attracting "gentlemen emigrants" from Britain and tourists from several countries. Many politically influential settlers had an interest in developing the sport fishery. See Patrick A. Dunae, *Gentlemen Emigrants: From the British Public Schools to the Canadian Frontier*. Vancouver and Toronto: Douglas & McIntyre, 1981, pp.109-10; Compiled By the Pioneer Researchers, *Memories Never Lost: Stories of the Pioneer*

1895 for better efforts to prohibit weirs. The secretary, Edward Musgrave, asserted that weirs were destructive and that they were unnecessary for the Cowichans' subsistence.³⁰ Soon after Musgrave had contacted the Minister, Inspector McNab noted that the Cowichans, with the support of Agent Lomas, were refusing right of passage over their reserves to Euro-Canadian anglers.³¹ Apparently, senior DMF officials felt that they, once again, had justifiable reasons to take action. Commissioner Prince informed McNab,

you are authorized to employ such aid and take such measures to do away with the abuses in question as you judge to be necessary.³²

On the heels of Prince's authorization, a summons was issued, requiring a Cowichan named Jim Quillshemet to answer to the charge of constructing a fish-weir. However, Maitland-Dougall, the officer responsible for monitoring the Cowichan River, was not happy with what he perceived to be attacks on his competence and dedication as a fisheries officer by Mr. Musgrave. Maitland-Dougall stated that it was the opinion of all the anglers with whom he had spoken, as well as the public in general, that weirs were harmless to the fish (both salmon and the sport fishers' trout) and that they should not be prohibited. It was his own opinion that fishing was always best above the weirs. Finally, Maitland-Dougall also disagreed with Musgrave's claim that the Cowichan were selling weir-caught fish in large amounts. These

Women of the Cowichan Valley and a Brief History of the Valley 1850-1920. Altona, Manitoba: D.W. Friesen & Sons, 1986, pp. 144, 238.

³⁰ NAC, RG23. R. 23, F. 583 pt.1. Edward Musgrave to Minister of DMF, 11 April 1898.

³¹ NAC, RG23. R. 23, F. 583, pt. 1. Inspector McNab to Deputy Minister DMF, 10 March 1898.

³² *ibid.* Commissioner Prince to Inspector McNab, 19 March 1898.

statements reflected Maitland-Dougall's concern about how Musgrave's letter appeared to "reflect on the way I [Maitland-Dougall] have carried out my duties",³³ but they also reflected the influence of Cowichan and DIA arguments.

The correspondence between the departments during the trial indicates that the arguments raised resembled those of the previous trial, although Maitland-Dougall's position on the destructiveness of weirs may have undermined DMF's fervour. This weakening seems to have led to more emphasis being placed by DMF on the Cowichans' "large earnings" from canneries and hop-fields. If weirs could not be seen as destructive for stocks, then they would be seen as morally destructive (ie., greedy and unnecessary). DIA vehemently denied these claims, but were unable to convince DMF to back away from court action. Ultimately the magistrate's decision solved this problem. He dismissed the case on the ground that the weir did not prevent fish from ascending the river.³⁴ This indicated that DMF did not have a monopoly on the construction of "truth" about weirs and the Cowichans' arguments were having an impact upon the enforcement of regulations. Following this decision, DMF abstained from weir prosecutions for the balance of the time period concerned in this study and took a lacklustre approach to prohibiting weirs until 1912.

III

From 1899 to 1905, there was very little recorded activity regarding the enforcement of restrictions on weirs. After what must have been a demoralizing defeat in court, DMF set about

³³ *ibid.* Overseer Maitland-Dougall to Inspector McNab, 7 March 1898.

³⁴ *ibid.* Secretary, DIA to Deputy Minister, DMF, Circa. May 10, 1898.

analyzing its position regarding the destructiveness of weirs. Overseer Galbraith, an officer stationed in Victoria who had the responsibility for weekly patrols of the Cowichan River, claimed that weirs prevented spawned fish from leaving the river. In his opinion, the weirs were destructive and a failure to enforce the law would endanger fish in the river. Galbraith was concerned about the maintenance of the sport fishery, but felt that by preserving fish, including salmon, prohibition of weirs would also benefit the Cowichan.³⁵ W.W. Stumbles, a senior Ottawa official who toured the Cowichan in 1899, sided with Maitland-Dougall, stating that in his opinion, Galbraith "looks at the matter from one standpoint only, namely making the [Cowichan] River a sportsman's preserve."³⁶

In his tour report, Stumbles claimed that weirs could only be obstructive if they were never removed. Weir construction, he noted, was such that wickerwork could easily be moved to allow for the passage of fish and he suggested that weirs should be opened at regulated intervals. Stumbles felt that if the weir prohibition was enforced, "the cure would be worse than the disease." He had good reason to believe that Cowichans would retaliate by refusing to allow anglers right of way across the reserve along the banks of the river, and was notified by Agent Lomas that DIA would support the Cowichans' action. Stumbles also worried about antagonizing the Cowichan by stringently enforcing the prohibition on selling without a commercial licence. This undermined the very basis of the distinction which the regulations made between Natives' and Euro-Canadians'

³⁵ NAC, RG23. R. 23, F. 583 pt.1. Memo. 'Statement of Mr. Galbraith, Fishery Overseer in regard to weirs and fishing on Cowichan River', 14 August 1899.

³⁶ NAC, RG23. R. 23, F. 583, pt1. W.W. Stumbles to Commissioner Prince, Circa. 21 August 1899.

interests in the fisheries. No official response is on record from Commissioner Prince, but, he did write "NO ACTION" on the report along with comments indicating that he favoured Galbraith's position.

The period between 1899 and 1905 also saw intense jousting on the River for control over fish. Sports fishers, who were concerned with access to trout (steelhead), believed that the Cowichan were intercepting these fish, as well as chum, with weirs and selling them in local markets. Some years later, DMF officers would confirm this belief. Although the Cowichans were undoubtedly eager to take advantage of the local market for trout, they probably also relied more on trout for personal consumption than they had before because of the netting in Cowichan Bay. Non-Native fishers using seines across the mouth of the Cowichan River were taking salmon and trout indiscriminately and selling them in the local markets. Although the Cowichans and sports fishers were in conflict, they had in common a desire to end netting in the Bay. As early as 1888, the Cowichans had protested against the use of seines in Cowichan Bay by commercial fishers. This protest asserted that commercial fishers were using their nets during low tides, giving fish little chance to enter the river.³⁷ Ten years later similar complaints were being made.³⁸

The Cowichans were also upset that local Euro-Canadians were selling their catch in the city markets of Victoria and Nanaimo. In 1895, the Superintendent General of DIA noted that,

³⁷ NAC, RG10. V. 3801, F. 49,287. Microfilm C-10140. Cowichan Band Council Resolution, 4 June 1888. Cited in O'Donnell, 'Indian and Non-Native Use of the Cowichan and Koksilah Rivers', p. 46.

³⁸ NAC, RG23. R. 23, F. 583, pt. 1. Inspector McNab to Deputy Minister DMF, 8 November 1898.

Greek and Italian fishermen who compete in the market, and it is alleged, are not required to even ask for licenses, threaten the Indians with the Regulations. It is easy to understand how such discrimination against them would gall and exasperate any particular class in the community, and how much more intensely it must be felt by the Indians [who, despite traditional rights and privileges, are required to obtain permission to fish]...³⁹

He warned DMF's minister that continued discrimination would cause the Cowichans to become a costly charge on the government and undermine peace and settlement by "endangering the confidence in and friendly sentiment towards government and settlers..." Five years later, the Cowichan were still protesting the actions of these un-licenses fishers. However, the Cowichans had also been busy selling fish, and, hence, breaking the bonds of "Indian food fishing". Cowichan sales in Victoria's markets were noted as early as 1895 by the secretary of the Anglers' Committee. By 1912, the Cowichans had apparently set up a sales network that extended beyond their locality to the bigger market of Vancouver.⁴⁰

The Cowichan also challenged restrictions imposed on their fishing activities by the category of "food fishing". In 1898, the Cowichans faced off against Inspector McNab and the cannery-owners involved in Cowichan Bay fishing. To avert "serious trouble", cannery owners agreed to supply the Cowichan with seine nets for the 1899 season as compensation for commercial fishing

³⁹ *ibid.* Superintendent General DIA to Minister DMF, 11 July 1895.

⁴⁰ This is evident from the report that in January of 1912, 460 lbs. of Steelhead bound for Vancouver were seized. NAC, RG23. R. 24, F. 583, pt.2. Inspector Taylor to Superintendent Found DMF, 11 June 1912. Apparently, Cowichan fishers were also supplying markets in Victoria. See NAC, RG23. R. 5, F. 6 pt.7. W. Galbraith, Overseer to Superintendent of Fisheries, 3 June 1912.

in the Bay.⁴¹ Unfortunately for the Cowichans, the canneries did not subsequently supply the seines. This led the Cowichans to pursue another avenue. Chief Joe Komiaken contacted W.W. Stumbles, undoubtedly aware that he was sympathetic to Cowichan fishers, and asked Stumbles for permission to use a purse seine in the Bay. This fishing technique, which was banned from the waters of B.C., would have effectively moved Cowichan fishers into a position to intercept salmon before Euro-Canadians fishing in Cowichan Bay. The following year, C.B. Sword, the new B.C. Fisheries Inspector, endorsed this request. He felt that the purse seine was necessary for the Cowichans to catch chum salmon, as the failure of the Fraser River sockeye runs that season "has pressed very heavily on the Indian."⁴²

This request was refused by senior officials along with another request from Cowichans that commercial fishing in the Bay be stopped. The Cowichans' efforts in 1899 and 1900, however, were not totally in vain. In the fall of 1900, DMF refused a request by Euro-Canadian commercial fishers to extend the fishing boundary in Cowichan Bay four hundred yards closer to the mouth of the River. A senior official noted that,

in view of the seriously depleted state of the waters of Cowichan River, and the complaints of the resident Indian communities that their supplies of fish food are imperilled by the excessive netting in the estuary, the extension petitioned for cannot be favourably entertained.⁴³

⁴¹ NAC, RG23. R. 23, F. 583, pt.1. Geolbs VanGoethem to W.W. Stumbles, 28 October 1899.

⁴² *ibid.* Inspector Sword to Commissioner Prince, 23 August 1900. Note: Cowichan Natives travelled to the Fraser River to work for canneries during the sockeye runs on that river.

⁴³ *ibid.* A/Deputy Minister DMF to William Lumley et al, 2 October 1900.

After having been denied in their attempts to "join" those fishing commercially, the Cowichans again focused their energies on limiting commercial fishing by Euro-Canadians in the Bay. This struggle, in conjunction with DMF's internal confusion on weir policy seems to have diverted some attention from restrictions on weirs for a while. During the 1902 Commission on the Salmon Industry in B.C. the Indian Agent, the local missionary and members of the Cowichan Band attempted to keep attention focused on seining in the Bay. Cowichan testimonies contained attempts to appeal to Euro-Canadians' sense of justice and even pity. One Cowichan stated that as a result of seining, "there are no salmon on the frying sticks and the children have not enough to eat."⁴⁴ Cowichans testifying invariably included comments about the Cowichan Bay seines in their answers to questions posed by the commissioners. When Overseer Galbraith mentioned that the elimination of weirs be a condition of removing the seines, Cowichan Chief Sweehelt stated, "I have come to ask a favour and not give it."⁴⁵

Even those Cowichans employed as commercial fishers opposed commercial fishing in Cowichan Bay. In his testimony to the Commission, John Elliot, a Cowichan member of the B.C. Fishermen's Union, stated that he wanted the seines taken out of the Bay, "because if the Indians cannot get the dog-salmon, they cannot live." Elliot felt that as a result of Cowichan efforts to get their crops in and, thus, have food for the fall, they could not begin fishing soon enough to please cannery-owners. As a result, they were alienated from opportunities in the commercial sector, particularly after American and Japanese

⁴⁴ NAC, RG23. R. 53, F. 2918, Canada. 'Commission on the Salmon Fishing Industry in British Columbia, 1902.' 16th Session, Evidence of Tsilpanult, 5 February 1902, p. 11.

⁴⁵ *ibid.* Evidence of Chief Sweehelt, 5 February 1902, p. 9.

fishers became more numerous.⁴⁶ Within two months, Cowichan union members had put sufficient pressure on Union officials to communicate with DMF on their behalf. Grand Secretary Treasurer Charles Durham stated in a letter to the Deputy Minister DMF that the Cowichans principally depended on "fishing in their locality for a living." Regarding commercial fishers in Cowichan Bay, he stated that,

these men (also members of our union by the way) residing in another part of the province come there to Cowichan annually armed with their licenses and by their fishing in the bay they utterly prevent the fish from going up the Cowichan River and in that manner they make things rather unpleasant for the residents...⁴⁷

By the time the Commission had completed its work in the Cowichan area, even DMF Commissioner Prince was of the opinion that seining should be prevented, but he linked it to the restriction (although not the prohibition) of weirs.⁴⁸ By 1904, DMF had encountered sufficient opposition to have seine fishing in Cowichan Bay totally prohibited. However, that year DMF lifted the ban on purse seining for commercial fishers. By 1907, canneries were being granted exclusive leases to use this highly efficient technique in Cowichan Bay, as well as other areas.⁴⁹ The final mark of the Cowichan's commercial value was the establishment of a hatchery at Cowichan Lake in 1910.⁵⁰

⁴⁶ *ibid.* Evidence of John Elliot, 5 February 1902, pp. 9-10.

⁴⁷ NAC, RG23. R. 23, F. 583, pt. 1. Charles Durham to Deputy Minister DMF, 7 April 1902.

⁴⁸ *ibid.* Commissioner Prince to Minister, DMF, 15 April 1902.

⁴⁹ Meggs, *Salmon*, p. 58.

⁵⁰ Elizabeth B. Norcross, *The Warm Land*. Duncan, B.C.: Elizabeth B. Norcross, 1959, p. 61.

While Cowichan fishers had drawn attention to the impacts of commercial fishing, those who wished to claim the Cowichan River for sport fishers strove to maintain DMF's attention on the issue of weirs. Soon after the 1902 Commission had wrapped up its gathering of evidence and testimonies from the Cowichan area, the Mayor of Victoria, who was also on the tourist board for Victoria and the region encompassing the Cowichan River, took up the cause which Mr. Musgrave's anglers' committee had supported. As well as opposing seines in Cowichan Bay, Mayor Charles Hayward opposed the use of nets and weirs by Cowichans on the river. Despite a barrage of letters asserting the destructiveness of Cowichan weir-use based on reports by a hired detective and his own observations, Hayward could not move DMF to enforce the weir prohibition.

In a letter to the Deputy Minister, the Commissioner of Fisheries, E.E. Prince stated that his department was unable to protect the "finest angling river in British Columbia" without enlisting the aid of DIA. The frustrated commissioner claimed that

...were the worst offenders whitemen, the department could put a stop to the abuse; but it is difficult to take strong measures against these Indians, who are unusually degraded, less civilized than most Indians and dangerously vindictive. The detective says that there is fear of the Indians doing the local white people an injury if the fishery laws be carried out. Threats of shooting have been made. I have attempted to deal effectively with this Indian trouble for over eight years and without result.

After detailing the department's failed enforcement measures, and

reiterating the standard DMF perception of Native weir use as unjustifiably destructive and wasteful, Prince concluded that any effective action on the part of DMF would not have the support of the Euro-Canadian residents around the Cowichan River, as they did not strongly object to Native weirs and did not wish to antagonize the Cowichans.⁵¹

During 1902, DMF hired guardian Colvin to replace Overseer Maitland-Dougall, who had quit the job to dedicate more time to his other position.⁵² The department had decided, however, to avoid confrontations with the Cowichans. Colvin was instructed to ensure that the weirs were opened for week-end closed seasons. As suggested by Prince, the Deputy Minister of DMF requested the assistance of DIA, but received the reply that unless DMF officials had evidence that weir use was destructive, they should focus on restricting commercial fishing at the mouth of the Cowichan River.⁵³

Despairing that either DMF's officers were incapable, or the department condoned illegal activity, Mayor Hayward threatened to take justice into his own hands.⁵⁴ Instead, he circulated a petition among the "leading property owners and residents of the Cowichan district"⁵⁵ protesting "the total ruin of the Cowichan, Koksilah and Chamainus Rivers for fishing purposes by illegal methods" and requesting that DMF take action.⁵⁶ When confronted by Inspector Sword, however, the signatories claimed that they

⁵¹ NAC, RG23. R. 40, F. 1469 pt.2. Commissioner E.E. Prince to Deputy Minister, DMF, 11 April 1902.

⁵² NAC, RG23. R. 42, F. 1600 pt.1. Overseer James Maitland - Dougall to Inspector C. B. Sword, 14 February 1901.

⁵³ NAC, RG23. R. 40, F. 1469 pt. 2. Secretary DIA to Deputy Minister DMF, 17 April 1902.

⁵⁴ *ibid.* Mayor Hayward, Victoria to Minister, DMF, 14 May 1902.

⁵⁵ *ibid.* Mayor Hayward to Minister, DMF, 17 July 1902.

⁵⁶ *ibid.* Petition from 57 Signatories to Minister, DMF, June 1902.

had signed with the wish that an inquiry be held on the issue and had not intended to imply that there was widespread infractions or that DMF was not doing its job.⁵⁷ DMF complied with this request and convened an inquiry on Cowichan weir use, chaired by Senator Templeman.

The inquiry provided the Cowichan with an opportunity to further undermine the image of weirs as destructive and obstructive. Chief Le-hil-lori asserted that it was the use of the Cowichan River for transportation of logs, as well as the seining in the bay that damaged stocks. Weirs, he noted, had long been in use and as many as ten had been operated on the Cowichan River at once. Most importantly, he gave an explanation of how they functioned, dispelling the images of impassable dams and barriers. Weirs, he claimed, "do not go down to the bottom of the river. There are always passages below the wickets."⁵⁸ John Elliot concurred, stating that "the weirs are put in to temporarily delay the fish while Indians may spear and hook them", but that they were left open on week-ends, as required by DMF. He added that the Cowichans depended on the weirs for their food, and that "it would be a serious loss if they were removed."⁵⁹ With the exception of some commercial fishers, local Euro-Canadian residents testifying were hesitant to challenge the Cowichans' use of weirs for fear that they might retaliate by preventing access to reserves for the purposes of fishing and hunting.⁶⁰

There is no record of a set of recommendations having been drawn

⁵⁷ *ibid.* Inspector Sword to Commissioner Prince, 9 August 1902.

⁵⁸ *ibid.* Testimony of Chief Le-hil-lori before Senator Templeman, 6 August 1902.

⁵⁹ *ibid.* Testimony of John Elliot before Senator Templeman, 6 August 1902.

⁶⁰ *ibid.* Testimony of F.H. Price before Senator Templeman, 6 August 1902.

up at the end of this enquiry, but it appears that the Cowichans had been the more compelling presence, as DMF did not change its soft approach to enforcement for the next three years. In 1905, Inspector Taylor, who had been recently appointed to supervise enforcement in the Vancouver Island District, instructed Guardian Colvin to remove the Cowichans' weirs, apparently on the basis of a report made by Overseer Galbraith. W.R. Robertson, who had succeeded Lomas as Cowichan Indian Agent, intervened and asked for a delay of such action for fear that there might be violence as a result.⁶¹ Following up on this, the Deputy Superintendent General of DIA contacted the Deputy Minister of DMF regarding the possibility of compensation for the Cowichan in exchange for the removal of weirs. By bringing up the issue of compensation, DIA officials were reflecting the conceptualization of Cowichan fishing as a right which had to be compensated, rather than ignored and of the Cowichan themselves as a people who would have to be negotiated with rather than dictated to. Back on the River, the Cowichan endorsed this conceptualization. Inspector Taylor noted of the attempt to enforce the weirs that

I informed the Indians, as there were a large number present, that I had instructed Mr. Colvin to see that the fish weirs were opened during Saturday and Sunday of each week, and before the Indians went away [to fish for Fraser River canneries], which would be about the first of July, they were to remove all the fish weir from the River. To this the Indians agreed.⁶²

This arrangement was agreeable to the Cowichans because it did

⁶¹ NAC, RG23. R. 23, F. 583 pt.1. Agent Robertson to Superintendent Vowell, 22 May 1905.

⁶² *ibid.* Inspector Taylor to Assistant Commissioner Venning, 19 July 1905.

not hamper their use of the weirs. Although Taylor noted in his correspondence that he recommended not allowing reconstruction of the weirs when the Cowichan returned from the Fraser River in the fall, this was not a part of the arrangement, nor did it appear that Taylor had intentions of seeing this through.

During 1906, DMF had its hands full with the confrontation over weirs on the Babine River, but in 1907, attention briefly returned to the Cowichan River. The Canadian Pacific Railroad Company (CPR), which owned lands along the Cowichan, was interested in seeing the River become a sports-fishing preserve. In a report which asserted the obstructiveness of weirs and the high number of unchecked infractions, the company pressured DMF to have the weirs removed.⁶³ Overseer Galbraith, mentioned in the CPR report as the only reliable DMF official on the River, concurred with the contents of the report. Inspector Taylor claimed that this report "was of very little value, noting that violations of regulations were actually "very few indeed." He included with his response, a report from Guardian Colvin who claimed that the decreases in trout was attributable to log-driving on the river. Colvin claimed that the number of weirs had decreased from eight to four in recent years, adding that

Some parties who evidently do not understand the construction of these weirs claim that they will not allow the passage of a fish more than one ounce in weight, when by actual measurement the wickets used in the weirs are from two to three inches apart.⁶⁴

⁶³ NAC, RG23. R. 24, F. 583 pt.2. President's Assistant Drinkwater to Deputy Minister, DMF, 2 January 1907.

⁶⁴ Ibid. Inspector Taylor to A/Minister, DMF and extract from Guardian Colvin's report to Taylor, 21 June 1907.

Colvin, like the previous two DMF guardians on the Cowichan, was convinced that the talk of weirs' destructiveness had little basis. Taylor's opinion also appears to have changed in the two years since his stand against weirs. In 1907, it was his opinion that

we all know that the Indian must be considered in a different light from our White people, and they require different treatment. I think the advance with the Indians has been very satisfactory, and illegal fishing is becoming less every year. The Indian does not consider his methods for taking fish illegal; but look [sic] upon them as his right, and we cannot expect to change his views on this delicate subject [the way to obtain his food] in one year.⁶⁵

This remarkable concession regarding Natives' status in the fisheries reflects the impact of the Cowichans' struggle to assert control over their own fishing. While Taylor's superior did not completely endorse this position, he did acknowledge the difficulty of convincing the Cowichans to give up a method of fishing which was "of such long standing and which [the Cowichans] have come to look upon as a right" and dismissed CPR's complaints.⁶⁶

IV

During the period between 1907 and 1912 the records show no activity by DMF on the Cowichan River. From 1909 and 1912, the

⁶⁵ *ibid.* Inspector Taylor to Assistant Commissioner Venning, 24 June 1907.

⁶⁶ *ibid.* Deputy Minister DMF to President's Assistant (CPR) Drinkwater, 10 July 1907.

department's attention was focused on the use of weirs in the spawning grounds of the Fraser River salmon runs. Most likely, Guardian Colvin continued to watch over the weirs to ensure that they were opened during the week-ends, but there is no evidence that any attempts were made to remove the weirs. However, late in 1911, DMF received complaints from two M.P.s alleging that Colvin was not checking destructive infractions of the regulations and that weirs were not being opened at all. In January of 1912, the Superintendent of Fisheries, W.A. Found, ordered recently-appointed Chief Inspector Cunningham to have the weirs removed. It was the Superintendent's opinion that, "it would not seem impossible or undesirable to prevent the Indians from using such barricades."⁶⁷ The Superintendent had obviously not spent much time on the ground trying to enforce the prohibition of weirs.

Much of the concern over weirs seems to have risen out of concern about Cowichans selling their harvest in town markets. Overseer Galbraith claimed that weir-caught salmon and trout were nearly always sold, noting the many complaints which he received about this.⁶⁸ Inspector Taylor claimed that Galbraith's information came from unreliable sources and not personal observation. Nevertheless, Guardian Colvin intercepted 460 lbs. of trout enroute from the Cowichans to Vancouver in the period between January and April.⁶⁹ No action appears to have been taken against weirs, but Taylor noted that 26 nets were destroyed by the Guardian during this time period, leaving none in operation.

⁶⁷ *ibid.* Superintendent of DMF, W.A. Found to Chief Inspector Cunningham, 30 January 1912.

⁶⁸ NAC, RG23. R. 5, F. 6 pt.7. W.M. Galbraith, Fishery Overseer, Victoria, 'Weekly Report', 12 May 1912. He claimed that if the prohibition on the sale of weir caught salmon was enforced, then weirs would no longer be used as Natives sold nearly all fish caught with these devices.

⁶⁹ NAC, RG23. R. 24, F. 583 pt.2. Chief Inspector Cunningham to Superintendent, DMF, 11 June 1912.

It is not clear how the Cowichans reacted to this action against their nets, but the following year, a provincial fisheries official noted that the Cowichans "now enjoyed the privilege of netting two days of the week under the supervision of the local overseer [Galbraith]," and were allowed to troll at any time for salmon.⁷⁰

For the next year, events on the ground appear to have been fairly quiet. When the McKenna/McBride Commission on reserve lands interviewed the Cowichans in early 1913, testifiers "constantly complained of the Fishing Laws and Regulations and the enforcement thereof." As a result, the commissioners decided to examine the question of weir use more closely.⁷¹ They concluded that previous reserve commissions had granted exceptional or even exclusive rights to fish in certain particularized waters" to dozens of bands. The commission recommended that these rights be clarified and that Native peoples be granted the right to sell fish in specific limited quantities, provided the proceeds were for personal use and reduced the demand for government aid.⁷²

While the commission was hearing the Cowichans' testimonies, Overseer Galbraith took action to enforce the weir prohibition. On June 7, 1913, Galbraith, with some assistance, made a raid on a Cowichan River weir. His report of the incident is worth quoting at length.

⁷⁰ BCARS, GR435. B. 64, F. 613. Deputy Commissioner (B.C.) to Commissioner of Fisheries (B.C.), 14 June 1913.

⁷¹ NAC, RG23. R. 24, F. 583 pt.2. E.L. Wetmore, Commission Chairman to A/Superintendent General, DIA, 9 June 1913.

⁷² Meggs, *Salmon*, p. 106. See also NAC, RG10. V. 11020, F. 517, Microfilm T-3957. Royal Commission on Indian Affairs for the Province of B.C., 'Memorandum Re: Fishing Rights and Privileges of Indians in B.C.', 12 January 1916.

Rattray, the boy and I with Kier the Provincial Constable went back to the Indian weirs on Sunday and pulled the whole thing out and threw them into the river, the Indians are mad! [A]nd the Indian Agent at Duncan told me that the members of the Indian Commission told the Indians that they had a perfect right to put in weirs! It is this sort of thing that gives the Indians backbone to fight. Can't you make these people mind their own business and not meddle with affairs outside their commission. If the thing is not carried out now, it will make the department a laughingstock and the thing will never be put right for everytime we back down, the Indians will be harder to deal with...the constable told me he would not come with me unless he got orders from Victoria telling him to do so. Can you manage to have him given orders to go with me whenever I require protection...I would take the boy or Rattray down until I hear if they are to be made constables...three of them is little enough as you may depend on it, there will be a big row.⁷³

The Chairman of the McKenna/McBride Commission, fearing the Cowichans would associate the raid with the Commission, protested that it was "rather impolitic that two Government Officials [Galbraith and Taylor] should proceed to such drastic action without the knowledge of the Commission", and requested that it be informed before future raids occurred.⁷⁴

DMF senior officials informed DIA and the Commissioners that enforcement would not be abated, but in the meantime, the

⁷³ BCARS, GR435. B. 64, F. 605. Overseer Galbraith, DMF to Mr. Matson (?), 9 June 1913.

⁷⁴ NAC, RG23. R. 24, F. 583 pt.2. Chairman E.L. Wetmore to A/Superintendent General, DIA, 9 June 1913.

Cowichan refused access to the reserve by Euro-Canadians and began building another weir. Inspector Taylor met with the Cowichan to arrange a peaceful compromise. The arrangement agreed upon was that the Cowichans would be allowed to use one weir, which would be required to be open three days a week.⁷⁵ This was a significant reduction of weir fishing by the Cowichans, but was ultimately not enough to satisfy senior DMF officials. In the month following the initial raid, orders were given to remove all weirs, contrary to the agreement reached with Taylor. The Provincial Police agreed to render the necessary assistance in future raids.⁷⁶

Unfortunately, there is no record of whether further raids occurred in 1913. However, by the spring of 1914, the McKenna/McBride Commission convened a committee consisting of Inspector Taylor, Assistant Commissioner Babcock of the B.C. Department of Fisheries, and Indian Agent Robertson. The committee, whose purpose was to study the use of weirs on the Cowichan River, called a meeting attended by Natives, Euro-Canadian anglers and provincial politicians. The Cowichans reiterated their arguments about weirs, which were rebutted by the Anglers' Association, but accepted by many of the other Euro-Canadians present. After hearing the witnesses, the committee made the recommendation that the Cowichans be allowed to place three weirs in the Cowichan River and one in the Koksilah River, provided that the wickets be separated by two and a half inches of space for smaller fish to pass through unhindered and that they be completely opened on the weekends. In return, the

⁷⁵ BCARS, GR435. B. 194, F. 1913 #6. Provincial Police Constable Kier to Superintendent of Police Campbell, 22 July 1913.

⁷⁶ *ibid.* Deputy Commissioner of Fisheries (B.C.) McIntyre to Superintendent of Police Campbell, 24 July 1913.

Cowichans were to abandon entirely the use of nets on the River.⁷⁷ In addition, that year, Inspector Taylor granted the local Indian agent the authority to grant permits to the Cowichans to take fish and sell them without having to obtain normal commercial licenses.⁷⁸ Two years later, the Commission noted that the arrangements of the committee were working well, and advised that they be continued.⁷⁹

⁷⁷ NAC, RG10. V. 11020, F. 517A, Microfilm T-3957. Cited in O'Donnell, 'Indian and Non-Native Use of the Cowichan and the Koksilah Rivers', p. 71.

⁷⁸ NAC, RG10. V. 3908, F. 107, 297-2. 'Minutes of the Dominion/Provincial Committee on Fishing Privileges of Indians in B.C.', 23 December 1915, p. 30.

⁷⁹ NAC, RG10. V. 11020, F. 517, Microfilm T-3957. Royal Commission on Indian Affairs for the Province of B.C., 'Memorandum Re: Fishing Rights and Privileges of Indians in B.C.', 12 January 1916.

v

This examination of enforcement of Fisheries regulations pertaining to weirs on the Cowichan River has revealed three important tendencies. Firstly, the Cowichans did not meekly defer to fisheries officials, but met their assertions with strong arguments of their own about the nature of their fishing practices and rights. Secondly, the Cowichans were able to move DIA officials, as well as other Euro-Canadians having "traditional power" to advocate for them. Thirdly, Cowichans were able to provide a presence and opposition on the ground that DMF officials were, for whatever reasons, unable to counter, even with support from the police or other means of Euro-Canadian "coercive" power.

Bruce Stadfeld has stated with regard to land pre-emptions that the Cowichan people were not easily intimidated by the trappings of coercive power which settler governments demonstrated from time to time. In the 1860s and 70s, Cowichans engaged in confrontations with settlers and government officials which led to negotiation and conciliation, ultimately allowing Cowichans to retain many pieces of land which they desired. This, Stadfeld asserts, is an example of how Natives were capable of manifesting power, and demonstrates that the relationship between Cowichans and Euro-Canadians was not characterized by Native helplessness.⁸⁰

Later, Cowichans demonstrated hostility regarding the legal prohibition of the potlatch and determination to perform the ceremony despite the law. In the context of inadequate

⁸⁰ Stadfeld, 'Manifestations of Power', p. 85.

enforcement for the potlatch law and Native unrest on the prairies, I.W. Powell, DIA Superintendent for B.C., was inclined to capitulate to their wishes.⁸¹ With regard to the fisheries, Cowichans made equally clear and powerful statements about their desire to continue to use weirs. The resistance of the Cowichan, well documented in land, potlatching and fishing, may have been partly driven by economic considerations. The Cowichan agency seems to have been the only southern B.C. DIA agency to have suffered a serious decline in per capita income between 1897 and 1910.⁸² Whatever the dynamics at work, the Cowichan community made deliberate and effective efforts to challenge the imposition of Euro-Canadian truths and rules.

⁸¹ Cole and Chaikin. *An Iron Hand Upon the People*, p. 31.

⁸² Burrows, 'A Much Needed Class of Labour', p. 41.

CHAPTER 4**Resistance on the Spawning Grounds
of the Skeena River****I**

In the Skeena River watershed, weirs could be found on tributaries from Kitwancool to Babine Lake. In the Fraser River watershed, weirs and traps were used from Soda Creek to Stuart and Fraser Lakes. The Carrier peoples occupied the lands around the salmon spawning grounds of these important river systems. Compared with Natives to the south, the Carriers had little sustained contact with settlers, although they had been actively involved with the fur-trade and continued to be involved in the commerce of the H.B.C.

During the first decade of the twentieth century, salmon fishing was still the main economic activity of Carriers living near salmon rivers. Those on the Skeena tributaries used their salmon catch for sale and barter, as well as personal nourishment. The H.B.C. and Euro-Canadian miners, as well as other Natives were the main markets for this surplus.¹ Carriers fishing in the Stuart and Fraser Lakes areas sometimes had to rely upon trade with the Skeena River fishers as the numbers of sockeye spawners on the Fraser River fluctuated every four years, but it is likely that they were involved in selling and bartering when a surplus was available.

Weirs in the upper waters of the Skeena and Fraser Rivers gained the attention of DMF following complaints by members of the commercial fishery and concerned local residents just after the turn of the century. Commercial fishers located their activities at river mouths and had the first opportunity to catch spawning

¹ DMF Annual Report, 1905. p. xlv.

salmon. Euro-Canadians in the commercial fishery generally viewed upstream fishing as destructive because it caught those fish that had escaped commercial nets and were destined to spawn.

The prohibition of weirs against the Carriers was not enforced until 1904, but once introduced, DMF used all available coercive means to induce compliance. However, Carrier peoples, like the Cowichans, presented a strong community presence on the ground and orchestrated a manipulative strategy of physical resistance to extract significant concessions from DMF officials.

II

Relative remoteness meant that the effective prohibition of inland fishing techniques, such as the weir, was rare or non-existent until the mid 1910s. As early as 1896, however, there were calls to prevent Carriers from using these devices. In the fall of that year an M.P. noted that his constituents had complained of Natives at Fraser Lake and on the Nechako River obstructing salmon with traps. He felt that the "Indians were trying to get their share before the white man depleted the fish," and were doing more harm than the hatcheries could repair and called for action against them.²

In 1904, cannery-owners began the first significant pressure upon DMF to enforce fisheries regulations in the upper waters of the Skeena River system. The owners of the Wallace Brothers Cannery complained that Natives on the Babine River, a tributary of the Skeena, were using "barricades" which prevented the salmon from reaching their spawning grounds. They claimed that due to the

² NAC, RG23. R. 39, F. 1469 pt 1. A.L. Poudrier, M.P. to Mr. H. Bostock, M.P., 30 August 1896.

lack of moderation by the Babines, weirs had obstructed too many salmon in 1899, resulting in a poor run in 1903. This resulted in a loss of money for Natives and others involved in the commercial fishery. According to the Wallace Brothers, eliminating the weirs would, therefore, benefit Natives as well as the industry.³

John Williams, Fisheries Inspector for northern B.C., concurred and in the fall of 1904 dispatched Overseer Hans Helgeson and Guardian Nordschow to inspect the upper waters of the Skeena River.⁴ On the Babine River, they found two "barricades" half a mile apart. Helgeson informed Chief Atio of the Babines that the regulations required the weirs to be removed because they were the cause of diminishing fish stocks. In addition he forbade the sale of fish and required that nets not obstruct more than one third of the river. Atio responded that his people had an "indisputable right for all time in the past" to fish and wished to know to what extent the government was willing to provide for the Babines if they complied. As well as asserting the Babines' rights, Atio also challenged Helgeson's image of Babine fishing as destructive by noting that the canneries destroyed more spawners than the Babines. Finally, the chief claimed that it was unfair to allow the canneries to sell fish but forbid the Babines from doing so.

Helgeson succeeded in intimidating the Babines into removing the weirs by stating that "nothing would save them from punishment or imprisonment" if they failed to do so. However, he eventually had to hire six of the Babine to finish the demolition. At a

³ NAC, RG23. R. 23, F. 583 pt.1. Assistant Commissioner Venning to Minister, DMF, 31 August 1906.

⁴ The report of this trip is found in DMF Annual Report, 1905, p. 204-11.

meeting later held by the Babines and attended by Helgeson, the Babines stated that they should be compensated for the loss of their weirs. One man stated that if he had been present, he would not have allowed the demolition of the weirs and that, unless the government sent him \$600 before the next season, he would re-erect a weir or die trying.⁵ According to the local missionary, Father Nicolas Coccola, Helgeson had agreed to the conditions set out by the Babines in return for the destruction of the weirs; firstly that they would be paid \$600 for the work of removal, secondly, that orphans and widows would receive rations and thirdly, that nets would be distributed to all.⁶

In the meantime, the Deputy Minister DMF contacted the Deputy Superintendent General DIA complaining of "the inefficacy of cooperation" from DIA officials in the past and requesting that DIA make arrangements to have weir use discontinued.⁷ The Deputy Superintendent General replied evasively that while he recognized the need to prevent improvident means of fishing, the remoteness of the Babines from the means of law enforcement necessitated that an amicable arrangement be made if serious trouble was to be averted. Finally, he claimed, in statements reflecting those of Chief Atio, that the Babines should be compensated for the loss of "what the Indians honestly and not un-naturally regard as their rights" and noted that this was especially necessary as there was "very conflicting evidence as to the extent of the obstructive effect of the weirs."⁸ DIA was

⁵ NAC, RG23. R. 23, F. 583 pt.1. Assistant Commissioner Venning to Minister, DMF, 31 August 1906.

⁶ *ibid.* Father N. Coccola to Deputy Superintendent General, DIA, 8 September 1906.

⁷ *ibid.* Deputy Minister DMF to Deputy Superintendent General DIA, 8 June 1905.

⁸ *ibid.* Deputy Superintendent General DIA to Deputy Minister, DMF, 15 June 1905.

not anxious to pick up the charge for relieving the Babines who were being prevented by DMF from sustaining themselves.

III

The Deputy Superintendent General would soon have good reason to fear "serious trouble". Soon after his communication with DMF, another local missionary, Father A.G. Morice, notified the Superintendent General that the Babines wished redress "so that this year they may not have to fight for their bread." Father Morice asserted that the elimination of weirs was an act of ignorance of local conditions which cause starving among the Natives relying on weirs for subsistence.⁹ The missionary later asserted that weirs and traps were the only means of supplying the quantities of salmon required for annual use, as wage employment was scarce and Euro-Canadian food-stuffs expensive.¹⁰

Despite the warnings, DMF, in the autumn of 1905, once again dispatched Helgeson and three guardians to the Babine River to enforce the weir prohibition. On this occasion, however, Helgeson, mindful of the demands of the Babine, brought with him nets supplied by Skeena River canners. Helgeson distributed the nets in exchange for the Babines' cooperation but noted that the nets were old web. He felt that in order to satisfactorily compensate the Babines, they would require approximately \$250 worth of new web before next year and every 2 or three years after that. In Helgeson's opinion, of all the Natives on the Upper Skeena tributaries, only the Babines and the Moricetown peoples would be affected seriously by the prohibition and recommended that the government provide relief to these people as

⁹ *ibid.* Father Morice to Superintendent Vowell, 2 July 1905.

¹⁰ *ibid.* Father Morice to Superintendent Vowell, 15 July 1905.

required.¹¹ DMF officials claimed that this compensation was the responsibility of DIA, which DIA, after some consideration of how the use of nets would allay the requirement of expensive relief, accepted.

While this arrangement was not a formal treaty, its creation, in many ways, resembled the treaty process followed by the Canadian government in the prairie provinces. As with land, Natives were being asked effectively to surrender (or "lease") a portion of their fisheries, for which they were compensated. In becoming involved with this arrangement, DMF was straying significantly from the policy whereby they gave no recognition to special rights or privileges of Natives. Although DIA was the department responsible for providing material compensation, DMF was required to allow net fishing in the Babine. Netting in inland waters was clearly prohibited under regulations.¹²

The arrangement did not, however, avert conflict between DMF and the Babines, as the Babines perceived that DMF and DIA did not hold up their end of the bargain. The old cannery netting supplied by Helgeson was too rotten to catch enough salmon for the winter stores, which made for a difficult winter. When Helgeson and the Indian Agent Loring began distributing the nets newly purchased by DIA in July of 1906, the Babine refused to accept them as they were too small to be of use. In addition, the \$600 and rations supposedly promised by Helgeson in 1904 were not supplied. In light of the situation, the Babines were apparently advised by sympathetic Euro-Canadians that they had the moral right to continue with the use of weirs. Despite a promise from Agent Loring that he would supply rations if

¹¹ *ibid.* Overseer Helgeson to Inspector Williams, 19 October 1905.

¹² DMF, Annual Report 1888 (1889), p. x.

required, the Babines had given up on the nets available and stated that "they were willing to go to jail where food would be given."¹³ Despite the community opposition to the nets supplied by DIA, two Babines accepted the nets allocated to them. Immediately, these nets were seized and disposed of by Babines acting on behalf of the community. At the same time, the Babines completed a weir in contravention of the prohibition and the arrangement made with Helgeson, and the conflict began.

According to Helgeson, a "fierce fracas" took place when Guardians Norrie and Wells, along with five assistants attempted to arrest two Babines for whom summons had been issued for "theft" of DIA issued nets and six Babines for whom warrants had been issued for the erection and maintenance of weirs. The Babines, however, vigorously opposed this enforcement action by rallying around the "offenders" and driving off the fisheries officers. Helgeson's account of the event is worth quoting at length.

...Chief George shook hands with the men [DMF officers], and in his loud voice said "Good Bye" "Good Bye" and some women sang in their most musical strain; this was afterwards interpreted to signify the last farewell and the "song of death"...When the Guardians reached the Barricade, they found a desperate situation, the scene would have daunted many, unarmed as they were in the face of an infuriated mob. With their sleeves rolled up their fierce passion aroused, shaking with excitement [,] the men could see at a glance that the Natives were determined to go to any extremity. Wells exhibited considerable tact, he being followed by the

¹³ ibid. Father Coccola to Deputy Superintendent General, DIA, 8 September 1906.

rest, walked boldly into their midst...but he had a fearful time, all of them resisted arrest, some of them struck him, while others aimed blows at him and all of them [the prisoners] were quickly rescued by tribesman [sic]. The Chief shouted that they would resist, to the last man, and that if one was taken, the whole tribe would be taken. The Guardians received blows from clubs and were jostled about in a fearful manner and seeing that further efforts to bring the prisoners out was futile, they succeeded in extricating themselves from the mob and went up to where their canoe was and camped, while the Indians were jubilant over their victory making noise and firing volleys at intervals the whole night.¹⁴

One might say that this passage tells us as much about how DMF officers on the ground viewed themselves as it does about the actual relationship between them and the Babines, but it does have its value as a source of information about how the Babine affected the enforcement of fisheries regulations. Through the dramatic flair of Overseer Helgeson, who was not even present at the event, we see the alleged manifestation of physical coercive power by Natives. As uncommon as this was, it is remarkable how Euro-Canadians' perceptions of potential bloody uprisings by Natives coloured Euro-Canadian - Native relations even at this late date. Although physical, this resistance was not, by any stretch of the imagination, a battle. The only blood spilled would have been from minor cuts and scrapes. The guardians were not quite ready to back down, however, so there would be a few more cuts and scrapes.

The following day, the guardians and their assistants marched

¹⁴ *ibid.* Overseer Helgeson to Inspector Williams, 21 October 1906.

back into the "fracus", determined to remove the barricades if possible. This time, they found the Babine community in a defensive formation around the weir. The women, armed with clubs, were gathered in a semi-circle close to the beach with some of the men behind them and the rest drawn up in line on the river bank. As the officers arrived, the Chief was allegedly heard to say "if any one touch the dam it will be at his peril." After the Babine refused the request to remove the weir, Guardian Norrie moved closer to the weir, but was pulled back by the women. When Wells came to Norrie's defence,

the two received blows from the clubs left and right...the officers knew that if they pushed the women aside or used them roughly, it would be the signal for the men to attack them, and Norrie saw that the Chief had all he could do to keep the Indians from attacking our men, who realized that if they carried matters any further that worse things would happen, so they elbowed their way out of the excited mob...The officers stated that the humiliation and indignities heaped upon them was beyond description.¹⁵

The physical nature of the guardians' abuse appears to have been minor. Inspector Williams reported soon after the event that none of the officers were seriously hurt¹⁶, but the reports of the guardians indicate that they found the experience to be harrowing. "Norrie said he received blows on the back that nearly disabled him, Wells fared worse, the squaws had him down in the water, among the boulders and nearly pounded him to death."¹⁷ Meanwhile, on the bank the men were watching "all

¹⁵ *ibid.* Overseer Helgeson to Inspector Williams, 21 October 1906.

¹⁶ *ibid.* Inspector Williams to Minister DMF, Telegram 31 August 1906.

¹⁷ *ibid.* Overseer Helgeson to Inspector McNab, 27 August 1906.

shaking with excitement frothing at the mouth looking like fiends turned loose from Hades."¹⁸

Being beaten in public by women may have been one of the most traumatizing aspects of the episode for the guardians. This reflects the disparate gendered constructions of women that existed in Babine and Euro-Canadian societies. Carrier social structures were based on matrilineal clans that directed intergroup trade, land and resource sharing, and the division of collective work during salmon fishing. Among Carrier peoples, social organization placed more emphasis than Euro-Canadian social organizations upon sexual equality. According to 1980s elders, women have always had access to clan leadership positions.¹⁹ In these positions, women would have exercised a great deal of influence over the community's fishing and use of the catch. Therefore, it is likely that the Babine women would have been involved in the construction of weirs regardless of whether DMF officers were present. The presence of these women was probably not intended only as a means of denigrating the DMF officers. Nevertheless, during later discussions with DMF senior officials, Babine representatives seemed to delight in recounting the treatment that the guardians received at the hands of these formidable women.

Following the incident, the guardians, in Overseer Helgesen's words, "beat an ignominious retreat" back to his office at Hazelton to make their reports. Helgesen telegraphed Inspector Williams and told him that the situation required 100 well-armed militiamen, as the situation could only be dealt with through

¹⁸ *ibid.* Overseer Helgeson to Inspector Williams, 31 August 1906.

¹⁹ Jo-Anne Fiske, 'The Politics of Mothering' in Creese, Gillian and Strong-Boag, eds. *British Columbia Reconsidered: Essays on Women*. Vancouver: Press Gang, 1992, 198-216. p. 201.

force. He was fearful that the resistance would spread to other bands in the vicinity, forcing DMF to retreat from that part of the province. This request had the strong support of the magistrate at Hazelton. Soon after, local residents petitioned the provincial government for a force of mounted police, a request which even Indian Agent Loring supported. Williams supported the idea of sending in the militia, but with the expectation that "the Indians would be overawed and offer no combined resistance." Williams, like his overseer and guardians, was anxious that the regulations be enforced because

...it is impossible for the River to stand salmon being captured at the mouth by the Canneries, in such immense quantities, and again destroyed in countless numbers on reaching their spawning grounds by the Indians for their winters supply of food and for sale.

In allocating this catch, Williams's sympathy clearly lay with the commercial fishery. He felt that allowing the Babines to use weirs would set a precedent that would lead other bands to use them with the result that "in a few years the Canning industry will be paralysed [sic]."²⁰

IV

The Minister L.P. Brodeur of DMF, however, could not get the approval of DIA for harsher action, so it was decided that negotiations would be held with the Babine. Within a month, the renegade Babines had surrendered and the weirs were taken out with the understanding that the prisoners would be released and

²⁰ NAC, RG23. R. 23, F. 583 pt.1. Inspector Williams to Minister, DMF, 31 August 1906.

not prosecuted and the issue would be discussed by all parties. DMF and DIA officials attempted to have all charges dropped, but were rebuffed by provincial officials who insisted on charging some of the prisoners with criminal offenses. Despite this, two Babine leaders, with Father Coccola as their intermediary, travelled to Ottawa to meet with DMF and DIA senior officials.

In the first meeting²¹, Chief George, one of the Babine representatives, used Father Coccola as an interpreter to explain the Babines' methods of regulating weir use and how the number of weirs had been voluntarily reduced in recent years to deal with increasing demands on the salmon. Chief George described the importance of weirs and claimed that the exclusive use of nets had not provided them with enough sustenance for the year. He also discussed the importance of their trade in fish with the H.B.C., pointing out how they obtained their common goods through the trade and barter of salmon. Chief George repudiated the charges of theft that had been brought against some of his people and stated that the arrest of Babine men during the weir raid reflected how DMF officers were too ashamed to arrest the women involved.

Father Coccola's discussion of this meeting in his memoirs reveals more about Chief George's participation than do the DMF minutes. Despite being quite shaken about journeying so far from home and being so nervous that he and his comrade were "all in perspiration", Chief George significantly challenged Euro-Canadian power in his response to being questioned about whether the Babines had guns. Chief George answered

²¹ *ibid.* Minutes for Conference held in the office of Hon. Frank Oliver, Minister of the Interior, 25 October 1906.

No, Why did we need guns for a handful of white men? We knew that the women could handle them easy. We did not want any trouble, but salmon. So we did not say word or show fighting.

Chief George also shaped his answers into narratives that unravelled the DMF guardians' constructions of the event and placed Babine weir use into a context with which others could empathize. When asked whether the Babines had threatened the DMF officers, he said,

No - our men were all sitting, on the lake shore, women were driving stakes in the river [for securing weirs] to catch salmon, as we had always done except last year because we were promised abundance of nets by these officers. The nets were sent too late when the best run of fish had gone through. When we made use of the nets to get the last fishes passing by we found the nets being too old and rotten, salmon passed through them. The consequence was that we nearly starved in winter and had no bait for our traps. So this fall our women had resolved to fish as they always did by using barricades, even at the cost of life. When driving the stakes, the officers advanced in the creek to pull them out and one of the strong women weighing 200lbs threw one of them down in the water and sat on him (all the audience laughed) but after that, she took him to shore and let him alone...

In reflection, Father Coccola noted in his memoirs that when the meeting was adjourned, all who were present looked more favourably upon the Babines and somewhat pompously concluded "[I] could see that I had won those present to the cause of my people

[the Babines]".²²

Chief George's testimony in the first conference had some resonance with Minister Brodeur of DMF. While questioning Overseer Helgeson during a second conference, Brodeur appeared to be almost advocating for the Babines.

B: I did not catch your answer with regard to the use of nets.

H: Yes, the water is clear and when the nets are not barked the fish see them.

B: What is the length of the season?

H: Nearly two months from the 1st August to end of September, or right into October if we count other kinds of salmon.

B: I suppose that the Canneries recognize that the Indian should be fed out of salmon. Do they object to that?

H: No.

B: Well suppose the barricades were allowed just for those two months, or until Indians get enough for food, what would be the objection?

H: The objection is that the Indians could not be watched, they would have barricades.²³

Although there is no indication that cannery-owners were present at these conferences, at least one person presented "the industrial point of view" to Brodeur. In his letter to the Minister, Alex Noble blamed Carrier weirs for low salmon runs, noting that capital invested and jobs provided by the commercial

²² Margaret Whitehead, *They Call Me Father: Memoirs of Father Nicolas Cocola*. Vancouver: University of British Columbia Press, 1988. pp. 145-147.

²³ NAC, RG23. R. 23, F. 583, pt.1., Minutes for the conference held in the office of DMF Minister L.P. Brodeur (second conference), 6 November 1906.

fishery were at risk. Noble ended his letter with a dire election forecast for the fortunes of Brodeur's Liberal party in northern B.C. if the weirs were allowed to remain.²⁴

When the conferences had concluded, the Babines had not managed to enforce the statement which they had made on the ground regarding their desire to keep their weirs, but they had made a strong impression on DMF officials and forced them to keep the promise which had been made earlier regarding nets. These negotiations also brought a concession from DMF to allow the unlicensed sale of salmon for the next couple of years until the department had solidified its policies for managing the fisheries of the west coast. Most importantly, the ground level resistance and the strong presence at the conference table gave the Babines some leverage in holding DMF to its word. In 1907, Helgeson was badgered into supplying nets of a size dictated by the Babines, rather than DMF regulations.²⁵

The Babines provided an example for other Carrier fishers to follow. In 1909, Guardian Norrie noted that there was considerable jealousy amongst the Native communities at Hazelton and Bulkley Valley regarding the Babines' access to and use of nets. In the process of enforcing the prohibition on nets, Norrie reported that he was told by one enraged Carrier fisher, "Bye and Bye no government soon, you will see."²⁶

Probably the most remarkable effect of the Babines' resistance was the impact that it had upon the enforcement of regulations

²⁴ *ibid.*, Alex Noble to Brodeur, 23 October 1906.

²⁵ NAC, RG23. R. 24, F. 583, pt.2. Inspector Williams to Assistant Commissioner Venning, 23 July 1907.

²⁶ *ibid.* See report attached to letter from Inspector Williams to Assistant Commissioner Venning, 15 July 1909.

regarding weirs. From 1908 to 1910, complaints arose about the use of weirs on the spawning grounds of the Fraser River, Stuart and Fraser Lakes. By 1911, the Chief Inspector for B.C. had been contacted by the bands at Stuart Lake, Fraser Lake and Stoney Creek and noted that

The Indians look upon the use of these barricades as a moral right, and state that their living depends upon the capture of fish by this means, and they view with displeasure, any suggestions made to prohibiting the use of the same by them.

These Carriers demanded that if they were to give up their weirs, they would have to be compensated with a boarding school and rations for their children, nets 50 feet deeper than those provided to the Babines, three new fishing stations/reserves, and farm implements and seeds for all who would make use of them.²⁷ It was Cunningham's opinion that

the policy of "least resistance" coupled with the least destructive method of capturing fish is the only means of dealing with these Indians. They are in a country sparsely populated, and it is practically impossible to enforce any regulations, except by persuasion and meeting the views of the Indians as nearly as possible.²⁸

Accordingly, this arrangement was agreed to. As before, DIA agreed to provide for the supply of the material items.

²⁷ *ibid.* Chief Inspector Cunningham to Deputy Minister, DMF [?], 18 April 1911.

²⁸ *ibid.* Chief Inspector Cunningham to The Department Marine and Fisheries, 5 July 1911.

v

DMF officers attempting to enforce the prohibition of weirs on the Babine River faced resistance which was similar in nature to that faced by officials on the Cowichan. However, in this instance, Natives had little community support and faced strong resolve from DMF officials "guarding" the second most important commercial salmon river in the province. However, both instances illustrate how DMF was inclined to pursue strict enforcement based on the assumption of Native "waste and destruction". In both situations, Natives challenged this common sense with some degree of success. Although the Babines were not able to maintain their use of weirs, they were able, like the Cowichans, to assert a claim to the fishery that DMF officials were eventually forced to address.

The Babines backed up their claim with a physical presence "on the ground" where community members resisted the removal of their weirs without compensation. Subsequently, they used these same techniques to force DMF officials to honour the compensation agreement which they made. This arrangement was never officially ratified by Ottawa²⁹, but nets were still being distributed fifty years later.³⁰

The loss of weirs entailed profound changes for the Babines, including a virtual cessation of trade and the end of the use of Babine Lake surplus fish production to offset fluctuations in other fishing areas.³¹ The economy shifted from reliance on salmon to trapping, the fur trade and wage labour. Although nets

²⁹ Hudson, 'Traplines and Timber.', p. 108.

³⁰ Newell, *Tangled Webs*. p. 145.

³¹ Hudson, 'Traplines and Timber.' p. 108.

were a poor substitute for weirs, the Babines remained active fishers and came to rely on other tools such as boats. They continued to have a need for the fishery as trapping and wage labour could not provide them with a sufficient income.³²

The events on the Babine between 1904 and 1906 do not demonstrate that the Babines exerted power over their fishery in the ways that were common in the pre-contact era. What they do demonstrate is that the Babines maintained participation in the fisheries by taking a stand against the emerging Euro-Canadian symbols of power and in the process, they shaped how this power would come to affect their lives.

³² *ibid.* p. 112.

CHAPTER 5

Conclusion

I

The earliest observations of Europeans indicate that salmon was the main food source for coastal and interior Native peoples prior to Euro-Canadian settlement. B.C. Natives created some particularly effective means of catching salmon and developed a variety of ownership systems to govern access to the resource. Due to variations in the abundance of salmon, Natives practised traditions which encouraged the distribution of surplus salmon, and some Native groups apparently took steps to protect the habitat for salmon spawners.

Early in the development of the Euro-Canadian commercial fishery, Natives were sought after as labour, but found it difficult to find work in this sector as cannery-owners began hiring more Asian immigrants and as DMF officials were dispensing most independent licenses to Euro-Canadians. For fishing to remain a means of support for Native communities, Native fishers had to maintain what had come to be defined by DMF regulations as the "food fishery." However, Euro-Canadians in the commercial fishery generally perceived Native fishers as unwanted competitors for salmon. These Euro-Canadians, particularly cannery-owners, had significant influence over DMF's formulation of regulations and policy. As a result, DMF regulations became more restrictive of Natives' fishing effort, while the commercial fishery was allowed to take more salmon with increasingly sophisticated equipment. This trend was particularly evident with the restriction of the most efficient Native fishing technique - the weir.

DMF officials employed a broad interpretation of the restriction

on weirs, such that they were prohibited where possible. A discourse of Native destruction and waste rationalized this policy and obscured how the use of barriers by non-natives was treated differently. However, there were barriers to enforcement, including inadequate resources and resistance from Natives and their Euro-Canadian advocates, missionaries and DIA officials.

II

To assess the effects of Native resistance, enforcement activities at two different locations in the province over a twenty year period have been considered. The "prohibition" of weirs began on the Cowichan River in the early 1890s. For the first ten years or so, the river was of no significant value to Euro-Canadian cannery-owners, although some non-Natives did fish the river mouth and sell their catch in local markets. DMF attempts to remove Cowichan weirs were prompted mostly by Euro-Canadian anglers, who had significant political support from the city of Victoria. However, Cowichan fishers were able to significantly shape these enforcement actions. They challenged the perception of weirs as destructive and wasteful, levered community support, and intimidated officials who tried to enforce the regulations. In this environment, DMF officials, particularly guardians, were inclined to adopt the Cowichans' perspective of weirs. Even after the chum salmon runs of the Cowichan River were identified as commercially valuable and sought after by cannery-owners, the Cowichans were able to create a negotiated understanding of the enforcement of regulations concerning weirs.

The prohibition of weirs on the Babine River was initiated in the

first decade of the 20th century by cannery-owners concerned about sockeye salmon runs on the Skeena River. In that situation, the Babine people were intimidated into abandoning the use of weirs, but only in conjunction with negotiated compensation and DMF concessions regarding the use of nets. When DMF officials failed to provide adequate compensation, the Babine resumed their use of weirs and physically resisted DMF attempts to have the weirs removed. This action on the ground gave the Babines the leverage that was required to have the agreement that was negotiated on the ground clarified and formalized. The Babines' show of force gave other Carrier communities leverage in negotiating with DMF regarding the removal of weirs. These compensation agreements indicated that DMF could not simply ignore Native concepts of ownership and use in its management of the fisheries.

By examining relationships "on the ground", this thesis has explored how Native fishers challenged and affected the enforcement of fisheries regulations. Chief Billie of the Ahousaht Band provided a clear description of Natives' perceptions of Euro-Canadian fisheries management when he stated that "part of the salmon [should be] reserved for ourselves and our families and then we will mind the law." Natives were no longer in a position to exert sole control over ownership and management issues in the fishery, but their willingness to work within the Euro-Canadian management structure was conditional upon DMF recognizing some degree of Native ownership and control over the fisheries. DMF officials may have had many reasons to make concessions for Native weir-users, but the evidence available suggests that Native resistance posed a significant influence. DMF officials were not inclined to make concessions regarding weirs that were perceived to be preventing spawning,

but found themselves "beset by Indians" where they tried to enforce a broad prohibition.¹ Where Natives pressed for some degree of negotiation, DMF officials tended to comply.

Hopefully this thesis lays a basis for understanding Native fishing after 1916. In the following year, fisheries regulations became more restrictive of Natives as permits for "food fishing" were made mandatory. Geoff Meggs notes in passing, however, that by about 1927, fisheries officers had given up trying to enforce restrictions on the sale of "food" fish and Dianne Newell notes in years following World War II, Native "food fishing" had persevered and that Native had come to rely on it more than ever.² To understand the perseverance of Native fishing, historians should attempt to reach beyond Euro-Canadian concerns about supporting Natives to see what Natives themselves were doing.

III

In more general terms, the analysis of Native resistance to fishing regulations demonstrates that the legal system and law enforcement can be manipulated to serve the interests of a propertied elite, but can be moulded by other interests as well.³ This means that the activities of individuals and small communities can bring their conceptions of "justice" to bear on legal systems, particularly where the traditions of Euro-Canadian

¹ NAC, RG23. R. 23, F. 583 pt.1. H. Helgeson to J. Williams, 6 October 1906.

² Meggs, *Salmon*, p. 111; Newell, *Tangled Webs*, p. 143.

³ See Douglas Hay, 'Property, Authority and the Criminal Law.' in Douglas Hay, et. al. eds., *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*. London: A. Lane, 1975, 17-63. Hay argues that the criminal legal system in England in the eighteenth century is best understood as an ideological system that maintained the power of the ruling class.

law were not yet entrenched.⁴ This perception of the law is important in providing a clearer understanding of Euro-Canadian - Native relations because so many points of contact revolve around the enforcement of Euro-Canadian law. If historians wish to bring Natives "out of the background"⁵, they should be portrayed as active subjects, rather than passive objects in their relationships with Euro-Canadians. Ideally, this should be accomplished by presenting Natives' points of view or contextualizing their actions within "the logic of their own cultural universe."⁶

It is important to put Native resistance in perspective. Native people were facing rapid change in all areas of their lives. Euro-Canadians and their institutions were asserting control over Natives' political, social and, especially, economic activities. Euro-Canadians had intimidating means at their disposal to coerce Natives and resistance of the kind demonstrated by the Babines did not always work in favour of Natives. However, Euro-Canadian physical coercion did not prevent Natives from using techniques of intimidation and negotiation to pursue their interests. It is not clear whether Natives in other parts of the province (and the country) exerted the same level of influence on fisheries

⁴ For a non-native example of how community justice influenced the legal process in frontier B.C., see Tina Loo, 'Trouble in the Gold Fields: The Grouse Creek 'War.'' *The Beaver* (August-September 1990) 24-33.

⁵ See Robin Fisher and Kenneth Coates, 'Introduction.' in Robin Fisher and Kenneth Coates, eds., *Out of the Background: Readings on Canadian Native History*. Toronto: Copp, Clark, Pitman, 1988, 1-18. Fisher and Coates note that, in recent years, historians have focused more attention on Native people as "important players in the pageant of the past". p. 1.

⁶ See R.M. Galois, 'The Burning of Kitsegukla, 1872.' *BC Studies* no. 94 (Summer 1992) 59-81. Galois attempts to analyze a point of contact and conflict between Gitksan peoples and Euro-Canadians from the Gitksan as well as the Euro-Canadian perspectives. He relies on the ethnographic information collected fifty years after the incident by anthropologist Marius Barbeau. For a discussion of how historians can use Native oral tradition in this kind of approach, see D. Peter MacLeod, 'The Anishinabeg Point of View: The History of the Great Lakes Region to 1800 in Nineteenth-Century Mississauga, Odawa, and Ojibwa Historiography.' *Canadian Historical Review* 73 no. 2 (1992) 194-210.

regulations as the Cowichans and Babines. A brief scan of the documents indicates that in least one instance, a fisheries guardian enforcing restrictions on Clayoquot Natives' use of nets feared that a riot would break out and claimed that, "it was only by a lot of deplomacy [sic] this was averted".⁷ This type of reaction to Native resistance may have been common in other instances where Euro-Canadians attempted to shape the lives of Natives. There are many points of contact to consider.

⁷ NAC, RG23. R. 24, F. 583 pt.1. Guardian John Grice to Inspector E.G. Taylor, 10 January 1906.

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Abbreviations

BCARS	British Columbia Archives and Records Service
NAC - BCARS	National Archives of Canada - Materials located at British Columbia Archives and Records Service
NAC - UBCIC	National Archives of Canada - Materials located at Union of British Columbia Indian Chiefs office
NAC - UBCL	National Archives of Canada - Materials located at University of British Columbia Library
SFUL	Simon Fraser University Library

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