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Fraser River Fisheries: Anthropology, the State and First Nations

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Introduction

The Fraser River is one of the most important river systems in British Columbia, with a watershed covering much of the province's interior. Its fisheries, especially salmon, formed the basis of pre-European Indigenous economies. Fisheries resources were appropriated by non-Indigenous populations starting in the late 1700s, and today numerous conflicts have emerged around the control of the river's resources—both in the river itself and in its drainage basin. This conflict between various levels of provincial and federal governments, corporations (especially forestry and railway companies), commercial and sports fishing groups, and First Nations or Indigenous people, has increasingly "framed" anthropological research—particularly as research material on fisheries has been introduced in court cases.[1]

The history of the disputes over the fisheries resources of the Fraser River has revealed some of the strategies that have emerged at the state and First Nations level to deal with issues, and the use of social science research material in this process. It is important to note that anthropologists are in the interesting position of being able to observe performances by other anthropologists and those who use anthropological material in the courts. The uses of such material in a formal setting such as the courts reveals problems in the data base, and flaws in the uses of ethnographic and archaeological data. However, it is obvious that we are not dealing with free-wheeling graduate seminars, but with courtroom presentations that could influence a judge's decision about jail sentences. Indeed, some of the things that are integral parts of an anthropological perspective on societies that were neither industrial nor capitalist-like emphasizing the kinship-based framework of exchange in small-scale societies—are being transformed into denying such societies anything approaching exchange relations that lie outside of kinship obligations. It is becoming increasingly important to understand both the historical context of the increasing conflict over fisheries resources, and the political discourse that takes place at the local level and in the courts.

My thoughts on these issues have been influenced by my own research with a number of Indigenous groups in British Columbia, the members of which depend on fisheries resources. In the 1970s, I carried out ethnographic research with a Carrier Indian Band in north-central B.C. (Hudson 1983), and in the 1980s worked with Okanagan (Hudson 1985), Nishga'a (Inglis et al. 1990), Taku River Tlingits (Hudson 1989) and, to a lesser extent, Chilcotin and Shuswap. I was also called by a defence lawyer as an expert witness in a court case involving a hunting charge against a Shuswap person.[2] The critical importance of fishing, and information on fishing, was brought into focus by two recent events. In the fall of 1989, I visited the Indian community where I had lived for a year gathering economic and social data for my Ph.D. thesis. Informal talks with elders in one house quickly turned to a discussion of dioxins in the fish supply, herbicides and pesticides in the berries, and the impact of clear-cut logging that extended to the river banks. This community is on a lake that serves as one of the main sources of water for the Fraser River, and provides extensive spawning grounds for one of the largest sockeye salmon runs in the Fraser River system (the Stuart Lake run). The elders were not optimistic about the future.

Later that same year, at the invitation of an archaeologist who was working with the Sto:lo Nation Tribal Council in the lower Fraser Valley (near Vancouver), I attended a court case, and listened to archaeological and anthropological information presented in support of the federal government in a fisheries case. In this case, the Department of Fisheries and Oceans had charged a Coast Salish person with illegally selling salmon caught in the Fraser River in a food-fishing area. The position of the defence was that such a disposal of the fish was an Aboriginal right, and a continuation of traditional practices of trade and exchange. The government's position, as brought out in a series of questions and summations, was that archaeological and ethnographic data, and information about trade along the Fraser River, showed that pre-European trade was minimal in that sector of the river; and that the group, resident there prior to the arrival of Europeans, was not adjacent to a major trading system connecting the coast and interior, nor to major players in trade. Discussions of the extent of trade by these particular groups led to its characterization as a "cul-de-sac" culture (sort of living on a dead-end cultural street), without a market economy prior to the arrival of Europeans and the fur trade, or indeed without having much of value to trade. Exchange, however minimal, was interpreted as well-imbedded in kinship obligations, precluding the existence of an economy that transcended kinship obligations. This was the point raised at earlier presentations, during sessions I did not attend. It crossed my mind several

times that what was being argued about were interpretations of Marshall Sahlins' book, *Stone Age Economics*, and that the courtroom was an awkward place for such a debate.

These two examples represent three important aspects of fisheries conflicts: (1) the industrial transformation of a river and its resources, (2) the attempts by the state to limit Indian use of resources, and (3) the ways in which anthropological material can be marshalled. They also can serve as an introduction to the broader picture, and below I will sketch out what I think is going on in part of British Columbia with respect to fisheries.

The State, User Groups, and Indians

From the perspective of the provincial and federal governments (especially the Department of Fisheries and Oceans), Indians are but one of a number of user groups whose access to fisheries resources must be regulated and managed in accordance with policies set by non-Indian agencies. These policies have undergone changes, and with those changes have come actions directed at various user groups and Indians. By viewing the Fraser River as a system, and all groups as user groups, Indian fishing rights are limited and fishing is subjected to the Department of Fisheries and Oceans' policy of "no net loss." This term means that modifications to the fisheries' habitats can be made so long as fish supplies remain at a constant level. For example, under the no-net-loss policy, spawning grounds in one part of the river system could be eliminated so long as a fish hatchery was established elsewhere to compensate for losses. With this approach, Indian fishing grounds and places along the Fraser River are replaceable. Furthermore, if Aboriginal fishing practices are not seen to include selling fish (beyond officially recognized commercial fisheries), then the share of fish allocated to Indians is capped by food fishery thresholds.

Much of the present conflict revolves around maintaining Indian fishing spots (usually expressed by the Indian people themselves in terms of Aboriginal rights) versus maintaining fish production levels by any means (including fish farms). However, early attempts by the state to control Indian fishing are evident. For many Indian people, the critical statement of colonialism with respect to fisheries is a clause in an 1889 fisheries act, which stated, "Indians shall at all times have liberty to fish for the purpose of providing food for themselves, but not for sale, barter or traffic, by any means other than with the drift nets or spearing" (McIntyre 1914, pp. 450-51). Having defined Indian fishing as food fishing, the state set the stage for a century of debate and litigation about what constituted a food fishery. That issue does not seem to have been an integral part of courses in anthropology; hence the courtroom session about cul-de-sac

culture and dealing in fish to non-kin. The 1880s legislation also provided the ideological basis for the "fish poaching" raids of the 1970s and 1980s, when newspapers were full of stories about sting operations (with undercover fisheries officers posing as buyers of what are referred to as "Fraser River turkeys"—the fish, not the people). For example, in 1983 the Department of Fisheries and Oceans carried out a four-month operation, and charged 130 people (129 of whom were Indian) with illegal sales of fish. Newspapers carried stories on helicopter sorties against Indian fishermen and raids on newsrooms to seize television videotape. They also published editorials and cartoons about poached salmon, and carried large advertisements by commercial and sports fishing groups denouncing what was labelled as Indian overfishing and waste of fish. Some examples of newspaper headlines are:

"Lillooet Indians to defy gov't 'no fishing' edict" (*Vancouver Province*, 29 August 1979).

"Chief comes to rescue fishing son" (*Vancouver Sun*, 1 September 1979).

"'Head bashed' in fish war" (*Vancouver Province*, 2 September 1979).

"Bootlegging is the threat to fish stocks" (letter, secretary of Steelhead Society of B.C., *Vancouver Sun*, 24 November 1981).

"Indians 'draw battle lines' overpoaching charges" (*Vancouver Sun*, 13 January 1983).

"Poaching charges revive 'rights' issue" (*Vancouver Sun*, 14 January 1983).

"Raids 'aimed at speeding fish treaty'" (*Vancouver Sun*, 14 January 1983).

"Ottawa 'will regret raids'" (*Vancouver Sun*, 20 January 1983).

"Something's fishy in Ottawa" (advertisement by Pacific Fishermen's Alliance, *Vancouver Province*, 23 October 1983).

"Salmon deal protested: Indians to sell surplus" (*Vancouver Sun*, 12 November 1983).

"Natives, officials in fishing fracas" (*Vancouver Sun*, 25 August 1986).

"Fisheries grabs TV tapes for use against Indians" (*Vancouver Sun*, 27 August 1986).

"Fisheries war continues though Indians win battle" (*Abbotsford-Sumas-Matsqui News*, 27 August 1986).

"Minister condemns TV raids" (*Vancouver Sun*, 28 August 1986).

"18 natives face charges in Fraser confrontation" (*Vancouver Sun*, 29 August 1986).

"Nine remanded on fishing counts" (*Vancouver Sun*, 19 September 1986).

"Fisheries men, Indians call truce on verge of violent salmon clash" (*Vancouver Sun*, 9 July 1987).

"Indian fish pact unfair to others" (editorial, *Vancouver Province*, 30 August 1987).

"The Secret Native Rights Deal" (advertisement by The Fisheries Council of B.C., *Vancouver Sun*, 18 September 1987).

"Bands head out to fish in defiance of regulations" (*Vancouver Sun*, 20 August 1988).

"Fish in the face of the law" (*Vancouver Province*, 21 August 1988).

"Dozens of native Indians face illegal fishing charges" (*Vancouver Sun*, 22 August 1988).

"Indian band calls off Fraser fishery: Tug of war raises fear of violence" (*Vancouver Sun*, 16 September 1988).

"Indians warned on defying fish rules" (*Vancouver Sun*, 19 August 1990).

In the reactions to fishing, Indians were commonly portrayed, among other things, as poachers. As can be imagined, a number of important court cases emerged out of this era. One has been noted above; another is the Sparrow case. Together they will, I think, provide the basis for future debates about Indian fishing rights.

Court Cases

In 1984, the now-famous Sparrow case was brought to court. Sparrow, a status Indian from the Coast Salish Musqueam Band near Vancouver, was charged with violating federal fisheries regulations by using what was deemed an over-length net while fishing for salmon in the Vancouver area. Five years later, the B.C. courts upheld the primacy of the Indian fishery, subject to conservation measures. In 1990, the Supreme Court of Canada upheld that decision.[3]

In 1987, eight Sto:lo (Coast Salish) people of the lower Fraser Valley, near Vancouver, were charged with illegally selling salmon. One of those charged went to court in 1989, and I attended various sessions. As noted earlier, the court heard evidence from anthropologists and archaeologists on both sides (Department of Fisheries and Oceans, Sto:lo) about whether or not selling was a traditional activity, and about the usual questions now routinely asked as a result of the Baker Lake case—questions about an "organized society" and about "exclusive use" prior to European contact. The court will have to deal with the important issue of whether or not the Sto:lo had a society in which exchange went beyond obligations defined

by kinship and feasting. The term "cul-de-sac" to describe trade involvement was not meant to be a summary statement, but it was certainly the key phrase picked up on by Sto:lo people in the audience, and it served as a focal point for their frustrations about non-Sto:lo people defining Sto:lo identity and culture. The case also raised a number of other issues: the amount of fish deemed necessary for a household to meet food requirements; how an Aboriginal right to "sell" fish can be established anthropologically; and the ultimate question of who controls the fisheries. Clearly the state is using the 1880s legislation as the basis for defining Indian fishing as food fishing, and is attempting to put into place production thresholds.

The ways in which data are used in the courts have implications for future research on resource-use issues. A colleague who invited me to observe the court proceedings pointed out that the kinds of research I had done in the past in northern B.C. would be unacceptable to the Sto:lo. I had taken graduate work at the time of the Mackenzie Valley Pipeline hearings and had been influenced by the ecological and empirical basis of resource-use studies. As part of my research into social organization and resource-use in northern B.C., I measured household fish production, and came up with what I thought were pretty impressive numbers on the amounts of salmon necessary for the Indigenous economy (Hudson 1983). But, given the increasing use of anthropological data in the courts, the Sto:lo fear that any such numbers reported for them would simply give the government a ceiling on Indian fishing levels. This surely will have an impact on land-use and occupancy studies, where quantitative research is seen as so necessary to establish Aboriginal rights of use.

A key element in the disputes of the 1980s, as opposed to earlier periods, was the Canadian Constitution, which recognizes and affirms Aboriginal rights. To Fraser River Indian groups, the Aboriginal right affirmed is the right to fish and to dispose of the fish in ways consistent with Aboriginal practices; hence the importance of the court discussions about social frameworks for exchange, and the visibility of pre-capitalist market economies or at least what the Department of Fisheries and Oceans will recognize as a market economy. While we are awaiting the verdict in this case, the state is still exerting its influence at a number of other levels. Regulations have been imposed on modes of production, processing and exchange. At the production level, regulations exist on how many days a week nets can be set and what kinds of technology can be used. In the late 1800s and early 1900s, pressure was exerted by fish canneries to eliminate Indian river fishing. A consequence of this was the ban on the use of fish weirs across the outlets of lakes or extended from shores. Weirs were destroyed in 1905/06 on Babine Lake, and removed

in 1911 from Stuart and Fraser Lakes (two lakes on the Fraser River system) (see Hudson 1983; Hudson and Wilson 1985). The reinstatement of this effective Aboriginal technology has yet to be tested. At the processing level, the Department of Fisheries and Oceans requires permits for fish-drying racks in the Fraser Canyon and limits the number. The Fraser Canyon is an important place for processing fish, as the warm summer and fall winds dry fish without the need for smoking them over campfires. At the exchange level, the issue of use beyond food consumption has already been noted. At any rate, the attempts to transform Indian fishermen into simply another "user group" have been resisted by the Indian people, although not always successfully. Some other examples will show the complex interplay of factors.

Twin-Tracking

In the 1980s, the Canadian National Railway proposed the construction of a second set of tracks alongside its existing line through British Columbia. Construction started and was completed in some areas, but coalition of Indian bands along the Fraser and Thompson River corridors obtained a court injunction preventing construction through reserves. This twin-tracking issue raised the spectre of industrial impacts on Indian fisheries and the fish resources of the Fraser and Thompson Rivers. Indian bands are conscious of a number of events. One is that history might be repeated. In 1913 and 1914, rock blasting from railway construction in the Hell's Gate Canyon of the Fraser River blocked the passage of migrating salmon, and almost destroyed the Fraser River salmon fisheries. Leaders today recall elders describing mass movements to the coast, food shortages and hardships created by the near loss of a key resource. In the headwaters of the Fraser River, reports indicated that the Stuart Lake Carrier people obtained only one hundred sockeye salmon in 1913; decades before, the Carriers had traded tens of thousands of salmon to the Hudson's Bay Company (cf. Hudson 1983). The Hell's Gate catastrophe showed what could indeed happen. The twin-tracking issue will be heard in court after a decision is reached on the Gitksan-Wet'suwet'en court case. The issue of control of research material was also raised by Shuswap and Thompson Bands of the Fraser River, who were so apprehensive that information collected for them would be obtained by the Canadian National Railway Company that they went to court to obtain an injunction. That experience has influenced subsequent research relations. As one colleague said to me, he is no longer allowed into the strategy sessions with the lawyers. Now, he simply gets research directions from the lawyers.

Alcan

Plans by the Aluminium Company of Canada (Alcan) to expand power production in northwestern B.C. set of a series of inter-state, corporate and Aboriginal rights wrangles into motion, which ultimately saw Indian groups marginalized. The story goes back to the late 1940s and early 1950s when, as part of an industrial strategy for the northwest, the B.C. government granted Alcan extensive water rights to develop power for a smelter on the coast at Kitimat. To provide the power, Alcan built a dam at the start of the Nechako River, a major tributary of the Fraser. Water from the reservoir thus created was diverted, via a tunnel, through the Coast Mountains to a generating station. The water diverted from the Nechako River reduced the Nechako's flow, and the use of an adjacent lake as a spillway forced the relocation of three Cheslatta Indian villages in the early 1950s. In the 1980s, Alcan proposed another lake and river diversion plan to increase water levels (and thus power). The federal fisheries department took Alcan to court to force the company to release enough water to the Nechako River to protect chinook salmon spawning grounds. What followed was a series of legal battles over what level of government controlled water resources, how much water was necessary to cover spawning beds and what temperature the water had to be to ensure salmon survival. Indian bands, along with a number of conservation groups, were granted intervenor status along with the fisheries department in its legal fights with Alcan—joined now by the provincial government, which had granted the original water rights to Alcan. It was an uneasy alliance, as Aboriginal rights did not necessarily coincide with the aims of the conservationists. In the long run, the federal fisheries department made a deal with Alcan and the B.C. government: the Carrier Sekani Tribal Council was denied participation in a court case on the grounds that having land claims on the agenda would unduly complicate what was really a technical issue over water volumes; Alcan agreed to surrender its claim over diverting lakes and rivers of the Skeena River system; and both the Carrier Sekani Tribal Council and commercial fishing organizations called the outcome a sell-out. I recall the courtroom sessions (Hudson 1988), but I think a reporter neatly captured the essence of the whole process in an article published in the *Globe and Mail* (3 October 1987):

> Concerned that Alcan was spilling too little water into the Nechako for the survival of fish stocks, the federal government won a B.C. Supreme Court injunction in 1980 to enforce a flow regime for the river. ... [In 1987,] Alcan went back to court, challenging Ottawa's right to interfere with the company's 1950 provincial water licence to use the Nechako. The Carriers tried to

become a party to the proceedings, but were turned down by the B.C. Court of Appeals. In court, federal government lawyers supported the Carriers' attempt to join the case, stating that the Indians had a vital stake in the future of the Nechako. Nine months later the Ministry of Fisheries and Oceans and Alcan reached an out-of-court settlement that completely excluded the Indians.

What the state (B.C.) gave away, the state (Canada) tried to get back. When Indians tried to get involved, both governments left them in the cold. The courts seemed to decide that Indians had complicated matters too much by talking about Aboriginal rights, and shunted them aside. In this case, anthropology did not get its day in court.

Emergence of Indian-Defined Fisheries Jurisdictions

Bands and tribal councils are defining their rights over stretches of river systems (even sometimes to the exclusion of other Indian groups). However, the state terminology of user groups has also entered the political discourse of Indigenous groups. The head of an interior Indian tribal council, on learning about yet another report showing high dioxin levels in marine life, is quoted as saying:

> Historically, fisheries have played an important part in our ... culture and it is our intention to ensure that all user groups continue to have the benefit of the fisheries resource as we have for many thousands of years. ["Dioxin warning shocks natives," *Vancouver Province*, 29 April 1990, p. 8]

Agreements between Indian groups and other jurisdictions have also emerged. For example, in 1989, Fraser River Indian bands belonging to the Indian Inland Fisheries Commission worked out an arrangement with the provincial government to reduce food fishing from three days a week to one in order to increase the escapement of steelhead to spawning grounds along the Thompson River, a major tributary of the Fraser. Dealing directly with Indian bands sidesteps the problem of the provincial government's long-standing position of refusing to recognize Aboriginal rights.

Summary

There clearly is a complex interplay of factors involving fishing issues in the Fraser River system in British Columbia. Jurisdictional conflicts abound: between Indians and the state, between Indian groups on

adjacent sections of the river, between federal and provincial agencies, between industries and the state, between industries and Indian groups, and between commercial fishermen and sports fishermen. As Indian groups in the Fraser River system and other watersheds move towards what are called framework agreements, the rights of access will become very important. The writings of anthropologists on traditional resource-use and management will also be important, but within the context of the Baker Lake decision, which defined for most lawyers what anthropologists are good for. Much informative anthropological data in B.C. are under a "legal chill." As court cases back up, the data just waits. Meanwhile, students are continually exposed to earlier writings—such as those by James Teit on the Thompson and Shuswap—all written prior to the Hell's Gate slide, and which miss a significant part of the political economy of Aboriginal issues in B.C. Debates in anthropology about the economies and relations of production in small-scale societies must be informed by the court cases.

In conclusion, the following statement by a senior member of the Department of Fisheries and Oceans, neatly captures so much of what is going on in B.C.: "Fish are the currency with which Indian land claims will be negotiated."[4]

Notes

A version of this paper was originally presented in a session on fisheries and the state at the 1990 Canadian Anthropology Society Congress, University of Calgary, Calgary, Alberta, May 1990.

1 The Sparrow Case, involving a Coast Salish Musqueam fisherman charged with infractions of federal fisheries regulations, is the most prominent example. Another case awaiting a decision involves a 1987 charge against a Coast Salish person from the Hope area, near Vancouver, B.C., of illegally selling salmon. This is usually referred to as the Vander Peet case, after the person charged. Coast Salish and Interior Salish bands also used anthropological and archaeological data to support an injunction to halt construction of additional railway tracks through reserves along the Fraser and Thompson rivers.

2 A similar case has been discussed in Asch (1984), p. 21.

3 Terry Glavin, "Indians hail aboriginal rights ruling," *Vancouver Sun*, 1 June 1990, pp. A1, A2.

4 R. Bell-Irving, quoted in a story by Greg Middleton, *Vancouver Province*, 21 August 1988, p. 11.

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