

Chapter 13

Fisheries and Fishing Rights

This chapter provides background information and lists resources for research projects relating to fisheries and fishing rights in British Columbia. Researching these topics can be a complex but rewarding project. The materials that you gain access to will depend largely on the focus of your research project. This chapter guides you through researching two major topics in fisheries and fishing rights research: 1) your community's traditional fisheries and fishing practices and 2) non-Indigenous (government) regulation of fisheries and fishing in your territory.

Historical Overview

Traditionally, Indigenous Peoples regulated fisheries and fishing in our own territories according to our own beliefs and practices. This changed in the 1850s with the arrival of European settlers who imposed their own laws in our territories. At the beginning, settler governments showed some recognition for fishing rights. The Douglas Treaties (1850-1854) stipulated that the Indigenous signatories were at liberty to carry out their fisheries "as formerly." In 1899, Treaty 8 affirmed Indigenous fishing rights throughout the territories covered by the treaty. The Joint/Indian Reserve Commission (J/IRC) (1876-1878 and 1878-1910), which allocated Indian reserves, also recognized and attempted to secure some fisheries and fishing stations for Indigenous communities. A fishery secured Indigenous rights to fish in a certain area, but it did not necessarily include an Indian reserve allotment. A fishing station is land that was allotted as a fishing reserve along or near fisheries, used for capturing, curing and drying fish. When searching the J/IRC documents it is important to note the existence of both fisheries and fishing stations and to keep in mind that the allotment of a fishery does not necessarily indicate an allotment of land.

While the J/IRC was conducting its work, the BC commercial fishing industry was established and federal and provincial governments introduced fishing regulations to restrict Indigenous fishing rights. For example, BC initiated Barricade Agreements, which promised



A fishing station is land that is used for capturing, curing, and drying fish. (UBCIC Collection)

Indigenous people compensation in exchange for abandoning their traditional fishing weirs. Since this time, Indigenous fisheries and fishing rights have been eroded and subject to various federal and provincial regulations, usually enforced by the federal Department of Fisheries and Oceans and the provincial Ministry of Fisheries and Wildlife.

When researching fisheries and fishing rights it is important to be aware of evolving fisheries laws and legislation, as they often affect the location, duration and continuation of fisheries over time. For an historic overview of policies, laws and legislation affecting Indigenous fishing in British Columbia, see:

- Douglas C. Harris, *Land, Fish and Law: The Legal Geography of Indian Reserves and Native Fisheries in British Columbia, 1850-1927* (PhD Thesis, Osgoode Hall Law School, York University, 2004). Available at: <http://faculty.law.ubc.ca/harris/thesis.htm>
- Douglas C. Harris, *Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001).
- Diane Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993).
- Rueben Ware, *Five Issues, Five Battlegrounds: An Introduction to the History of Indian Fishing in British Columbia, 1850-1930*. 1978 (Vancouver: Union of BC Indian Chiefs.)

Researching Fisheries and Fishing Rights

Traditional Fisheries and Fishing Practices



Woman cleaning fish. If possible, start your research by talking to community members who are involved in fisheries. (UBCIC Collection)

If you are interested in finding out about traditional fisheries and fishing practices you may want to start by researching land use and occupancy patterns in your territory. For more information on land use and occupancy research, please refer to the UBCIC-Ecotrust Canada publication, *Chief Kerry's Moose: A Guidebook to Land Use and Occupancy Mapping, Research Design, and Data Collection* (2000) by Terry Tobias. You may also want to consult the following chapters in this guide for help answering your research questions:

- Chapter 4: Documents lists several archival documents that may include information on fishing and fishing practices. Archival documents could provide you with

documentary evidence to prove the existence of traditional fisheries, fishing stations and other sites used for fishing or fishing-related activities. Archival information about traditional fisheries and fishing practices may be found in:

- o The Federal Collection of **Minutes of Decision**, Correspondence and Sketches of the Joint/Indian Reserve Commission. Commissioners were directed not to disturb traditional fisheries and often reserved these fisheries for the use of Indian bands, either exclusively or in common with other bands.
- o Indian Affairs **RG 10** at Library and Archives Canada (LAC), which contains records of correspondence and reports regarding Indigenous fishing and fishing places beginning in 1878.
- o The Henry Doyle Papers, which are in Rare Books and Special Collections at the University of British Columbia.
- o Testimony from the Royal Commission on Indian Affairs for the Province of BC (McKenna-McBride) may also be a source of community-specific fishing information.
- Chapter 6: Oral History offers detailed information about interviewing community members. There is a good chance that Elders or other community members will have some of the answers you are seeking. It is always a good idea to start your project in your community and talk to as many people as possible about the issues you are researching.
- Chapter 8: Anthropology Resources provides information on how to gain access to a wide and growing range of ethnographic studies and reports, many of which deal with the subject of Indigenous fisheries and fishing practices in BC.

Government Regulation of Fisheries and Fishing Rights

Government regulation of fisheries in BC is somewhat complex. Generally, either the federal or the provincial government regulates fisheries, depending upon whether the fishery is a marine or a freshwater fishery. Federal control is exercised through the Department of Fisheries and Oceans, which is concerned primarily with ocean and coastal areas. Provincial control is exercised through the BC Department (or Ministry, as it was known in the past) of Fisheries, which is responsible for fresh-water and inland lakes and rivers. Given this division of responsibility, your specific research project will determine whether you should look into federal and provincial issues separately, or together (in the instance of salmon fisheries, for example).

Investigating the general history of your community's reserve lands is a good place to start your research. This will help you determine if your community was allotted a fishery and/or a fishing station and where they are located. Here you will want to check whether access to your community's fishery or fishing station has been denied through alienation to a third party, cancellation or actual physical barriers (such as fences, canals, log booms) since its establishment. See Chapter 5: Basic Reserve Research for information on investigating the

history of your community's reserve lands.

There are other important government records that contain information about fisheries. Be sure to check the minutes of decision, correspondence, and sketches of the Joint/Indian Reserve Commission, particularly the *Schedule of Fisheries Allotted to Indians in British Columbia by the Indian Reserve Commission, 1898*. Look through the minutes of decision, proceedings and reports of the Royal Commission on Indian Affairs for the Province of BC, (McKenna-McBride, 1913-1916), particularly the *Memorandum and Evidence on Fishing Rights & Privileges of the Indians of BC*. Also check the Indian Affairs records (RG 10) and correspondence for records of petitions or protests regarding the size or location of fisheries or fishing stations that had been reserves (or not reserved) for your community.

There are also other relevant archival records in RG 10 and the Department of Marine and Fisheries Record Group 23 (RG 23) at LAC. RG 10 records contain information and correspondence regarding BC fisheries laws and restrictions, the Barricade Agreements, protest regarding the size or location fisheries or fishing stations that had been reserved (or not reserved), and Indigenous fishing practices, places, rights and privileges in BC. RG 23 records include the minutes, proceedings and reports of the BC Fisheries Commission (1891-1893) and the Dominion-BC Fisheries Commission (1905-1907). Many of these records are held at LAC's Pacific Region Federal Records Centre in Burnaby. Many are also available at the University of British Columbia Libraries and Special Collections. See Chapter 3: Resource Institutions for information on accessing these documents.

Once you have searched the federal archival records, you may want to look through provincial records. Many of the records you will need are available at the BC Archives. Check the archival records of the following government departments:

- BC Attorney General
- BC Department of Fisheries
- BC Department of Lands
- BC Executive Council
- BC Fish and Wildlife Branch
- BC Marine Resources Branch
- BC Premier's Office
- BC Provincial Secretary
- Great Britain, Colonial Office

In addition to departmental records and correspondence, annual reports and sessional papers will be of interest (see Chapter 4: Documents).

If the issue you are looking into is more recent, you may also want to request active files from Indian and Northern Affairs Canada and the Department of Fisheries and Oceans Canada. Also look for documents at the following provincial government offices:

- The Attorney General of BC
- Ministry of Agriculture, Food and Fisheries
- Ministry of Sustainable Resource Management
- Ministry of Water, Land and Air Protection, Fish and Wildlife Branch

See Chapter 3: Resource Institutions and Chapter 4: Documents for information on gaining access to active records.

Resources

- Gladstone, Percy H. 1959. *Industrial Disputes in the Commercial Fisheries of British Columbia*. (MA Thesis). Vancouver: University of British Columbia.
- Harris, D.C. 2004. *Land, Fish and Law: The Legal Geography of Indian Reserves and Native Fisheries in British Columbia, 1850-1927*. PhD Thesis, Osgoode Hall Law School, York University. Available at: <http://faculty.law.ubc.ca/harris/thesis.htm>.
- Harris, D.C. 2001. *Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia*. Toronto: University of Toronto Press.
- Knight, Rolf. 1996. *Indians at Work: An Informal History of Native Labour in British Columbia 1858-1930*. Vancouver: New Star Books.
- Lane, Barbara and Robert. 1978. *Recognition of BC Indian Fishing Rights in Formal Treaties with the Indians & Foreign Government*. Vancouver: Union of BC Indian Chiefs.
- Newell, Dianne and Rosemary E. Ommer. 1999. *Fishing Places, Fishing People: Traditions and Issues in Canadian Small-Scale Fisheries*. Toronto: University of Toronto Press.
- Newell, D. 1993. *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries*. Toronto: University of Toronto Press.
- Ware, Reuben and M. Spring 1981. The Indian Reserve Commission and the Upper Stalo Indian Fisheries, 1876-1890. *BC Historical News*: 14 (3).
- Ware, Reuben 1978. *Five Issues, Five Battlegrounds: An Introduction to the History of Indian Fishing in British Columbia, 1850-1930*. 1978. Vancouver: Union of BC Indian Chiefs.

Websites

- BC Ministry of Sustainable Resource Management, *Fish Info BC*
<http://www.bcfisheries.gov.bc.ca/fishinv/fishinfobc.html>
- Department of Fisheries and Oceans, *Fisheries and Oceans Canada Online*
<http://www.dfo-mpo.gc.ca/index.htm>
- Ministry of Sustainable Resource Management, Land and Resources Registries Portal
<http://srmwww.gov.bc.ca/sstu/portal>
- UBC Fisheries Centre, *Aboriginal Fisheries Initiatives*.
<http://www.fisheries.ubc.ca/aborig>