

FEDERAL RECOGNITION OF INDIAN FISHING RIGHTS
IN BRITISH COLUMBIA

THE BABINE BARRICADE AGREEMENT OF 1906

THE FORT FRASER AGREEMENT OF 1911

THE FORT ST. JAMES AGREEMENT OF 1911

A Brief Summary

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by

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I. Traditional Indian Fishing at Barricades or Weirs

Before Europeans came to what is now British Columbia, most of the native people of the region depended upon fish for their staple food. In streams and at the outlet of lakes fishing was often done at barricades. These were weirs or fences built across waterways which let the water pass through, but stopped the fish.

There were openings in these fences through which the fish could find their way upstream to their spawning grounds. At these openings the fish could be taken easily with spears or dip nets or in basketry traps of various kinds.

These barricades were very effective. They could have stopped all the fish in a given run from returning to their spawning grounds, but obviously this did not happen. At the time that Europeans came to British Columbia there was an abundance of fish which the newcomers found truly amazing.

Clearly salmon and other fish came up the streams year after year and spawned despite the presence of the weirs or barricades.

There is no evidence that the fish runs declined in size because of the presence of the Indian barricades. Indian people understood quite well how to regulate their fisheries so as to allow enough fish to escape so that neighbors upstream would be able to harvest fish and so that fish would reach the spawning grounds.

The Indian fishermen regulated the passage of fish upstream by leaving open the gates in the barricades or by removing periodically one or more panels in the weir. In this way Indian fishermen allowed enough fish to escape to provide fish for all and for all times.

In those days people harvested fish for their own food, to serve to guests at intercommunity gatherings, and to trade to people who needed more fish or who desired kinds of fish which were not available in their area. Large quantities of salmon were dried and these were traded over considerable distances.

When the early fur traders entered the country, they depended for their survival on salmon which they purchased from Indian fishermen. Most of the trading posts were located so that they would be near Indian fisheries. This was the case for Fort Fraser, Fort St. James, and the post at Babine Lake. For well over fifty years the Indian people in these areas were encouraged by Europeans to fish for commercial purposes at their barricades.

II. Development of Canneries on the Fraser and Skeena rivers

In the 1860's commercial fishing and fish processing by non-Indians began on the coast and along the lower Fraser River. The fish canning industry developed rapidly and almost without regulation until the early 1900's. There were clusters of canneries on the lower Fraser and on the lower Skeena rivers.

By 1900 salmon canning in British Columbia had become big business in which large amounts of money were invested and powerful interests were involved. Canneries began to pack varieties of salmon such as chum or dog salmon which they had not previously used. Canneries were expanding their facilities on the Fraser and on the Skeena without any regard to the future survival of the salmon runs in those areas.

The waste was incredible. The British Columbia Commissioner of Fisheries reported in 1909 on the waste of Fraser River sockeye in 1901. "The catch that year (1901) was so great that every one of the canneries on both sides of the international line filled every can they had or could obtain; and in addition to the millions of fish they packed that year, many millions more were captured, from both the Canadian and American waters of the Fraser River district, which could not be used, and were thrown back dead into the water. The waste of sockeyes of our own catch and of that of

the Americans in 1901 is believed to have been greater than the number caught and packed by all the canners on the waters mentioned in any year since, with the exception of 1905 and this year."

III. The campaign to prohibit the Indian barricades

The salmon resources of British Columbia were beginning to be destroyed through this wastage and greed of the cannery interests in the early 1900's. The cannery operators faced the prospect that government would soon limit their operations.

The cannery men looked for someone else to blame for the diminishing salmon runs. They blamed the Indian weirs along the upper reaches of the rivers, claiming that these prevented the salmon from reaching the spawning grounds.

If the Indians were prevented from building weirs, they would be able to harvest far fewer fish. This would leave more fish for the canneries and it would also end the sale of fish by Indians to the Hudson's Bay Company and others.

In 1904 the cannery operators mounted a campaign to stop Indian fishing at barricades in central British Columbia. The cannery men said that the Indians were destroying the resource and that if the weirs were not prohibited, there would be no salmon in a few years.

The cannery operators demanded that the Department of Marine and Fisheries enforce the Fisheries Act to prevent the Indians from obstructing the streams with their weirs.

The fish packers threatened to withdraw political support from the Liberal party if the government did not prohibit Indian weirs.

Up to this time, the Fisheries Act generally had not been applied to Indians in British Columbia. Indians claimed the right to harvest fish for their own needs and to sell fish to others. These rights were generally recognized by the public and by the federal government.

In 1904, at the urging of the cannery interests at the mouth of the Skeena, a federal fisheries officer visited the upper Skeena and ordered Babine Indians to dismantle their weir or be subject to imprisonment.

The fishery officer, Mr. Helgesen, promised the Indians that they would receive compensation in place of the weirs and that they would be provided with nets to use instead of their traditional methods. He also advised them that they could not sell fish.

The Indians insisted that they had the right from time immemorial to harvest fish in their own manner and to sell their surplus fish. However, they agreed to try fishing with nets.

In 1905 the Babine Indians did not build weirs. The cannery men at the mouth of the Skeena donated nets for the Indians to use, but the nets were old and rotten and proved to be a waste of time and a waste of fish. The fishery officer promised to bring them new nets the next year.

By March, of 1906 the Indians were suffering because they had been unable to take sufficient fish for their winter stores. They rejected the new nets supplied by the Indian Department and began to rebuild their weir.

Charges were laid against several "leaders" who were accused, of inciting the community to rebuild the weir. When officers came to arrest the men, the community refused to let them be taken prisoner saying that they were all of one mind and that if anyone were to be arrested, they should all be arrested.

Charges were also laid against two men accused of "net stealing." It seems that two men accepted nets and took them to their homes. They later said that they had done so because they were afraid of the fishery officers. When the Chief learned of it, he sent two men to bring the nets back and return them to the fisheries officers. Mr. Helgesen charged the men who returned the nets with theft.

When fisheries officers tried to remove the weir, some of the local women resisted their efforts. Mr. Helgesen announced that they were all outlaws and asked that one

hundred well armed militia be sent to deal with the situation. His demand was supported by that of Mr. Williams, the fishery inspector at Port Essington, and by the cannery men of Port Essington.

The Indians had offered to leave their weirs open at the same time that nets were not fishing on the lower Skeena. This was rejected by the fisheries officers.

On the advice of their priest, Father Coccola, the Indians gave themselves up and were placed in jail in Hazelton.

Meanwhile, in Ottawa, the Department of Indian Affairs and the Department of Marine and Fisheries attempted to come to terms with one another. The Indian Department took the position that the Indians had a traditional right to fish with weirs and to sell their fish. The Minister of Marine and Fisheries said that it was his job to enforce the federal Fisheries Act.

It was finally decided that the Indians charged under the Fisheries Act should receive suspended sentences until the conflict between the Minister of Fisheries and the Minister of Indian Affairs could be resolved. Instructions to that effect were sent to Mr. Williams, the fishery inspector.

The Indians went to trial in Hazelton. The bench was occupied by a stipendiary magistrate and two justices of

the peace, one of whom was Mr. Helgesen. Apparently Mr. Helgesen laid the charges and then sat in judgment on the men he had charged.

Six men were charged under the Fisheries Act with barricading the Babine River. They pleaded guilty and were each given a fine or one month imprisonment. The same six men were then charged under the Provincial Criminal Code with obstructing a peace officer, disobeying warrants, and assaulting constables. They were sentenced to six months in prison at hard labor or \$100 fine. Two men were convicted of net stealing and were each sentenced to three months in prison. The Chief was acquitted.

The Minister of Marine and Fisheries advised the stipendiary magistrate that his department remitted all penalties under the Fisheries Act and wished to see the men released. The stipendiary magistrate replied that he could not release the men and that they had received lenient sentences.

The men were sent to prison in New Westminster. The federal offices of Justice and the Secretary of State had to be involved before the men were released.

As soon as this was effected, Chief Big George and Chief William Tszak were called to Ottawa in order to arrive at some agreement about the fishing situation. The priest, Father Coccola, accompanied them as interpreter.

Mr. Williams, the fishery inspector at Port Essington, and Mr. Helgesen, the fishery overseer, were also called to Ottawa to participate in the discussions.

A series of conferences were held involving the Minister of the Interior and officers of the Department of Indian Affairs and the Department of Marine and Fisheries.

An agreement was finally reached in which the Indians of the Babine area agreed to give up fishing at weirs in exchange for compensation to be provided by the Indian Department and special fishing rights recognized by the Department of Marine and Fisheries.

The Indian Department undertook to secure agricultural land for the Babine band and promised to provide funds for the purchase of nets every two years or so as needed by the Indians.

The Fisheries Department agreed to purchase nets and related fishing equipment for the Indians and to instruct them in the use and care of the nets.

It is important to note that the Fisheries Act expressly prohibited fishing for salmon with nets above the tidal boundary. The Fisheries Department agreed to provide nets to the Babine Indians in order that they might fish notwithstanding the provisions of the federal Fisheries Act.

The Fisheries Department recognized the right of Indians to fish contrary to the regulations under the Fisheries Act.

The Fisheries Department also agreed that the Indians could continue to trade in fish as they had in the past. However, the Department later reversed its policy and Indian people who sold or traded fish were charged with unlawful trafficking.

In 1911 a campaign was waged against barricades on Stuart River and Fraser Lake, tributaries of the Fraser River. The same arguments that had been used in the Babine area were repeated. It was claimed that the Indian barricades would do in a few years what they had failed to do in hundreds of years previously - they would destroy the salmon runs.

The Fisheries Department asked a number of bands in central British Columbia to agree to give up their traditional fishing weirs in exchange for a federally sanctioned right to fish with nets in non-tidal waters (notwithstanding the Fisheries Act), bi-annual provision of fishing equipment, and other forms of compensation.

The Indians agreed, but made some additional demands including, among other things, the reservation to them of a number of traditional, fishing stations throughout their area. All of the Indian demands were agreed to by the two federal agencies involved - the Department of Marine and Fisheries and the Department of Indian Affairs.

Two formal agreements were signed. The Fort Fraser Agreement of June 15, 1911 was signed by Chief Antoine,

representing the Stoney Creek Band, Chief George, representing the Fort Fraser Band, and Chief Isidore, for the Stella Band.

The Fort St. James Agreement was signed June 19, 1911 by Chief Joseph, representing the Nakazle Band, Chief Dominic on behalf of the Pinche Band, and Chief Alexis for the Tacha Band.

The language of the written agreements was drafted by the government. Each Agreement begins with these words: "We, the undersigned... acting in the capacity of chiefs and representing our respective Bands... do hereby agree that for and in consideration of the following concessions or demands, herein enumerated we will abandon the method known as barricading..."

The federal government, in seeking the agreements, recognized that the traditional fishing practices of the Indians in British Columbia are aboriginal rights which cannot be altered or extinguished except with the consent of the Indians and with payment of compensation for the rights which may be relinquished.

The Fisheries Act of Canada prohibits the construction of barriers which prevent salmon from freely ascending rivers to the spawning areas. If there had not been recognition of special Indian fishing rights, the Indian barricades could simply have been disallowed under the law.

The fact that the federal government undertook to secure Indian consent by formal written agreements and undertook to provide compensation through the same legal instruments shows that the Government of Canada recognized the existence, legitimacy, and the value of Indian fishing rights.

The federal government, by the language it used in these written Agreements, recognized the separate Bands as sovereign entities to be treated with by the Government of Canada with respect to fishing rights. The chiefs were recognized in the Agreements as representing their respective Bands and acting for them.

In dealing with the Bands as sovereign groups, the Government of Canada was able to secure lasting arrangements which are binding upon all members of the Bands which are parties to the Agreements.

The Babine Barricade Agreement of 1906 and the Fort Fraser and Fort St. James Agreements of 1911 reflect the recognition on the part of the Government of Canada that the Indians of British Columbia have fishing rights which have never been ceded or diminished by treaty and which cannot be altered or extinguished legally without the consent of the Indians concerned.