

MEMORANDUM

To: George Manuel, Lillian Basil and Walt Taylor  
From: Robert B. Lane and Barbara Lane  
Date: August 16, 1978  
Subject: Report entitled "Indian Fishing Rights versus  
Conservation - An Artificial Issue"

Enclosed please find the above-titled report. This is a revision of the draft which we discussed at the time of the Fisheries Advisory meeting last week. The final version submitted today is updated to include concerns which were discussed by George and others last week.

In the last few days some of the trollers have also stressed their view that the Fisheries Department uses "conservation" closures to re-allocate the potential harvest between competing fishing groups. These events appear to make the enclosed report particularly timely.

INDIAN FISHING RIGHTS versus CONSERVATION -  
AN ARTIFICIAL ISSUE

Prepared for  
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by  
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The Annual Crisis

In this summer of 1978, the Federal Department of Fisheries is again announcing "emergency" closures of salmon fisheries for "conservation" reasons. Indian people who fish along the rivers are again being told by the Department of Fisheries that they must cut down on their fishing to save the fishery resource.

The Department of Fisheries claims that Indian fishing in the rivers may not allow enough salmon to reach the spawning areas. Indian people are again in a position where they either cut down on fishing or they are accused of endangering or destroying the resource.

This situation is not new. It happens year after year. Out of this yearly artificial crisis, the public has been led to believe that Indian fishing rights are a major obstacle to safeguarding the salmon supply.

The crisis is artificial because it is not Indian fishing rights which endanger the salmon. Of all the causes for fisheries decline, Indian fishing is the least responsible. Through its regulations, the Department deprives Indian people of their fishing rights by making it appear that Indian fisheries threaten the resource.

### What the Department of Fisheries Says

Indian people in British Columbia have aboriginal fishing rights which have been recognized by every Government of Canada since British Columbia entered Confederation. The Department of Fisheries says that it recognizes Indian fishing rights and that it only interferes with those rights in the interests of conservation.

The present Minister of Fisheries and previous Ministers of Fisheries have said consistently that Indian fishing rights are second only to conservation requirements.

The Department of Fisheries maintains that its first priority is to ensure adequate salmon escapement for reproduction of the runs. Its second priority is to ensure an adequate supply of salmon for the Indian river fisheries. After these two needs are met, the Department says it regulates so as to safeguard the harvest of commercial and sport fisheries.

### What the Department of Fisheries Does

The stated priorities of the Department of Fisheries do not seem to be supported by its actions. Year after year Indian fishing is stopped or cut back on "conservation" grounds. In fact, Indian fishing is cut short or cut off because the Department allows commercial and sport fishermen to take almost all of the available harvest. By "available harvest" we mean those salmon not required for reproduction.

## How the Regulations are Used to cut off Indian Fishing

Every year salmon return from the ocean to their rivers of origin to spawn and produce the next generation of fish. Three classes of fishermen harvest the salmon as they follow their route to their home rivers. These fishermen take the salmon at different places along their migration routes.

The first to get the fish are commercial fishermen who fish in the offshore fisheries. Now that Canada has extended her territorial waters to two hundred miles offshore, fishing within that distance is subject to regulation by the Department of Fisheries.

Next, other commercial fishermen take Salmon in the straits and in bays and estuaries of the major salmon streams. The major portion of the sport catch is also taken in these waters.

The last people to harvest the salmon are the Indian people fishing for food for their own use at their traditional locations along the river systems. Indian people are able to harvest only those fish which have escaped the offshore and inshore fisheries. However, Indian fishermen must let enough fish pass upstream to the spawning beds so that a new generation of fish can be produced.

The Indian river fishery is limited by the size of the commercial and sport harvest in marine waters and by the escapement needed for reproduction.

By regulating the open and close seasons and by their estimates of escapement needs, the Department of Fisheries determines how many salmon are available to each of these classes of fishermen. Through its regulations, the Department of Fisheries allocates the salmon available for harvest by the marine and river fishermen. The more salmon taken in the commercial and marine sport fisheries, the fewer salmon available for harvest by Indians in the rivers.

As the Department itself admits, the people who are most adversely affected by the river closures are the Indian fishermen.

#### The Steelhead Fishery

Indian people fishing for their food in the rivers must also compete with steelhead fishermen fishing for sport in the rivers. Steelhead are present in the rivers at the same time that certain salmon "runs" occur. The Federal Department of Fisheries cooperates with the British Columbia Fish and Wildlife Branch to insure that steelhead fishermen have a share in the river fisheries.

The Indian food fishery is further cut back in order to provide for a recreational fishery in the rivers. Indian rights and subsistence needs are subordinated to the recreational interests of anglers.

Sportsmen effectively lobby government in order to forward their interests.

### Making Indians the "Fall Guys"

Indian fishermen are caught in a squeeze-play. The Department of Fisheries allows the commercial and sports fishermen to take the major proportion of the available harvest and then requires the Indian people fishing along the rivers to cut back or not to fish at all in order to allow adequate escapement for spawning purposes.

In this way, Indian fishing rights are eroded under the guise of "conservation needs." When Indian people protest the erosion of their fishing rights, they are accused of endangering the salmon resource.

In similar fashion, Indian food fisheries are cut back to provide for recreational fishing. Fewer steelhead are taken in the Indian fisheries than are taken by either the commercial fishermen or the sport fishermen. Despite this, steelhead fishermen, are led to believe that Indian food fishing is endangering steelhead stocks.

### Dollars versus Rights

The Department of Fisheries prevents Indian people from using their fishing rights by allocating almost all of the harvestable salmon to commercial and sport fishermen.

The reasons for the allocations relate largely to economics. The commercial and sport fisheries generate revenues for the federal and provincial governments directly through taxes and license fees and indirectly in other ways.

The Indian food fishery generates no revenues for either government.

#### The Real Issue

The Department of Fisheries uses its regulatory powers to benefit commercial and sport fishermen at the expense of Indian fishing rights.

The real issue is the Federal Fisheries Department's use of its regulatory authority to circumvent rights which have been guaranteed to the Indian people of British Columbia for over a century.

#### Indian Fishing Rights

The general public is largely unaware of the true nature of Indian fishing rights. Many people are led to believe that Indians are accorded special fishing "privileges" as an act of charity based on need. This is not the case.

The Department of Fisheries often behaves as if the Indian fisheries are dependent upon the good will of the Minister or of local enforcement officers. This is not true.

Indian fishing rights have existed continuously since before the arrival of the first Europeans to these shores. They continue to exist today and are recognized in law.

Indian fishing rights have received explicit official recognition in a variety of ways. These rights have been



confirmed in treaties and agreements. They have been recognized in the establishment of fishing reserves and exclusive fishing areas by successive federal-provincial commissions. The so-called Indian food fishery has been a continuous feature of federal policy from the time that the Federal Fisheries Act was made operative in British Columbia.

In limited ways, Indian rights in commercial fisheries have also been recognized. This recognition can be documented in treaty provisions, orders-in-council, and policy decisions announced by previous Ministers of Fisheries.

A few examples will serve to indicate the nature, extent, and legal standing of Indian fishing rights in British Columbia. This is not intended to be a complete recitation of official government recognition of these rights, nor of government promises to the Indian people of this province regarding their fisheries.

Between 1850 and 1854 James Douglas concluded fourteen treaties for the cession of Indian title to various districts of Vancouver Island. Each of the treaties reserved to the Indian parties the right to "carry on our fisheries as formerly." In a letter reporting the treaty arrangements, Douglas explained, "I informed the natives... that they were at liberty to hunt over the unoccupied lands, and to carry on their fisheries with the same freedom as when they were the sole occupants of the country."

It would be difficult to imagine a more concise and clear guarantee of aboriginal rights.

Between 1876 and 1894 a large number of fishing reserves as well as exclusive fishing areas were designated for the use of specific Indian bands. These fishing areas and fishing rights were recognized and officially sanctioned by the joint federal-provincial Indian Reserve Commission which was established in 1876.

Alexander Anderson, one of the initial members of the Indian Reserve Commission served simultaneously as Inspector of Fisheries for British Columbia. In his capacity as a member of the Indian Reserve Commission Anderson participated in the establishment of fishing reserves and in the guarantee of exclusive fishing areas to Indian people.

In his capacity as Inspector of Fisheries for British Columbia, Anderson recommended that the Indian population in the province should not be subject to the provisions of the Fisheries Act. The Federal Fisheries Act was extended to apply to the Province of British Columbia as of July 1, 1877. On August 8 of the same year, the Minister of Marine and Fisheries suspended the application of the Fisheries Act in respect to Indians in British Columbia.

From 1894 to the present, the fisheries regulations for British Columbia have consistently recognized special rights of Indians to take fish for their own food.

In 1892 Great Britain, acting on behalf of Canada, entered into a treaty with the United States of America respecting the fur-seal fishery in the North Pacific Ocean. This was a commercial fishery in which coastal Indians participated. In 1893 the two governments agreed on a number of restrictions on the taking of fur seals. The restrictions were imposed in the interests of conserving the fur seal stocks.

These restrictions were not to apply to Indian people sealing "in the way hitherto practised by the Indians." The exceptions for Indians were carried forward in the multi-lateral pelagic fur seal treaty entered into by Great Britain (on behalf of Canada), the United States, Russia and Japan in 1911. That treaty was abrogated by Japan in 1941, but a continuing agreement exists between Canada and the United States.

The exemption for Indians is still in force. The Department of Fisheries enforces the provisions of the fur seal treaty with respect to Canadian subjects and residents.

In 1889 the Government of Canada entered into a treaty with Cree, Chipewyan, and Beaver Indians in northern Alberta, the southern Northwest Territories and northeastern British Columbia. Under the terms of Treaty 8, the Indians retained hunting, trapping and fishing rights on the lands which were ceded to the government

Treaty No. 8 has never been abrogated and its provisions are still in force.

Between 1906 and 1911 representatives of the Government of Canada entered into formal agreements with Dene Indian bands in the Upper Skeena region and in the area of Stuart and Fraser lakes. Under these agreements, the government provided compensation to the Indians who agreed to give up their aboriginal method of fishing with weirs. The government further provided that the Indian parties would fish with nets in non-tidal waters notwithstanding the provisions of the Federal Fisheries Act.

Again, it would be difficult to imagine a clearer recognition of the existence, legality, and value of aboriginal fishing rights.

#### Federal Fisheries' Misuse of its Regulatory Powers

For over a century, the Government of Canada has repeatedly assured the Indian people of this province that their fishing rights would not be curtailed and that laws would not be enacted to diminish the value of those rights.

Despite this, in recent years the Department of Fisheries has increasingly utilized regulations which serve to expand the commercial and sport fisheries at the expense of Indian fishing rights.

The false issue of conservation is used to limit Indian people in the exercise of their rights.