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*Fact Sheet*  
**Aboriginal Rights to Fish in British Columbia**  
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The fisheries are one of the primary points of conflict between the Government of Canada, which has principal jurisdiction over the fisheries, and Aboriginal peoples in British Columbia.

### **Aboriginal Fisheries**

Aboriginal peoples have a long history of using and managing the fisheries in what is now British Columbia. This history provides the underlying foundation for Aboriginal claims to the fisheries.

### **Aboriginal Rights to Fish**

Aboriginal and treaty rights have been protected since 1982 under the Canadian Constitution. No subject area has been more important to the development of Aboriginal rights, and to an understanding of their nature, than disputes over fishing rights.

Before the constitutional entrenchment of Aboriginal rights, the government of Canada generally understood Aboriginal fisheries, including food fisheries, as discretionary privileges.

Canada constructed the category of 'Indian food fishing' in its fisheries law in the late nineteenth century to minimize Aboriginal peoples access to the fishery.

In *R. v. Sparrow* (1990), the Supreme Court of Canada confirmed that Aboriginal peoples had a right to a food, social and ceremonial fishery, and that this fishery had priority, after conservation, over other fisheries, including sport and commercial fisheries.

In 1996, the Supreme Court of Canada outlined the test that First Nations must meet to establish an Aboriginal right to a commercial fishery.

In *R. v. Gladstone* (1996), the Supreme Court of Canada determined that the Heiltsuk had an Aboriginal right to a commercial spawn-on-kelp fishery. It determined that the government might justifiably infringe this right to promote regional and economic fairness or to recognize the historical reliance on and participation in the fishery by non-Aboriginal fishers.

### **Treaty Rights to Fish**

The 14 treaties between the Hudson's Bay Company (on behalf of the British Crown) and Aboriginal peoples on Vancouver Island between 1850-54 include recognition of the Aboriginal signatories' right to conduct their "fisheries as formerly".

The meaning of the fisheries clause has not been settled and is the subject of continuing litigation. It seems likely that it includes food fishing rights and rights to a commercial fishery, perhaps to support a moderate livelihood.

Negotiations over the management of, and access to, fisheries are an integral part of the continuing British Columbia Treaty Process.

Under the Nisga'a Treaty and the accompanying Harvest Agreement, the Nisga'a have rights to harvest significant percentages of fish that live or return to the Nass River. The treaty rights are protected under the Canadian constitution. Rights under the Harvest Agreement are not.

Several other First Nations, including the Tsawwassen, have signed agreements-in-principal that contain similar provisions. However the portion of the fishery that is to be protected under the future treaty is explicitly confined to the food fishery.

If existing treaties and agreements-in-principal provide an accurate guide, the Aboriginal food and commercial fisheries under treaties and harvest agreements will equal approximately one-third of the total catch of sockeye salmon in the province.

### **Aboriginal Rights and Public Rights**

Following the Supreme Court of Canada decision in *Sparrow*, Canada created an Aboriginal Fisheries Strategy (AFS) to enhance Aboriginal participation in fisheries across Canada, and to act as an interim measure while it negotiated treaties in British Columbia.

The most controversial element of the AFS has been the pilot sales program. This blurred the distinction between food and commercial fisheries by allocating fixed quotas of salmon to several First Nations for whatever purposes they determined, including fish for food or sale. This program provoked considerable opposition, including protest fisheries from members of the general commercial fleet.

In the absence of treaties or comprehensive agreements for the fisheries, these disputes are not likely to disappear. Indeed, they seem certain to escalate.

#### ***About the Scow Institute***

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