

## “To Take the Food from Our Mouths”: The Cowichans’ Fight to Maintain Their Fishery, 1894–1914

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*In a time when history records British Columbia Aboriginal peoples as having been pushed into the margins of power by the Euro-Canadian settler society, the Cowichan people of Vancouver Island demonstrated a remarkable defiance to restrictions on their fishing activities. Despite persistent efforts by federal regulators and others to eliminate the use of fishing weirs on Cowichan River, Cowichan fishers devised several effective strategies to retain these important devices. This extended and successful resistance is significant because it illustrates the importance of tracking events “on the ground” over a period of time in order to appreciate the complexities of power relations between Aboriginal and Euro-Canadian peoples.*

*À une époque où l’histoire documente que les peuples autochtones de Colombie-Britannique ont été poussés dans les marges du pouvoir par la société des pionniers eurocanadiens, les Cowichans de l’Île de Vancouver ont fait preuve d’un défi remarquable face aux restrictions concernant leurs activités de pêche. En dépit des efforts persistants des autorités de réglementation fédérales et autres pour éliminer l’utilisation de déversoirs pour la pêche sur la rivière Cowichan, les pêcheurs cowichans ont trouvé plusieurs stratégies efficaces pour garder ces systèmes importants. Cette résistance prolongée qui a porté fruit est significative parce qu’elle illustre l’importance de suivre des événements “au sol” pendant une période de temps pour apprécier les complexités des rapports de pouvoir entre les peuples autochtones et eurocanadiens*

Since the arrival of European settlers in British Columbia, Aboriginal people have tried to secure government recognition and protection of their interests in the region’s lands and resources. From the 1880s to the 1920s, they elaborated their goals as land title and rights to be addressed through treaties with the Crown.<sup>1</sup> During this time, Aboriginal leaders petitioned and met with provincial, federal and British government officials, enlisted

the aid of Euro-Canadian advisors and created "pan-Indian" organizations. These efforts focused mainly on addressing Aboriginal interest in land and enjoyed only limited success.<sup>2</sup> In recent years, historians have begun to explore early Aboriginal rights struggles as they pertained to fishing activities.<sup>3</sup> This has shed light on how federal fisheries regulations and the commercial fishing industry significantly reduced Aboriginal peoples' access to fish.<sup>4</sup>

Although important ground has been covered in examining how government fishing regulations affected Aboriginals in B.C., there has not been much consideration of how Aboriginals' resistance affected regulatory efforts or of regional variations in enforcement.<sup>5</sup> Examination of regulation enforcement activities on the Cowichan River around the turn of the century reveals that the Cowichan Aboriginal people persistently and effectively resisted serious encroachments on their fishing activities. Over a period of twenty years, from 1894 to 1914, they continued to use fishing weirs on the river despite a regulatory ban and formidable opposition from sports fishers.

The Cowichan used four approaches to protect their weirs. Firstly, they sought the assistance of Department of Indian Affairs (DIA) officials to pressure Department of Marine and Fisheries (DMF) officials to relax enforcement of the ban on weirs. Secondly, the Cowichan garnered the support of other Euro-Canadians and expanded their protests beyond narrow bureaucratic channels.<sup>6</sup> Thirdly, they developed effective arguments to address allegations about weirs and introduced their own parameters for debating the issue.<sup>7</sup> Fourthly, the Cowichan continued using weirs and resisted the attempts of DMF officials to remove these devices. In examining this extended resistance the Cowichans' power should not be exaggerated or their hardships ignored, but by the same token their accomplishments should not be overlooked. DMF officials opposed Cowichan claims to rights regarding weirs, but under sustained pressure the department adjusted its enforcement of the ban on weirs and eventually negotiated an agreement allowing the use of these devices.

## I

Prior to the arrival of Europeans, fish was the main source of food for Aboriginal people living near the Cowichan River on the east coast of Vancouver Island. In addition, fish served as an item of exchange within and between families.<sup>8</sup> After Euro-Canadian settlement, the Cowichan engaged in farming and wage labour, such as building boats and canoes, picking hops in Washington State, and working in lumber camps, sawmills,

smelters and canneries. Fishing, however, remained their most significant source of income, with Cowichan supplying canneries and selling their catch in local markets.<sup>9</sup>

Cowichan fishers used Euro-Canadian-made gill nets and boats, but they also continued to use effective traditional tools, such as weirs. These devices, which resembled fences, were built in streams and slow-moving rivers for the purpose of delaying salmon swimming upstream to spawn. There were a variety of weir types in B.C., but the most common ones consisted of a permanent wooden frame driven into the stream-bed with a removable lattice-work or slatted panel held onto the frame by pressure of the current (see Figure 1). Fish unable to pass through the latticework or between the slats could be steered into traps or pens to be clubbed or speared. Alternatively, fishers could use spears and dip-nets to capture fish where they gathered on the downstream side of the weir.<sup>10</sup>

Weirs also played important political and social roles. The opening of weirs (removal of panels) at appropriate times in each salmon run was necessary to provide for fishers located upstream. A closed weir could be used to monopolize fishing and exert economic or political pressure on upstream neighbours.<sup>11</sup> To avoid the necessity of opening weirs, some fishers may have constructed panels with flexible materials and large enough spaces that fish could eventually push through after a temporary delay. Prior to the arrival of European settlers, the Cowichan evidently practised self-regulation, with twelve or more weirs being operated

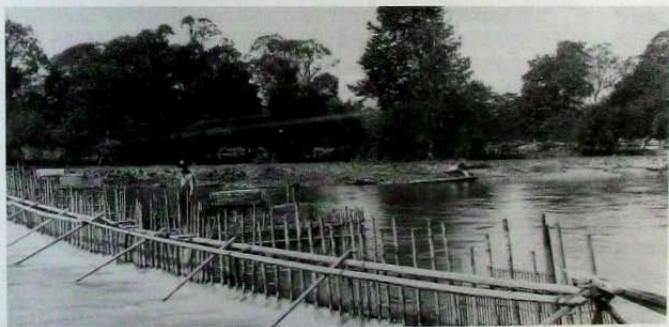


Figure 1 A fishing weir on the Cowichan River in the early 1900s. Note the slatted panels, catch-pens and walkway. [B.C. Archives & Records Service photo #D-07562]



concurrently on the Cowichan River.

Among the Cowichan, construction of weirs was arranged and managed by powerful and prestigious families. This construction required a good deal of labour and involved the entire community. In return, community members had access to weirs, although particularly productive and useful aspects of a weir-site, such as traps, pens and nearby smokehouses, may have been privately controlled with no community access.<sup>12</sup> In Coast Salish society, food and high status were directly related. As a result, it is quite possible that the prestige and power on which a family or individual relied in order to arrange the construction of a weir was, in turn, reinforced by the weir's catch. Thus, as well as being important to the subsistence and economy of the Cowichan, weirs formed the basis for some important political and social relationships.

Aboriginal people were ostensibly subject to the 1878 B.C. fisheries regulations, which placed restrictions on the size and location of drift nets and prohibited fishing on weekends. To avoid hampering the development of the commercial fishery, however, DMF officials exempted Aboriginals, the backbone of the industry, from enforcement.<sup>13</sup> By 1885 DMF officials expressed concern that, although Cowichan weirs by themselves were not a threat to fish stocks, the combined catch of Euro-Canadian and Aboriginal fishers seriously depleted Cowichan River fish. As a result, DMF introduced the requirement that weirs be opened on weekends. William Lomas, DIA's Cowichan Indian agent, was appointed as "Fisheries Guardian" to ensure that this requirement was respected.<sup>14</sup> The introduction of logging in the Cowichan Valley, however, had a more significant impact on Cowichan weirs. Loggers used the Cowichan River to move logs downstream, where they were milled and transported. As well as causing destructive erosion to waterfront lands, log driving on the river destroyed weirs.<sup>15</sup> By 1894, log-driving led the Cowichan to reduce the number of weirs on the river, and to use more nets.<sup>16</sup>

Prior to 1894, it does not appear that the Cowichan objected to opening their weirs during weekends. They did, however, react angrily against changes introduced that year. New regulations specified that "no Indian shall spear, trap, or pen fish on their spawning grounds or in any place leased or set apart for the natural or artificial propagation of fish, or in any other place otherwise specially reserved."<sup>17</sup> In effect, the use of weirs in rivers and streams had been banned. With the support of DIA officials and missionaries, the Cowichan pressured Fisheries officials to refrain from enforcing regulations "to the letter"<sup>18</sup> in 1894.

The Cowichan had a tradition of stringently opposing Euro-Canadian

encroachments on their lives. In the 1860s and 1870s, they were involved in heated conflicts with settlers and government officials over land. Through resistance and negotiation, they were able to retain lands that they desired.<sup>19</sup> In the 1880s, the Cowichan demonstrated a determination to perform the potlatch, despite the prohibition under the *Indian Act*.<sup>20</sup> Having inadequate resources for enforcement and fearing Aboriginal unrest like that which had just erupted on the prairies, DIA was inclined to capitulate to the Cowichan.<sup>21</sup>

By the spring of 1895 DMF officials were determined to remove Cowichan weirs. Citing concern about the protection of trout streams, they requested that DIA officials ensure Aboriginals refrained from "obstructing" the Cowichan River. Sport fishing, or "angling," had become popular on the Cowichan River because of its impressive steelhead run and close proximity to Victoria.<sup>22</sup> By the 1890s, the Cowichan was considered to be primarily an anglers' river, although commercial netting continued in Cowichan Bay. The B.C. fisheries regulations existed mainly to protect the commercial fishing industry,<sup>23</sup> but on the Cowichan River DMF officials were primarily concerned with the impact that weirs could have on the anglers' target fish, the steelhead trout.

DIA officials in Ottawa were prepared to accept the restriction on weirs. However, the DIA Indian superintendent in Victoria, A.W. Vowell, protested that Aboriginals did not construct weirs for the purpose of total obstruction and pointed out that the use of weirs had not harmed fish populations in the past. DMF inspector McNab responded that weirs had the effect of totally obstructing fish. He claimed that the use of weirs was an old and unnecessary practice and warned that, if Aboriginal people were unwilling to give it up, the time may have come to use force to end the use of weirs.<sup>24</sup>

Soon after, Cowichan fishers were summoned to court and charged under the regulations for maintaining a weir and obstructing fish. In his role as Indian agent, Lomas represented the fishers in trial and raised several arguments in their defence.<sup>25</sup> He stated that weirs did not prevent fish from reaching their spawning grounds and that up to twenty weirs had successfully operated on the river at a time. Lomas emphasized that the Cowichan right to fish for food had never been surrendered and that the Indian reserve commissioners had recognized this right.<sup>26</sup> He also warned that the Cowichan could be expected to take action against anglers in response to a ban on the use of weirs. The fishers were convicted, but Lomas subsequently filed an appeal.<sup>27</sup>

In the meantime, DIA officials requested that the ban be relaxed.



Vowell and Lomas were worried about reaction to the convictions. In addition, DIA was concerned that the Cowichan could become impoverished. They had informed Lomas that without access to fish, they would be looking to DIA for support.<sup>28</sup> Regardless, Inspector McNab was intransigent in his desire to eliminate the weirs and Vowell despaired that he was helpless to assist the Cowichan.<sup>29</sup>

At this point, Cowichan fishers, along with Aboriginal people from Victoria to Nanaimo, met to discuss the case and consider the defence. In a letter written to Vowell on their behalf by a Catholic missionary, the Cowichan stated that they had always had the right to take any fish, by any means, at any time, in any of the waters of British Columbia, and wanted to preserve that right in its entirety.<sup>30</sup> Furthermore, they claimed ownership of the fish by natural right and considered all government regulations depriving them of that right to be unjust. By framing their weir use in terms of rights, the Cowichan elicited a contemporary liberal precept, which made their argument readily intelligible to authorities and the general public. In addition, this characterization linked weirs to the Aboriginal title issue, which was a topic of some public concern.

The Cowichan further stated that, in taking possession of their lands, the government had promised to protect them.<sup>31</sup> Upon this promise they claimed to have been law-abiding, but stated that the government "favoured the white people by so far that now they are allowed to take the food from our mouths." This clearly included economic, as well as nutritional sustenance. In making this point, the Cowichan invoked the assumptions of coercive tutelage, a structure of relations reflecting a form of restraint or care imposed by Euro-Canadians upon Aboriginals.<sup>32</sup> Cowichan fishers understood how regulatory restriction on weirs effected the reallocation of fish from themselves to Euro-Canadians and were determined to hold DIA to its responsibilities in the tutelage relationship.

The petition also contrasted Euro-Canadian and Cowichan fishing practices. The Cowichan claimed to take fish for personal subsistence, as well as to make a living, and emphasized that they made use of all fish taken. History demonstrated that weirs did not destroy fish populations and they noted that weirs caught only large fish, predominantly chum salmon. Conversely, the Cowichan asserted that Euro-Canadians took fish from the Cowichan River mostly for pleasure and practised destructive habits such as throwing away smaller fish. They concluded that regulations should address the White population, rather than Aboriginals. With this important petition, the Cowichan established their own terms of reference for the debate about weirs.

The Cowichan fishers "heartily" thanked Vowell, Lomas and local priests for their efforts to re-establish Cowichan rights, but also requested the services of a lawyer in court. When court proceedings resumed, Perry Mills, the lawyer retained by the Cowichan fishers, argued three points: (1) in non-tidal waters, the Dominion fisheries regulations did not apply; (2) the "Indians" had, by treaty or agreement with the Indian reserve commission a right to carry on their fisheries as formerly; and (3) weirs did not prevent fish from ascending the river.

Instead of ruling on these points, the two presiding magistrates ruled the case out of court on a technicality. Consequently, no legal issues were resolved.<sup>33</sup> In this process, however, the Cowichan and their advocates had developed and aired arguments against restrictions on weirs. As they stated in their letter to Vowell, "Now that we are aware of the object of what we claim to be unjust regulations, we strongly protest, and we are decided to keep hold of our natural rights. . . ."<sup>34</sup>

The lack of resolution in the court decision appears to have created an atmosphere of tension on Cowichan River. Agent Lomas noted that the trial had created a "good deal of excitement" among Aborigines of all neighbouring villages regarding restrictions on the food fishery. They wanted the promises of the Indian reserve commission honoured and their right to fish for food respected. In Lomas's opinion, these Aboriginal people had the sympathy and support of the local Euro-Canadian population.<sup>35</sup> These observations were communicated to DIA Deputy Superintendent General Hayter Reed, who, in turn, contacted the minister of fisheries. Reed requested that the Cowichans' right to fish by their accustomed methods be restored and warned fisheries officials that "unwarranted interference" with the Cowichans' rights was causing "intense dissatisfaction . . . really of a serious nature" and "a spirit of unrest in the bands."<sup>36</sup> He claimed that fishing restrictions could endanger Cowichan "confidence in and friendly sentiment towards the government and settlers."<sup>37</sup>

This fear was not unfounded. Cowichan chiefs had warned Perry Mills that if they were prevented from taking salmon for food, serious trouble would follow. Mills suggested that this trouble could be averted by amending the regulations to allow for the use of weirs, subject to inspection.<sup>38</sup> Meanwhile, DIA officials in B.C. were able to convince James Maitland-Dougall, Lomas's replacement as fisheries guardian, to lay no further summons. It was expected that an arrangement would be made for Aboriginal fishers by senior officials from the two departments.<sup>39</sup>

In response to DIA's concerns, the minister of Marine and Fisheries



dispatched the Dominion fisheries commissioner, E.E. Prince, to inspect the weirs and prepare a report. Following his visit, Prince reported that, of the various species of fish on the Cowichan River, Aboriginal people preferred chum salmon as food and set their weirs to catch it from May until September. According to Prince, some of the weirs he encountered barred the entire river to ascending fish and he observed that the bottom edge of a weir's panel was shaped to fit the riverbed so as to prevent fish from escaping underneath the weir. Prince asserted that it was only due to the idle and careless nature of the Cowichan in maintaining their weirs that some fish managed to get past to spawn. In his opinion, the Cowichan earned good money by commercial fishing and hop-picking, but failed to cultivate their reserve lands. As a result, Prince concluded there was no justification for allowing weirs that would destroy an exceptional sports fishing river.<sup>40</sup> This was obviously not the kind of response that DIA officials had hoped for.

DMF officials also expressed concern about the difficulty of enforcing regulations against Aboriginal peoples in other parts of B.C. if the Cowichan were allowed to use weirs.<sup>41</sup> In addition, they were receiving persistent requests from the Vancouver Island Fish and Game Protection Society to eliminate weirs on the Cowichan River and to extend the fishing season for anglers.<sup>42</sup> While the Cowichan focused on catching chum salmon for food, trout was caught in weirs and sold in the markets of Nanaimo and Victoria. The anglers were concerned about the threat that this posed to their favourite fish.<sup>43</sup>

In response to Prince's inspection visit and the increasing antagonism from the Fish and Game Society, the Cowichan initiated a petition,<sup>44</sup> signed by themselves and many local Euro-Canadian residents. The petition stated that:

1. the Cowichan Indians have from time immemorial claim to the right or privilege to catch fish for the purpose of providing themselves with necessary food;
2. that they always enjoyed that right or privilege until the 1894 regulations were passed whereby they were prejudicially restricted;
3. that they could not live without the use of fish;
4. that they do not destroy fish;
5. that if their fishing rights are restricted, they will become a burden to the government; and
6. that they have always been very law-abiding and very kind to the White population.

The petition requested that its recipient, the superintendent general of DIA,



use his authority and influence to re-establish Cowichan rights to catch fish by any means for providing themselves with food and money as necessary. This petition was passed to the minister of Marine and Fisheries with the warning that the restrictions were causing a "good deal of agitation and trouble amongst all classes of people."<sup>45</sup>

The impetus for local Euro-Canadian support is unclear. Perhaps these Euro-Canadians were swayed by Cowichan arguments. In addition, it is possible that settlers simply wished to continue purchasing fish from the Cowichan. The Euro-Canadian petitioners may have also resented the intrusion of outsiders, particularly English immigrants. Many of the English sportsmen who visited Vancouver Island as tourists returned to live there.<sup>46</sup> The B.C. government encouraged this by promoting Vancouver Island, particularly the Cowichan Valley, as a place similar to the British Isles, where potential English immigrants could live cheaply and "potter about with a gun or rod."<sup>47</sup> Many of these immigrants brought rigid traditions of social hierarchy with them, a stratification not accepted by their new Canadian neighbours.<sup>48</sup> Perhaps some Canadians were aware that water rights had become tradable commodities in England and that rents for and rights to most game fish waters were rapidly annexed by non-resident upper middle-class anglers.<sup>49</sup> English anglers' clubs could be very effective in gaining exclusive use of rivers for their members.<sup>50</sup> Local settlers may have perceived the ban on weirs as the thin edge of the wedge.

It appears that fisheries authorities took no action against Cowichan fishers in 1896, but Maitland-Dougall claimed to have prevented the erection of weirs in 1897. In a letter recounting his enforcement activities, Maitland-Dougall stated that the Cowichan had removed the panels from their weirs when he informed them that he was enforcing the ban.<sup>51</sup> However, he noted that the frame was not removed, which would have allowed for the Cowichan to easily replace the panels and resume using the weir. This act of enforcement produced a response from the Cowichan. Frustrated with DIA ineffectiveness, they wrote to the members of Parliament for Nanaimo and Vancouver and reiterated the claim that the regulations unjustly restricted Cowichan fishing rights. In these letters the Cowichan denied Commissioner Prince's allegation that the panels fit flush with the riverbed and prevented escape. As evidence they pointed out that they used up to twelve weirs on the river at a time and the "multitude of salmon was never reduced." The letters also delineated the injustice of how restrictions sacrificed "the living of their aged folks for the pleasure of a few sportsmen" and suggested that if this was the government's decision then it should be more liberal in its financial or material support.

As an alternative the Cowichan suggested that their weirs should be regulated by having them opened for two days each week.<sup>52</sup> This proposal was a reflection of DMF's policy prior to 1894.

The Nanaimo member of Parliament passed this letter with his endorsement to the minister of fisheries, but received what was becoming a standard response from that department. The minister claimed that DMF had to enforce the regulations because weirs destroyed fish. Furthermore, the Cowichan did not merit special treatment because they wasted their wages from commercial fishing and hop-picking and failed to cultivate their land. Meanwhile, the Cowichan continued to use weirs, but also decided, with the support of Indian Agent Lomas, to prohibit passage over their riverside reserves by Euro-Canadians, particularly anglers.<sup>53</sup> The size and location of these reserves, particularly Cowichan Indian Reserve No. 1 (see Figure 2), made this an effective strategy.

Early in 1898, the Fish and Game Society again pressed for enforcement of restrictions against weirs. In an indignant response to what he perceived as an affront on his integrity, Maitland-Dougall pointed out that "the

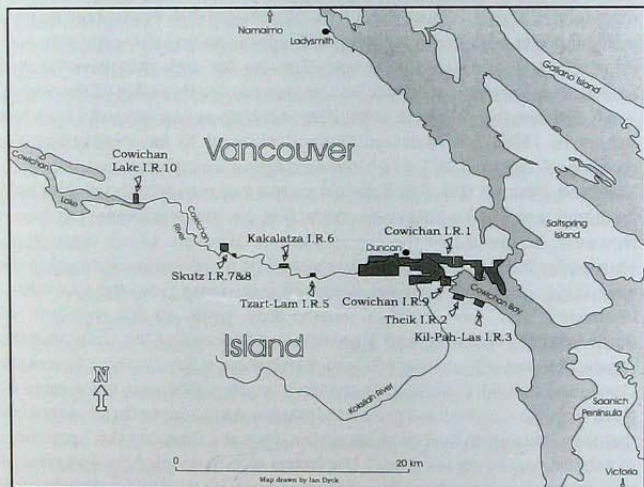


Figure 2 Reserves along the Cowichan River, 1894–1914. Cowichan IR No. 1 comprised over 5700 acres.

feeling and wish of the public here is that the Indians be allowed to use their weirs." In his opinion, the fishing in the river was always best above the weirs.<sup>54</sup> Maitland-Dougall's supportive comment reflected some degree of defensiveness. Fisheries officials in general were subject to persistent public criticism. However, there is also a distinct possibility that Cowichan arguments and actions were having an impact on DMF officials.

Despite Maitland-Dougall's reservations, the commissioner of fisheries authorized the B.C. inspector to take whatever measures necessary to eliminate weirs.<sup>55</sup> Within a month of that authorization, a Cowichan fisher named Jim Quillshemet was summoned before a magistrate's court for constructing a weir across the Cowichan River. As could be expected, officials of DMF and DIA traded familiar arguments about the alleged destructiveness of weirs and the rights and needs of the Cowichan. However, on this occasion, at least one of these arguments was validated by the court. The charge against Quillshemet was dismissed on the grounds that the weir did not prevent fish from ascending the river.<sup>56</sup>

This court victory represented a substantial component of the Cowichans' continuing degree of control over their fishing activities. While physical repression and economic domination are significant and effective tools for exercising coercion, they are not the only means of exercising power. The creation and reproduction of credible knowledge is important to the acceptance of an idea or practice within a society and is another significant means of exercising power.<sup>57</sup> The ability of the Cowichan to validate their knowledge about weirs in the face of DMF's antithetical knowledge established a hole in the umbrella of Euro-Canadian power over the fisheries.<sup>58</sup> The court victory did not stop efforts by DMF officials and others to eliminate Cowichan weirs, but DMF officials had one less means of exercising repressive and ideological power and did not take weirs-users to court again.

## II

The court decision caused senior DMF officials to question the ban on weirs. In the summer of 1899, W.W. Stumbles, an Ottawa official, was dispatched to study the issue. After touring the Cowichan River to view the weirs, Stumbles took statements from William Galbraith, a Victoria-based DMF overseer responsible for weekly patrols of the river, and Maitland-Dougall, who remained the local DMF guardian. Overseer Galbraith, who was also a member of the Fish and Game Society, asserted that weirs were "injurious" because they delayed spawning fish long enough to disrupt their reproduction. In addition, he claimed that weirs destroyed young fish



attempting to swim downstream. In Galbraith's opinion, weirs endangered the economic benefits brought to the town of Duncan and the Cowichan area by visiting anglers.<sup>59</sup> Maitland-Dougall had a broader perspective and believed that sports fishing was reasonably protected under the current circumstances. Stumbles agreed that fishing was not seriously injured by the weirs, particularly if their use was regulated. To preserve the commercially valuable spring salmon and the angler's steelhead trout, Stumbles stipulated that the panels would have to be removed during the respective spawning runs.

Stumbles claimed, however, that weirs were an effective means for the Cowichan to catch their food staple, the chum salmon. If weirs were strictly prohibited rather than regulated, he feared that the Cowichan would retaliate by refusing White sportsmen access to Cowichan reserves.<sup>60</sup> To prevent overfishing of dog salmon, which had a growing market in Japan, Stumbles recommended restricting cannery-employed Japanese fishers from using seine nets in Cowichan Bay. This report illustrated the growing division in the Department of Marine and Fisheries between officials who believed that regulating Cowichan weirs provided sufficient protection for fish and others who believed that complete prohibition of weirs was necessary. Faced with this dilemma, Commissioner Prince wrote "No Action" on Stumbles's report.

After their court victory, the Cowichan took other measures to protect their fishery on the Cowichan River. As early as 1888, they had requested prohibition of seine netting in Cowichan Bay by non-Aboriginal fishers who sold their catch to local markets. The Cowichan argued that large seine nets were not allowing enough fish into the Cowichan River.<sup>61</sup> Twelve years later, similar requests were being made on the Cowichans' behalf by DIA officials. During the 1890s, however, seining in Cowichan Bay had expanded to include cannery-employed fishers.<sup>62</sup> In 1900 and 1901, Lomas's replacement, Indian Agent Robertson, had to discourage the Cowichan from using force to stop non-Native fishers from seining or netting in Cowichan Bay.<sup>63</sup>

In 1900 DMF officials denied requests by cannery owners to extend seining privileges in Cowichan Bay, "in view of the seriously depleted state of the waters of Cowichan River, and the complaints of the resident Indian communities that their supplies of fish food are imperilled by the excessive netting in the estuary."<sup>64</sup> However, by the fall of 1901 the Cowichan were suffering serious food shortages. In 1902, Agent Robertson convinced DMF Commissioner Prince to hold a session of the B.C. Commercial Salmon Commission where Cowichan area residents could

give evidence. Cowichan Chief Seeheeltum and others informed the salmon commission of the hardship caused by the depletion of fish and requested that seining in Cowichan Bay be stopped and gill-netting be moved out into open water. During Seeheeltum's testimony, Overseer Galbraith suggested that if seines and nets were removed from the bay, the Cowichan should give up the use of weirs on the river.<sup>65</sup> Emphasizing that weirs provided food throughout the year for the Cowichan, but that they were not in use at all times, Seeheeltum was reported to "declare with much dignity" that he had not come before the commission to surrender any of his people's rights, but to have their wrongs adjusted.<sup>66</sup>

The Cowichan requests regarding netting and seining in Cowichan Bay and their defence of weirs received the support of local White residents and, ironically, the B.C. Fishermen's Union, to which the seiners and gill-netters belonged. The local union lodge, comprised mainly of Cowichan fishers, claimed that the interests of Fraser River and Victoria canneries should not take precedence over local interests and received the support of the union on this position.<sup>67</sup> The Fish and Game Society also supported the ban on fishing in Cowichan Bay, but maintained their opposition to the use of weirs.

Commissioner Prince considered the concerns about fishing in Cowichan Bay to be exaggerated, but recommended that seining be prohibited in the interests of the Cowichan and that, in the interests of the anglers, weirs be limited to autumn use.<sup>68</sup> In an order-in-council passed later in 1902, fishing was prohibited within an area comprising the majority of Cowichan Bay.<sup>69</sup> However, the Cowichan River's respite from commercial fishing was short-lived. Cannery owners in B.C. lobbied DMF to allow them to use purse-seines, a highly effective method of open-water fishing, and in 1904 were granted this privilege. By 1907, canneries were being granted leases to use this technique in Cowichan Bay.<sup>70</sup>

The Cowichan people resisted encroachments on their fishing, but they also demonstrated adaptability. As well as adopting the use of nets on the Cowichan River after the introduction of log-driving, they sought employment with canneries. Cowichans also engaged in commercial fishing outside the licensed parameters of the fisheries regulations. In the late 1800s, they began selling portions of their catch to local town markets. By 1912, Cowichan fishers had apparently set up a sales network that extended beyond their locality and the city of Victoria to the bigger market of Vancouver.<sup>71</sup>

The use of nets on the Cowichan River and the sale of fish without DMF licences was prohibited by regulations. Cowichan fishers were

frequently arrested and prosecuted for being in violation of these regulations. Just as they protested restrictions on weirs, the Cowichan resisted limits on their use of nets in the river and bay and on their ability to sell their catch. The fight to protect weirs, however, provided the cornerstone around which they struggled to maintain their access to the local fishery.

### III

In 1902 Charles Hayward, the mayor of Victoria and president of the Tourist Association of Victoria, resumed efforts initiated by the Fish and Game Society to establish the Cowichan River as a sportsmen's preserve, free from weirs and other non-sport fishing activities. Hayward hired a private detective to collect evidence, and fired off a barrage of letters to DMF asserting the destructiveness of Cowichan weirs. However, Victoria's mayor could not move DMF to enforce a weir prohibition. In a letter to the deputy minister, Commissioner Prince stated that his department was unable to protect the "finest angling river in British Columbia" without enlisting the aid of DIA. The frustrated commissioner claimed that,

[W]ere the worst offenders white men, the department could put a stop to the abuse; but it is difficult to take strong measures against these Indians, who are unusually degraded, less civilized than most Indians and dangerously vindictive. The detective says that there is fear of the Indians doing the local white people an injury if the fishery laws be carried out. Threats of shooting have been made. I have attempted to deal effectively with this Indian trouble for over eight years and without result.<sup>72</sup>

Claiming that either DMF's officers were incapable, or the department condoned illegal activity, Hayward threatened to take justice into his own hands.<sup>73</sup> Soon after, the Tourist Association initiated a private prosecution against a Cowichan fisher for maintaining a weir on the Cowichan River.<sup>74</sup> This action was the culmination of several months of pressure by the association. During the previous winter, Overseer Galbraith had reportedly met the Cowichan at their band office and informed them that the Tourist Association of Victoria "had thousands of dollars to spend and was going to compel the Indians to take the weirs out of the River and if defeated in the courts of this country would appeal to [the] Privy Council of England." Robertson noted that this caused grave concern among the Cowichan. In their defence, the Indian agent claimed that they had complied with the closely enforced requirement that weirs be kept open on weekends.<sup>75</sup>

Soon after the prosecution was initiated, the Cowichan forcibly ejected



anglers from Cowichan Indian reserves, an action which was fully sanctioned by the local Indian agent and B.C. Indian superintendent.<sup>76</sup> In an effort to encourage DIA officials to take further action, the Cowichan, with the assistance of the local Methodist missionary, obtained a charter from the Canadian Trades Congress and had the congress petition DIA. The petition stated that while the Cowichan hoped that fish stocks would increase as a result of restrictions on commercial fishing in Cowichan Bay, they were "constantly being harassed" about their weirs, which had always been used by their people to procure salmon from the river. The petition concluded with the hope that the DIA "will guard our rights."<sup>77</sup>

Superintendent Vowell and Agent Robertson played down the concerns expressed in the petition, but when the Tourist Association's prosecution was brought to trial, Vowell arranged for an adjournment pending the outcome of a commission called for by the anglers and local residents.<sup>78</sup> The commission, comprised of Senator William Templeman, DMF Inspector Sword and Indian Superintendent Vowell, convened at Duncan. The first to give testimony to the commission were Euro-Canadian anglers and local residents. Mayor Hayward, the first witness, complained vociferously that local officials were not properly enforcing fishing regulations on the Cowichan River. He was incredulous that Guardian Colvin, Maitland-Dougall's replacement, had been ordered not to remove weirs, but merely ensure they were open on weekends. Hayward argued that the destruction of fish by Cowichan weirs would cause an immense loss to Victoria and the rest of Vancouver Island if the Cowichan River could not draw sportsmen from the "Old Country." J.T. Mann, a Victoria lawyer acting on behalf of the Tourist Association, testified that in the two years he had pursued angling on the Cowichan River, he had noticed a decline in stocks and attributed it to weirs. He did, however, acknowledge that commercial fishing in the bay must have had an impact. Mann believed that weirs had the effect of obstructing spawning, which caused fish to subsequently avoid the river.

Local Euro-Canadians, many of whom had fished on the Cowichan River for twenty years or more, disagreed with Hayward and Mann. White residents noted that the weirs were designed to temporarily stop chum salmon for spearing, but that only the larger fish could not eventually push through the interstices. They attributed the decrease in fish stocks to the increased fishing on the river or log-driving, which destroyed the spawning beds for salmon and trout. Overseer Galbraith claimed that residents were hesitant to oppose the use of weirs on account of the "vengeance of the Indians," but those present at the commission denied fearing or ever having

been threatened or abused by the Cowichan.<sup>79</sup>

The Cowichan used their testimony to address the image of weirs as obstructive and destructive. Like local Euro-Canadians, Chief Seeheeltum believed that log-driving and commercial fishing in Cowichan Bay had reduced the river's stocks. Weirs, he noted, had long been in use and several had operated at the same time on the river, yet fish remained numerous. Most importantly, Seeheeltum discredited the image of weirs as impassable dams or barriers. Weirs, he claimed, "do not go down to the bottom of the river. There [were] always passages below the wickets."<sup>80</sup> John Elliot, a Cowichan commercial fisherman, concurred. He stated that weirs were put in to temporarily delay fish, allowing Aboriginals to spear and hook them, but that they were left open on weekends as required by DMF. Elliot added that the Cowichan depended on the weirs for their food, and that "it would be a serious loss if they were removed."<sup>81</sup>

Throughout the testimony, Mann reiterated the anglers' argument that the weirs should be prohibited because they were illegal, but Senator Templeman reminded him at each turn that the commission was charged with gathering evidence to determine whether weirs were destructive, not whether they were illegal. There is no record of the final recommendations of the commission or whether the Tourist Association pursued its prosecution. Possibly the legal action was terminated because anglers feared losing access to fishing spots on Cowichan reserve lands. Considering the commission testimony of local residents, it is questionable whether the Tourist Association would have had sufficient evidence to be successful in court.

From 1904 to 1911, DMF officials focused attention on the salmon spawning grounds of the Skeena and Fraser Rivers, which supported the most lucrative commercial fisheries in B.C. The Babine River included the Skeena River's main spawning grounds and provided the Babines' primary food source. Like the Cowichan, Babine fishers caught the majority of their salmon with weirs. In 1904, at the behest of cannery owners who perceived that these weirs endangered the future of the Skeena commercial fishery, DMF officials removed the Babine weirs. As a result of confrontations with these fishers, DMF officials negotiated an agreement with DIA and Babine representatives in 1906. Under this arrangement, the Babines agreed to stop using weirs in exchange for a supply of nets from DIA and an exemption from DMF's ban on netting in inland waters. In 1911, similar agreements were made with Aboriginal fishers in the Stuart Lake area, the main spawning ground for the Fraser River.<sup>82</sup>

Perhaps emboldened by the removal of the Babine weirs in 1904, DMF officials resumed efforts to eliminate the Cowichan weirs. In 1905, DMF

Inspector C. Taylor instructed Guardian Colvin to remove the weirs. DIA officials warned that this could lead to violence and suggested some form of compensation in exchange for the removal of weirs.<sup>83</sup> Back on the river, the Cowichan gathered in numbers to protect their weirs and the enforcement action was downgraded. Inspector Taylor, noting the attempt to enforce the weir prohibition, said:

I informed the Indians, as there were a large number present, that I had instructed Mr. Colvin to see that the fish weirs were opened during Saturday and Sunday of each week, and before the Indians went away [to fish for Fraser River canneries], which would be about the first of July, they were to remove all the fish weirs from the River. To this the Indians agreed.<sup>84</sup>

This arrangement was agreeable to the Cowichan because it did not hamper their use of weirs. Although Taylor noted in his correspondence that he recommended against allowing reconstruction of weirs when the Cowichan returned from the Fraser River in the fall, this was not a part of the arrangement and there is no record of it occurring.

During 1906, DMF had its hands full with the confrontation over weirs on the Babine River, but in 1907 attention briefly returned to the Cowichan River. The Canadian Pacific Railroad Company (CPR), which owned lands along the Cowichan River, was interested in seeing it become a sport fishing preserve.<sup>85</sup> In a report that decried the destructiveness of weirs and the high number of unchecked infractions, the company pressured DMF to have the devices removed.<sup>86</sup> Inspector Taylor claimed that this account "was of very little value," noting that violations of regulations were actually "very few indeed." In addition, he noted that Aboriginal people believed they had rights to certain fishing methods and could not be expected to change their views quickly. With his response, Taylor included a report from Guardian Colvin, who dismissed concerns about weirs obstructing fish and attributed the decrease in trout to log-driving on the river. While Taylor's superior did not completely endorse these positions, he dismissed the CPR's complaints.<sup>87</sup>

The events between 1902 and 1907 reflect the Cowichans' continuing success in warding off efforts to eliminate their weirs.<sup>88</sup> The Victoria-based tourism industry quickly took up the torch that DMF dropped with regard to the alleged destructiveness of weirs. With some prodding from the Cowichan, DIA officials intervened in yet another legal proceeding and arranged for the issue to be considered by Euro-Canadians in the local community. By engaging in a public discussion about the destructiveness of weirs, the Cowichan were able to enlist community support for their



cause. It is not clear whether local Euro-Canadians supported the use of weirs because of self-interest, convincing Cowichan arguments, or divisions within the community. In any case, the Cowichans' fight to maintain weirs had achieved a momentum which an inexperienced Inspector Taylor tested in 1905, but knew all too well by 1907.

#### IV

During the period between 1907 and 1912 the records show no activity by DMF on the Cowichan River. From 1909 to 1912, the department's attention was focused on eliminating weirs in the Stuart Lake region. Most likely, Guardian Colvin continued to watch over the Cowichan weirs to ensure that they were opened during the weekends, but there is no evidence that any attempts were made to remove them. However, late in 1911, DMF received complaints from two M.P.s alleging that Colvin was not checking destructive infractions of the regulations and that weirs were not being opened at all. In January 1912, the superintendent of fisheries, W.A. Found, ordered recently appointed Chief Inspector Cunningham to have the weirs removed. It was the superintendent's opinion that "it would not seem impossible or undesirable to prevent the Indians from using such barricades."<sup>89</sup> The superintendent had obviously not spent much time on the ground trying to enforce the prohibition.

The order to remove the weirs seems to have risen out of concern about the Cowichan selling their harvest in town markets. Overseer Galbraith claimed that weir-caught salmon and trout were nearly always sold, noting that he received many complaints about this.<sup>90</sup> Inspector Taylor stated that Galbraith's information came from unreliable sources and not personal observation. Nevertheless, Guardian Colvin intercepted 460 lbs. of trout en route from Cowichan fishers to Vancouver in the period between January and April.<sup>91</sup> No action appears to have been taken against weirs, but Taylor noted that twenty-six nets were destroyed by the guardian during this time period, leaving none in operation. It is not clear how the Cowichan reacted to this, but the following year a provincial fisheries official noted that the Cowichan "now enjoyed the privilege of netting two days of the week under the supervision of the local overseer [Galbraith]," and were allowed to troll at any time for salmon.<sup>92</sup>

When the Royal Commission on Indian Affairs for B.C.<sup>93</sup> interviewed the Cowichan early in 1913, witnesses "constantly complained of the Fishing Laws and Regulations and the enforcement thereof." As a result, the commissioners decided to examine the question of weir use more closely.<sup>94</sup> They concluded that Indian reserve commissioners had granted "exceptional or even exclusive rights to fish in certain particularized

waters" to dozens of bands. The Commission recommended that these rights be clarified and that Aboriginals be granted the right to sell fish in specific limited quantities, provided the proceeds were for personal use and reduced the demand for government aid.<sup>95</sup>

During the Royal Commission's visit to the Cowichan Valley, Overseer Galbraith, with assistance from the local constable and L.C. Rattray, the president of the Cowichan Anglers Association, tore up the Cowichans' weirs. According to Galbraith, the weirs had been closed on the weekend, in contravention of DMF's requirements. His report of the incident is worth quoting at length:

Rattray, the boy and I with Kier the Provincial Constable went back to the Indian weirs on Sunday and pulled the whole thing out and threw them into the river, the Indians are mad! [A]nd the Indian Agent at Duncan told me that the members of the Indian Commission told the Indians that they had a perfect right to put in weirs! It is this sort of thing that gives the Indians backbone to fight. Can't you make these people mind their own business and not meddle with affairs outside their commission. If the thing is not carried out now, it will make the department a laughingstock and the thing will never be put right for everytime we back down, the Indians will be harder to deal with . . . the constable told me he would not come with me unless he got orders from Victoria telling him to do so. Can you manage to have him given orders to go with me whenever I require protection? . . . I would take the boy or Rattray down until I hear if they are to be made constables. . . . [T]hree of them is little enough as you may depend on it, there will be a big row.<sup>96</sup>

The Commission chairman, fearing that the Cowichan would associate the raid with the Commission, protested that it was "rather impolitic that two Government Officials [Galbraith and Taylor] should proceed to such drastic action without the knowledge of the Commission," and requested that it be informed before future raids occurred.<sup>97</sup>

Senior DMF officials informed the Commissioners and DIA officials that enforcement would not be abated. Following this, the Cowichan refused Euro-Canadian access to reserves and began building another weir. To prevent further trouble, Inspector Taylor met with the Cowichan fishers and arranged for them to be allowed one weir, which be left open three days a week.<sup>98</sup> This was a significant reduction of weir fishing by the Cowichan, but was ultimately not enough to satisfy senior DMF officials. In the month following the initial raid, orders were given to remove all weirs, contrary to Taylor's agreement. The provincial police agreed to

render the necessary assistance.<sup>99</sup>

It is unclear whether subsequent raids occurred in 1913, but by the spring of 1914, the Royal Commission convened a committee consisting of Inspector Taylor, Assistant Commissioner Babcock of the B.C. Department of Fisheries, and Indian Agent Robertson, to deal with the situation. The committee heard from DMF officials who were involved with the Babine and Stuart Lake weir agreements and it was decided to negotiate a compromise regarding the use of weirs on the Cowichan River. Following this, a meeting was held between Cowichan fishers, local residents, politicians and anglers.<sup>100</sup> The Cowichan reiterated their arguments about weirs, which were rebutted by the anglers, but accepted by many of the other Euro-Canadians present.

After hearing the witnesses, the committee recommended that the Cowichan be allowed to place three weirs in the Cowichan River and one in the Koksilah River, provided that the slats in the panels were separated by two-and-a-half inches of space for fish of a moderate size to pass through unhindered and that they be left open on the weekends. In return, the Cowichan were to abandon entirely the use of nets on the river.<sup>101</sup> In addition, Inspector Taylor gave the local Indian agent the authority to grant permits to the Cowichan to take fish and sell them that year without obtaining normal commercial licences.<sup>102</sup>

In 1916, the Royal Commission noted that the arrangements under the 1914 committee agreement were working well, and advised that they continue.<sup>103</sup> Despite efforts by DMF to remove weirs in 1919, the Cowichan continued using them the following year.<sup>104</sup> Apparently, they stopped using weirs during the 1930s. This may have been because band members could not agree on how to distribute the catch, but further research is needed to determine how and why Cowichan weir-use diminished.<sup>105</sup>

## V

Fishing, particularly with weirs, played important economic, political and social roles among the Cowichan people of Vancouver Island. When DMF officials tried to enforce the 1894 ban on weirs, they discovered what lengths the Cowichan would go to in order to protect this method of fishing. For over twenty years, they forced modification of DMF enforcement policy and were able to keep their weirs. The Cowichan accomplished this remarkable achievement firstly by emphasizing government responsibilities to Aborigines and finding advocates among DIA officials. This was noteworthy considering the lack of support received by other Aboriginal groups.<sup>106</sup>



Secondly, the Cowichan sought out support from a wide range of Euro-Canadians, including local residents, members of Parliament and the union movement. They relied on missionaries to some degree for contact with these other Euro-Canadians, but avoided relying exclusively on one particular clergyman or even one particular denomination. Sympathetic Euro-Canadians may have helped articulate but certainly did not create Cowichan discontent and resistance.<sup>107</sup>

Thirdly, the Cowichan defined their use of weirs in terms of rights and needs and mounted an "insurrection" against DMF's discursive portrait of weirs as destructive and wasteful. By contrasting the anglers' pursuit of pleasure with the Cowichan struggle for food and economic survival, they introduced powerful terms of reference on which to base their public statements.

Fourthly, the Cowichan demonstrated a firm presence on the ground and would not relinquish their weirs. This firm presence included making Euro-Canadians aware that access to reserve lands could not be taken for granted. As a result of these activities, they achieved some degree of success, including the 1898 trial decision and public support during the 1902 Weir Commission. These accomplishments undermined DMF enforcement efforts and the powerful tourism and sport fishing lobbies. Ultimately, Cowichan resistance set the stage for the 1914 agreement.

Important milestones such as the 1898 trial decision and the 1914 agreement did not guarantee permanent access to fish. The Cowichan would have to continue to resist encroachments on their fishing not only by DMF, but also by the commercial fishing industry, which turned its attention to Cowichan River chum salmon when it became marketable in the early 1900s. In addition, it is unclear how significant this resistance was for other Aboriginal fishers in B.C. during this period. Nitinat fishers on Vancouver Island's west coast were still using a weir in 1912,<sup>108</sup> but by 1924 DMF had succeeded in designating the Capilano River (north of Vancouver) for angling.<sup>109</sup>

By the end of the 1800s, power over the Cowichan River fishery had shifted significantly out of the hands of Cowichan people. Nevertheless, their resistance provided a strong platform for asserting Aboriginal rights and had an important impact on emerging Euro-Canadian power. Accommodations and adjustments made by authorities between 1894 and 1914 cannot be attributed solely to Euro-Canadian initiatives. The prolonged fight over weirs undermined DMF's authority and power on the Cowichan River and demonstrated that the Cowichan could take steps to stop the food from being taken from their mouths.

## Notes

This paper has been adapted from a chapter in Jos Dyck, "And Then We Will Mind the Law": The Enforcement of Federal Fisheries Regulations in British Columbia and the Resistance of Native Fishers, 1894-1916" (unpublished M.A. thesis, Simon Fraser University, 1994). This paper was reviewed at various stages by Dr. Douglas Cole, Dr. Noel Dyck and Dr. Ian Dyck as well as unidentified referees. The insights and suggestions from these reviews were very helpful.

- 1 Prior to European settlement in a region, British authorities and their Canadian successors arranged treaties to compensate Aboriginal people for their interests or rights regarding lands and to protect other interests such as hunting and fishing activities. For a discussion of treaty-making on the prairies, see Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Toronto: McClelland & Stewart, 1992), chapter 19, "First Numbered Treaties, Police and the Indian Act." In B.C., treaties were concluded only with Aboriginal people in the Peace River region and on southern Vancouver Island. See Paul Tennant, *Aboriginal People and Politics: The Indian Land Question in British Columbia, 1849-1989* (Vancouver: University of British Columbia Press, 1990), chapter 2, "The Douglas Treaties and Aboriginal Title," and pp. 65-67.
- 2 The history of B.C. Aboriginal demands for recognition of Aboriginal title, negotiation of treaties and self-government from 1887 to 1927 is recounted in Tennant, *Aboriginal Peoples*, chapters 5 to 8. Tennant indicates that, despite persistent efforts by tribal groups and "pan-Indian" organizations, federal and provincial governments refused to acknowledge and directly address the issue of Aboriginal title and rights in B.C. west of the Rockies.
- 3 Dianne Newell, *Tangled Webs of History: Indians and the Law in Canada's Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993) is the main published work on this topic as it pertains to B.C.
- 4 Newell, *Tangled Webs*; see chapter 4, "Indian Labour Captured, 1889-1918." Perhaps the most important encroachment on Aboriginal fishing activities was the limited definition of traditional Aboriginal fishing as a personal subsistence activity. Fisheries authorities did not recognize an Aboriginal right to sell fish (p. 62). After outlining how fishing regulations were geared to meet the economic interests of the Euro-Canadian controlled industrial/commercial fishery, Newell concludes that Aboriginal people lost effective control of their own labour as well as access to salmon (p. 96).
- 5 James Burrows, "A Much Needed Class of Labour: The Economy and Income of the Southern Interior Plateau Indians, 1897-1910," *BC Studies* 71 (autumn 1986). In a re-evaluation of Robin Fisher's argument that Aboriginals became largely irrelevant to B.C.'s economy after Euro-Canadian settlement, James Burrows states that it is impossible to properly examine the role of Aboriginal people in the provincial economy without taking into account regional differences (see p. 28). Similarly, examining regional examples or even the experiences of specific Aboriginal communities contributes to a more accurate understanding of how fisheries regulations were enforced with regard to Aboriginal peoples.

- 6 R.M. Galois, "The Indian Rights Association, Native Protest Activity and the 'Land Question' in British Columbia, 1903-1916," *Native Studies Review* 8, no. 2 (1992): 1-34. Galois asserts that this was a transition period in protest activities when Aboriginal people sought direct access to centres of Euro-Canadian power (imperial, federal and provincial governments) and used forms of protest that were readily intelligible to Euro-Canadian authorities (i.e., letters, petitions, delegations) (see p. 23).
- 7 Tina Loo, "Dan Cranmer's Potlatch: Law as Coercion, Symbol and Rhetoric in British Columbia, 1884-1951," *Canadian Historical Review* 73/2 (1992): 125-65. Loo argues that the power of law includes the ability to define issues, set the terms of debate and resolution, and provide the measures for assessing fairness of the outcome (pp. 151-52). The idea that power is exercised through the production, accumulation, circulation and functioning of discourses and associated "truths" is based upon ideas in Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977* (New York: 1980).
- 8 Wayne Suttles, "Affinal Ties, Subsistence, and Prestige among the Coast Salish" in *Coast Salish Essays*, edited by W. Suttles (Vancouver and Seattle and London: Talon Books and University of Washington Press, 1987), pp. 19-20.
- 9 Burrows, "Economy and Income," pp. 38-39. Burrows's discussion is based upon figures in DIA annual reports from various years between 1897 and 1905.
- 10 Joseph and Anne Forester, *Fishing: B.C.'s Commercial Fishing History* (Saanichton: Hancock House Pub. Ltd., 1975), pp. 40-41.
- 11 Newell, *Tangled Webs*, p. 42.
- 12 Information about the social significance of Cowichan weir-use is taken from Wayne Suttles, "Central Coast Salish Subsistence," *Northwest Anthropological Research Notes* 24, no. 2 (1990), p. 149, and Suttles, "Affinal Ties," p. 20.
- 13 Newell, *Tangled Webs*, pp. 53, 63.
- 14 Brendan O'Donnell, "Indian and Non-Native Use of the Cowichan and Koksilah Rivers: An Historical Perspective," report for the Department of Fisheries and Oceans (n.d.), pp. 40, 45, 46.
- 15 O'Donnell, "Indian and Non-Native Use," pp. 41, 43.
- 16 National Archives Record Group 10, Department of Indian Affairs (hereafter "RG10"), reel C-13921, volume 1357, W.H. Lomas to Fisheries Inspector J. McNab, 24 January 1894.
- 17 Dominion Order in Council, 3 March 1894, SC, 1894. Cited in Newell, *Tangled Webs*, p. 89.
- 18 National Archives Record Group 23 for the Department of Marine and Fisheries (hereafter "RG23"), reel 23, file 583, pt. 1, Geolbs VanGoethem to A.W. Vowell, Indian Superintendent, Victoria, 23 June 1895.
- 19 Bruce Stadfeld, *Manifestations of Power: Native Response to Settlement in Nineteenth Century British Columbia* (M.A. thesis, Simon Fraser University, 1993), p. 85.
- 20 *An Act further to amend "The Indian Act, 1880."* S.C. 1884 c.27 (47 Vict.)



- 21 Douglas Cole and Ira Chaikin, *An Iron Hand Upon the People: The Law Against the Potlatch on the Northwest Coast* (Vancouver and Toronto; Seattle, WA: Douglas and McIntyre and University of Washington Press, 1990), p. 31.
- 22 Angling for trout and salmon had become very popular among wealthy urban middle class men in Britain during the 1880s, largely because of the greater accessibility to fishing streams as a result of railroad building. See Tony Mason, (ed.), *Sport In Britain: A Social History* (Cambridge: Cambridge University Press, 1989), pp. 17-19. Canada quickly became a popular destination for anglers from Britain, as well as the U.S. Of its various tourist publications around the turn of the century, the Canadian Pacific Railway Company's *Fishing and Shooting Along the Line of the Canadian Pacific Railway* was the most popular. See E.J. Hart, *The Selling of Canada: The CPR and the Beginnings of Canadian Tourism* (Banff, Canada: Altitude Publishing, 1983), p. 27. At this time, the Cowichan River was beginning to be known to sportsmen the world over as one of the finest steelhead rivers. See Horace Annesley Vachell, *Sport and Life on the Pacific Slope* (London: Eveleigh Nash, 1908), pp. 297-302, and A.J. Wright, "A Study of the Social and Economic Development of the District of North Cowichan: 1850-1912" (B.A. essay, University of British Columbia, 1966), p. 98.
- 23 Canada Sessional Papers, 1903, DMF Annual Report, 1902, Supplement no. 1, *Special Reports: III, The Aim and Method of Fishery Legislation, by Professor E.E. Prince, 1901*. The commissioner of fisheries, E.E. Prince, claimed that the basis and aim of fisheries legislation was to preserve: (1) fish, (2) commercial fishing interests, (3) the state and public interest, and (4) international interests. See p. 20.
- 24 RG23, r.39, f.1469, Correspondence between 25 April 1895 and 1 July [June] 1895.
- 25 Note the apparent conflict of interest between Lomas's role as an Indian agent acting on behalf of Aborigines and his role as a DMF fisheries guardian enforcing regulations against Aboriginal fishers. Curiously, there are no indications on file that either department raised concerns about Lomas's dual role.
- 26 In 1876, the provincial and Dominion governments established an Indian Reserve Commission to choose provincial Crown land to be transferred to the federal Crown for use as Indian reserves. See Robin Fisher, *Contact and Conflict: Indian-European Relations in British Columbia, 1774-1890*, 2nd ed. (Vancouver: UBC Press, 1992), p. 188. The commission's minutes of decision for the Cowichan reserves do not reflect any promises about fisheries. Further research would be required to determine whether the commission broached the topic in archived correspondence. Joint Indian Reserve Commission and G.M. Sproat, *Minutes of Decision, Correspondence and Sketches*, vol. 3, ILR Register No. B-64656, Indian Land Registry, Department of Indian Affairs and Northern Development, B.C. Region.
- 27 RG23, r.39 f.1469, Agent Lomas to Superintendent Vowell, 10 June 1895.
- 28 Trefor Smith, "'A Very Respectable Man': John Freemont Smith and the Kamloops Agency, 1912-1923" (unpublished M.A. thesis, Simon Fraser University, 1993). In his examination of the career of an Indian agent, Smith asserts that Aboriginal people could achieve certain ends with DIA by using the

bureaucratic discourses of the department (see p. 10). By discussing issues in terms of the economic impacts on DIA, they could evoke departmental parsimoniousness, as well as the powerful moral maxims of Aboriginal self-sufficiency and self-reliance.

- 29 RG23, r.39, f.1469, Letters from 11 June 1895 to 18 June 1895.
- 30 RG23, r.23, f.583, pt.1, Father Geolbs VanGoethem to Superintendent Vowell, 23 June 1895.
- 31 The Cowichan were likely relying on the Land Conveyance Agreements ("Douglas Treaties") arranged by James Douglas with Aboriginal communities on Vancouver Island during the 1850s. Each of the Douglas Treaties stipulated that the communities were at liberty to carry on their fisheries as formerly. British Columbia, *Papers Connected with the Indian Land Question: 1850-1875* (Victoria: Wolfenden, 1875), pp. 5-11.
- 32 Noel Dyck, "What is the Indian Problem": *Tutelage and Resistance in Canadian Indian Administration* (St. John's: Memorial University of Newfoundland, 1991), pp. 24-25. This structure of relations, based on the assumption of Aboriginal inferiority, had the effect of disempowering Indians in their relations with Euro-Canadians. Instead of emphasizing the assumption of Aboriginal dependence and irresponsibility, however, the Cowichan emphasized the assumption of government responsibility to Aboriginal people. This kind of argument indicated an alternative flow of power in the tutelage relationship and gave the Cowichan an opportunity to define the "guardianship" role of DIA officials, who were the primary Euro-Canadian representatives in the tutelage relationship.
- 33 RG23, r.23, f.583, pt.1, Agent Lomas to Superintendent Vowell, 27 June 1895.
- 34 RG23, r.23, f.583, pt.1, Father Geolbs VanGoethem to Superintendent Vowell, 23 June 1895.
- 35 RG23, r.23, f.583, pt.1, Agent Lomas to Superintendent Vowell, 27 June 1895.
- 36 RG23, r.23, f.583, pt.1, Deputy Superintendent General Reed to Deputy Minister, DMF, 27 June 1895 and 9 July 1895.
- 37 RG23, r.23, f.583, pt.1, Deputy Superintendent General Reed to John Costigan, Minister of Fisheries, 11 July 1895.
- 38 RG23, r.23, f.583, pt.1, Perry Mills, Barrister to Sir Charles Tupper, Minister of Justice, 2 July 1895.
- 39 RG23, r.23, f.583, pt.1, James Maitland-Dougall to John McNab, 7 March 1898.
- 40 RG23, r.23, f.583, pt.1, Memorandum from Commissioner E.E. Prince to Minister of Fisheries, 4 September [1895]
- 41 RG23, r.23, f.583, pt.1, Fisheries Inspector McNab to the Deputy Minister of Marine and Fisheries, 9 September 1895.
- 42 Around the turn of the century, "rod and gun" clubs formed throughout B.C. to promote the interests of recreational fishers and hunters. As the conservation movement gained prominence throughout Canada in the 1910s, these types of organizations lobbied effectively for stringent fish and game laws which restricted Aboriginal peoples' access. See A.J. Ray, *I Have Lived Here Since the World Began: An Illustrated History of Canada's Native People* (Toronto: Lester Publishing, Key Porter Books, 1996), p. 279.

- 43 RG23, r.23, f.583, pt.1, James Bridgeman, Secretary of Vancouver Island Fish and Game Protection Society to the Minister of Marine and Fisheries, 19 December 1895. Another letter, identical in text to this one, was sent to the Minister by the new secretary of the Society on 7 February 1898.
- 44 RG23, r.23, f.583, pt.1. Superintendent General, DIA to Minister of Marine and Fisheries, 28 January 1896. Enclosure: Petition from Indians and residents of Cowichan to Superintendent General, DIA.
- 45 RG23, r.23, f.583, pt.1, Superintendent General, DIA to Minister of Marine and Fisheries, 28 January 1896. Enclosure: Petition from Indians and residents of Cowichan to Superintendent General, DIA.
- 46 Patrick Dunae, *Gentlemen Emigrants: From the British Public Schools to the Canadian Frontier* (Vancouver/Toronto: Douglas and McIntyre, 1981), p. 106.
- 47 B.C. Department of Mines and Resources, "Cowichan, Vancouver Island as a Home" (Victoria: The Colonist Printing and Publishing Co., 1901), p.3.
- 48 Wright, "Social and Economic Development," p. 99. Also see Dunae, *Gentlemen Emigrants*, pp. 123-26, where he states that, by the turn of the century, Canadians were becoming more nationalistic and independent, creating an atmosphere of less tolerance for English stereotyping of Canada and its residents.
- 49 John Lowerson, *Sport and the English Middle Classes, 1870-1914* (Manchester and New York: Manchester University Press, 1993), pp. 42-43.
- 50 In the 1860s, the Esk Fishery Association formed to restrict the Esk River salmon and trout for the use of wealthy tourists and local anglers. The association attempted to limit the catch of commercial offshore net-fishers, but was particularly successful in stopping fishing by local iron miners, who had long assumed a customary right to take fish from the river. The association allotted them limited rights, but revoked them when it was discovered that the miners were following another custom of selling catches to augment their income. Lowerson, *Sport*, pp. 43-44.
- 51 RG23, r.23, f.583, pt.1, James Maitland-Dougall to John McNab, 7 March 1898.
- 52 RG23 r.23, f.583, pt.1, Louis Gaborini to V.W. McInnis, M.P. for Nanaimo and Rev. Maxwell, M.P. for Vancouver, 22 September 1897.
- 53 RG23, r.23, f.583, pt.1, Inspector McNab to Deputy Minister, DMF, 10 March 1898.
- 54 RG23, r.23, f.583, pt.1, Maitland-Dougall to McNab, 7 March 1898.
- 55 RG23, r.23, f.583, pt.1, Dominion Commissioner of Fisheries to John McNab, 19 March 1898.
- 56 RG23 r.23, f.583, pt.1, Correspondence from 7 April to 10 May 1898.
- 57 In his class analysis of power, Antonio Gramsci argued that ideology - the control of ideas, opinions and attitudes through various public and private institutions - allowed dominant groups to exert power over others without having to continually rely on forceful repression. According to Gramsci, the legal system provided an important forum in which this phenomenon, which he called hegemony, could be employed. Phil Harris, *An Introduction to Law* (London: Weidenfeld and Nicolson, 1984), p. 28. The Cowichan court victory indicates that occasionally the legal system provided opportunities for marginalized groups to exercise this type of power.



- 58 Although not based strictly on class analysis, Michel Foucault's theory that localized, regional knowledges and discourses are subjugated by the coercion of a theoretical, unitary, formal and scientific discourse is reminiscent of Gramsci's theory of hegemony. However, Foucault was also concerned with the "insurrection of subjugated knowledges" and ascribed power to their use, particularly as a means of criticism. Michel Foucault, *Power/Knowledge: Selected Interviews & Other Writings, 1972-1977*, edited by Colin Gordon (New York: Pantheon Books, 1980), pp. 81-85, 98.
- 59 RG23, r.23, f.583, pt.1, Memo, "Statement of Mr. Galbraith, Fishery Overseer in regard to weirs and fishing on Cowichan River," 14 August 1899.
- 60 RG23, r.23, f.583, pt.1, W.W. Stumbles to Commissioner Prince, Circa 21 August 1899.
- 61 RG10, microfilm C-10140, v.3801, f.49,287, Cowichan Band Council Resolution, 4 June 1888. Cited in O'Donnell, "Indian and Non-Native Use of the Cowichan and Koksilah Rivers," p. 46.
- 62 RG23, r.23, f.583, pt.1, L.D. McLean, Secretary, DIA to Acting Deputy Minister, DMF, 12 July 1900; and RG10, C-13923, v.1362, Indian Agent Robertson to DMF Inspector C.B. Sword, 11 September 1900.
- 63 RG10, C-13923, v.1362, Agent Robertson to Chief Secheeltum and Others, 26 September 1900; v.1363 Robertson to Sword, 5 November 1901.
- 64 RG23, r.23, f.583, pt.1, A/Deputy Minister DMF to William Lumley et al., 2 October 1900.
- 65 RG23, r.53, f.2918, Canada, "Commission on the Salmon Fishing Industry in British Columbia, 1902," 16th Session, Evidence of Tsilpanult, 5 February 1902, p. 11.
- 66 "Dog Salmon for Japan, Important Statistics Presented to Fisheries Commission at Nanaimo Sitting," *The Province* (Vancouver), p.2.
- 67 RG23, r.23, f.583, pt.1, Charles Durham to Deputy Minister DMF, 7 April 1902.
- 68 RG23, r.23, f.583, pt.1, Memorandum Re. Suggested Abolition of Seines, Cowichan River, B.C. by Commissioner E.E. Prince, 15 April 1902.
- 69 RG23, r.23, f.583, pt.1, Dominion Order-in-Council dated 23 May 1902.
- 70 Geoff Meggs, *Salmon: The Decline of the British Columbia Fishery* (Vancouver: Douglas and McIntyre, 1991), p. 58.
- 71 This is evident from the report that in January 1912, 460 lbs. of steelhead bound for Vancouver were seized. RG23, r.24, f.583, pt.2, Inspector Taylor to Superintendent Found, 11 June 1912. Apparently, Cowichan fishers were also supplying markets in Victoria. See RG23, r.5, f.6 pt.7, W. Galbraith, Overseer to Superintendent of Fisheries, 3 June 1912.
- 72 RG23, r.40, f.1469, pt.2, Commissioner E.E. Prince to Deputy Minister, DMF, 11 April 1902.
- 73 RG23, r.40, f.1469, p.2, Mayor Hayward, Victoria to Minister, DMF, 14 May 1902.

- 74 RG10, C-13924, v.1364, Agent Robertson to C.B. Sword, Inspector, DMF, 22 July 1902; C-13916, v. 1343, Indian Superintendent MacLaughlin to Agent Robertson. Based on a complaint laid by a member of the Tourist Association before the local magistrate, a summons was served on "Leo," a Cowichan fisher from Quamichan. A charge was preferred on the Association's behalf and J.T. Mann was retained as counsel for the prosecution.
- 75 RG10, C-13924, v.1364, Agent Robertson to Superintendent Vowell, 22 July 1902.
- 76 RG10, C-13924, v.1364, Agent Robertson to Superintendent Vowell, 8 April 1902; and RG10, C-13916, v. 1343, Superintendent Vowell to Agent Robertson, 10 April 1902.
- 77 RG10, C-13916, v.1343, P.M. Draper, Secretary-Treasurer, Trades and Labour Congress of Canada to Clifford Sifton, Minister of the Interior, 8 July 1902.
- 78 RG10, C-13916, v.1343, W. MacLaughlin, Acting Superintendent to Agent Robertson, 25 July 1902.
- 79 Three days of testimony by anglers and local residents was recorded in the *Victoria Daily Colonist* under the following article titles: "Enquiry as to use of weirs," 9 August 1902; "Fisheries Commission," 12 August 1902; and "Fisheries Commission," 19 August 1902.
- 80 RG23, r.40, f.1469, pt.2, Testimony of Chief Seeheeltum before Senator Templeman, 6 August 1902.
- 81 RG23, r.40, f.1469, pt.2, Testimony of John Elliot before Senator Templeman, 6 August 1902.
- 82 These events are recounted in Newell, *Tangled Webs*; Meggs, *Salmon*; and Dyck, *And Then We Will Mind the Law.*"
- 83 RG23, r.23, f.583, pt.1, Agent Robertson to Superintendent Vowell, 22 May 1905.
- 84 RG23, r.23, f.583, pt.1, Inspector C. Taylor to Assistant Commissioner Venning, 19 July 1905.
- 85 The C.P.R. was an impetus for the creation of the Tourist Association of Victoria in 1902. Kenneth Lines, "A Bit of Old England: The Selling of Tourist Victoria" (unpublished M.A. thesis, University of Victoria, 1972), chapter 2.
- 86 RG23, r.24, f.583, pt.1, President's Assistant Drinkwater to Deputy Minister, DMF, 2 January 1907.
- 87 RG23, r.24, f.583, pt.1, Deputy Minister DMF to President's Assistant (CPR) Drinkwater, 10 July 1907.
- 88 The number of Cowichan weirs had declined, but it is not evident whether this was attributable to DMF enforcement, log driving on the river or changes in the Cowichan economy such as increased participation in wage labour.
- 89 RG23, r.24, f.583, pt.1, Superintendent of DMF, W.A. Found to Chief Inspector Cunningham, 30 January 1912.
- 90 RG23, r.5, f.6, pt.7, W. Galbraith, Fishery Overseer, Victoria, "Weekly Report," 12 May 1912. He claimed that if the prohibition on the sale of weir caught salmon was enforced, then weirs would no longer be used as Aborigines sold nearly all fish caught with these devices.

- 91 RG23, r.24, f.583, pt.2, Chief Inspector Cunningham to Superintendent, DMF, 11 June 1912.
- 92 BCARS, GR435, Box 64, file 613, Deputy Commissioner (B.C.) to Commissioner of Fisheries (B.C.), 14 June 1913.
- 93 After lingering disagreements between the provincial and Dominion governments regarding the size and conveyance of lands set aside by the Indian reserve commission, the royal commission was jointly established in 1912 to settle differences. From 1913 to 1916, it held hearings with bands and examined reserves throughout B.C. As with the Indian reserve commission, the royal commission was not mandated to address the issue of Aboriginal rights, but many Aboriginals addressed this topic in discussions about fishing, as well as land. See Tennant, *Aboriginal Peoples*, pp. 88-93.
- 94 RG23, r.24, f.583, pt.2, E.L. Wetmore, Commission Chairman to A/Superintendent General, DIA, 9 June 1913.
- 95 Meggs, *Salmon*, p. 106. See also RG10, T-3957, v.11020, f.517, Royal Commission on Indian Affairs for the Province of B.C., "Memorandum Re: Fishing Rights and Privileges of Indians in B.C.," 12 January 1916.
- 96 BCARS, GR435, b.64, f.605, Overseer Galbraith, DMF to Mr. Matson (?), 9 June 1913.
- 97 RG23, r.24, f.583, pt.2, Chairman E.L. Wetmore to A/Superintendent General, DIA, 9 June 1913.
- 98 BCARS, GR435, b.194, f.1913 #6, Provincial Police Constable Kier to Superintendent of Police Campbell, 22 July 1913.
- 99 BCARS, GR435, b.194, f.1913 #6, Deputy Commissioner of Fisheries (B.C.) McIntyre to Superintendent of Police Campbell, 24 July 1913.
- 100 RG10, T-3957, v.11020, f.517, Royal Commission on Indian Affairs for the Province of B.C.: Conference on Fishing, 9 April 1914.
- 101 RG10, T-3957, v.11020, f.517A, Cited in O'Donnell, "Indian and Non-Native Use of the Cowichan and the Koksilah Rivers," p. 71.
- 102 RG10, v.3908, f.107, 297-2, "Minutes of the Dominion/Provincial Committee on Fishing Privileges of Indians in B.C.," 23 December 1915, p. 30.
- 103 RG10, T-3957, v.11020, f.517, Royal Commission on Indian Affairs for the Province of B.C., "Memorandum Re: Fishing Rights and Privileges of Indians in B.C.," 12 January 1916.
- 104 RG10, C-13931, v.1385, Agent Robertson to Inspector Taylor, 6 June 1919 and C-13932, v.1387, Agent Robertson to Inspector Taylor, 6 May 1920.
- 105 "Officials have no taste for weir-caught salmon," *Vancouver Sun*, 6 September 1973, p.7.
- 106 In particular, see Noel Dyck, "An Opportunity Lost: The Initiative of the Reserve Agricultural Programme in the Prairie West," in *1885 and After: Native Society in Transition*, edited by F. Laurie Barron and James B. Waldram, pp. 121-37 (Regina: Canadian Plains Research Centre, 1986) and Sarah Carter, *Lost Harvests: Prairie Indian Reserve Farmers and Government Policy* (Montreal & Kingston: McGill-Queen's University Press, 1990). Both authors indicate that DIA undermined Aboriginal farmers on the prairies around the turn of the century.



- 107 This phrasing is taken from Galois, "The Indian Rights Association," p. 23.
- 108 RG23, r.5, f.6, A.W. Neil, Indian Agent to Secretary, DIA, 6 March 1912.
- 109 In 1925, a Squamish fisher was convicted for breaching the sport fishery designation. Chris Roine, "The Squamish Aboriginal Economy, 1860-1940" (unpublished M.A. thesis, Simon Fraser University, 1996), pp. 74-76.