

Nez Perce, Umatilla, Warm Springs, and Yakama treaty fishing rights and Treaty Fishing Access (In-Lieu) Sites

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Cultural and Legal Background

Bureau of Indian Affairs. 1977. Background information on Indian fishing rights in the Pacific Northwest. Bureau of Indian Affairs, Portland, Oregon. <https://docs.cbfwl.org/biblio28871.pdf>

Describes significant legal decisions and developments, and the impact of United States v. Washington that led to the wider possibility of tribal management and enforcement of fisheries.

Columbia River Inter-Tribal Fish Commission. 1988. Briefing book on Indian in-lieu fishing sites and fisheries law enforcement on the Columbia River between Bonneville and McNary Dams. Columbia River Inter-Tribal Fish Commission, Portland, Oregon. <https://catalog.cbfwl.org/cgi-bin/koha/opac-detail.pl?biblionumber=7141>

Provides information on the history of existing in-lieu fishing access sites, possible in-lieu sites, and a background on enforcement in the Mid-Columbia.

Dompier, D. W. 2005. The fight of the salmon people: blending tribal tradition with modern science to save sacred fish. Xlibris, Philadelphia, Pennsylvania. <https://catalog.cbfwl.org/cgi-bin/koha/opac-detail.pl?biblionumber=1824>

Provides a broad history of indigenous salmon fisheries in the Columbia River Basin.

Dupris, J. C., K. S. Hill, and W. H. Rodgers. 2006. The Si'lailo Way: Indians, salmon, and law on the Columbia River. Carolina Academic Press, Durham, North Carolina. <https://catalog.cbfwl.org/cgi-bin/koha/opac-detail.pl?biblionumber=28254>

Tells the history of the fight to protect tribal fishing rights and salmon habitats through chapters on key figures and their efforts.

Duwors, R. 2008. Documents from the Indian fishing rights controversy in the Pacific Northwest. The Pacific Northwest Quarterly 99(2): 55-65. <https://www.jstor.org/stable/40492062>

Compilation of 5 primary sources from the 1960s and 1970s related to the fishing rights movement: a statement from Sidney Mills, a letter from Hank Adams, excerpts from the Native American Red Power newsletter, and a newsletter of the Treaty Indians of the Columbia, Columbia River & Yakima Indian News.

Hedberg, D. B. 2017. "As long as the mighty Columbia River flows": the leadership and legacy of Wilson Charley, a Yakama Indian fisherman. Master's thesis. Portland State University, Portland, Oregon. <https://doi.org/10.15760/etd.5400>

Profiles Yakama Nation fisher Wilson Charley and his strategies for opposing The Dalles Dam and attempts by the government to weaken tribal rights to fish and fishing access sites.

Lane, R. B., and B. Lane. 1979. Traditional fisheries of the Walla Walla, Cayuse and Umatilla. <https://catalog.cbfiw.org/cgi-bin/koha/opac-detail.pl?biblionumber=32940>

Manuscript examining the establishment of treaty rights, federal court cases, cultural importance and context of fishing locations to the Walla Walla, Cayuse, and Umatilla tribes, and usual and accustomed fishing access sites.

Swindell, E. G., Jr. 1942. Report on source, nature and extent of the fishing, hunting and miscellaneous related rights of certain Indian Tribes in Washington and Oregon. Office of Indian Affairs, Division of Forestry and Grazing, Los Angeles. <https://www.sos.wa.gov/legacy/publicationsviewer/?title=Report%20on%20fishing%20and%20hunting%20rights%20of%20Indian%20tribes&id=116>

Offers historical background on traditional sources and areas for harvesting, as well as a section detailing the tribal rights of the time. Also includes affidavits on the location of traditional fishing grounds of many tribes in Oregon and Washington, including the CRITFC member tribes.

Ulrich, R. 1996. Justice delayed: a sixty year battle for Indian fishing rights. Master's thesis. Portland State University, Portland, Oregon. <https://doi.org/10.15760/etd.6982>

Provides a history from the 1930s through the 1990s of delays to the creation of in-lieu fishing access sites intended to replace the sites lost by the construction of Bonneville Dam.

Ulrich, R. 2007. Empty nets: Indians, dams, and the Columbia River. Oregon State University Press, Corvallis, Oregon. <https://catalog.cbfiw.org/cgi-bin/koha/opac-detail.pl?biblionumber=28472>

History of Columbia River tribes struggles to gain fishing rights between the 1939 promise by the U.S. Government to provide replacement sites, and the subsequent decades of inaction. Investigates court cases, and political action used to fight for fishing rights; also examines the cultural impacts of dams and profiles individual families who were impacted by the construction of dams.

U.S. Army Corps of Engineers. 1992. Title IV Columbia River treaty fishing access sites: phase one interim evaluation report: Public Law 100-581. U.S. Army Corps of Engineers, Portland, Oregon. <https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/7415>

Presents the plan to implement Phase one of the Columbia River Treaty Fishing Access Sites project as part of Public Law 100-581. This designated 23 fishing sites for use by the treaty tribes. Phase one included the study of eight sites, and the plan includes recommendations for construction on four: Bonneville Area Office, Cascade Locks, Lone Pine and Underwood.

U.S. Army Corps of Engineers. 1994. Land acquisition study, public law 100-581, title IV, Columbia River treaty fishing access sites. U.S. Army Corps of Engineers, Portland, Oregon. <https://docs.cbowl.org/USACE/CRTFishingAccess-LandAcquisition.pdf>

Offers an update on the Columbia River Treaty Fishing Access Sites project. Examines the current development and planned development of six additional sites: Lyle, Wind River, Stanley Rock, White Salmon, Dallesport, and Bingen Boat Channel.

U.S. Army Corps of Engineers) 1995. Final phase two evaluation report and finding no significant impact/environmental assessment: Columbia River Treaty fishing access sites. U.S. Army Corps of Engineers, Portland, Oregon. <https://catalog.cbowl.org/cgi-bin/koha/opac-detail.pl?biblionumber=31522>

Following the phase one implementation, phase two recommends the construction of the remaining 19 treaty fishing access sites, two in-lieu fishing sites, and six acquisition sites on the Bonneville pool.

U.S. Army Corps of Engineers. 2003. Post authorization change for Celilo Village redevelopment. U.S. Army Corps of Engineers, Portland, Oregon. <https://docs.cbowl.org/USACE/2003%20PACR%20-%20Celilo%20Village%20Redevelopment.pdf>

Outlines Army Corps of Engineers plans to redevelop Celilo Village. The plan includes adopting the Celilo Village redevelopment into the Columbia River Treaty Fishing Access Sites project, updating infrastructure at the site, replacing existing residences, transferring operations and maintenance funding for Celilo Village to the Bureau of Indian Affairs, and reestablishing of the Wyam Board to provide governance to the village.

United States Army Corps of Engineers and Cooper Zeitz Engineers. 2013. Fulfillment of a promise: a history & summary of the planning and implementation of the Columbia River Treaty Fishing

Access Sites. Portland, Oregon. <https://catalog.cbowl.org/cgi-bin/koha/opac-detail.pl?biblionumber=44159>

Collection of documents relating to the Columbia River Treaty, which eventually led to the creation of in-lieu fishing access sites intended to replace the sites lost by the construction of Bonneville Dam. Volume 1 includes an executive summary of the treaty and related projects.

Court Cases and Litigation

Berg, L. 1989. Interview with Judge Robert Belloni. <https://catalog.cbowl.org/cgi-bin/koha/opac-detail.pl?biblionumber=16523>

Transcript of a 1989 interview with Judge Robert Belloni, who presided over the *Sohappy v. Smith* case (later consolidated into *United States v. Oregon*). Belloni ruled in favor of tribes, finding that the state had violated tribal fishing rights by failing to ensure an equal share of harvests.

Berg, L. 2008. Let them do as they promised. *Hastings Environmental Law Journal* 14(1): 311-330. https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1132&context=hastings_environmental_law_journal

Provides an overview of the treaties and key court cases throughout the Columbia River basin as it relates to the fishing rights of the four treaty tribes.

Blumm, M. C. 2002. *Sacrificing the salmon: a legal and policy history of the decline of Columbia Basin salmon*. BookWorld, Den Bosch, The Netherlands. <https://catalog.cbowl.org/cgi-bin/koha/opac-detail.pl?biblionumber=34660>

Examines the history of treaties, agreements, and legislation that have impacted salmon populations. Includes chapters on the Stevens and Palmer treaties, judicial interpretations of treaties.

Blumm, M. C. 2022. *Pacific Salmon Law and the environment: Treaties, endangered species, dam removal, climate change, and beyond*. Environmental Law Institute, Washington. <https://catalog.cbowl.org/cgi-bin/koha/opac-detail.pl?biblionumber=45487>

Chronicles various factors impacting salmon protecting legislation and policy. The first chapters related to treaties, are as follows: the Stevens treaties, Treaty rights as property rights, The Winans Legacy in the courts, Indian treaty rights as a harvest share: the Belloni and Boldt decisions, treaty fishing rights and the environment: the Martinez decision.

Blumm, M. C., and C. L. Baermann. 2020. The Belloni Decision and its legacy: United States v. Oregon and its far-reaching effects after a half-century. *Environmental Law* 50: 347-396.
https://lawcommons.lclark.edu/faculty_articles/104/

Reflects on the impact of Judge Robert Belloni's decision on *Sohappy v. Smith* (later consolidated into *United States v. Oregon*). Judge Belloni ruled that the state of Oregon had violated tribal rights by failing to ensure a "fair share" of fish harvests, and that tribal fisheries should be co-equal with non-tribal commercial fisheries.

Blumm, M. C., and J. Brunberg. 2006. "Not much less necessary...than the atmosphere they breathed": salmon, Indian Treaties, and the Supreme Court—a centennial remembrance of *United States v. Winans* and its enduring significance. *Natural Resources Journal* 46(1): 1-56.
https://lawcommons.lclark.edu/faculty_articles/110

Reflects on the importance of *United States v. Winans*, which upheld the Indian treaty right to cross private property to access traditional fishing grounds on the Columbia River.

Blumm, M. C., and B. M. Swift 1998. The Indian treaty piscary profit and habitat protection in the Pacific Northwest: a property rights approach. *University of Colorado Law Review* 69: 407-502.
https://lawcommons.lclark.edu/faculty_articles/125/

Explores the case law related to the protection of treaty rights. Charts a transition from issues including access to historic fishing grounds, the right to be free from state licensing requirements and discriminatory regulations, the right to equal harvest, and the protection of habitat and populations of fish.

Blumm, M. C., and J. G. Steadman. 2006. Indian treaty fishing rights and habitat protection: the Martinez decision supplies a resounding judicial reaffirmation. *Natural Resources Journal* 49(3): 653-706.
https://lawcommons.lclark.edu/faculty_articles/33

Examines the 2007 *Culverts* case, in which Judge Ricardo S. Martinez affirmed that treaty rights prohibit habitat-damaging activities that preclude tribes from accessing fish. Places the decision in historical context with existing precedent.

Diesen, M. 2013. *State v. Jim*: a new era in Washington's treatment of the treatment of the Tribes? *American Indian Law Review* 38(1): 101-155.
<https://digitalcommons.law.ou.edu/ailr/vol38/iss1/3>

Article analyzing potential impacts to precedent and enforcement from the case *State of Washington v. Jim* in which a Yakama Nation fisher was charged by the State of Washington for net fishing at Maryhill, an in-lieu fishing access site.

Hickey, Ryan. 2018. Highway culverts, salmon runs, and the Stevens Treaties: a century of litigating Pacific Northwest tribal fishing rights. *Public Land & Resources Law Review* 39(1): 254-276. <https://scholarworks.umt.edu/plrlr/vol39/iss1/7/>

Examines the history of the Stevens Treaties with a focus on how the fish clause has been interpreted by the State of Washington.

Lewis III, O. Y. 2002. Treaty fishing rights: a habitat right as part of the trinity of rights implied by the fishing clause of the Stevens Treaties. *American Indian Law Review* 27(1):281–311. <https://doi.org/10.2307/20070691>

Examines the concept to ‘habitat right’ in the Stevens Treaties and why courts should recognize it.

Lindekugel, R. E. 1986. Scope of Indian treaty fishing rights: a right to fishery habitat protection. Columbia River Inter-Tribal Fish Commission, Portland, Oregon. <https://catalog.cbfiw.org/cgi-bin/koha/opac-detail.pl?biblionumber=29758>

Compilation of federal court decisions relating to treaty fishing rights in the Columbia River Basin. Decisions examine whether treaty fishing rights protect against land use impacts on fish populations.

McConnell, L. 2006. The treaty rights of the Confederated Tribes of Warm Springs. *The Pacific Northwest Quarterly* 97(4): 190-201. <https://www.jstor.org/stable/40491973>

Provides a history of fishing treaty rights of the Confederated Tribes of Warm Springs.

Mulier, V. 2007. Recognizing the full scope of the right to take fish under the Stevens Treaties: the history of fishing rights litigation in the Pacific Northwest. *American Indian Law Review* 31(1): 41-92. <https://digitalcommons.law.ou.edu/ailr/vol31/iss1/2>

Overview of history of treaty fishing rights, their litigation and development in the Pacific Northwest, includes information on CRITFC member tribes as well as Western Washington tribes.

Roth, E. B. 1992. A compilation of Indian treaty fishing rights cases. Columbia River Inter-Tribal Fish Commission, Portland, Oregon. https://docs.cbfiw.org/treaty_compilation.pdf

Compilation of federal court decisions relating to CRITFC member tribes’ treaty fishing rights. It does not include all decisions but seeks to represent the judicial interpretation of treaty fishing rights.

Stellmon, J. 2008. Under the guise of 'treaty rights:' the Nez Perce Tribe of Idaho, steelhead, and gillnetting. *Public Land & Resources Law Review* 29(1): 64-83.
<https://scholarworks.umt.edu/plrlr/vol29/iss1/5/>

Focuses on the legal and political history of the Nez Perce Tribe's fishing rights as it relates to the 2007 Nez Perce decision to issue gillnetting permits for fishers on the Columbia River.

U.S. Senate (Indian Affairs). 2019. Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act. Senate Report 116-7 (116th Congress, 1st session). <https://www.congress.gov/bill/116th-congress/senate-bill/50/all-info>

Bill introduced by Senator Merkely and passed as Public Law No: 116-99. Authorizes the Secretary of the Interior to assess sanitation and safety conditions at Bureau of Indian Affairs facilities that were constructed to provide affected Columbia River treaty tribes access to traditional fishing grounds and expend funds on the construction of facilities and structures to improve those conditions.

U.S. Supreme Court. 1905. *United States v. Winans*. U.S. Reports 198: 371-384.
<https://www.loc.gov/item/usrep198371/>

Includes the United States argument and the court's opinion on *United States v. Winans*, which upheld tribal rights to cross private property lines to access traditional harvesting grounds.

U.S. Supreme Court. 1942. *Tulee v. Washington*. U.S. Reports 315: 681-685.
<https://www.loc.gov/item/usrep315681/>

Opinion of the court on *Tulee v. Washington*, which found the state's imposing of licensing fees on tribal members was a violation of their treaty rights as it created a fiscal barrier to the exercise of these protected rights.